

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

**122nd General Assembly
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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

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facilities or properties that is documented; is designed to 20
improve compliance, or identify, correct, or prevent 21
noncompliance, with environmental laws; and is conducted by the 22
owner or operator of a facility or property or the owner owner's 23
or operator's employee or independent contractor. An environmental 24
audit may be conducted by the owner or operator of a facility or 25
property, the owner's or operator's employees, or independent 26
contractors. Once initiated, an audit shall be completed within a 27
reasonable time, not to exceed six months, unless a written 28
request for an extension is approved by the director of 29
environmental protection based on a showing of reasonable grounds. 30
An audit shall not be considered to be initiated until the owner 31
or operator or the owner's or operator's employee or independent 32
contractor actively has begun the self-evaluation of environmental 33
compliance. 34

(B) "Activity" means any process, procedure, or function that 35
is subject to environmental laws. 36

(C) "Voluntary" means, with respect to an environmental audit 37
of a particular activity, that all both of the following apply 38
when the audit of that activity commences: 39

(1) The audit is not required by law, prior litigation, or an 40
order by a court or a government agency; 41

(2) The owner or operator who conducts the audit does not 42
know or have reason to know that a government agency has commenced 43
an investigation or enforcement action that concerns a violation 44
of environmental laws involving the activity or that such an 45
investigation or enforcement action is imminent. 46

(D) "Environmental audit report" means interim or final data, 47
documents, records, or plans that are necessary to an 48
environmental audit and are collected, developed, made, and 49
maintained in good faith as part of the audit, and may include, 50

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without limitation:	51
(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;	52 53 54 55 56
(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;	57 58 59 60
(3) Memoranda, documents, records, and plans analyzing the environmental audit report or discussing implementation, prevention, compliance, and remediation issues associated with the environmental audit.	61 62 63 64
"Environmental audit report" does not mean corrective or remedial action taken pursuant to an environmental audit.	65 66
(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.	67 68 69 70 71 72 73 74 75 76
Sec. 3745.71. (A) The <u>Except as otherwise provided in division (C) of this section, the</u> 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	77 78 79 80

respect to both of the following:	81
(1) The contents of an environmental audit report that is based on the audit;	82
(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.	84
(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 <u>be compelled to</u> testify in any criminal, civil, or administrative proceeding concerning the contents privileged portions of that information the environmental audit.	90
(C) The <u>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.</u> Furthermore, the privilege provided in this section does not apply to particular information under any of the following circumstances:	99
(1) The privilege is not asserted with respect to that information by the owner or operator to whom the privilege belongs.	107
(2) The owner or operator to whom the privilege belongs	110

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.	111 112 113
(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.	114 115 116 117
(4) The information is required by law to be collected, developed, maintained, reported, or otherwise made available to a government agency <u>or otherwise is required by law to be disclosed publicly</u> .	118 119 120 121
(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.	122 123 124 125 126
(6) The information is collected, developed, made, or maintained in bad faith or for a fraudulent purpose.	127 128
(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.	129 130 131 132 133 134 135 136 137 138
(8)(a) The information shows evidence of noncompliance with environmental laws and <u>the owner or operator fails to do any of the following</u> :	139 140 141

(i) <u>Promptly initiate</u> reasonable efforts to achieve	142
compliance with those laws are not initiated and pursued <u>upon</u>	143
<u>discovery of the noncompliance through an environmental audit;</u>	144
(ii) <u>Pursue compliance</u> with reasonable diligence <u>upon</u>	145
<u>discovery through the environmental audit of noncompliance.</u>	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
(10) 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
<u>imminent and substantial harm to property or the environment;</u>	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
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(a) The information is contained in a document and the front cover, <u>the</u> first page, or a comparable part of the document is prominently labeled with "environmental audit report: privileged information" or substantially comparable language;	172 173 174 175
(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.	176 177 178 179 180
<u>(13) The information existed prior to the initiation of the environmental audit under division (A) of section 3745.70 of the Revised Code.</u>	181 182 183
(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.	184 185 186 187 188 189 190 191
(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 <u>promptly</u> and <u>that compliance was</u> pursued with reasonable diligence pursuant to that division and achieved within a reasonable time.	192 193 194 195 196 197 198 199 200 201 202

(F)(1) 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.	203 204 205 206 207 208
(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, 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.	209 210 211 212 213 214 215 216 217 218
(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 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.	219 220 221 222 223 224 225 226 227 228
(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	229 230 231 232 233 234

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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

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

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state agency that has jurisdiction over the alleged violation in investigating the cause, nature, extent, and effects of the noncompliance;	296 297 298
(5) The disclosure is not required by law, prior litigation, or an order by a court or a government agency;	299 300
(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.	301 302 303 304 305
(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:	306 307 308 309 310
(1) The name, address, and telephone number of the owner or operator making the disclosure;	311 312
(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;	313 314 315
(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;	316 317 318 319
(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.	320 321 322 323
(D) This section does not provide immunity from the payment of damages for harm to persons, property, or the environment; the	324 325

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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.	326 327 328
(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:	329 330 331 332 333 334
(1) <u>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, settlement agreements, or 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.</u>	335 336 337 338 339 340 341 342 343 344 345 346 347 348
(2) <u>With respect to a specific violation, the violation resulted in serious harm or in imminent and substantial endangerment to human health or the environment.</u>	349 350 351
(3) <u>With respect to a specific violation, the violation is of a specific requirement of an administrative or judicial order.</u>	352 353
(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,	354 355 356

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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
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(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

<u>Revised Code.</u>	419
(D) <u>"Environmental receptor"</u> means natural areas such as national or state parks, forests, or 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.	420 421 422 423 424 425 426 427
(E) <u>"Owner or operator"</u> means any person who owns, leases, operates, controls, or supervises a stationary source.	428 429
(F) <u>"Process"</u> 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.	430 431 432 433 434 435 436
(G) <u>"public"</u> means any person except employees or contractors at a stationary source.	437 438
(H) <u>"public receptor"</u> 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.	439 440 441 442 443 444
(I) <u>"Regulated substance"</u> means a toxic or flammable substance listed in rules adopted under section 3753.02 of the Revised Code.	445 446 447
(J) <u>"Risk management plan"</u> means a risk management plan required under section 3753.03 of the Revised Code.	448 449

(K) <u>"Stationary source"</u> 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.	450 451 452 453 454 455 456 457
(1) <u>"Stationary source"</u> 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. <u>"Stationary source"</u> does not include the transportation, including storage incident to transportation, of any regulated substance under this chapter. <u>"Stationary source"</u> does not include naturally occurring hydrocarbon reservoirs.	458 459 460 461 462 463 464 465
(2) <u>"Transportation"</u> 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.	466 467 468 469 470 471
(L) <u>"Threshold quantity"</u> 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.	472 473 474 475
(M) <u>"Vessel"</u> means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.	476 477
Sec. 3753.02. <u>For the purpose of implementing and administering this chapter, the director of environmental protection may adopt, amend, and rescind rules in accordance with</u>	478 479 480

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<u>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 may do any or all of the following:</u>	481
(A) <u>Identify and list regulated substances and establish a threshold quantity for any regulated substance in a process at a stationary source;</u>	487
(B) <u>Add regulated substances to or delete regulated substances from the list established in rules adopted under this section or revise the threshold quantity for any regulated substance;</u>	490
(C) <u>Prescribe toxic and flammable endpoints for regulated substances;</u>	494
(D) <u>Prescribe the forms and all of the elements of risk management plans;</u>	496
(E) <u>Prescribe the schedule and format for the submission of risk management plans and other information required to be submitted under this chapter or rules adopted under it;</u>	498
(F) <u>Prescribe criteria for developing and implementing a management system required under section 3753.04 of the Revised Code to oversee the implementation of the elements of a risk management program;</u>	501
(G) <u>Prescribe criteria for conducting a hazard assessment required under section 3753.04 of the Revised Code, including, but not limited to, criteria for a worst case release assessment;</u>	505
(H) <u>Prescribe criteria for the implementation of prevention requirements for covered processes that are subject to program 2 or program 3 requirements under section 3753.04 of the Revised</u>	508
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<u>Code:</u>	511
(I) <u>Prescribe criteria for developing an emergency response program required under section 3753.04 of the Revised Code;</u>	512 513
(J) <u>Prescribe record-keeping and audit requirements, including, but not limited to, requirements governing the availability of records to individuals and other persons as provided in section 114(C) of the Clean Air Act Amendments;</u>	514 515 516 517
(K) <u>Establish any other requirements that the director determines to be necessary or appropriate to implement and administer this chapter.</u>	518 519 520
Sec. 3753.03. (A) <u>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:</u>	521 522 523 524 525 526 527
(1) <u>June 21, 1999;</u>	528
(2) <u>The date on which a regulated substance is first present above a threshold quantity in a process at the stationary source;</u>	529 530
(3) <u>Three years after the date on which a regulated substance at the stationary source is first listed under 40 C.F.R. 68.130.</u>	531 532 533
(B) <u>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:</u>	534 535 536 537 538 539 540

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(1) <u>A registration that reflects all covered processes at the stationary source pursuant to 40 C.F.R. 68.160;</u>	541
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(2) <u>The applicable information required to be submitted with the plan under section 3753.04 of the Revised Code;</u>	543
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(3) <u>A summary of the actions taken to comply with all of the other applicable requirements established under section 3753.04 of the Revised Code.</u>	545
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(C) <u>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:</u>	548
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(1) <u>Not later than five years after the initial submission of the risk management plan under division (A) of this section;</u>	553
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(2) <u>Not later than five years after the most recent update of the risk management plan submitted under division (C) of this section;</u>	555
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(3) <u>As otherwise provided in rules adopted by the director under section 3753.02 of the Revised Code.</u>	558
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(D) <u>No owner or operator who is required to submit a risk management plan shall fail to do so.</u>	560
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(E) <u>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.</u>	562
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Sec. 3753.04. (A) <u>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</u>	568
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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

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(C) <u>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.</u>	602 603 604 605 606
(D) <u>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:</u>	607 608 609 610 611
(1) <u>The process is in standard industrial classification code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911;</u>	612 613
(2) <u>The process is subject to the United States occupational safety and health administration safety management standard under 29 C.F.R. 1910.119.</u>	614 615 616
(E) <u>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:</u>	617 618 619 620
(1) <u>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;</u>	621 622 623 624
(2) <u>Submit with the risk management plan a five-year accident history for the process;</u>	625 626
(3) <u>Ensure that response actions have been coordinated with local emergency planning and response agencies;</u>	627 628
(4) <u>Certify in the risk management plan that "Based upon criteria in rules adopted by the Director of Environmental Protection under section 3753.02 of the Revised Code, the distance</u>	629 630 631

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<u>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 by the Director 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)"</u>	632
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<u>(F) 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:</u>	648
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<u>(1) Develop and implement a management system in accordance with rules adopted under section 3753.02 of the Revised Code;</u>	652
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<u>(2) Conduct a hazard assessment in accordance with rules adopted under section 3753.02 of the Revised Code;</u>	654
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<u>(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;</u>	656
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<u>(4) Submit as part of the risk management plan information on prevention program elements for covered processes that are subject to program 2 requirements;</u>	659
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<u>(5) Develop and implement an emergency response program in</u>	662

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<u>accordance with rules adopted under section 3753.02 of the Revised Code.</u>	663 664
<u>(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:</u>	665 666 667 668
<u>(1) Develop and implement a management system in accordance with rules adopted under section 3753.02 of the Revised Code;</u>	669 670
<u>(2) Conduct a hazard assessment in accordance with rules adopted under section 3753.02 of the Revised Code;</u>	671 672
<u>(3) Implement program 3 prevention requirements in accordance with rules adopted under section 3753.02 of the Revised Code;</u>	673 674 675
<u>(4) Submit as part of the risk management plan information on prevention program elements for covered processes that are subject to program 3 requirements;</u>	676 677 678
<u>(5) Develop and implement an emergency response program in accordance with rules adopted under section 3753.02 of the Revised Code.</u>	679 680 681
<u>(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.</u>	682 683 684 685 686 687 688
<u>Sec. 3753.05. (A) An owner or operator who is required to submit a risk management plan shall pay annually to the environmental protection agency a fee of fifty dollars together with any of the following applicable fees:</u>	689 690 691 692

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(1) <u>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;</u>	693
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(2) <u>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;</u>	697
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(3) <u>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.</u>	701
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(B) <u>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.</u>	709
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(C) <u>An owner or operator who is required to submit a risk management plan 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 fifteen per cent of the total fees due</u>	719
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<u>under division (A) of this section.</u>	724
<u>(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 may charge the actual costs involved in accessing any computerized data base established or used for the purposes of assisting in the administration of this chapter.</u>	725 726 727 728 729 730 731 732
<u>(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.</u>	733 734 735 736 737 738 739
<u>(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.</u>	740 741 742 743 744 745 746 747 748 749 750 751
<u>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</u>	752 753 754 755

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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 increasd to an amount exceeding the amount specified in division (A) of this section. 756
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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. 762
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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. 767
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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. 769
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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 783
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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. 787
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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. 792
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(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. 806
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(C) Upon the certified written request of any person, the director shall conduct investigations and make inquiries that are 817
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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

<u>under circumstances not covered by this section.</u>	850
<u>(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 the alternative, the immunities conferred by division (B) of this section apply to that individual.</u>	851 852 853 854 855 856 857 858 859 860
<u>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.</u>	861 862 863 864
Section 2. That existing sections 3745.70, 3745.71, 3745.72, and 3745.73 of the Revised Code are hereby repealed.	865 866