



Ohio Revised Code

Section 3752.113 Exemption of indentured trustee for debt securities.

Effective: July 1, 1996

Legislation: House Bill 98 - 120th General Assembly

(A) Except as otherwise specifically provided in this section and subject to compliance with the conditions set forth in it, nothing in this chapter or rules adopted under it applies to a person residing, incorporated, or otherwise organized within the territorial jurisdiction of the United States who is subject to service of process in this state and who is serving as an indenture trustee for debt securities or certificates of participation in any such debt securities, provided that the indenture trustee has not exercised actual and direct control over the use, generation, transportation, treatment, storage, or disposal of regulated substances at a reporting facility.

For the purposes of this section, "actual and direct control" does not include any action taken to inspect the facility for the occurrence of a release or threatened release of a regulated substance; any response action taken under section 107(d)(1) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2781, 42 U.S.C.A. 9607, as amended, and applicable regulations adopted under that act; compliance with the requirements established in this section; or any remedial action taken under the trust indenture or other similar document or trust agreement.

(B) In order to be and remain exempt from this chapter and rules adopted under it, if the operator of a reporting facility fails to comply with section 3752.07 of the Revised Code, and if the indenture trustee has foreclosed on its interest either by formal means such as the use of judicial process or informal means such as through the terms of the indenture agreement or similar financing document between the indenture trustee and the issuing entity, the indenture trustee shall do one of the following to the extent there are sufficient assets in the trust:

(1) Petition the court for the appointment of a receiver under Chapter 2735. of the Revised Code to perform or cause the performance of the actions required under section 3752.04, divisions (A)(4) to (6) of section 3752.06, and section 3752.07 of the Revised Code. The court may appoint the indenture trustee as the receiver. The receiver has the powers necessary to spend money and to perform or cause the performance of those measures as so required with such additional terms and



conditions as may be imposed by the court. The receiver shall perform the required actions or cause them to be performed within such times as the court may prescribe. The indenture trustee is not liable for any of the costs of the receivership.

(2) Do both of the following:

(a) Secure against unauthorized entry each building or structure at the facility where regulated operations were conducted and that contains or is contaminated with regulated substances and each outdoor location of operation. The indenture trustee shall secure each such building, structure, or outdoor location of operation by boarding windows, doors, and other potential means of entry, by providing security personnel, or by other methods prescribed in rules adopted under section 3752.03 of the Revised Code. The indenture trustee also shall post about each such building, structure, or outdoor location of operation in publicly visible locations warning signs that prohibit trespassing and state that the building, structure, or outdoor location of operation contains or is contaminated with regulated substances that may endanger public health or safety if released into the environment. The indenture trustee shall continue the security measures, and maintain the warning signs, as required at each such building, structure, or outdoor location of operation until the indenture trustee no longer holds legal title to the facility or until the indenture trustee or another person has performed the measures required under divisions (A)(4) and (5) of section 3752.06 of the Revised Code in connection with the regulated substances present at the facility. Promptly after discovering that any of the entry barriers or warning signs installed pursuant to division (B)(2)(a) of this section have been damaged, lost, or removed, the indenture trustee shall repair or replace them in order to maintain the security of the building, structure, or outdoor location of operation.

(b) Submit to the director, the local emergency planning committee of the emergency planning district in which the facility is located, and the fire department having jurisdiction where the facility is located a notice of the cessation of regulated operations at the facility and of the indenture trustee's compliance with division (B)(2)(a) of this section. The indenture trustee shall submit the notice on a form prescribed by the director.

(C) No person shall fail to comply with this section.