

## DRAFT – April 8, 2019

### 1301:7-9-20 **Underground storage tank revolving loan fund.**

#### (A) Purpose and scope.

For the purpose of prescribing rules pursuant to section 3737.883 of the Revised Code, the state fire marshal hereby adopts this rule to establish the underground storage tank revolving loan fund. This rule is adopted by the state fire marshal in accordance with Chapter 119 of the Revised Code and shall not be considered part of the "Ohio Fire Code".

#### (B) Definitions.

(1) "Qualifying political subdivision" has the same meaning ascribed to "political subdivision" in division (A) of section 3737.883 of the Revised Code. As referenced in section 3737.883 of the Revised Code, a "qualifying political subdivision" includes a community improvement corporation as that term is defined in section 1724.01 of the Revised Code.

(2) "Loan" means a loan granted under the underground storage tank revolving loan program established by section 3737.883 of the Revised Code.

(3) "Responsible person" has the same meaning as division (N) of section 3737.87 of the Revised Code.

(4) "Site" means a UST site.

#### (C) Qualifications.

(1) Only a qualifying political subdivision is eligible to receive a loan.

(2) In order for a qualifying political subdivision to receive a loan under this rule, the qualifying political subdivision must commit to spend, of its own funds, an amount at least equal to five percent of the requested loan amount. The actual amount of a qualifying political subdivision's own funds that must be spent shall be no less than five percent of the final amount of the loan.

#### (D) Activities eligible for funding.

A qualifying political subdivision may conduct any activity described in paragraph (G)(1) of this rule if the following conditions apply:

(1) For an underground storage tank:

(a) The underground storage tank is located within the territorial boundaries of the qualifying political subdivision, and,

(b) The qualifying political subdivision is the owner but not the operator of the site.

(2) For a site of a previously existing release:

- (a) The qualifying political subdivision is not the responsible person;
- (b) A release at the location has not received a no further action determination from the state fire marshal;
- (c) The site is located within the qualifying political subdivision's territorial boundaries; and,
- (d) The responsible person or persons are not identifiable or the state fire marshal determines that no identified responsible person or persons are able to pay the costs of the actions required at the location.

(E) Applications - Filing.

- (1) Applications for a loan shall be made only on forms provided by the state fire marshal.
- (2) Only applications that are post marked or filed with the state fire marshal on or before the application deadline established by the state fire marshal and have been delivered to the state fire marshal's office within seven days of that deadline will be considered by the state fire marshal.

(F) Applications - Content.

In its application, the qualifying political subdivision shall:

- (1) Explain how it qualifies for the loan;
- (2) State the requested loan amount;
- (3) Describe how the loan will be used including the total cost of the project and the amount of money the qualifying political subdivision is proposing to contribute to the total cost of the project;
- (4) Provide an affidavit signed and submitted by an authorized representative of the qualifying political subdivision certifying that the qualifying political subdivision meets the requirements in paragraph (D) of this rule; and,
- (5) Provide such other information as may be called for in the application form provided by the state fire marshal.

(G) Requirements for utilizing revolving loan funding.

- (1) Funds received from a loan under this program may be used for any of the following purposes:
  - (a) Initiation, continuation, or proper completion of the closure in place or removal of an underground storage tank system;

(b) Initiation, continuance, or proper completion of an assessment of the site; or,

(c) Initiation, continuation, or proper completion of a corrective action.

(2) All activities described in paragraph (G)(1) of this rule shall be conducted in accordance with this chapter of the Administrative Code, except that the failure to meet a deadline in rule 1301:7-9-12 or rule 1301:7-9-13 of the Administrative Code shall not be considered a violation of those rules by the qualifying political subdivision.

(3) Upon determination by the state fire marshal that the applicable standards established by rules in this chapter of the Administrative Code have been met for an action described in paragraph (G)(1) of this rule, the state fire marshal shall issue the qualifying political subdivision written notice that no further action is required.

(4) Written notice issued pursuant to paragraph (G)(3) of this rule that no further action is required shall not be construed in any manner to suggest that the qualifying political subdivision completing the funded activities has thereby assumed any liability or responsibility for a release or suspected release of petroleum, or for any residual contamination that may remain at the property.

(H) Emergency loans.

At the discretion of the state fire marshal a qualifying political subdivision may apply for and be granted a loan at any time regardless of established application periods and deadlines if all of the following apply:

(1) The site which is the subject of the application is within an area where a natural disaster has been declared by the governor;

(2) The events of the disaster have resulted in a release or suspected release from the site which is the subject of the application;

(3) The qualifying political subdivision has made application for any federal, state and private insurance reimbursement as may be available as a result of the disaster;

(4) The loan fund has necessary moneys to provide the loan; and,

(5) The state fire marshal receives any necessary authorizations to expend the funds.

(I) Evaluation of loans.

(1) Awarding of all loans shall be at the sole discretion of the state fire marshal.

(2) The state fire marshal shall establish written criteria for evaluation of loan applications. The state fire marshal may amend the criteria at any time and shall make the criteria available to all qualifying political subdivisions at the time of loan application. The criteria may include, but are not limited to, the loan's:

(a) Likelihood of having a demonstrable and significant positive impact on the environment;

(b) Likelihood of having a demonstrable and positive impact on the redevelopment of nonproductive property for the qualifying political subdivision and adjacent political subdivisions; and,

(c) Likelihood of enabling the applicant to obtain other funding or resources for additional site development.

(3) In evaluating the loan applications, the state fire marshal may also consider:

(a) The viability of the applicant;

(b) If the applicant has previously received a loan and whether the actions described in paragraph (G)(1) of this rule have been completed; and

(c) Any other factors established by the state fire marshal.

(4) If funds for loans are available, the state fire marshal shall establish a minimum of one loan application period per state fiscal year. Unless otherwise specified by the state fire marshal, the loan application period shall be open for a minimum period of thirty days. Unless otherwise specified by the state fire marshal, all applications shall expire at the end of each state fiscal year.

(J) Award of loans.

(1) Upon determining which qualifying political subdivision shall receive a loan, the state fire marshal shall notify the qualifying political subdivision in writing of his intent to grant the loan and of the terms and conditions of the loan.

(2) Within forty-five days of receiving notification described in paragraph (J)(1) of this rule, the qualifying political subdivision shall forward a copy of a resolution, ordinance, or other acceptable authorization to the state fire marshal which shall:

(a) Authorize the qualifying political subdivision to accept the loan, and

(b) Agree to conditions of the loan as stipulated by the state fire marshal, including the authority to execute any documents necessary to grant or secure the loan.

(3) Upon receipt of the resolution or ordinance and execution of the loan agreement and other documents as required by the state fire marshal, the state fire marshal shall establish a line of credit from the loan fund in the name of the qualifying political subdivision. Within 30 days of the establishment of the line of credit, the loan funds will be released to the qualifying political subdivision according to the terms of the loan agreement.

(4) Upon request of the state fire marshal, the qualifying political subdivision shall provide to the state fire marshal a properly executed contract for the environmental work necessary at the site as described in the original loan application.

(5) Unless otherwise authorized by the state fire marshal in writing, activities authorized by paragraph (G)(1) of this rule shall commence within 180 days after the release of the loan funds as described in paragraph (H)(4) of this rule.

(K) Term of loan and repayment.

- (1) A loan issued pursuant to this rule shall not carry interest.
- (2) A repayment or amortization schedule shall be established as part of the loan agreement.
- (3) The repayment or amortization schedule shall not extend beyond ten years.
- (4) Any other such terms specified by the state fire marshal.

(L) Cost recovery.

If, at any time after the expenditure of loan funds by a qualifying political subdivision, the state fire marshal or any law enforcement agency identifies a responsible person or determines, for any reason, that a previously identified responsible person was or is able to pay the costs of the action for which the loan was issued, the qualifying political subdivision may bring any appropriate proceedings against the responsible person to recover the costs incurred by the qualifying political subdivision. The proceedings may be brought in either the court of common pleas having jurisdiction where the underground storage tank is located or the court of common pleas of Franklin County.

(M) Effect on other laws.

- (1) Nothing in this rule affects any liability or response authority under any federal or state law, including, but not limited to:
  - (a) The Comprehensive Environmental Response Compensation, and Liability Act (42 U.S.C. 9601 et seq.);
  - (b) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
  - (c) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
  - (d) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
  - (e) The Safe Drinking Water Act (42 U.S.C. 300f et seq.).

The federal laws listed in this paragraph are those versions of the laws ~~amended through January 3, 2012~~ as amended at the time of the effective date of this rule.

- (2) Any determination by the state fire marshal for the purpose of assisting activities funded by the loan program does not release any responsible person from any obligations under 3737.87 to 3737.89 of the Revised Code and the regulations adopted thereunder, or effect any other rights under the citizen suits provision of the Resource Conservation and Recovery Act of 1976, 90 Stat. 2795, 42 U.S.C.A. 6901, as amended at the time of the effective date of this rule. The state fire marshal reserves all enforcement and remedy rights available under the law.