

1301:7-9-14 **Voluntary Corrective Action.**

(A) Purpose and Scope.

For the purpose of prescribing rules pursuant to section 3737.88 of the Revised Code, the fire marshal hereby adopts this rule to establish standards for voluntary corrective action and for eligibility to receive assistance from the fire marshal to perform voluntary corrective action at a petroleum brownfields site. This rule is adopted by the fire marshal in accordance with Chapter 119. of the Revised Code and shall not be considered a part of the Ohio Fire Code.

(B) Definitions.

- (1) "Governmental entity" means a general purpose unit of local government; a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government; a regional council or group of general purpose units of local government; a state agency; or a redevelopment agency that is chartered or otherwise sanctioned by the state.
- (2) "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization;
- (3) "Petroleum brownfields site" means real property, the expansion, redevelopment or reuse of which may be complicated by the release or suspected release of petroleum or a petroleum product excluded from the definition of hazardous substance under section 1301:7-9-03 of the Administrative Code from an underground storage tank system.
- (4) "Property" means any parcel of real property, or portion thereof, and any improvements thereto, the limits of which have been described in writing by the owner of record or a legally appointed representative of the owner and that is, will be, or have been the subject of a voluntary action under this rule.
- (5) "Voluntary corrective action" means any and all corrective action undertaken by a person who is not an owner or operator, as those terms are defined in section 3737.87 of the Revised Code, or otherwise potentially liable for the costs of corrective action pursuant to section 3737.89 of the Revised Code in response to a release or suspected release from a petroleum UST system for the purpose of meeting applicable standards established by rules adopted pursuant to section 3737.882(B) of the Revised Code.

(C) Exclusions.

For purposes of eligibility for assistance from the fire marshal under paragraph (E) of this rule, the term "petroleum brownfields site" does not include:

- (1) A petroleum brownfields site that is the subject of any administrative or court order requiring corrective action issued under section 3737.882 of the Revised Code or section 9003(h) of the Resource Conservation and Recovery Act, 42 U.S.C. 6991(b), as amended;

- (2) A portion of a petroleum brownfields site for which assistance for corrective action has been obtained under subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. 6991 et seq., as amended, from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or
- (3) A petroleum brownfields site owned by, or under the custody and control of the federal government, except for land held in trust by the United States for an Indian tribe.

(D) Voluntary corrective action.

- (1) Any person having a legal, equitable or possessory interest in a parcel of property may undertake voluntary corrective action in response to a release or suspected release from a UST system containing petroleum.
- (2) Upon demonstration that the applicable standards established by rules adopted pursuant to section 3737.882(B) of the Revised Code have been met, the fire marshal shall issue the person that undertook voluntary corrective action written notice that no further corrective action is required. The written notice shall acknowledge that the person who completed voluntary corrective action has no liability under sections 3737.87 to 3737.882 of the Revised Code and the regulations adopted thereunder to remedy the release or suspected release.
- (3) Written notice issued pursuant to paragraph (D)(2) of this rule that no further corrective action is required shall not be construed in any manner to suggest that the person completing voluntary corrective action has thereby assumed any liability or responsibility for the release or suspected release of petroleum, or for any residual contamination that may remain at the property.

(E) Voluntary corrective action assistance program.

- (1) The fire marshal may provide assistance to conduct voluntary corrective action at a petroleum brownfields site in the form of conducting appropriate field investigations, including the collection and analysis of soil and groundwater samples, to identify contamination at a petroleum brownfields site for which a governmental entity, nonprofit organization, property owner or property developer has legal access to perform such environmental assessment activities.
- (2) Assistance may be provided under paragraph (E)(1) of this rule only if the fire marshal determines all of the following:
 - (a) The release or suspected release from the petroleum underground storage tank system is of relatively low risk compared with other sites contaminated solely by petroleum or a petroleum product excluded from the definition of hazardous substance under rule 1301:7-9-03 of the Administrative Code.
 - (b) There is no viable responsible person; and
 - (c) Assistance will be provided to a party that is not potentially responsible for corrective action for the release or suspected release of petroleum.

(F) Applications for technical assistance.

- (1) Any person considering undertaking voluntary corrective action at a petroleum brownfields site for which the applicant has or can obtain legal access to perform environmental assessment activities may submit an application to the fire marshal for technical assistance to assess the petroleum brownfields site. If the application is approved, the fire marshal will conduct appropriate field investigations, prepare a report using the environmental data collected, and supply the applicant with a copy of the report to enable the applicant to better estimate the costs of voluntary corrective action associated with property redevelopment.
- (2) The applicant shall submit an application on a form prescribed and furnished by the fire marshal, accompanied by all requested supporting documentation, including without limitation the following:
 - (a) Documentation establishing the applicant's legal authority to perform environmental assessment and field investigation activities on the property that is the subject of the application;
 - (b) An affidavit signed and submitted by the authorized representative of the applicant certifying that the applicant did not cause or contribute to the release or suspected release of petroleum at the property that is the subject of the application;
 - (c) An application fee as determined by the fire marshal; and
 - (d) If the applicant is not a government entity, a letter of support from the local government having jurisdiction over the petroleum brownfields site indicating its desired involvement, if any, in the project.
- (3) Eligible applicants will be ranked and prioritized for technical assistance based on the following criterion:
 - (a) The likelihood of property redevelopment;
 - (b) Evidence that the property is capable of becoming an operating business that provides jobs to the community and/or the property will be utilized to increase the quality of life in the community;
 - (c) The ability of the applicant to fund redevelopment work without fire marshal assistance;
 - (d) Evidence that the petroleum contamination or concern about liability related to the petroleum contamination is the sole or primary obstacle to redevelopment; and
 - (e) Evidence that the community at large is aware of and supports the proposed redevelopment.
- (4) Any award of technical assistance is within the discretion of the fire marshal based on the criteria listed in paragraph (F)(3) of this rule. Eligible applicants who do not receive technical assistance may resubmit their application for consideration in the next round of technical assistance application review.

(G) Effect on other laws.

- (1) Nothing in this rule affects any liability or response authority under any federal or state law, including, but not limited to:

- (a) The Comprehensive Environmental Response Compensation, and Liability Act (42 U.S.C. 9601 et seq.);
 - (b) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
 - (c) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
 - (d) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
 - (e) The Safe Drinking Water Act (42 U.S.C. 300f et seq.).
- (2) Any determination by the fire marshal for the purpose of assisting voluntary corrective action at a petroleum brownfields site does not release any responsible person from any obligations under 3737.87 to 3737.89 of the Revised Code and the regulations adopted thereunder, or effect any other rights under the citizen suits provision of the Resource Conservation and Recovery Act of 1976, 90 Stat. 2795, 42 U.S.C.A. 6901, as amended. The fire marshal reserves all enforcement and remedy rights available under the law.

HISTORY: Eff 9-1-92; 1-1-94; 3-31-99; Replaces: 1301:7-9-14, eff. 3-1-05

Rule promulgated under: RC 119.03

Rule authorized by: RC 3737.02, 3737.88 (A)

Rule amplifies: RC 3737.02, 3737.88 (A)

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