



Ohio Revised Code

Section 3737.91 Petroleum underground storage tank financial assurance fund.

Effective: December 18, 1997

Legislation: Senate Bill 46 - 122nd General Assembly

(A) There is hereby created the petroleum underground storage tank financial assurance fund, which shall be in the custody of the treasurer of state, but is not a part of the state treasury. The fund shall consist of moneys from the following sources:

- (1) All fees collected under divisions (B) and (F) of this section and all supplemental fees collected under division (C) of this section;
 - (2) Interest earned on moneys in the fund;
 - (3) Appropriations to the fund from the general revenue fund;
 - (4) The proceeds of revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code, provided that upon resolution of the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code, all or part of those proceeds may be deposited into a separate account of the fund. Chapters 131. and 135. of the Revised Code do not apply to the establishment, deposit, investment, application, and safeguard of any such account and moneys in any such account.
- (B) For the purposes of paying the costs of implementing and administering this section and sections 3737.90 and 3737.92 of the Revised Code and rules adopted under them; payment or reimbursement of corrective action costs under section 3737.92 of the Revised Code; compensating third parties for bodily injury or property damage under that section; and payment of principal and interest on revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code to raise capital for the fund, there is hereby assessed an annual petroleum underground storage tank financial assurance fee on each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility by rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code. The fee assessed by this division shall be paid to the board by a responsible



person for each tank that is subject to the fee. The fee shall be paid not later than the first day of July of each year, except that in 1989 the fee shall be paid by either the first day of September or ninety days after July 11, 1989, whichever is later. The fee is in addition to any fee established by the fire marshal under section 3737.88 of the Revised Code.

The amount of the annual fee due in 1989 and 1990 is one hundred fifty dollars per tank per year. In 1991 and subsequent years the board shall establish the amount of the annual fee in accordance with this division. Not later than the first day of April of 1991 and each subsequent year, the board, in consultation with the administrative agent of the fund with whom the board has entered into a contract under division (B)(3) of section 3737.90 of the Revised Code, if any, shall determine the amount of the annual fee to be assessed in that year and shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the fee at that amount. The fee shall be established at an amount calculated to maintain the continued financial soundness of the fund, provided that if the unobligated balance of the fund exceeds forty-five million dollars on the date that an annual determination is made, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds. Not later than the first day of May of 1991 and each subsequent year, the board shall notify each responsible person by certified mail of the amount of the annual fee per tank due in that year. As used in this paragraph, "proceedings" has the same meaning as in section 133.01 of the Revised Code.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any annual fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any annual fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

(C) As necessary to maintain the financial soundness of the fund, the board, by rules adopted in accordance with Chapter 119. of the Revised Code, may at any time assess a supplemental petroleum underground storage tank financial assurance fee on tanks subject to the fee assessed under division (B) or (F) of this section in any fiscal year in which the board finds that the unobligated balance in



the fund is less than fifteen million dollars. The board, in consultation with the fund's administrative agent, if any, shall establish the amount of the supplemental fee at an amount that will ensure an unobligated balance in the fund of at least fifteen million dollars at the end of the fiscal year in which the supplemental fee is assessed. Not less than thirty days before the date on which payment of the supplemental fee is due under the board's rules, the board shall notify each responsible person by certified mail of the amount of the supplemental fee and the date on which payment of the supplemental fee to the board is due.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

(D)(1) The board shall issue a certificate of coverage to any responsible person who has complied with all of the following:

(a) Paid the fee assessed under division (B) or (F) of this section;

(b) Demonstrated to the board financial responsibility in compliance with the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code for the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section. If the responsible person utilizes self-insurance as a financial responsibility mechanism, the responsible person shall provide the board with an affidavit in which the responsible party certifies that all documentation submitted to the board is true and accurate;

(c) Certified to the board that for each petroleum underground storage tank system for which a certificate of coverage is sought, the responsible person is in compliance with applicable rules for petroleum underground storage tank systems that have been adopted by the fire marshal under section 3737.88 of the Revised Code.



The certificate of coverage shall state the amount of coverage to which the responsible person is entitled from the fund pursuant to division (D)(3) of this section and the time period for which the certificate provides that coverage. An issued certificate of coverage is subject to the condition that the holder timely pay any supplemental fee assessed under division (C) of this section during the time that the certificate is in effect.

(2) The board shall not issue a certificate of coverage to any responsible person who fails to comply with divisions (D)(1)(a), (b), and (c) of this section.

(3) The maximum disbursement from the fund for any single release of petroleum is the difference between the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section and one million dollars. The maximum disbursement from the fund during any fiscal year on behalf of any responsible person shall not exceed in the aggregate one million dollars less the deductible amount if the responsible person owns or operates not more than one hundred tanks comprising underground petroleum storage tanks or underground petroleum storage tank systems, shall not exceed in the aggregate two million dollars less the deductible amount if the responsible person owns or operates not more than two hundred such tanks, shall not exceed in the aggregate three million dollars less the deductible amount if the responsible person owns or operates not more than three hundred such tanks, and shall not exceed in the aggregate four million dollars less the deductible amount if the responsible person owns or operates more than three hundred such tanks. The maximum disbursement from the fund for any single release or for any fiscal year under this division does not in any manner limit the liability of a responsible person for a release of petroleum.

(E)(1) Except as otherwise provided in division (F) of this section, no responsible person is eligible to receive moneys from the fund under section 3737.92 of the Revised Code until the responsible person demonstrates to the board financial responsibility for the first fifty thousand dollars of the cost for corrective action for, and compensating third parties for bodily injury and property damage caused by, accidental releases of petroleum from an underground storage tank owned or operated by the responsible party. The fifty thousand dollar amount is the deductible amount for the purposes of this section and section 3737.92 of the Revised Code.

(2) The board, in consultation with the fund's administrative agent, if any, may, by rules adopted in



accordance with Chapter 119. of the Revised Code, establish for any fiscal year a deductible amount that differs from fifty thousand dollars. The deductible amount established by the board shall be such an amount as to maintain the financial soundness of the fund. Any action of the board to establish a differing deductible amount or to alter a deductible amount previously established by it shall be taken concurrently with the establishment under division (B) of this section of the annual fee due on the first day of the fiscal year in which the deductible amount will apply. If the deductible amount established under this division differs from that in effect at the time of the board's action, the board shall notify each responsible person of the change by certified mail not later than the first day of May preceding the effective date of the change.

(F)(1) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar years 1989 and 1990 to pay twice the amount of the per tank annual fee for each tank assessed under division (B) of this section in order to reduce the amount of the deductible established in division (E) of this section to the total amount of ten thousand dollars. The election shall be available only at the time of the payment of the annual fee and any supplemental fee. The election shall not be retroactively applied.

(2) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar year 1991 and in each subsequent year to pay an additional fee at an amount established by the board in addition to the per tank annual fee assessed under division (B) of this section in order to reduce the deductible amount established under division (E) of this section. In calendar year 1991 and in each subsequent year, the board shall establish the amount of the additional fee and the reduced deductible amount. In determining the amount of the additional fee and the reduced deductible amount, the board shall take into consideration the effect of the additional claims paid under section 3737.92 of the Revised Code to responsible persons making an election under division (F)(2) of this section and balance that consideration with such factors as the availability of liability insurance, the difficulty of proving financial responsibility pursuant to the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code, and the hardship created on small owners and operators of petroleum underground storage tanks by an increase in either the additional fee or the reduced deductible amount.

(3) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks who elects to pay the additional fee under divisions (F)(1) and (2) of this



section shall pay any per tank supplemental fee assessed under division (C) of this section.

(G) If the director of the fund determines that a responsible person has failed to comply with division (B), (C), or (F) of this section, the director of the fund shall notify each responsible person for the petroleum underground storage tank of the noncompliance. If, within thirty days after the notification, the responsible person fails to pay the applicable fee or any fee previously assessed upon the responsible person under this section, the director of the fund shall issue an order requiring the responsible person to pay all of the fees the responsible person owes to the fund and an additional late payment fee in the amount of one thousand dollars to the fund.

If a responsible person fails to comply with any order of the director of the fund within thirty days after the issuance of the order, the director shall notify the fire marshal of that noncompliance. Upon the request of the director of the fund, the attorney general may bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which the petroleum underground storage tank that is the subject of the order is located. The court shall issue an injunction upon a demonstration that a failure to comply with the director's order has occurred or is occurring.

Any orders issued by the director of the fund under this division may be appealed by the responsible person under division (F) of section 3737.92 of the Revised Code. For the purpose of an appeal of any order of the director of the fund, "determination" as used in that division includes any order of the director of the fund. The filing of a notice of appeal under this division does not operate as a stay of any order of the director of the fund.