
Detailed Fiscal Analysis

RMP Background

In the Federal Clean Air Act Amendments, signed into law on November 15, 1990, Congress added subsection (r) to Section 112. 112 (r) requires any facility with more than a threshold quantity of specified chemicals, gases, or liquids to submit a Risk Management Plan, or RMP, to U.S. EPA by June of 1999. However, through this bill, Ohio EPA is requesting delegation of authority from U.S. EPA to administer the RMP program in Ohio. If a bill is not enacted to allow Ohio to ask for primacy and administrative rules are not adopted by June 1999, the U.S. EPA will control Ohio's program. This bill will allow the Ohio EPA to develop administrative rules and administer the 112 (r) program in Ohio.

RMP Requirements

This bill will require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process at the source to develop and submit a RMP, and generally requires the plan to be revised every five years. Small businesses that employ one hundred or fewer individuals and are small business concerns as defined in the "Small Business Act" (72 Stat. 384 (1958)) are exempted from this requirement. Criteria are established to determine which of the three-tiered RMP system requirements are to be met by the owners or operators of those sources. Regardless of which program requirements the stationary source falls under, the affected owner or operator must compile all requirements and submit a single RMP and the applicable fees by the deadline to the Ohio EPA.

A new Risk Management Reporting Fund will be created for implementation and administration of the program. This bill is expected to cost Ohio EPA approximately \$456,000 annually to administer. Ohio EPA estimates that new staff will be required to review and audit the RMPs, probably consisting of one environmental supervisor (ES3) and three to four environmental scientists (ES2). Currently an environmental supervisor makes \$36,161 per year, while the environmental scientists make \$32,988 per year. Ohio EPA's estimate also accounts for vehicles, supplies, and necessary tools to hold 5 to 6 informational public hearings, seminars, and mailings. However, this estimate does not include reproduction fees because this bill gives the Ohio EPA the authority to charge fees to persons, other than public officers or employees, to cover no more than the actual costs of obtaining copies of documents or for accessing any computerized data base. These fees are yet to be determined, depending on the length and design of the items.

One of the requirements of a RMP is to coordinate emergency response plans and procedures with local emergency planning commissions. This is the normal duty of the local emergency planning commissions, since they already have this duty under the Federal Superfund (SARA) law, so it will not impose additional costs on them.

Fees

Ohio EPA estimates that this program will be applicable to approximately 750 facilities across the state, while U.S. EPA estimates that at least twice that many exist. These

approximations do not include the exemptions for small businesses which is expected to decrease the number of facilities that must comply with the program. The Table 1 shows the estimated number of facilities that will be affected by the 112 (r) program in each county, based on both Ohio EPA and U.S. EPA estimates.

Table 1*

COUNTY	OHIO EPA DATABASE	U.S. EPA ESTIMATE	COUNTY	OHIO EPA DATABASE	U.S. EPA ESTIMATE
Adams	3	7	Licking	8	18
Allen	19	42	Logan	19	42
Ashland	8	18	Lorain	10	22
Ashtabula	12	26	Lucas	31	68
Athens	2	4	Madison	4	9
Auglaize	10	22	Mahoning	7	15
Belmont	3	7	Marion	9	20
Brown	4	9	Medina	5	11
Butler	18	39	Meigs	1	2
Carroll	3	7	Mercer	11	24
Champaign	11	24	Miami	11	24
Clark	8	18	Monroe	0	0
Clermont	8	18	Montgomery	20	44
Clinton	5	11	Morgan	2	4
Columbiana	7	15	Morrow	4	9
Coshocton	3	7	Muskingum	2	4
Crawford	10	22	Noble	0	0
Cuyahoga	30	66	Ottawa	7	15
Darke	14	31	Paulding	6	13
Defiance	10	22	Perry	0	0
Delaware	7	15	Pickaway	15	33
Erie	10	22	Pike	2	4
Fairfield	3	7	Portage	9	20
Fayette	5	11	Preble	7	15
Franklin	21	46	Putnam	3	7
Fulton	20	44	Richland	13	28
Gallia	2	4	Ross	8	18
Geauga	0	0	Sandusky	8	18
Greene	6	13	Scioto	5	11
Guernsey	2	4	Seneca	12	26
Hamilton	36	79	Shelby	12	26
Hancock	10	22	Stark	18	39
Hardin	10	22	Summit	18	39
Harrison	0	0	Trumbull	12	26
Henry	9	20	Tuscarawas	9	20
Highland	7	15	Union	6	13
Hocking	1	2	Van Wert	7	15
Holmes	1	2	Vinton	1	2
Huron	16	35	Warren	7	15
Jackson	4	9	Washington	4	9
Jefferson	3	7	Wayne	11	24
Knox	4	9	Williams	9	20
Lake	13	28	Wood	23	50
Lawrence	3	7	Wyandot	10	22

Total Ohio EPA facilities: 767
Total U.S. EPA estimated facilities: 1678

* These estimates do not include late filing penalties or small business exemptions.

Table 2 shows the estimation of fees to be collected by Ohio EPA under this program. These estimates do not include any late filing penalties, which is an additional three percent of the total fees due. These estimates also do not include the exemptions for small businesses. Under this bill, the Ohio EPA's total collection of fees is not to exceed \$750,000 for one fiscal year. Ohio EPA must evaluate the program every two years to ensure that the balance of the RMP account does not exceed the \$750,000 limit. If the balance exceeds \$750,000, Ohio EPA must restructure the fee schedule and assess the facilities lower amounts. Similar to the fee cap, if the total amount of money collected is less than \$750,000 for a fiscal year, the Ohio EPA has the option to raise the fee structure.

Table 2
Estimation of Fees for Different Source Categories
Ohio EPA 112(r) Program

Source Category	Estimated # of Facilities (U.S.EPA)⁽¹⁾	# of Facilities (Ohio EPA)⁽²⁾	Ohio EPA's Rough Estimate of Facilities Qualifying as a "Small Business"⁽³⁾	Estimated Fees ⁽⁴⁾
SIC Code 28/29/2611 ⁽⁵⁾	124	56	10%	\$2050-\$4050
Other manufacturers	273	122	50%	\$250-\$1450
Cold storage	128	57	50%	\$250
Agriculture retail	163	73	75%	\$115-\$315
Propane	705	315	75%	\$115
Utilities	72	32	0%	\$250-\$450
Drinking water	102	46	5%	\$250
POTW	77	35	5%	\$250
Wholesale	36	16	50%	\$250-\$650
TOTAL	1680	752		

(1) The estimated number of facilities is from U.S. EPA's Draft Guidance Document for State Implementation.

(2) These facilities have returned questionnaires indicating that they are subject to the RMP regulation. This does not include all subject facilities.

(3) Because the criteria of a small business concern as defined in 72 Stat. 384 (1958) are very specific, Ohio EPA does not have the information available to make exact estimates that reflect the actual number of facilities that qualify. This is the best estimate that Ohio EPA could provide at the present time.

(4) Fees are based on the number of regulated substances over the threshold. This will vary within the range provided for each source category.

- ⁽⁵⁾ SIC Code 28/29/2611 includes pulp mills, chlor-alkali, industrial inorganics, plastics and resins, cyclic crudes, industrial organics, nitrogen fertilizers, agricultural chemicals, and petroleum refineries.

Inspections

During the first year, as the stationary source submits a RMP, it will be reviewed and internally audited by the Ohio EPA staff. The audit will look for compliance problems, and it will be cross-referenced with the Ohio EPA's violation database to determine past performance problems in Ohio. After the first year, when RMP updates are submitted, Ohio EPA will audit the plans to look for those requiring an onsite inspection, and it is estimated that approximately 100 inspections will be necessary each year. Because it costs approximately \$250 per inspection, approximately \$25,000 will be spent annually on inspections.

Enforcement

This bill prohibits an owner or operator who is required to submit, revise or update a RMP from failing to do so within the prescribed time. Anyone who purposely violates that prohibition must be fined a criminal penalty of not more than \$20,000 or imprisoned for not more than a year, or both. Each day of each violation is a separate offense. The Attorney General must bring an action against a violator in the county court of common pleas. Additionally, an owner or operator who knowingly makes a false statement in a plan, on a record which information in the plan is based, is guilty of falsification, which is a first-degree misdemeanor. The penalty for falsification is a fine of not more than \$1,000, a term or imprisonment of not more than six months, or both. In addition, the violator is responsible for court costs, attorney fees, and other reasonable expenses.

Ohio EPA focuses more on providing technical assistance instead of resorting to litigation methods, so Ohio EPA's Small Business Assistance Office will be available to meet with the companies to assist them in resolving any compliance problems. This is a normal function of the Small Business Assistance Office, so it will not require additional expenditures. Using the Ohio EPA's Toxic Release Inventory Program as a guide, Ohio EPA estimates less than one stationary source per year will result in the need for a final order resulting from failed attempts to try to cooperatively resolve the problem. Although a final order is not precedent to bringing any civil or criminal penalty actions, the need for the Attorney General to bring an action for injunctive is expected to be extremely rare, if at all.

Changes to the Current Environmental Audit Law

Background

In March of 1997, S.B. 138 went into effect which created both a privilege for information contained in an environmental audit and limited immunity from penalties for violators discovered through the audit and disclosed to the Ohio EPA. This law was intended to encourage companies to diligently look for potential environmental compliance problems at their facilities and to take voluntary action to solve them. However, since this law has been in effect, only one disclosure violation has been reported and the law has not been used to a great extent by the Ohio business community.

Time Limit

This bill amends Section 3745.70 of the Revised Code to require audits to be completed within six months unless the operator receives an extension from Ohio EPA. The current law only requires audits to be "discrete." Because the environmental audit law has not been utilized much by the business community, this is not expected to have a fiscal impact on Ohio EPA.

Testifying Requirements

This bill changes the existing testimonial prohibition to a requirement that a person shall not be compelled to testify in civil or administrative proceedings about privileged portions contained in an environmental audit.

Privilege Exemptions

This bill creates the following exemptions from the privilege under Section 3745.71 of the Revised Code:

1. For criminal proceedings
2. For information that is otherwise required to be publicly disclosed
3. Adds additional certainty that operators must achieve compliance within a reasonable timeframe in order to keep the privilege.
4. Creates an exemption from the privilege for information that the government alleges contains evidence of imminent and substantial endangerment to human health and the environment.
5. Clarifies that information that existed prior to an audit can not be privileged.

Immunity Exemptions

This bill also creates the following exemptions from the immunity portion under Section 3745.72 of the Revised Code:

1. For violations which resulted in significant economic benefit to the owner or the operator of the facility or property.
2. For violations that constitute a pattern of environmental violations, environmental related settlement agreements, or environmental related judicial orders within the past three years in separate events.
3. For violations which resulted in serious harm or created substantial endangerment to human health and the environment.
4. For violations of a specific requirement of an administrative or judicial order.

Sunset Provision

This bill also extends the sunset provision to January 1, 2004, from the current law which ends January 1, 2001.

□ *LBO staff: Erica Burnett, Budget/Policy Analyst*
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