



Ohio Revised Code

Section 3737.882 Confirming or disproving suspected petroleum release.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

(A) If, after an examination or inspection, the fire marshal or an assistant fire marshal finds that a release of petroleum is suspected, the fire marshal shall take such action as the fire marshal considers necessary to ensure that a suspected release is confirmed or disproved and, if the occurrence of a release is confirmed, to correct the release. These actions may include one or more of the following:

(1) Issuance of a citation and order requiring the responsible person to undertake, in a manner consistent with the requirements of section 9003 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, as amended, applicable regulations adopted thereunder, and rules adopted under division (B) of this section, such actions as are necessary to protect human health and the environment, including, without limitation, the investigation of a suspected release;

(2) Requesting the attorney general to 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 a suspected release is located or in which the release occurred, to obtain the corrective action necessary to protect human health and the environment. In granting any such relief, the court shall ensure that the terms of the temporary restraining order or injunction are sufficient to provide comprehensive corrective action to protect human health and the environment.

(3) Entry onto premises and undertaking corrective action with respect to a release of petroleum if, in the fire marshal's judgment, such action is necessary to protect human health and the environment. Any corrective action undertaken by the fire marshal or assistant fire marshal under division (A)(3) of this section shall be consistent with the requirements of sections 9003 and 9005 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, and 98 Stat. 3284, 42 U.S.C.A. 6991e, respectively, as amended, applicable regulations adopted thereunder, and rules adopted under division (B) of this section.

(B) The fire marshal shall adopt, and may amend and rescind, such rules as the fire marshal



considers necessary to establish standards for corrective actions for suspected and confirmed releases of petroleum and standards for the recovery of costs incurred for undertaking corrective or enforcement actions with respect to such releases. The rules also shall include requirements for financial responsibility for the cost of corrective actions for and compensation of bodily injury and property damage incurred by third parties that are caused by releases of petroleum. Rules regarding financial responsibility shall, without limitation, require responsible persons to provide evidence that the parties guaranteeing payment of the deductible amount established under division (E) or (F) of section 3737.91 of the Revised Code are, at a minimum, secondarily liable for all corrective action and third-party liability costs incurred within the scope of the deductible amount. The rules shall be consistent with sections 9003 and 9005 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, and 98 Stat. 3284, 42 U.S.C.A. 6991e, respectively, as amended, and applicable regulations adopted thereunder.

(C)(1) No person shall violate or fail to comply with a rule adopted under division (A) of section 3737.88 of the Revised Code or division (B) of this section, and no person shall violate or fail to comply with the terms of any order issued under division (A) of section 3737.88 of the Revised Code or division (A)(1) of this section.

(2) Whoever violates division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each day that the violation continues. The fire marshal may, by order, assess a civil penalty under this division, or the fire marshal may request the attorney general to bring a civil action for imposition of the civil penalty in the court of common pleas of the county in which the violation occurred. If the fire marshal determines that a responsible person is in violation of division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code, the fire marshal may request the attorney general to 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 underground storage tank or, in the case of a violation of division (F)(3) of section 3737.881 of the Revised Code, the training program that is the subject of the violation is located. The court shall issue a temporary restraining order or an injunction upon a demonstration that a violation of division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code has occurred or is occurring.



Any action brought by the attorney general under this division is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

Nothing in section 3737.883 of the Revised Code limits the powers of the fire marshal or the attorney general under this division.

(D) Orders issued under division (A) of section 3737.88 of the Revised Code and divisions (A)(1) and (C) of this section, and appeals thereof, are subject to and governed by Chapter 3745. of the Revised Code. Such orders shall be issued without the necessity for issuance of a proposed action under that chapter. For purposes of appeals of any such orders, the term "director" as used in Chapter 3745. of the Revised Code includes the fire marshal and an assistant fire marshal.

(E) Any restrictions on the use of real property for the purpose of the achievement by an owner or operator of applicable standards pursuant to rules adopted under division (B) of this section shall be contained in a deed or in another instrument that is signed and acknowledged by the property owner in the same manner as a deed or an environmental covenant that is entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code. The deed, other instrument containing the restrictions, or environmental covenant shall be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to Chapter 5309. of the Revised Code, if the use restrictions or environmental covenant are connected with registered land, as defined in section 5309.01 of the Revised Code, the restrictions or environmental covenant shall be entered as a memorial on the page of the register where the title of the owner is registered.

(F) Any restrictions on the use of real property for the purpose of the achievement by a person that is not a responsible person, or by a person undertaking a voluntary action of applicable standards pursuant to rules adopted under division (B) of this section shall be contained in an environmental covenant that is entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code. The environmental covenant shall be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to Chapter 5309. of the Revised Code, if the environmental covenant is connected with registered land, as defined in section 5309.01 of the Revised Code, the environmental covenant shall be entered as a memorial on the page of the register where the title of the owner is registered.