

# AN ACT

To amend sections 3745.70 to 3745.73 and to enact sections 3745.74, 3753.01 to 3753.10, and 3753.99 of the Revised Code to require the owners or operators of stationary sources that have more than the threshold quantity of a regulated substance to submit a risk management plan related to that regulated substance, to establish the requirements of the risk management program, and to revise the statutes relating to environmental audits.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 3745.70, 3745.71, 3745.72, and 3745.73 be amended and sections 3745.74, 3753.01, 3753.02, 3753.03, 3753.04, 3753.05, 3753.06, 3753.07, 3753.08, 3753.09, 3753.10, and 3753.99 of the Revised Code be enacted to read as follows:

Sec. 3745.70. As used in sections 3745.70 to 3745.73 of the Revised Code:

(A) "Environmental audit" means a voluntary, thorough, and discrete self-evaluation of one or more activities at one or more facilities or properties that is documented; is designed to improve compliance, or identify, correct, or prevent noncompliance, with environmental laws; and is conducted by the owner or operator of a facility or property or the ~~owner~~ owner's or operator's employee or independent contractor. An environmental audit may be conducted by the owner or operator of a facility or property, the owner's or operator's employees, or independent contractors. Once initiated, an audit shall be completed within a reasonable time, not to exceed six months, unless a written request for an extension is approved by the head officer of the governmental agency, or division or office thereof, with jurisdiction over the activities being audited based on a showing of reasonable grounds. An audit shall not be considered to be initiated until the owner or operator or the owner's or operator's employee or independent contractor actively has begun the self-evaluation of environmental compliance.

(B) "Activity" means any process, procedure, or function that is subject to environmental laws.

(C) "Voluntary" means, with respect to an environmental audit of a particular activity, that ~~all~~ both of the following apply when the audit of that activity commences:

(1) The audit is not required by law, prior litigation, or an order by a court or a government agency;

(2) The owner or operator who conducts the audit does not know or have reason to know that a government agency has commenced an investigation or enforcement action that concerns a violation of environmental laws involving the activity or that such an investigation or enforcement action is imminent.

(D) "Environmental audit report" means interim or final data, documents, records, or plans that are necessary to an environmental audit and are collected, developed, made, and maintained in good faith as part of the audit, and may include, without limitation:

(1) Analytical data, laboratory reports, field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys;

(2) Reports that describe the scope, objectives, and methods of the environmental audit, audit management policies, the information gained by the environmental audit, and conclusions and recommendations together with exhibits and appendices;

(3) Memoranda, documents, records, and plans analyzing the environmental audit report or discussing implementation, prevention, compliance, and remediation issues associated with the environmental audit.

"Environmental audit report" does not mean corrective or remedial action taken pursuant to an environmental audit.

(E) "Environmental laws" means sections 1511.02 and 1531.29, Chapters 3704., 3734., 3745., 3746., 3750., 3751., 3752., 6109., and 6111. of the Revised Code, and any other sections or chapters of the Revised Code the principal purpose of which is environmental protection; any federal or local counterparts or extensions of those sections or chapters; rules adopted under any such sections, chapters, counterparts, or extensions; and terms and conditions of orders, permits, licenses, license renewals, variances, exemptions, or plan approvals issued under such sections, chapters, counterparts, or extensions.

Sec. 3745.71. (A) The Except as otherwise provided in division (C) of this section, the owner or operator of a facility or property who conducts an

environmental audit of one or more activities at the facility or property has a privilege with respect to both of the following:

(1) The contents of an environmental audit report that is based on the audit;

(2) The contents of communications between the owner or operator and employees or contractors of the owner or operator, or among employees or contractors of the owner or operator, that are necessary to the audit and are made in good faith as part of the audit after the employee or contractor is notified that the communication is part of the audit.

(B) Except as otherwise provided in or ordered pursuant to this section, information that is privileged under this section is not admissible as evidence or subject to discovery in any ~~criminal~~, civil, or administrative proceeding and a person who possesses such information as a result of conducting or participating in an environmental audit shall not be compelled to testify in any ~~criminal~~, civil, or administrative proceeding concerning the contents privileged portions of that information the environmental audit.

(C) The privilege provided in this section does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege provided in this section applicable to civil or administrative proceedings is not waived or eliminated. Furthermore, the privilege provided in this section does not apply to particular information under any of the following circumstances:

(1) The privilege is not asserted with respect to that information by the owner or operator to whom the privilege belongs.

(2) The owner or operator to whom the privilege belongs voluntarily testifies, or has provided written authorization to an employee, contractor, or agent to testify on behalf of the owner or operator, as to that information.

(3) A court of record in a ~~criminal~~ or civil proceeding or the tribunal or presiding officer in an administrative proceeding finds, pursuant to this section, that the privilege does not apply to that information.

(4) The information is required by law to be collected, developed, maintained, reported, disclosed publicly, or otherwise made available to a government agency.

(5) The information is obtained from a source other than an environmental audit report, including, without limitation, observation, sampling, monitoring, a communication, a record, or a report that is not part of the audit on which the audit report is based.

(6) The information is collected, developed, made, or maintained in bad faith or for a fraudulent purpose.

(7) The owner or operator to whom the privilege belongs waives the

privilege, in whole or in part, explicitly or by engaging in conduct that manifests a clear intent that the information not be privileged. If an owner or operator introduces part of an environmental audit report into evidence in a civil, ~~criminal~~, or administrative proceeding to prove that the owner or operator did not violate, or is no longer violating, any environmental laws, the privilege provided by this section is waived with respect to all information in the audit report that is relevant to that issue.

(8)(a) The information shows evidence of noncompliance with environmental laws and the owner or operator fails to do any of the following:

(i) Promptly initiate reasonable efforts to achieve compliance ~~with these laws are not initiated and pursued upon discovery of the noncompliance through an environmental audit;~~

(ii) Pursue compliance with reasonable diligence ~~upon discovery through the environmental audit of noncompliance. "Reasonable;~~

(iii) Achieve compliance within a reasonable time.

(b) "Reasonable diligence" includes, without limitation, compliance with section 3745.72 of the Revised Code.

(9) The information contains evidence that a government agency federally authorized, approved, or delegated to enforce environmental laws has reasonable cause to believe is necessary to prevent imminent and substantial endangerment or harm to human health or the environment.

(10) Any circumstance in which both of the following apply:

(a) The information contains evidence regarding an alleged violation of environmental laws and a government agency charged with enforcing any of those laws has a substantial need for the information to protect public health or safety or to prevent ~~imminent and~~ substantial harm to property or the environment;

(b) The government agency is unable to obtain the substantial equivalent of the information by other means without unreasonable delay or expense.

~~(10)~~(11) The information consists of personal knowledge of an individual who did not obtain that information as part of an environmental audit.

~~(11)~~(12) The information is not clearly identified as part of an environmental audit report. For purposes of this section, clear identification of information as part of an environmental audit report includes, without limitation, either of the following:

(a) The information is contained in a document and the front cover, the first page, or a comparable part of the document is prominently labeled with

"environmental audit report: privileged information" or substantially comparable language;

(b) The information is contained in an electronic record and the record is programmed to display or print prominently "environmental audit report: privileged information" or substantially comparable language before the privileged information is displayed or printed.

(13) The information existed prior to the initiation of the environmental audit under division (A) of section 3745.70 of the Revised Code.

(D) If the privilege provided in this section belongs to an owner or operator who is not an individual, the privilege may be asserted or waived, in whole or in part, on behalf of the owner or operator only by an officer, manager, partner, or other comparable person who has a fiduciary relationship with the owner or operator and is authorized generally to act on behalf of the owner or operator or is a person who is authorized specifically to assert or waive the privilege.

(E) A person asserting the privilege provided in this section has the burden of proving the applicability of the privilege by a preponderance of the evidence. If a person seeking disclosure of information with respect to which a privilege is asserted under this section shows evidence of noncompliance with environmental laws pursuant to division (C)(8) of this section, the person asserting the privilege also has the burden of proving by a preponderance of the evidence that reasonable efforts to achieve compliance with those laws were initiated promptly and that compliance was pursued with reasonable diligence pursuant to that division and achieved within a reasonable time.

(F)~~(4)~~ When determining whether the privilege provided by this section applies to particular information, a court of record that is not acting pursuant to division (G) of this section, or the tribunal or presiding officer in an administrative proceeding, shall conduct an in camera review of the information in a manner consistent with applicable rules of procedure.

(G)(1) The prosecuting attorney of a county or the attorney general, having probable cause to believe, based on information obtained from a source other than an environmental audit report, that a violation has been committed under environmental laws for which a civil or administrative action may be initiated, may obtain information with respect to which a privilege is asserted under this section pursuant to a search warrant, subpoena, or discovery under the Rules of Civil Procedure ~~or the Rules of Criminal Procedure~~. The prosecuting attorney or the attorney general immediately shall place the information under seal and shall not review or disclose its contents.

(2) Not later than sixty days after receiving an environmental audit report under division (G)(1) of this section, the prosecuting attorney or the attorney general may file with the court of common pleas of a county in which there is proper venue to ~~prosecute~~ bring a civil or administrative action pertaining to the alleged violation a petition requesting an in camera hearing to determine if the information described in division (G)(1) of this section is subject to disclosure under this section. Failure to file such a petition shall cause the information to be released to the owner or operator to whom it belongs.

(3) Upon the filing of a petition under division (G)(2) of this section, the court shall issue an order scheduling an in camera hearing, not later than forty-five days after the filing of the petition, to determine if any or all of the information described in division (G)(1) of this section is subject to disclosure under this section. The order shall allow the prosecuting attorney or the attorney general to remove the seal from the report in order to review it and shall place appropriate limitations on distribution and review of the report to protect against unnecessary disclosure.

(4) The prosecuting attorney or the attorney general may consult with government agencies regarding the contents of the report to prepare for the in camera hearing. Information described in division (G)(1) of this section that is used by the prosecuting attorney or the attorney general to prepare for the in camera hearing shall not be used by the prosecuting attorney, the attorney general, an employee or agent of either of them, or an agency described in division (G)(4) of this section in any investigation or proceeding against the respondent, and otherwise shall be kept confidential, unless the information is subject to disclosure under this section.

(5) The parties may stipulate that information contained in an environmental audit report is or is not subject to disclosure under this section.

(6) If the court determines that information described in division (G)(1) of this section is subject to disclosure under this section, the court shall compel disclosure under this section of only the information that is relevant to the proceeding described in division (G)(1) of this section.

(H) Nothing in this section affects the nature, scope, or application of any privilege of confidentiality or nondisclosure recognized under another section of the Revised Code or the common law of this state, including, without limitation, the work product doctrine and attorney-client privilege.

(I) The privilege provided by this section applies only to information and communications that are part of environmental audits ~~conducted~~ initiated after March 13, 1997, and completed before January 1, ~~2004~~ 2004.

in accordance with the time frames specified in division (A) of section 3745.70 of the Revised Code.

Sec. 3745.72. (A) The owner or operator of a facility or property who conducts an environmental audit of the facility or property and promptly and voluntarily discloses information contained in or derived from an audit report that is based on the audit and concerns an alleged violation of environmental laws to the director of the state agency that has jurisdiction over the alleged violation is immune from any administrative and civil penalties for ~~that~~ the specific violation disclosed, except that where the disclosed violation has resulted in significant economic benefit to the owner or operator of the facility or property, there is no immunity for the economic benefit component of the administrative and civil penalties for that violation. An owner or operator asserting entitlement to such immunity has the burden of proving that entitlement by a preponderance of the evidence.

(B) For the purposes of this section, a disclosure of information is voluntary with respect to an alleged violation of environmental laws only if all of the following apply:

(1) The disclosure is made promptly after the information is obtained through the environmental audit by the owner or operator who conducts the environmental audit;

(2) A reasonable, good faith effort is made to achieve compliance as quickly as practicable with environmental laws applicable to the information disclosed;

(3) Compliance with environmental laws applicable to the information disclosed is achieved as quickly as practicable or within such period as is reasonably ordered by the director of the state agency that has jurisdiction over the alleged violation;

(4) The owner or operator cooperates with the director of the state agency that has jurisdiction over the alleged violation in investigating the cause, nature, extent, and effects of the noncompliance;

(5) The disclosure is not required by law, prior litigation, or an order by a court or a government agency;

(6) The owner or operator who makes the disclosure does not know or have reason to know that a government agency charged with enforcing environmental laws has commenced an investigation or enforcement action that concerns a violation of such laws involving the activity.

(C) For the purposes of this section, a disclosure shall be in writing, dated, and hand delivered or sent by certified mail to the director of the state agency that has jurisdiction over the alleged violation, and shall contain all of the following in a printed letter attached to the front of the disclosure:

(1) The name, address, and telephone number of the owner or operator making the disclosure;

(2) The name, title, address, and telephone number of one or more persons associated with the owner or operator who may be contacted regarding the disclosure;

(3) A brief summary of the alleged violation of environmental laws, including, without limitation, the nature, date, and location of the alleged violation to the extent that the information is known by the owner or operator;

(4) A statement that the information is part of an environmental audit report and is being disclosed under section 3745.72 of the Revised Code in order to obtain the immunity provided by that section.

(D) This section does not provide immunity from the payment of damages for harm to persons, property, or the environment; the payment of reasonable costs incurred by a government agency in responding to a disclosure; or responsibility for the remediation or cleanup of environmental harm under environmental laws.

(E) ~~The immunity provided by this section does not apply to the owner or operator of a facility or property who, within the previous year, made a disclosure under this section with respect to a particular activity and received immunity under this section with respect to that activity~~ under any of the following circumstances:

(1) Within the three-year period prior to disclosure, the owner or operator of a facility or property has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, environmental related settlement agreements, or environmental related judicial orders and that arose from separate and distinct events. For the purposes of division (E)(1) of this section, a pattern of continuous or repeated violations also may be demonstrated by multiple settlement agreements related to substantially the same alleged significant violations that occurred within the three-year period immediately prior to the voluntary disclosure. Determination of whether a person has a pattern of continuous or repeated violations under division (E)(1) of this section shall be based on the compliance history of the property or specific facility at issue.

(2) With respect to a specific violation, the violation resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(3) With respect to a specific violation, the violation is of a specific requirement of an administrative or judicial order.

(F) The immunity provided by this section applies only to disclosures

made concerning environmental audits ~~conducted~~ initiated after March 13, 1997, and completed before January 1, ~~2001~~ 2004, in accordance with the time frames specified in division (A) of section 3745.70 of the Revised Code.

(G) The immunity provided by this section applies to a person who makes a good faith disclosure to a state agency under this section even though another state agency is determined to have jurisdiction over an alleged violation of environmental laws indicated in the disclosure.

(H) Each state agency that receives a disclosure under this section promptly shall record receipt of the disclosure, determine whether it has jurisdiction over the alleged violation of environmental laws indicated in the disclosure, and, if it does not have such jurisdiction, deliver the disclosure documents to the director of a state agency that has jurisdiction over the alleged violation. If a disclosure indicates alleged violations of environmental laws that are under the jurisdiction of more than one state agency, the state agency that first receives the disclosure and has jurisdiction over any of the alleged violations promptly shall notify the director of each state agency that has jurisdiction over any of such alleged violations. The director of each state agency that receives a disclosure under this section, or is notified by another state agency that the director's agency has jurisdiction over an alleged violation of environmental laws indicated in the disclosure, promptly shall deliver written notice of that fact by certified mail to the owner or operator who made the disclosure. The notice shall identify the state agency that sends the notice; state the name, title, address, and telephone number of a person in the agency ~~who~~ whom the owner or operator may contact regarding the disclosure; and state the name, address, and telephone number of the director of any other state agency notified about the disclosure because that agency has jurisdiction over an alleged violation of environmental laws indicated in the disclosure.

Sec. 3745.73. Not later than March 31, ~~2000~~ 2002, the director of environmental protection, in consultation with the attorney general, appropriate federal, state, and local agencies, and appropriate statewide organizations, shall submit to the president of the senate and the speaker of the house of representatives a report on the operation and impacts of ~~this act~~ Substitute Senate Bill No. 138 of the 121st general assembly, including the impact on environmental compliance and protection. The attorney general and each state agency that has received a disclosure under section 3745.72 of the Revised Code shall cooperate with the director in preparing the report required by this section and shall submit information relevant to the report to the director not later than January 31, ~~2000~~ 2002.

Sec. 3745.74. Nothing in sections 3745.70 to 3745.73 of the Revised Code shall be construed to limit or affect either of the following:

(A) The authority or obligation of any government agency pursuant to section 149.43 of the Revised Code;

(B) Any employee protection rights under federal or state laws.

Sec. 3753.01. As used in this chapter:

(A) "Accidental release" means an unanticipated emission of a regulated substance into the ambient air from a stationary source.

(B) "Clean Air Act Amendments" means the "Clean Air Act Amendments of 1990," 91 Stat. 685, 42 U.S.C. 7401 et al., as amended, and regulations adopted under it.

(C) "Covered process" means a process that has a regulated substance present in an amount that is in excess of the threshold quantity established in rules adopted under section 3753.02 of the Revised Code.

(D) "Environmental receptor" means natural areas such as national or state parks, forests, or natural monuments; federally designated or state-designated wildlife sanctuaries, preserves, refuges, or areas; and federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints prescribed in rules adopted under section 3753.02 of the Revised Code and that can be identified on United States geological survey maps.

(E) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(F) "Process" means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of the substance or any combination of these activities. Any group of vessels that are interconnected, or separate vessels that are located in such a manner that a regulated substance potentially could be involved in a release, shall be considered a single process.

(G) "public" means any person except employees or contractors at a stationary source.

(H) "public receptor" means off-site residences, institutions such as schools or hospitals, industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time where the public could be exposed to toxic concentrations, radiant heat, or overpressure as a result of an accidental release.

(I) "Regulated substance" means a toxic or flammable substance listed in rules adopted under section 3753.02 of the Revised Code.

(J) "Risk management plan" means a risk management plan required under section 3753.03 of the Revised Code.

(K) "Stationary source" means any buildings, structures, equipment, installations, or substance-emitting stationary activities that belong to the same industrial group as described in the standard industrial classification manual, 1987, that are located on one or more contiguous properties under the control of the same person or persons, and from which an accidental release may occur. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

(1) "Stationary source" includes transportation containers that are used for storage not incident to transportation and transportation containers that are connected to equipment at a stationary source for loading and unloading. "Stationary source" does not include the transportation, including storage incident to transportation, of any regulated substance under this chapter. "Stationary source" does not include naturally occurring hydrocarbon reservoirs.

(2) "Transportation" includes, but is not limited to, transportation that is subject to oversight or regulation under 49 C.F.R. part 192, 193, or 195, or to a state natural gas or hazardous liquid program for which the state has in effect a certification to the United States department of transportation under 49 U.S.C. 60105.

(L) "Threshold quantity" means the quantity established for a regulated substance in rules adopted under section 3753.02 of the Revised Code that, if exceeded, subjects an owner or operator to compliance with this chapter and rules adopted under it.

(M) "Vessel" means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Sec. 3753.02. For the purpose of implementing and administering this chapter, the director of environmental protection may adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code. The rules shall be consistent with, equivalent in scope, content, and coverage to, and no more stringent than the requirements of section 112(r) of the Clean Air Act Amendments and any regulations adopted pursuant to that section. Rules adopted under this section shall prescribe notice requirements by which the public is informed about and afforded the opportunity to comment on risk management plans submitted in accordance with this chapter.

Sec. 3753.03. (A) Effective upon the date that the United States environmental protection agency delegates the program created under section 112(r) of the Clean Air Act Amendments to the environmental protection agency of this state, an owner or operator of a stationary source that has a covered process shall develop and submit a risk management plan no later than the latest of the following:

(1) June 21, 1999;

(2) The date on which a regulated substance is first present above a threshold quantity in a process at the stationary source;

(3) Three years after the date on which a regulated substance at the stationary source is first listed under 40 C.F.R. 68.130.

(B) An owner or operator who is subject to division (A) of this section shall submit a single risk management plan that reflects all covered processes at the stationary source by the applicable deadline established under that division and that is in the form required by the director of environmental protection in rules adopted under section 3753.02 of the Revised Code. The risk management plan shall include all of the following, as applicable:

(1) A registration that reflects all covered processes at the stationary source pursuant to 40 C.F.R. 68.160;

(2) The applicable information required to be submitted with the plan under section 3753.04 of the Revised Code;

(3) A summary of the actions taken to comply with all of the other applicable requirements established under section 3753.04 of the Revised Code.

(C) An owner or operator who has submitted a risk management plan as required by division (A) of this section or submitted an update to a risk management plan under division (C) of this section shall revise, update, and submit the risk management plan in accordance with whichever of the following is applicable:

(1) Not later than five years after the initial submission of the risk management plan under division (A) of this section;

(2) Not later than five years after the most recent update of the risk management plan submitted under division (C) of this section;

(3) As otherwise provided in rules adopted by the director under section 3753.02 of the Revised Code.

(D) No owner or operator who is required to submit, revise, or update a risk management plan shall fail to do so within the prescribed time.

(E) An owner or operator who is required to submit a risk management plan and who knowingly makes a false statement in the plan, on a record upon which information in the plan is based, or on or pertaining to any other information or records required to be maintained under this chapter or rules adopted under it is guilty of falsification under section 2921.13 of the Revised Code.

Sec. 3753.04. (A) In addition to complying with section 3753.03 of the Revised Code, the owner or operator of a stationary source at which one or

more covered processes are present, as part of the owner or operator's risk management program, shall comply with program 1, program 2, or program 3 requirements established under this section or with a combination of those requirements. An owner or operator shall determine which of those requirements apply to the covered processes that are present at the stationary source as provided in divisions (B) to (D) of this section. An owner or operator shall comply with all levels of program requirements that apply to the covered processes at the owner or operator's stationary source.

(B) The owner or operator of a stationary source at which a covered process is present is subject to program 1 requirements established under division (E) of this section if the covered process meets all of the following conditions:

(1) For the five years prior to the submission of a risk management plan, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following occurrences off-site:

- (a) Death of any person;
- (b) Injury to any person;
- (c) Response or restoration activities for an environmental receptor.

(2) The distance to a toxic or flammable endpoint for a worst case release assessment conducted pursuant to a hazard assessment as specified in rules adopted under section 3753.02 of the Revised Code is less than the distance to any public receptor;

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(C) The owner or operator of a stationary source at which a covered process is present is subject to program 2 requirements established under division (F) of this section if the covered process does not meet the conditions established under division (B) or (D) of this section.

(D) The owner or operator of a stationary source at which a covered process is present is subject to program 3 requirements established under division (G) of this section if the covered process does not meet the conditions established under division (B) of this section and either of the following conditions is met:

(1) The process is in standard industrial classification code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911;

(2) The process is subject to the United States occupational safety and health administration safety management standard under 29 C.F.R. 1910.119.

(E) The owner or operator of a stationary source at which one or more covered processes are present that meet the conditions established under division (B) of this section shall comply with all of the following program 1 requirements:

(1) Submit with the risk management plan an analysis of the worst case release scenario for each covered process and documentation that the nearest public receptor is beyond the distance to a toxic or flammable endpoint;

(2) Submit with the risk management plan a five-year accident history for the process;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies;

(4) Certify in the risk management plan that "Based upon criteria in rules adopted under section 3753.02 of the Revised Code, the distance to the specified endpoint for the worst case release scenario for the following process(es) is less than the distance to the nearest public receptor: (list processes). within the past five years, the process(es) has (have) had no accidental release that caused off-site impacts as described in rules adopted under section 3753.02 of the Revised Code. No additional measures are necessary to prevent off-site impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the risk management plan. The undersigned certifies that, to the best of my knowledge, the information submitted is true, accurate, and complete. (signature, title, date signed)"

(E) The owner or operator of a stationary source at which one or more covered processes are present that meet the conditions established under division (C) of this section shall comply with all of the following program 2 requirements:

(1) Develop and implement a management system in accordance with rules adopted under section 3753.02 of the Revised Code;

(2) Conduct a hazard assessment in accordance with rules adopted under section 3753.02 of the Revised Code;

(3) Implement program 2 prevention requirements or implement program 3 prevention requirements in accordance with rules adopted under section 3753.02 of the Revised Code;

(4) Submit as part of the risk management plan information on prevention program elements for covered processes that are subject to program 2 requirements;

(5) Develop and implement an emergency response program in accordance with rules adopted under section 3753.02 of the Revised Code.

(G) The owner or operator of a stationary source at which one or more covered processes are present that meet the conditions established under division (D) of this section shall comply with all of the following program 3 requirements:

(1) Develop and implement a management system in accordance with rules adopted under section 3753.02 of the Revised Code;

(2) Conduct a hazard assessment in accordance with rules adopted under section 3753.02 of the Revised Code;

(3) Implement program 3 prevention requirements in accordance with rules adopted under section 3753.02 of the Revised Code;

(4) Submit as part of the risk management plan information on prevention program elements for covered processes that are subject to program 3 requirements;

(5) Develop and implement an emergency response program in accordance with rules adopted under section 3753.02 of the Revised Code.

(H) If at any time a covered process at a stationary source no longer meets the conditions established under this section for its program level, the owner or operator shall comply with the requirements of the new program level that applies to the covered process and shall update the risk management plan and information submitted with it not later than six months after the change in compliance with this chapter and rules adopted under it.

Sec. 3753.05. (A) Except as provided in division (G) of this section, an owner or operator who is required to submit a risk management plan under this chapter shall pay annually to the environmental protection agency a fee of fifty dollars together with any of the following applicable fees:

(1) A fee of sixty-five dollars if a covered process in the stationary source includes propane and propane is the only regulated substance at the stationary source over the threshold quantity;

(2) A fee of sixty-five dollars if a covered process in the stationary source includes anhydrous ammonia that is sold for use as an agricultural nutrient and is on-site over the threshold quantity;

(3) A fee of two hundred dollars for each regulated substance over the threshold quantity. Propane shall be considered a regulated substance subject to the fee levied under division (A)(3) of this section only if it is not the only regulated substance over the threshold quantity. Anhydrous ammonia shall be considered a regulated substance subject to the fee levied under division (A)(3) of this section only if it is not sold for use as an

agricultural nutrient.

(B) In accordance with rules adopted under section 3753.02 of the Revised Code, the fees assessed under division (A) of this section shall be collected for the year 1999 no later than June 21, 1999. Thereafter, the fees shall be collected no later than the first day of September of each year. The fees assessed under division (A) of this section for a stationary source shall be based upon the regulated substances present over the threshold quantity identified in the risk management plan on file for calendar year 1999 as of the twenty-first day of June and for each subsequent calendar year as of the first day of September.

(C) An owner or operator who is required to submit a risk management plan under this chapter and who fails to submit such a plan within thirty days after the applicable filing date prescribed in section 3753.03 of the Revised Code shall submit with the risk management plan a late filing fee of three per cent of the total fees due under division (A) of this section.

(D) The director of environmental protection may establish fees to be paid by persons, other than public officers or employees, to cover the costs of obtaining copies of documents or information submitted to the director under this chapter and rules adopted under it. The director shall not charge more than the actual cost of making and delivering such copies or of accessing any computerized data base established or used for the purposes of assisting in the administration of this chapter.

(E) All moneys received by the agency under divisions (A), (C), and (D) of this section shall be transmitted to the treasurer of state to be credited to the risk management plan reporting fund, which is hereby created in the state treasury. The fund shall be administered by the director and used exclusively for the administration and enforcement of this chapter and rules adopted under it.

(F) Beginning in fiscal year 2001, and every two years thereafter, the director shall review the total amount of moneys in the risk management plan reporting fund to determine if that amount exceeds seven hundred fifty thousand dollars in either of the two preceding fiscal years. If the total amount of moneys in the fund exceeded seven hundred fifty thousand dollars in either fiscal year, the director, after review of the fee structure and consultation with affected persons, shall issue an order reducing the amount of the fees levied under division (a) of this section so that the estimated amount of moneys resulting from the fees will not exceed seven hundred fifty thousand dollars in any fiscal year.

If, upon review of the fees under this division and after the fees have been reduced, the director determines that the total amount of moneys

collected and accumulated is less than seven hundred fifty thousand dollars, the director, after review of the fee structure and consultation with affected persons, may issue an order increasing the amount of the fees levied under division (A) of this section so that the estimated amount of moneys resulting from the fees will be approximately seven hundred fifty thousand dollars. Fees shall never be increased to an amount exceeding the amount specified in division (A) of this section.

Notwithstanding section 119.06 of the Revised Code, the director may issue an order under this division without the necessity to hold an adjudicatory hearing in connection with the order. The issuance of an order under this division is not an act or action for purposes of section 3745.04 of the Revised Code.

(G) This section does not apply to the owner or operator of a business that employs one hundred or fewer individuals and is a small business concern as defined in the "Small Business Act," 72 Stat. 384 (1958), 15 U.S.C.A. 632, as amended.

Sec. 3753.06. No person shall violate any provision of this chapter or a rule adopted or order issued under it.

Sec. 3753.07. The director of environmental protection or the director's authorized representative, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times upon any private or public property, real or personal, to inspect, investigate, obtain samples, and examine and copy records to determine compliance with this chapter and rules adopted or orders issued under it. The director or the director's authorized representative may apply for, and any judge of a court of record may issue for use within the court's territorial jurisdiction, an administrative inspection warrant under division (F) of section 2933.21 of the Revised Code or other appropriate search warrant necessary to achieve the purposes of this chapter and rules adopted or orders issued under it.

Sec. 3753.08. The director of environmental protection may issue orders requiring an owner or operator who is subject to this chapter to abate a violation of section 3753.06 Of the Revised Code. The director may issue such orders as final orders without issuing a proposed action under section 3745.07 of the Revised Code and, notwithstanding section 119.06 of the Revised Code, without the necessity to hold an adjudication hearing. Issuance of an order under this section is not a condition precedent to bringing any civil or criminal action under this chapter.

Sec. 3753.09. (A) The attorney general or the prosecuting attorney of the county or director of law of the city where a violation has occurred or is occurring, upon written request of the director of environmental protection,

shall prosecute to termination any person who has violated division (D) of section 3753.03 of the Revised Code or shall bring an action for injunction against any person who has violated or is violating section 3753.06 of the Revised Code. The court of common pleas in which an action for injunction is filed has the jurisdiction to and shall grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating section 3753.06 Of the Revised Code. The court shall give precedence to such an action over all other cases.

(B) Whoever violates section 3753.06 of the Revised Code shall pay a civil penalty of not more than twenty-five thousand dollars for each day of each violation. The attorney general or the prosecuting attorney of the county or director of law of the city where a violation of that section has occurred or is occurring, upon written request of the director, shall bring an action for the imposition of a civil penalty under this division against any person who has committed or is committing any such violation. Moneys resulting from civil penalties imposed under this division shall be credited to the risk management plan reporting fund created in section 3753.05 of the Revised Code.

(C) Upon the certified written request of any person, the director shall conduct investigations and make inquiries that are necessary to secure compliance with this chapter or rules adopted or orders issued under it. The director, upon request or upon the director's own initiative, may investigate or make inquiries into any violation of this chapter or rules adopted or orders issued under it.

Sec. 3753.10. (A) As used in this section:

(1) "Harm" means injury to, death of, or loss to person or property.

(2) "Tort action" means a civil action for damages for harm, but does not include a civil action for damages for a breach of contract or other agreement between persons or for a breach of a warranty that exists pursuant to the Revised Code or the common law of this state.

(B) The state, and any officer or employee of the state as defined in section 109.36 of the Revised Code, is not liable in a tort action when the state inspects, investigates, reviews, or accepts a risk management plan from an owner or operator who is subject to this chapter unless an action or omission of the state, or of an officer or employee of the state, constitutes willful or wanton misconduct or intentionally tortious conduct. Any action brought against the state under this division shall be brought in the court of claims.

(C)(1) This section does not create, and shall not be construed as creating, a new cause of action against or substantive legal right against the

state or an officer or employee of the state.

(2) This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by the Revised Code, the United States Constitution, or the Ohio Constitution or available at common law to which this state, or an officer or employee of the state, may be entitled under circumstances not covered by this section.

(3) Section 9.86 of the Revised Code does not apply to an officer or employee of the state if the officer or employee is performing work in connection with inspecting, investigating, reviewing, or accepting a risk management plan from an owner or operator who is subject to this chapter at the time that the officer or employee allegedly caused the harm or caused or contributed to the presence or release of toxic or flammable substances for which damages are sought in a tort action. In that case, the immunities conferred by division (B) of this section apply to that individual.

Sec. 3753.99. Whoever purposely violates division (D) of section 3753.03 of the Revised Code shall be fined not more than twenty thousand dollars and imprisoned for not more than one year, or both. Each day of violation is a separate offense.

SECTION 2. That existing sections 3745.70, 3745.71, 3745.72, and 3745.73 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_