

**As Reported by the Senate Energy, Natural Resources and
Environment Committee**

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Sub. S. B. No. 219

Senators Gardner, Cupp, Kearns, Suhadolnik, Nein

A B I L L

To amend sections 3745.70 to 3745.73 and to enact	1
sections 3745.74, 3753.01 to 3753.10, and 3753.99	2
of the Revised Code to require the owners or	3
operators of stationary sources that have more	4
than the threshold quantity of a regulated	5
substance to submit a risk management plan related	6
to that regulated substance, to establish the	7
requirements of the risk management program, and	8
to revise the statutes relating to environmental	9
audits.	10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3745.70, 3745.71, 3745.72, and	11
3745.73 be amended and sections 3745.74, 3753.01, 3753.02,	12
3753.03, 3753.04, 3753.05, 3753.06, 3753.07, 3753.08, 3753.09,	13
3753.10, and 3753.99 of the Revised Code be enacted to read as	14
follows:	15

Sec. 3745.70. As used in sections 3745.70 to 3745.73 of the	16
Revised Code:	17

(A) "Environmental audit" means a voluntary, thorough, and	18
discrete self-evaluation of one or more activities at one or more	19

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 director of
environmental protection 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: 51

(1) Analytical data, laboratory reports, field notes and 52
records of observations, findings, opinions, suggestions, 53
conclusions, drafts, memoranda, drawings, photographs, 54
computer-generated or electronically recorded information, maps, 55
charts, graphs, and surveys; 56

(2) Reports that describe the scope, objectives, and methods 57
of the environmental audit, audit management policies, the 58
information gained by the environmental audit, and conclusions and 59
recommendations together with exhibits and appendices; 60

(3) Memoranda, documents, records, and plans analyzing the 61
environmental audit report or discussing implementation, 62
prevention, compliance, and remediation issues associated with the 63
environmental audit. 64

"Environmental audit report" does not mean corrective or 65
remedial action taken pursuant to an environmental audit. 66

(E) "Environmental laws" means sections 1511.02 and 1531.29, 67
Chapters 3704., 3734., 3745., 3746., 3750., 3751., 3752., 6109., 68
and 6111. of the Revised Code, and any other sections or chapters 69
of the Revised Code the principal purpose of which is 70
environmental protection; any federal or local counterparts or 71
extensions of those sections or chapters; rules adopted under any 72
such sections, chapters, counterparts, or extensions; and terms 73
and conditions of orders, permits, licenses, license renewals, 74
variances, exemptions, or plan approvals issued under such 75
sections, chapters, counterparts, or extensions. 76

Sec. 3745.71. (A) The Except as otherwise provided in 77
division (C) of this section, the owner or operator of a facility 78
or property who conducts an environmental audit of one or more 79
activities at the facility or property has a privilege with 80

respect to both of the following: 81

(1) The contents of an environmental audit report that is 82
based on the audit; 83

(2) The contents of communications between the owner or 84
operator and employees or contractors of the owner or operator, or 85
among employees or contractors of the owner or operator, that are 86
necessary to the audit and are made in good faith as part of the 87
audit after the employee or contractor is notified that the 88
communication is part of the audit. 89

(B) Except as otherwise provided in or ordered pursuant to 90
this section, information that is privileged under this section is 91
not admissible as evidence or subject to discovery in any 92
~~criminal~~, civil, or administrative proceeding and a person who 93
possesses such information as a result of conducting or 94
participating in an environmental audit shall not be compelled to 95
testify in any ~~criminal~~, civil, or administrative proceeding 96
concerning the ~~contents~~ privileged portions of ~~that information~~ 97
the environmental audit. 98

(C) The privilege provided in this section does not apply to 99
criminal investigations or proceedings. Where an audit report is 100
obtained, reviewed, or used in a criminal proceeding, the 101
privilege provided in this section applicable to civil or 102
administrative proceedings is not waived or eliminated. 103
Furthermore, the privilege provided in this section does not apply 104
to particular information under any of the following 105
circumstances: 106

(1) The privilege is not asserted with respect to that 107
information by the owner or operator to whom the privilege 108
belongs. 109

(2) The owner or operator to whom the privilege belongs 110

voluntarily testifies, or has provided written authorization to an 111
employee, contractor, or agent to testify on behalf of the owner 112
or operator, as to that information. 113

(3) A court of record in a ~~criminal or~~ civil proceeding or 114
the tribunal or presiding officer in an administrative proceeding 115
finds, pursuant to this section, that the privilege does not apply 116
to that information. 117

(4) The information is required by law to be collected, 118
developed, maintained, reported, or otherwise made available to a 119
government agency or otherwise is required by law to be disclosed 120
publicly. 121

(5) The information is obtained from a source other than an 122
environmental audit report, including, without limitation, 123
observation, sampling, monitoring, a communication, a record, or a 124
report that is not part of the audit on which the audit report is 125
based. 126

(6) The information is collected, developed, made, or 127
maintained in bad faith or for a fraudulent purpose. 128

(7) The owner or operator to whom the privilege belongs 129
waives the privilege, in whole or in part, explicitly or by 130
engaging in conduct that manifests a clear intent that the 131
information not be privileged. If an owner or operator introduces 132
part of an environmental audit report into evidence in a civil, 133
~~criminal~~, or administrative proceeding to prove that the owner or 134
operator did not violate, or is no longer violating, any 135
environmental laws, the privilege provided by this section is 136
waived with respect to all information in the audit report that is 137
relevant to that issue. 138

(8)(a) The information shows evidence of noncompliance with 139
environmental laws and the owner or operator fails to do any of 140
the following: 141

(i) <u>Promptly initiate</u> reasonable efforts to achieve	142
compliance with those laws are not initiated and pursued upon	143
<u>discovery of the noncompliance through an environmental audit;</u>	144
(ii) <u>Pursue compliance</u> with reasonable diligence upon	145
discovery through the environmental audit of noncompliance.	146
"Reasonable;	147
(iii) <u>Achieve compliance within a reasonable time.</u>	148
(b) <u>"Reasonable</u> diligence" includes, without limitation,	149
compliance with section 3745.72 of the Revised Code.	150
(9) <u>The information contains evidence that a government</u>	151
<u>agency charged with enforcing environmental laws alleges is</u>	152
<u>necessary to prevent imminent and substantial endangerment or harm</u>	153
<u>to human health or the environment.</u>	154
<u>(10)</u> Any circumstance in which both of the following apply:	155
(a) The information contains evidence regarding an alleged	156
violation of environmental laws and a government agency charged	157
with enforcing any of those laws has a substantial need for the	158
information to protect public health or safety or to prevent	159
imminent and substantial harm to property or the environment;	160
(b) The government agency is unable to obtain the substantial	161
equivalent of the information by other means without unreasonable	162
delay or expense.	163
(10) (11) The information consists of personal knowledge of an	164
individual who did not obtain that information as part of an	165
environmental audit.	166
(11) (12) The information is not clearly identified as part of	167
an environmental audit report. For purposes of this section, clear	168
identification of information as part of an environmental audit	169
report includes, without limitation, either of the following:	170
	171

(a) The information is contained in a document and the front 172
cover, the first page, or a comparable part of the document is 173
prominently labeled with "environmental audit report: privileged 174
information" or substantially comparable language; 175

(b) The information is contained in an electronic record and 176
the record is programmed to display or print prominently 177
"environmental audit report: privileged information" or 178
substantially comparable language before the privileged 179
information is displayed or printed. 180

(13) The information existed prior to the initiation of the 181
environmental audit under division (A) of section 3745.70 of the 182
Revised Code. 183

(D) If the privilege provided in this section belongs to an 184
owner or operator who is not an individual, the privilege may be 185
asserted or waived, in whole or in part, on behalf of the owner or 186
operator only by an officer, manager, partner, or other comparable 187
person who has a fiduciary relationship with the owner or operator 188
and is authorized generally to act on behalf of the owner or 189
operator or is a person who is authorized specifically to assert 190
or waive the privilege. 191

(E) A person asserting the privilege provided in this section 192
has the burden of proving the applicability of the privilege by a 193
preponderance of the evidence. If a person seeking disclosure of 194
information with respect to which a privilege is asserted under 195
this section shows evidence of noncompliance with environmental 196
laws pursuant to division (C)(8) of this section, the person 197
asserting the privilege also has the burden of proving by a 198
preponderance of the evidence that reasonable efforts to achieve 199
compliance with those laws were initiated promptly and that 200
compliance was pursued with reasonable diligence ~~pursuant to that~~ 201
~~division~~ and achieved within a reasonable time. 202

(F)~~(1)~~ When determining whether the privilege provided by 203
this section applies to particular information, a court of record 204
that is not acting pursuant to division (G) of this section, or 205
the tribunal or presiding officer in an administrative proceeding, 206
shall conduct an in camera review of the information in a manner 207
consistent with applicable rules of procedure. 208

(G)(1) The prosecuting attorney of a county or the attorney 209
general, having probable cause to believe, based on information 210
obtained from a source other than an environmental audit report, 211
that a violation has been committed under environmental laws, may 212
obtain information with respect to which a privilege is asserted 213
under this section pursuant to a search warrant, subpoena, or 214
discovery under the Rules of Civil Procedure ~~or the Rules of~~ 215
~~Criminal Procedure~~. The prosecuting attorney or the attorney 216
general immediately shall place the information under seal and 217
shall not review or disclose its contents. 218

(2) Not later than sixty days after receiving an 219
environmental audit report under division (G)(1) of this section, 220
the prosecuting attorney or the attorney general may file with the 221
court of common pleas of a county in which there is proper venue 222
to prosecute the alleged violation a petition requesting an in 223
camera hearing to determine if the information described in 224
division (G)(1) of this section is subject to disclosure under 225
this section. Failure to file such a petition shall cause the 226
information to be released to the owner or operator to whom it 227
belongs. 228

(3) Upon the filing of a petition under division (G)(2) of 229
this section, the court shall issue an order scheduling an in 230
camera hearing, not later than forty-five days after the filing of 231
the petition, to determine if any or all of the information 232
described in division (G)(1) of this section is subject to 233
disclosure under this section. The order shall allow the 234

prosecuting attorney or the attorney general to remove the seal 235
from the report in order to review it and shall place appropriate 236
limitations on distribution and review of the report to protect 237
against unnecessary disclosure. 238

(4) The prosecuting attorney or the attorney general may 239
consult with government agencies regarding the contents of the 240
report to prepare for the in camera hearing. Information described 241
in division (G)(1) of this section that is used by the prosecuting 242
attorney or the attorney general to prepare for the in camera 243
hearing shall not be used by the prosecuting attorney, the 244
attorney general, an employee or agent of either of them, or an 245
agency described in division (G)(4) of this section in any 246
investigation or proceeding against the respondent, and otherwise 247
shall be kept confidential, unless the information is subject to 248
disclosure under this section. 249

(5) The parties may stipulate that information contained in 250
an environmental audit report is or is not subject to disclosure 251
under this section. 252

(6) If the court determines that information described in 253
division (G)(1) of this section is subject to disclosure under 254
this section, the court shall compel disclosure under this section 255
of only the information that is relevant to the proceeding 256
described in division (G)(1) of this section. 257

(H) Nothing in this section affects the nature, scope, or 258
application of any privilege of confidentiality or nondisclosure 259
recognized under another section of the Revised Code or the common 260
law of this state, including, without limitation, the work product 261
doctrine and attorney-client privilege. 262

(I) The privilege provided by this section applies only to 263
information and communications that are part of environmental 264
audits ~~conducted~~ initiated after March 13, 1997, and completed 265

before January 1, ~~2001~~ 2004, in accordance with the time frames 266
specified in division (A) of section 3745.70 of the Revised Code. 267

Sec. 3745.72. (A) The owner or operator of a facility or 268
property who conducts an environmental audit of the facility or 269
property and promptly and voluntarily discloses information 270
contained in or derived from an audit report that is based on the 271
audit and concerns an alleged violation of environmental laws to 272
the director of the state agency that has jurisdiction over the 273
alleged violation is immune from any administrative and civil 274
penalties for that specific violation disclosed, except that where 275
the disclosed violation has resulted in significant economic 276
benefit, there is no immunity for the economic benefit component 277
of the administrative and civil penalties for that violation. An 278
owner or operator asserting entitlement to such immunity has the 279
burden of proving that entitlement by a preponderance of the 280
evidence. 281

(B) For the purposes of this section, a disclosure of 282
information is voluntary with respect to an alleged violation of 283
environmental laws only if all of the following apply: 284

(1) The disclosure is made promptly after the information is 285
obtained through the environmental audit by the owner or operator 286
who conducts the environmental audit; 287

(2) A reasonable, good faith effort is made to achieve 288
compliance as quickly as practicable with environmental laws 289
applicable to the information disclosed; 290

(3) Compliance with environmental laws applicable to the 291
information disclosed is achieved as quickly as practicable or 292
within such period as is reasonably ordered by the director of the 293
state agency that has jurisdiction over the alleged violation; 294

(4) The owner or operator cooperates with the director of the 295

state agency that has jurisdiction over the alleged violation in 296
investigating the cause, nature, extent, and effects of the 297
noncompliance; 298

(5) The disclosure is not required by law, prior litigation, 299
or an order by a court or a government agency; 300

(6) The owner or operator who makes the disclosure does not 301
know or have reason to know that a government agency charged with 302
enforcing environmental laws has commenced an investigation or 303
enforcement action that concerns a violation of such laws 304
involving the activity. 305

(C) For the purposes of this section, a disclosure shall be 306
in writing, dated, and hand delivered or sent by certified mail to 307
the director of the state agency that has jurisdiction over the 308
alleged violation, and shall contain all of the following in a 309
printed letter attached to the front of the disclosure: 310

(1) The name, address, and telephone number of the owner or 311
operator making the disclosure; 312

(2) The name, title, address, and telephone number of one or 313
more persons associated with the owner or operator who may be 314
contacted regarding the disclosure; 315

(3) A brief summary of the alleged violation of environmental 316
laws, including, without limitation, the nature, date, and 317
location of the alleged violation to the extent that the 318
information is known by the owner or operator; 319

(4) A statement that the information is part of an 320
environmental audit report and is being disclosed under section 321
3745.72 of the Revised Code in order to obtain the immunity 322
provided by that section. 323

(D) This section does not provide immunity from the payment 324
of damages for harm to persons, property, or the environment; the 325

payment of reasonable costs incurred by a government agency in 326
responding to a disclosure; or responsibility for the remediation 327
or cleanup of environmental harm under environmental laws. 328

(E) The immunity provided by this section does not apply to 329
~~the owner or operator of a facility or property who, within the~~ 330
~~previous year, made a disclosure under this section with respect~~ 331
~~to a particular activity and received immunity under this section~~ 332
~~with respect to that activity~~ under any of the following 333
circumstances: 334

(1) Within the three-year period prior to disclosure, the 335
owner or operator of a facility or property has committed 336
significant violations that constitute a pattern of continuous or 337
repeated violations of environmental laws, settlement agreements, 338
or judicial orders and that arose from separate and distinct 339
events. For the purposes of division (E)(1) of this section, a 340
pattern of continuous or repeated violations also may be 341
demonstrated by multiple settlement agreements related to 342
substantially the same alleged significant violations that 343
occurred within the three-year period immediately prior to the 344
voluntary disclosure. Determination of whether a person has a 345
pattern of continuous or repeated violations under division (E)(1) 346
of this section shall be based on the compliance history of the 347
property or specific facility at issue. 348

(2) With respect to a specific violation, the violation 349
resulted in serious harm or in imminent and substantial 350
endangerment to human health or the environment. 351

(3) With respect to a specific violation, the violation is of 352
a specific requirement of an administrative or judicial order. 353

(F) The immunity provided by this section applies only to 354
disclosures made concerning environmental audits ~~conducted~~ 355
initiated after March 13, 1997, and completed before January 1, 356

2001 2004, in accordance with the time frames specified in 357
division (A) of section 3745.70 of the Revised Code. 358

(G) The immunity provided by this section applies to a person 359
who makes a good faith disclosure to a state agency under this 360
section even though another state agency is determined to have 361
jurisdiction over an alleged violation of environmental laws 362
indicated in the disclosure. 363

(H) Each state agency that receives a disclosure under this 364
section promptly shall record receipt of the disclosure, determine 365
whether it has jurisdiction over the alleged violation of 366
environmental laws indicated in the disclosure, and, if it does 367
not have such jurisdiction, deliver the disclosure documents to 368
the director of a state agency that has jurisdiction over the 369
alleged violation. If a disclosure indicates alleged violations of 370
environmental laws that are under the jurisdiction of more than 371
one state agency, the state agency that first receives the 372
disclosure and has jurisdiction over any of the alleged violations 373
promptly shall notify the director of each state agency that has 374
jurisdiction over any of such alleged violations. The director of 375
each state agency that receives a disclosure under this section, 376
or is notified by another state agency that the director's agency 377
has jurisdiction over an alleged violation of environmental laws 378
indicated in the disclosure, promptly shall deliver written notice 379
of that fact by certified mail to the owner or operator who made 380
the disclosure. The notice shall identify the state agency that 381
sends the notice; state the name, title, address, and telephone 382
number of a person in the agency ~~who~~ whom the owner or operator 383
may contact regarding the disclosure; and state the name, address, 384
and telephone number of the director of any other state agency 385
notified about the disclosure because that agency has jurisdiction 386
over an alleged violation of environmental laws indicated in the 387
disclosure. 388

Sec. 3745.73. Not later than March 31, ~~2000~~ 2002, the 389
director of environmental protection, in consultation with the 390
attorney general, appropriate federal, state, and local agencies, 391
and appropriate statewide organizations, shall submit to the 392
president of the senate and the speaker of the house of 393
representatives a report on the operation and impacts of ~~this act~~ 394
Substitute Senate Bill No. 138 of the 121st general assembly, 395
including the impact on environmental compliance and protection. 396
The attorney general and each state agency that has received a 397
disclosure under section 3745.72 of the Revised Code shall 398
cooperate with the director in preparing the report required by 399
this section and shall submit information relevant to the report 400
to the director not later than January 31, ~~2000~~ 2002. 401

Sec. 3745.74. Nothing in sections 3745.70 to 3745.73 of the 402
Revised Code shall be construed to limit or affect either of the 403
following: 404

(A) The authority or obligation of any government agency 405
pursuant to section 149.43 of the Revised Code; 406

(B) Any employee protection rights under federal or state 407
laws. 408

Sec. 3753.01. As used in this chapter: 409

(A) "Accidental release" means an unanticipated emission of a 410
regulated substance into the ambient air from a stationary source. 411
412

(B) "Clean Air Act Amendments" means the "Clean Air Act 413
Amendments of 1990," 91 Stat. 685, 42 U.S.C. 7401 et al., as 414
amended, and regulations adopted under it. 415

(C) "Covered process" means a process that has a regulated 416
substance present in an amount that is in excess of the threshold 417
quantity established in rules adopted under section 3753.02 of the 418

Revised Code. 419

(D) "Environmental receptor" means natural areas such as 420
national or state parks, forests, or monuments; federally 421
designated or state-designated wildlife sanctuaries, preserves, 422
refuges, or areas; and federal wilderness areas, that could be 423
exposed at any time to toxic concentrations, radiant heat, or 424
overpressure greater than or equal to the endpoints prescribed in 425
rules adopted under section 3753.02 of the Revised Code and that 426
can be identified on United States geological survey maps. 427

(E) "Owner or operator" means any person who owns, leases, 428
operates, controls, or supervises a stationary source. 429

(F) "Process" means any activity involving a regulated 430
substance, including any use, storage, manufacturing, handling, or 431
on-site movement of the substance or any combination of these 432
activities. Any group of vessels that are interconnected, or 433
separate vessels that are located in such a manner that a 434
regulated substance potentially could be involved in a release, 435
shall be considered a single process. 436

(G) "public" means any person except employees or contractors 437
at a stationary source. 438

(H) "public receptor" means off-site residences, institutions 439
such as schools or hospitals, industrial, commercial, and office 440
buildings, parks, or recreational areas inhabited or occupied by 441
the public at any time where the public could be exposed to toxic 442
concentrations, radiant heat, or overpressure as a result of an 443
accidental release. 444

(I) "Regulated substance" means a toxic or flammable 445
substance listed in rules adopted under section 3753.02 of the 446
Revised Code. 447

(J) "Risk management plan" means a risk management plan 448
required under section 3753.03 of the Revised Code. 449

(K) "Stationary source" means any buildings, structures, 450
equipment, installations, or substance-emitting stationary 451
activities that belong to the same industrial group as described 452
in the standard industrial classification manual, 1987, that are 453
located on one or more contiguous properties under the control of 454
the same person or persons, and from which an accidental release 455
may occur. Properties shall not be considered contiguous solely 456
because of a railroad or pipeline right-of-way. 457

(1) "Stationary source" includes transportation containers 458
that are used for storage not incident to transportation and 459
transportation containers that are connected to equipment at a 460
stationary source for loading and unloading. "Stationary source" 461
does not include the transportation, including storage incident to 462
transportation, of any regulated substance under this chapter. 463
"Stationary source" does not include naturally occurring 464
hydrocarbon reservoirs. 465

(2) "Transportation" includes, but is not limited to, 466
transportation that is subject to oversight or regulation under 49 467
C.F.R. part 192, 193, or 195, or to a state natural gas or 468
hazardous liquid program for which the state has in effect a 469
certification to the United States department of transportation 470
under 49 U.S.C. 60105. 471

(L) "Threshold quantity" means the quantity established for a 472
regulated substance in rules adopted under section 3753.02 of the 473
Revised Code that, if exceeded, subjects an owner or operator to 474
compliance with this chapter and rules adopted under it. 475

(M) "Vessel" means any reactor, tank, drum, barrel, cylinder, 476
vat, kettle, boiler, pipe, hose, or other container. 477

Sec. 3753.02. For the purpose of implementing and 478
administering this chapter, the director of environmental 479
protection may adopt, amend, and rescind rules in accordance with 480

Chapter 119. of the Revised Code. The rules shall be consistent 481
with, equivalent in scope, content, and coverage to, and no more 482
stringent than the requirements of section 112(r) of the Clean Air 483
Act Amendments and any regulations adopted pursuant to that 484
section. Rules adopted under this section may do any or all of the 485
following: 486

(A) Identify and list regulated substances and establish a 487
threshold quantity for any regulated substance in a process at a 488
stationary source; 489

(B) Add regulated substances to or delete regulated 490
substances from the list established in rules adopted under this 491
section or revise the threshold quantity for any regulated 492
substance; 493

(C) Prescribe toxic and flammable endpoints for regulated 494
substances; 495

(D) Prescribe the forms and all of the elements of risk 496
management plans; 497

(E) Prescribe the schedule and format for the submission of 498
risk management plans and other information required to be 499
submitted under this chapter or rules adopted under it; 500

(F) Prescribe criteria for developing and implementing a 501
management system required under section 3753.04 of the Revised 502
Code to oversee the implementation of the elements of a risk 503
management program; 504

(G) Prescribe criteria for conducting a hazard assessment 505
required under section 3753.04 Of the Revised Code, including, but 506
not limited to, criteria for a worst case release assessment; 507

(H) Prescribe criteria for the implementation of prevention 508
requirements for covered processes that are subject to program 2 509
or program 3 requirements under section 3753.04 Of the Revised 510

<u>Code;</u>	511
(I) <u>Prescribe criteria for developing an emergency response</u>	512
<u>program required under section 3753.04 Of the Revised Code;</u>	513
(J) <u>Prescribe record-keeping and audit requirements,</u>	514
<u>including, but not limited to, requirements governing the</u>	515
<u>availability of records to individuals and other persons as</u>	516
<u>provided in section 114(C) of the Clean Air Act Amendments;</u>	517
(K) <u>Establish any other requirements that the director</u>	518
<u>determines to be necessary or appropriate to implement and</u>	519
<u>administer this chapter.</u>	520
Sec. 3753.03. (A) <u>Effective upon the date that the United</u>	521
<u>States environmental protection agency delegates the program</u>	522
<u>created under section 112(r) of the Clean Air Act Amendments to</u>	523
<u>the environmental protection agency of this state, an owner or</u>	524
<u>operator of a stationary source that has a covered process shall</u>	525
<u>develop and submit a risk management plan no later than the latest</u>	526
<u>of the following:</u>	527
(1) <u>June 21, 1999;</u>	528
(2) <u>The date on which a regulated substance is first present</u>	529
<u>above a threshold quantity in a process at the stationary source;</u>	530
(3) <u>Three years after the date on which a regulated substance</u>	531
<u>at the stationary source is first listed under 40 C.F.R. 68.130.</u>	532
	533
(B) <u>An owner or operator who is subject to division (A) of</u>	534
<u>this section shall submit a single risk management plan that</u>	535
<u>reflects all covered processes at the stationary source by the</u>	536
<u>applicable deadline established under that division and that is in</u>	537
<u>the form required by the director of environmental protection in</u>	538
<u>rules adopted under section 3753.02 of the Revised Code. The risk</u>	539
<u>management plan shall include all of the following, as applicable:</u>	540

<u>(1) A registration that reflects all covered processes at the</u>	541
<u>stationary source pursuant to 40 C.F.R. 68.160;</u>	542
<u>(2) The applicable information required to be submitted with</u>	543
<u>the plan under section 3753.04 of the Revised Code;</u>	544
<u>(3) A summary of the actions taken to comply with all of the</u>	545
<u>other applicable requirements established under section 3753.04 of</u>	546
<u>the Revised Code.</u>	547
<u>(C) An owner or operator who has submitted a risk management</u>	548
<u>plan as required by division (A) of this section or submitted an</u>	549
<u>update to a risk management plan under division (C) of this</u>	550
<u>section shall revise, update, and submit the risk management plan</u>	551
<u>in accordance with whichever of the following is applicable:</u>	552
<u>(1) Not later than five years after the initial submission of</u>	553
<u>the risk management plan under division (A) of this section;</u>	554
<u>(2) Not later than five years after the most recent update of</u>	555
<u>the risk management plan submitted under division (C) of this</u>	556
<u>section;</u>	557
<u>(3) As otherwise provided in rules adopted by the director</u>	558
<u>under section 3753.02 of the Revised Code.</u>	559
<u>(D) No owner or operator who is required to submit a risk</u>	560
<u>management plan shall fail to do so.</u>	561
<u>(E) An owner or operator who is required to submit a risk</u>	562
<u>management plan and who knowingly makes a false statement in the</u>	563
<u>plan, on a record upon which information in the plan is based, or</u>	564
<u>on or pertaining to any other information or records required to</u>	565
<u>be maintained under this chapter or rules adopted under it is</u>	566
<u>guilty of falsification under section 2921.13 of the Revised Code.</u>	567
<u>Sec. 3753.04. (A) In addition to complying with section</u>	568
<u>3753.03 of the Revised Code, the owner or operator of a stationary</u>	569
<u>source at which one or more covered processes are present, as part</u>	570

of the owner or operator's risk management program, shall comply 571
with program 1, program 2, or program 3 requirements established 572
under this section or with a combination of those requirements. An 573
owner or operator shall determine which of those requirements 574
apply to the covered processes that are present at the stationary 575
source as provided in divisions (B) to (D) of this section. An 576
owner or operator shall comply with all levels of program 577
requirements that apply to the covered processes at the owner or 578
operator's stationary source. 579

(B) The owner or operator of a stationary source at which a 580
covered process is present is subject to program 1 requirements 581
established under division (E) of this section if the covered 582
process meets all of the following conditions: 583

(1) For the five years prior to the submission of a risk 584
management plan, the process has not had an accidental release of 585
a regulated substance where exposure to the substance, its 586
reaction products, overpressure generated by an explosion 587
involving the substance, or radiant heat generated by a fire 588
involving the substance led to any of the following occurrences 589
off-site: 590

(a) Death of any person; 591

(b) Injury to any person; 592

(c) Response or restoration activities for an environmental 593
receptor. 594

(2) The distance to a toxic or flammable endpoint for a worst 595
case release assessment conducted pursuant to a hazard assessment 596
as specified in rules adopted under section 3753.02 of the Revised 597
Code is less than the distance to any public receptor; 598

(3) Emergency response procedures have been coordinated 599
between the stationary source and local emergency planning and 600
response organizations. 601

(C) The owner or operator of a stationary source at which a 602
covered process is present is subject to program 2 requirements 603
established under division (F) of this section if the covered 604
process does not meet the conditions established under division 605
(B) or (D) of this section. 606

(D) The owner or operator of a stationary source at which a 607
covered process is present is subject to program 3 requirements 608
established under division (G) of this section if the covered 609
process does not meet the conditions established under division 610
(B) of this section and either of the following conditions is met: 611

(1) The process is in standard industrial classification code 612
2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911; 613

(2) The process is subject to the United States occupational 614
safety and health administration safety management standard under 615
29 C.F.R. 1910.119. 616

(E) The owner or operator of a stationary source at which one 617
or more covered processes are present that meet the conditions 618
established under division (B) of this section shall comply with 619
all of the following program 1 requirements: 620

(1) Submit with the risk management plan an analysis of the 621
worst case release scenario for each covered process and 622
documentation that the nearest public receptor is beyond the 623
distance to a toxic or flammable endpoint; 624

(2) Submit with the risk management plan a five-year accident 625
history for the process; 626

(3) Ensure that response actions have been coordinated with 627
local emergency planning and response agencies; 628

(4) Certify in the risk management plan that "Based upon 629
criteria in rules adopted by the Director of Environmental 630
Protection under section 3753.02 of the Revised Code, the distance 631

to the specified endpoint for the worst case release scenario for 632
the following process(es) is less than the distance to the nearest 633
public receptor: (list processes). within the past five years, the 634
process(es) has (have) had no accidental release that caused 635
off-site impacts as described in rules adopted by the Director 636
under section 3753.02 of the Revised Code. No additional measures 637
are necessary to prevent off-site impacts from accidental 638
releases. In the event of fire, explosion, or a release of a 639
regulated substance from the process(es), entry within the 640
distance to the specified endpoints may pose a danger to public 641
emergency responders. Therefore, public emergency responders 642
should not enter this area except as arranged with the emergency 643
contact indicated in the risk management plan. The undersigned 644
certifies that, to the best of my knowledge, the information 645
submitted is true, accurate, and complete. (signature, title, date 646
signed)\" 647

(F) The owner or operator of a stationary source at which one 648
or more covered processes are present that meet the conditions 649
established under division (C) of this section shall comply with 650
all of the following program 2 requirements: 651

(1) Develop and implement a management system in accordance 652
with rules adopted under section 3753.02 of the Revised Code; 653

(2) Conduct a hazard assessment in accordance with rules 654
adopted under section 3753.02 of the Revised Code; 655

(3) Implement program 2 prevention requirements or implement 656
program 3 prevention requirements in accordance with rules adopted 657
under section 3753.02 of the Revised Code; 658

(4) Submit as part of the risk management plan information on 659
prevention program elements for covered processes that are subject 660
to program 2 requirements; 661

(5) Develop and implement an emergency response program in 662

accordance with rules adopted under section 3753.02 of the Revised 663
Code. 664

(G) The owner or operator of a stationary source at which one 665
or more covered processes are present that meet the conditions 666
established under division (D) of this section shall comply with 667
all of the following program 3 requirements: 668

(1) Develop and implement a management system in accordance 669
with rules adopted under section 3753.02 of the Revised Code; 670

(2) Conduct a hazard assessment in accordance with rules 671
adopted under section 3753.02 of the Revised Code; 672

(3) Implement program 3 prevention requirements in accordance 673
with rules adopted under section 3753.02 of the Revised Code; 674
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(4) Submit as part of the risk management plan information on 676
prevention program elements for covered processes that are subject 677
to program 3 requirements; 678

(5) Develop and implement an emergency response program in 679
accordance with rules adopted under section 3753.02 of the Revised 680
Code. 681

(H) If at any time a covered process at a stationary source 682
no longer meets the conditions established under this section for 683
its program level, the owner or operator shall comply with the 684
requirements of the new program level that applies to the covered 685
process and shall update the risk management plan and information 686
submitted with it not later than six months after the change in 687
compliance with this chapter and rules adopted under it. 688

Sec. 3753.05. (A) An owner or operator who is required to 689
submit a risk management plan shall pay annually to the 690
environmental protection agency a fee of fifty dollars together 691
with any of the following applicable fees: 692

(1) A fee of sixty-five dollars if a covered process in the 693
stationary source includes propane and propane is the only 694
regulated substance at the stationary source over the threshold 695
quantity; 696

(2) A fee of sixty-five dollars if a covered process in the 697
stationary source includes anhydrous ammonia that is sold for use 698
as an agricultural nutrient and is on-site over the threshold 699
quantity; 700

(3) A fee of two hundred dollars for each regulated substance 701
over the threshold quantity. Propane shall be considered a 702
regulated substance subject to the fee levied under division 703
(A)(3) of this section only if it is not the only regulated 704
substance over the threshold quantity. Anhydrous ammonia shall be 705
considered a regulated substance subject to the fee levied under 706
division (A)(3) of this section only if it is not sold for use as 707
an agricultural nutrient. 708

(B) In accordance with rules adopted under section 3753.02 of 709
the Revised Code, the fees assessed under division (A) of this 710
section shall be collected for the year 1999 no later than June 711
21, 1999. Thereafter, the fees shall be collected no later than 712
the first day of September of each year. The fees assessed under 713
division (A) of this section for a stationary source shall be 714
based upon the regulated substances present over the threshold 715
quantity identified in the risk management plan on file for 716
calendar year 1999 as of the twenty-first day of June and for each 717
subsequent calendar year as of the first day of September. 718

(C) An owner or operator who is required to submit a risk 719
management plan and who fails to submit such a plan within thirty 720
days after the applicable filing date prescribed in section 721
3753.03 of the Revised Code shall submit with the risk management 722
plan a late filing fee of fifteen per cent of the total fees due 723

under division (A) of this section. 724

(D) The director of environmental protection may establish 725
fees to be paid by persons, other than public officers or 726
employees, to cover the costs of obtaining copies of documents or 727
information submitted to the director under this chapter and rules 728
adopted under it. The director may charge the actual costs 729
involved in accessing any computerized data base established or 730
used for the purposes of assisting in the administration of this 731
chapter. 732

(E) All moneys received by the agency under divisions (A), 733
(C), and (D) of this section shall be transmitted to the treasurer 734
of state to be credited to the risk management plan reporting 735
fund, which is hereby created in the state treasury. The fund 736
shall be administered by the director and used exclusively for the 737
administration and enforcement of this chapter and rules adopted 738
under it. 739

(F) Beginning in fiscal year 2001, and every two years 740
thereafter, the director shall review the total amount of moneys 741
in the risk management plan reporting fund to determine if that 742
amount exceeds seven hundred fifty thousand dollars in either of 743
the two preceding fiscal years. If the total amount of moneys in 744
the fund exceeded seven hundred fifty thousand dollars in either 745
fiscal year, the director, after review of the fee structure and 746
consultation with affected persons, shall issue an order reducing 747
the amount of the fees levied under division (a) of this section 748
so that the estimated amount of moneys resulting from the fees 749
will not exceed seven hundred fifty thousand dollars in any fiscal 750
year. 751

If, upon review of the fees under this division and after the 752
fees have been reduced, the director determines that the total 753
amount of moneys collected and accumulated is less than seven 754
hundred fifty thousand dollars, the director, after review of the 755

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.

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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.

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

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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.

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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

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issuing a proposed action under section 3745.07 of the Revised 787
Code and, notwithstanding section 119.06 of the Revised Code, 788
without the necessity to hold an adjudication hearing. Issuance of 789
an order under this section is not a condition precedent to 790
bringing any civil or criminal action under this chapter. 791

Sec. 3753.09. (A) The attorney general or the prosecuting 792
attorney of the county or director of law of the city where a 793
violation has occurred or is occurring, upon written request of 794
the director of environmental protection, shall prosecute to 795
termination any person who has violated division (D) of section 796
3753.03 of the Revised Code or shall bring an action for 797
injunction against any person who has violated or is violating 798
section 3753.06 of the Revised Code. The court of common pleas in 799
which an action for injunction is filed has the jurisdiction to 800
and shall grant preliminary and permanent injunctive relief upon a 801
showing that the person against whom the action is brought has 802
violated or is violating section 3753.06 Of the Revised Code. The 803
court shall give precedence to such an action over all other 804
cases. 805

(B) Whoever violates section 3753.06 of the Revised Code 806
shall pay a civil penalty of not more than twenty-five thousand 807
dollars for each day of each violation. The attorney general or 808
the prosecuting attorney of the county or director of law of the 809
city where a violation of that section has occurred or is 810
occurring, upon written request of the director, shall bring an 811
action for the imposition of a civil penalty under this division 812
against any person who has committed or is committing any such 813
violation. Moneys resulting from civil penalties imposed under 814
this division shall be credited to the risk management plan 815
reporting fund created in section 3753.05 of the Revised Code. 816

(C) Upon the certified written request of any person, the 817
director shall conduct investigations and make inquiries that are 818

necessary to secure compliance with this chapter or rules adopted 819
or orders issued under it. The director, upon request or upon the 820
director's own initiative, may investigate or make inquiries into 821
any violation of this chapter or rules adopted or orders issued 822
under it. 823

Sec. 3753.10. (A) As used in this section: 824

(1) "Harm" means injury to, death of, or loss to person or 825
property. 826

(2) "Tort action" means a civil action for damages for harm, 827
but does not include a civil action for damages for a breach of 828
contract or other agreement between persons or for a breach of a 829
warranty that exists pursuant to the Revised Code or the common 830
law of this state. 831

(B) The state, and any officer or employee of the state as 832
defined in section 109.36 of the Revised Code, is not liable in a 833
tort action when the state inspects, investigates, reviews, or 834
accepts a risk management plan from an owner or operator who is 835
subject to this chapter unless an action or omission of the state, 836
or of an officer or employee of the state, constitutes willful or 837
wanton misconduct or intentionally tortuous conduct. Any action 838
brought against the state under this division shall be brought in 839
the court of claims. 840

(C)(1) This section does not create, and shall not be 841
construed as creating, a new cause of action against or 842
substantive legal right against the state or an officer or 843
employee of the state. 844

(2) This section does not affect, and shall not be construed 845
as affecting, any immunities from civil liability or defenses 846
established by the Revised Code, the United States Constitution, 847
or the Ohio Constitution or available at common law to which this 848
state, or an officer or employee of the state, may be entitled 849

under circumstances not covered by this section. 850

(3) Section 9.86 of the Revised Code does not apply to an 851
officer or employee of the state if the officer or employee is 852
performing work in connection with inspecting, investigating, 853
reviewing, or accepting a risk management plan from an owner or 854
operator who is subject to this chapter at the time that the 855
officer or employee allegedly caused the harm or caused or 856
contributed to the presence or release of toxic or flammable 857
substances for which damages are sought in a tort action. In the 858
alternative, the immunities conferred by division (B) of this 859
section apply to that individual. 860

Sec. 3753.99. Whoever purposely violates division (D) of 861
section 3753.03 of the Revised Code shall be fined not more than 862
twenty thousand dollars and imprisoned for not more than one year, 863
or both. Each day of violation is a separate offense. 864

Section 2. That existing sections 3745.70, 3745.71, 3745.72, 865
and 3745.73 of the Revised Code are hereby repealed. 866