

STATE OF OHIO  
ADJUTANT GENERAL'S DEPARTMENT

2625 WEST DUBLIN GRANVILLE ROAD  
COLUMBUS, OHIO 43235-2789

EMERGENCY MANAGEMENT AGENCY

AGOH-EM-RAD

June 20, 1995

Mr. Wayne Slawinski  
Nuclear Regulatory Commission  
Region III  
801 Warrensville Road  
Lisle, IL 60532

Dear Mr. Slawinski:

Enclosed with this letter are two resolutions pertaining to Advanced Medical Systems (AMS), a copy of the Ohio Revised Code (ORC) 3750, and letters supporting the variance. On June 16, the State Emergency Response Commission (SERC) passed Resolution 95-74, and rejected Resolution 95-75. Resolution 95-74 authorizes the SERC to pursue its intent to issue an order requiring AMS to comply with ORC 3750.04 and 3750.05. The SERC will mail written notice to AMS by certified mail, return receipt requested. Subsequently, the SERC will publicly notice its intent in a local newspaper 45 days prior to issuance permitting public comment.

After the comment period has expired, the SERC will reconvene and vote on the issuance of the order to subject AMS to ORC 3750.04 and 3750.05. I will send you a copy of the newspaper notice as soon as we receive it.

If you have any questions, please do not hesitate to call me at (614) 799-3915.

Sincerely,

*Carol A. O'Claire*

CAROL A. O'CLAIRE  
Radiological Analyst Supervisor

CAO:bdn

ENCLS: as stated

Don 1-28-95

E/25  
RECEIVED  
JUL 03 1995  
REGION III



# City of Cleveland

MICHAEL R. WHITE, MAYOR

DEPARTMENT OF LAW  
SHARON SOBOL JORDAN  
DIRECTOR

ROOM 106 - CITY HALL  
601 LAKESIDE AVENUE  
CLEVELAND, OHIO 44114  
(216) 864 2800

June 13, 1995

Jane Harf, Chairperson  
Ohio State Emergency Response Commission (SERC)  
P.O. Box 163669  
Columbus, Ohio 43216-3669

Re: Letter of Support for the Cuyahoga County Local Emergency Planning Committee's (LEPC's) Request for a Variance and Additional Facility Designation for the Advanced Medical Systems facility at 1020 London Road, Cleveland, Ohio.

Dear Ms. Harf and Members of the SERC:

As Director of the City of Cleveland's Department of Public Health and Chair of Mayor Michael R. White's Advanced Medical Systems (AMS) Task Force, I want to express the City's full support of the LEPC's request for a variance pursuant to Ohio Revised Code Sections 3750.02 and 3750.11(B), and for SERC designation of AMS, 1020 London Road, Cleveland, Ohio, as an "Additional Facility" pursuant to Ohio Revised Code Sections 3750.05(A) and 3750.04.

The City believes that granting the variance for this facility and SERC designation of AMS as an "Additional Facility" are critical steps to ensure our ability to respond appropriately in the event of an emergency at this facility, and to safeguard the health and well-being of the surrounding community and emergency responders. The City's Division of Fire has already submitted comments in support of the LEPC's request to the SERC. In addition, Mayor White, other City departments, and particularly the Department of Public Health, have ongoing concerns about the failure of AMS to provide adequate emergency response planning as required under their United States Nuclear Regulatory Commission (US NRC) license.

Reliance on federal oversight has not proved sufficient to ensure compliance with even the most basic safety precautions. Our most immediate concerns relate to the fact that AMS has not been required to meet federal regulatory standards for emergency response planning, communications and testing, even over the last eighteen months when they have been preparing to apply for renewal of their US NRC license. The City of Cleveland is understandably alarmed about both the lack of AMS' responsiveness to questions about their facility and, until

*An Equal Opportunity Employer*

RE: Letter of Support  
June 13, 1995  
Page 2

very recently, the lack of federal oversight of this facility, given the nature and level of contamination at the site and its proximity to residential neighborhoods of Cleveland.

Representatives of the City's Law Department together with representatives from the City's Fire Department, who are members of the Cuyahoga County LEPC, will be in attendance at the SERC's June 16th meeting in Columbus on behalf of the City. These representatives of the administration will be prepared to address any questions the SERC may have about the City's concerns, and to lend absolute support to our LEPC in their requests to the Commission.

Very truly yours,

*Robert O. Staib (M/M)*

Robert O. Staib  
Director  
Department of Public Health



# Northeast Ohio Regional Sewer District

3826 Euclid Avenue • Cleveland, Ohio 44115-2504 216 • 881 • 6600 FAX: 216 • 881 • 9709

June 9, 1995

Ohio State Emergency Response Commission  
c/o Ms. Jane Harf, Chairperson  
1800 Watermark Drive  
P.O. Box 163669  
Columbus, Ohio 43216-3669

Re: Cuyahoga County Local Emergency Planning Committee Petitions

Dear Members of the Commission:

With this letter, the Northeast Ohio Regional Sewer District ("District") wishes to formally state its support for the petitions filed by the Cuyahoga County Local Emergency Planning Committee ("LEPC") to require a detailed inventory of any facility harboring ten (10) Curies or more of Cobalt-60 in any form other than sealed source and to add the Advanced Medical System ("AMS") facility to those over which the LEPC has emergency planning jurisdiction. The District is an emergency responder in the area in which the AMS facility is located, and can state categorically that the LEPC is well-versed in the needs of emergency response organizations, and is in the best position to effectively evaluate and coordinate response to problems posed by AMS.

The LEPC would serve to fill a regulatory void that has existed at the AMS facility. For many years, the NRC has failed to enforce its own regulations as they apply to this facility. These failures specifically include an ongoing failure to require AMS to completely inventory materials at its facility. This inventory was "required" by the NRC to be complete by June 1, 1993; it has yet to be completed. The NRC has also failed to enforce its requirement that AMS participate in biennial full-scale emergency exercises. In the entire history of NRC oversight of this facility, there has never been a full-scale emergency exercise.

The members of the State Emergency Response Commission must thus understand that the paper requirements imposed by the NRC may well never be effectively enforced by the NRC. It has been the well-documented experience of the District, moreover, that the NRC does not work cooperatively with local agencies to find mutually-satisfactory responses to problems, or even acknowledge that many local problems exist. In contrast, the LEPC - through such programs as its highly successful CAPCEP program - has excellent working knowledge of the demands of emergency planning and emergency response coordination.

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*The mission of the Northeast Ohio Regional Sewer District is to enhance public health and welfare through the efficient, cost-effective conveyance and treatment of wastewater. This is accomplished by an organization dedicated to professionalism, fairness and consistency that anticipates and responds to the changing environmental needs of the community.*

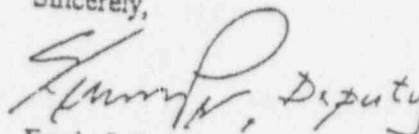


Accordingly, for effective protection of emergency responders, local enforcement jurisdiction must be conferred and realistic reporting requirements must be imposed, as has been requested by the LEPC.

The District has abundant documentation to demonstrate the persistent and comprehensive failure of the NRC to effectively control this licensee. Please contact Thomas E. Lenhart or Lawrence K. English of my legal staff at (216) 881-6600, or Richard N. Connelly, Manager, Water Quality and Industrial Surveillance (a Cuyahoga County LEPC representative), at (216) 641-6000, for more information.

Thank you for your consideration of this letter of support.

Sincerely,

A handwritten signature in dark ink, appearing to read "Erwin J. Odeal", with the word "Deputy" written in a cursive script to the right of the signature.

Erwin J. Odeal  
Executive Director

cc: Michael S. Kalstrom, Secretary, Cuyahoga County LEPC  
James L. Caldwell, Deputy Director, NRC Region III

# City of Olmsted Falls

FOUNDED IN 1814  
DIVISION OF FIRE  
8051 BROOKSIDE DRIVE  
OLMSTED FALLS, OHIO 44138  
WILLIAM FISHER, FIRE CHIEF

OFFICE OF THE CHIEF  
(216) 235-3738

EMERGENCY 235-1217

June 14, 1995

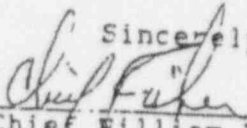
To: Jane Harf  
Ken Schultz  
Ohio SERC  
P.O. Box 163669  
Columbus, Ohio  
43216-3669

Re: Cuyahoga County Local Emergency Planning Committee Request  
for a Variance and for Additional Facility Designation.

The North East Ohio Fire Chiefs Association in a recent meeting gave unanimous support to the Cuyahoga County LEPC and the Cleveland Fire Department in their effort to obtain a Variance and Additional Facility Designation regarding Advanced Medical Systems, Inc. The Fire Chiefs believe these measures will provide for improved emergency preparedness in Cuyahoga County and will aid Emergency Responders and Hazardous Materials Teams that may respond to this facility.

I am the Vice Chairman of the Cuyahoga County LEPC representing the North East Ohio Fire Chiefs Association. Should you wish to discuss this matter further please contact me at 216-235-3238.

Sincerely,

  
Chief William Fisher  
Olmsted Falls Fire Dept.

cc Michael Kalstrom, Secretary, Cuyahoga Co. LEPC  
Chief Fred Barnhoff, President N.E.O.F.C.A.  
Robert Patton, Chairman, Cuyahoga Co. LEPC  
Chief Tom Root, Cleveland Fire Dept.  
Brad Burland, Safety Director, Olmsted Falls  
file



Northeastern Ohio Local Section of the  
American Industrial Hygiene Association

June 12, 1995

Ms. Jane Harf, Chairperson  
Ohio State Emergency Response Commission  
Emergency Planning & Right-To-Know  
P.O. Box 163669  
1800 Watermark Drive  
Columbus, OH 43216-3669

Dear Ms. Harf:

The Northeastern Ohio Local Section of the American Industrial Hygiene Association is hereby giving support to the requests of the Cuyahoga County Local Emergency Planning Committee (LEPC), to get a variance for adding Cobalt<sup>60</sup> to the list of Extremely Hazardous Substances, and to add an additional facility, Advance Medical Systems, Inc., 1020 London Road in Cleveland, to the SARA plan for emergency response preparedness.

The purpose of these requests is to have improved emergency response preparedness in the City of Cleveland and in Cuyahoga County, so that the health and safety of first responders and the residents in the surrounding community can be preserved in the event of an emergency involving the Advance Medical Systems facility.

The American Industrial Hygiene Association is an organization of professionals dedicated to the anticipation, recognition, evaluation, and control of environmental factors arising in or from the workplace that may result in injury, illness, impairment, or affect the well-being of workers and members of the community. In the spirit of this mission, we request your support of the Cuyahoga County LEPC request.

Sincerely,

Barbara J. Hermes, CIH  
Member of Cuyahoga County LEPC

Jennifer M. Ticer, CIH, CHMM  
Secretary, NEOAIIA

cc: Michael S. Kalstrom, SARA Information Coordinator  
Robert J. Patton, Chairman, Cuyahoga County LEPC

J. TOWN, CIH  
American Analytical Laboratories, Inc.  
840 S. Main Street  
Akron, OH 44311  
Phone (216) 535-1300  
Fax (216) 535-7246

President-Elect  
RANDALL S. HARTONG, IHIT  
American Analytical Laboratories, Inc.  
840 S. Main Street  
Akron, OH 44311  
Phone (216) 535-1300  
Fax (216) 535-7246

Post President  
ANTONE L. LOTT, Ph.D., CIH  
Clayton Environmental Consultants  
4575 Hudson Drive  
Stow, OH 44224  
Phone (216) 686-5100  
Fax (216) 686-5105

Treasurer  
JATHY L. PADOLEWSKI  
ASA LeRC M.S. 6-4  
1000 Brookpark Road  
Cleveland, OH 44135  
Phone (216) 433-3032  
Fax (216) 433-8719

Secretary  
J. TICER, CIH  
Environmental Consultants  
Hudson Drive  
Stow, OH 44224  
Phone (216) 686-5100  
Fax (216) 686-5105

Board of Directors  
J. L. HODGSON, CIH  
American Greetings  
c American Road  
Cleveland, OH 44144  
Phone (216) 252-7300  
Fax (216) 252-6778

J. P. LADUE, MS  
University Hospitals of Cleveland  
4 Abington Road  
Cleveland, OH 44106  
Phone (216) 844-1437  
Fax (216) 844-5154

ERIE BAKER, CSP  
Verue Labs  
Northfield Road  
Cleveland, OH 44146  
Phone (216) 232-3320  
Fax (216) 232-5672

JAM W. NICHOLS  
on Environmental Consultants  
Hudson Drive  
OH 44224  
Phone (216) 686-5100  
Fax (216) 686-5105



*"Working to improve statewide preparedness and response to chemical emergencies and to improve public awareness of potential chemical hazards."*

State Emergency Response Commission

Emergency Planning and Community Right-to-Know  
P.O. Box 163669, 1800 WaterMark Drive  
Columbus, Ohio 43216-3669

George V. Voinovich  
Governor

STATE EMERGENCY RESPONSE COMMISSION

RESOLUTION 95-74

TO ISSUE AN ORDER PURSUANT TO REVISED CODE 3750.05 TO DESIGNATE ADVANCED MEDICAL SYSTEMS, INCORPORATED AS AN ADDITIONAL FACILITY, REQUIRING PARTICIPATION IN THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE EMERGENCY PLANNING PROCESS UNDER SECTIONS 3750.04 AND 3750.05

WHEREAS, SECTION 3750.05(A) STATES THAT THE COMMISSION UPON THE WRITTEN REQUEST OF A LOCAL EMERGENCY PLANNING COMMITTEE MAY ISSUE AN ORDER IN ACCORDANCE WITH SECTION 3750.18 OF THE OHIO REVISED CODE DESIGNATING AN ADDITIONAL FACILITY AS BEING SUBJECT TO THIS SECTION AND TO SECTION 3750.04 OF THE REVISED CODE. THE COMMISSION SHALL MAIL A WRITTEN NOTICE OF ITS INTENT TO ISSUE SUCH AN ORDER TO THE OWNER OR OPERATOR OF THE FACILITY, AND PUBLICLY NOTICE ITS INTENT IN A LOCAL NEWSPAPER FORTY-FIVE DAYS PRIOR TO ISSUANCE OF SUCH AN ORDER SO THAT THE PUBLIC MAY SUBMIT WRITTEN COMMENT TO THE COMMISSION DURING THAT TIME; AND

WHEREAS, ON FEBRUARY 7, 1995, THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE SUBMITTED A COPY OF THEIR RESOLUTION NO. SARA 941114-08 AS A WRITTEN REQUEST TO MAKE ADVANCED MEDICAL SYSTEMS, INCORPORATED, 1020 LONDON ROAD, CLEVELAND, OHIO, AN ADDITIONAL FACILITY SUBJECT TO THE REQUIREMENTS OF SECTION 3750.04 AND 3750.05; AND

WHEREAS, THE COMMISSION IS TO DETERMINE FROM THE REQUEST THAT DUE TO:

- (1) THE SIZE OF THE FACILITY, OR
- (2) THE NATURE OF ITS OPERATIONS, OR
- (3) ITS PROXIMITY TO A RESIDENTIAL AREA OR AN AREA WHERE SIGNIFICANT NUMBERS OF PEOPLE WORK OR CONGREGATE,

PARTICIPATION IN THE EMERGENCY PLANNING PROCESS UNDER SECTIONS 3750.04 AND 3750.05 BY ADVANCED MEDICAL SYSTEMS, INCORPORATED, IS NECESSARY OR APPROPRIATE TO PROTECT THE PUBLIC HEALTH OR SAFETY OR THE ENVIRONMENT; AND

WHEREAS, UPON CONSIDERATION OF THE FACTORS SET FORTH IN SECTION 3750.05(A) THE COMMISSION FINDS THAT PARTICIPATION BY ADVANCED MEDICAL SYSTEMS, INCORPORATED, IN THE EMERGENCY PLANNING PROCESS UNDER SECTIONS 3750.04 AND 3750.05 IS NECESSARY OR APPROPRIATE TO PROTECT THE PUBLIC HEALTH OR SAFETY OR ENVIRONMENT FOR THE FOLLOWING REASONS:

- (1) ADVANCED MEDICAL SYSTEMS, INCORPORATED IS LICENSED FOR THE STORAGE OF 290,000 CURIES OF SEALED COBALT 60 AND AT THE FACILITY ACCORDING TO THE U.S. NUCLEAR REGULATORY COMMISSION LICENSE ISSUED TO IT AND SUBMITTED IN ATTACHMENT G ON APRIL 3, 1995. ACCORDING TO ATTACHMENT F, 529.4 CURIES OF NON SEALED COBALT 60 WAS PRESENT IN THE WASTE HOLD UP TANK ROOM IN 1988. BASED ON THE 5.272 YEAR HALF LIFE OF COBALT 60, APPROXIMATELY 230 CURIES OF NON SEALED COBALT 60 REMAIN. IN ADDITION, ACCORDING TO THE PRESENTATIONS OF MR. JACK GROBE OF THE NUCLEAR REGULATORY COMMISSION, TO THE EXECUTIVE COMMITTEE ON MARCH 27, 1995, AND TO THE COMMISSION ON APRIL 12, 1995, 29 CURIES OF NON SEALED COBALT 60 IS PRESENT IN THE DRY WASTE STORAGE ROOM BASEMENT AREA OF ADVANCED MEDICAL SYSTEMS, INCORPORATED. THIS FACT IS ALSO STATED IN A LETTER DATED APRIL 12, 1995, FROM DWIGHT MILLER, AN ATTORNEY REPRESENTING ADVANCED MEDICAL SYSTEMS, INCORPORATED, TO JANE HARF, COMMISSION CHAIR;
- (2) DURING THE PAST OF OPERATIONS AT ADVANCED MEDICAL SYSTEMS, INCORPORATED, SEALED COBALT 60 SOURCES WERE MANUFACTURED. WASTES GENERATED BY THE MANUFACTURING AND HANDLING OF THESE SOURCES ARE BEING STORED AT THIS FACILITY IN QUANTITIES AS STATED IN PARAGRAPH (1) ABOVE. IN THE COURSE OF OPERATIONS THE FACILITY WAS PERMITTED BY THE NUCLEAR REGULATORY COMMISSION TO DISCHARGE WASTE WATER CONTAINING RADIOACTIVITY TO THE SANITARY SEWER SYSTEM. THE NORTHEAST OHIO REGIONAL SEWER DISTRICT PLACED A PLUG INTO THE LATERAL SEWER CONNECTION CONNECTING ADVANCED MEDICAL SYSTEMS, INCORPORATED, TO THE SANITARY SEWER TO STOP THIS DISCHARGE. APPROXIMATELY 30 INCHES OF WATER ACCUMULATED IN THE FACILITY'S BASEMENT. CONTAMINATION LEVELS OF UP TO 170,000 PICOCURIES PER LITER HAVE BEEN MEASURED IN THE WATER FOUND IN THE BASEMENT AS STATED IN ATTACHMENTS F, J, AND L; AND

DUE TO THE NUCLEAR REGULATORY COMMISSION'S FIVE YEAR PERMITTING PROCEDURE A COPY OF AN EMERGENCY PLAN WAS



PREPARED AND PROVIDED TO THE CLEVELAND FIRE DEPARTMENT AND TO THE STATE EMERGENCY RESPONSE COMMISSION ON MARCH 31, 1995. A COPY WAS ALSO PROVIDED TO THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE. A REVIEW OF THIS PLAN REVEALED THAT IT DOES NOT ADDRESS FLOODING AS AN ISSUE AND NEITHER THE COMMITTEE NOR THE COMMISSION'S 24 HOUR EMERGENCY NUMBERS ARE LISTED IN THE EMERGENCY CONTACT SECTION OF THIS PLAN; AND

(3) THE FACILITY IS LOCATED WITHIN SEVENTY FIVE FEET OF A RESIDENTIAL AREA CONTAINING OVER 5,967 PEOPLE WITHIN A ONE HALF MILE RADIUS, SEVEN FACILITIES POSSESSING EXTREMELY HAZARDOUS SUBSTANCES ARE LOCATED WITHIN THIS AREA, AND TWO SCHOOLS WITH AN ENROLLMENT OF 587 ARE WITHIN THIS AREA. THIS INFORMATION WAS PROVIDED IN ATTACHMENT E OF THE APRIL 3, 1995, SUPPLEMENTAL SUBMISSION PROVIDED BY THE CUYAHOGA COUNTY COMMITTEE SECRETARY; AND

WHEREAS IN THE ISSUANCE OF ANY ORDER GRANTING THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE'S REQUEST TO DESIGNATE ADVANCED MEDICAL SERVICES, INCORPORATED, AS AN ADDITIONAL FACILITY UNDER SECTION 3750.05, SHALL REMAIN EFFECTIVE UNTIL SUCH TIME AS THE AMOUNT OF NON SEALED COBALT 60 WITHIN ADVANCED MEDICAL SYSTEMS, INCORPORATED, POSSESSION IS LESS THAN 10 CURIES.

THEREFORE, LET IT BE KNOWN, BY THE APPROVAL OF SIXTY PERCENT OR MORE OF THE COMMISSION'S VOTING MEMBERS THAT THE COMMISSION IS HEREBY ANNOUNCING ITS INTENT TO ISSUE AN ORDER IN ACCORDANCE WITH SECTION 3750.18 OF THE REVISED CODE THAT ADVANCED MEDICAL SYSTEMS, INCORPORATED, BE REQUIRED TO PARTICIPATE IN THE PLANNING PROCESS PURSUANT TO SECTIONS 3750.04 AND 3750.05 AND RULES ADOPTED THEREUNDER; AND

FURTHERMORE, THE COMMISSION AUTHORIZES THE CHAIR TO MAIL A WRITTEN NOTICE TO THE OWNERS OR OPERATORS OF ADVANCED MEDICAL SERVICES, INCORPORATED, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND TO NOTIFY THE PUBLIC BY PUBLICATION OF NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN CUYAHOGA COUNTY OF THE COMMISSION'S INTENTION TO APPROVE THE REQUEST AND TO ISSUE AN ORDER.

RECORD OF MOTION:

\_\_\_\_\_ FOR  
\_\_\_\_\_ AGAINST  
\_\_\_\_\_ ABSTAIN



I HEREBY CERTIFY THIS RESOLUTION WAS APPROVED BY SIXTY PERCENT OF  
THE VOTING MEMBERS OF THE STATE EMERGENCY RESPONSE COMMISSION  
MEMBERS AT THE MEETING ON THIS 16TH DAY OF JUNE, 1995.

---

JANE HARF, CHAIR  
STATE EMERGENCY RESPONSE COMMISSION



"Working to improve statewide preparedness and response to chemical emergencies and to improve public awareness of potential chemical hazards."

State Emergency Response Commission

Emergency Planning and Community Right-to-Know  
P.O. Box 163669, 1800 WaterMark Drive  
Columbus, Ohio 43216-3669

George V. Voinovich  
Governor

STATE EMERGENCY RESPONSE COMMISSION

RESOLUTION 95-75

GRANTING CUYAHOGA COUNTY'S COMMITTEE'S APPLICATION FOR  
A VARIANCE TO REQUIRE THE ADVANCED MEDICAL SYSTEMS, INCORPORATED  
TO SUBMIT REPORTS UNDER SECTION 3750.08 (ORC)

WHEREAS, SECTION 3750.11(A) STATES THAT A LOCAL EMERGENCY  
PLANNING COMMITTEE SHALL PRIOR TO COMMENCING ENFORCEMENT OF A  
REQUIREMENT FOR THE PURPOSES OF;

- (1) REPORTING OF THE NAMES OR AMOUNTS OF EXTREMELY  
HAZARDOUS SUBSTANCE (EHS) OR HAZARDOUS CHEMICALS  
PRODUCED, USED, OR STORED AT FACILITIES WITHIN THE  
JURISDICTION OF THE COMMITTEE; OR
- (2) REPORTING OF OR PROVIDING INFORMATION REGARDING THE  
LOCATIONS OF SUBSTANCES OR CHEMICALS STORED AT THOSE  
FACILITIES; OR
- (3) REPORTING RELEASES OF EHS'S, HAZARDOUS SUBSTANCES, OR  
OIL,

THAT IS NOT EQUIVALENT TO OR CONSISTENT WITH, AND NO MORE  
STRINGENT THAN THE REPORTING AND HAZARD COMMUNICATION  
REQUIREMENTS OF CHAPTER 3750 AND RULES ADOPTED UNDER IT, SHALL  
SUBMIT A VARIANCE APPLICATION TO THE COMMISSION; AND

WHEREAS, ON FEBRUARY 7, 1995, THE CUYAHOGA COUNTY LOCAL EMERGENCY  
PLANNING COMMITTEE FILED A COPY OF THEIR RESOLUTION NO. SARA  
941114-08 AS AN APPLICATION FOR A VARIANCE TO RECEIVE ANNUAL  
INVENTORIES PURSUANT TO SECTION 3750.08 OF THE OHIO REVISED CODE  
FROM ADVANCED MEDICAL SYSTEMS, INCORPORATED, 1020 LONDON ROAD,  
CLEVELAND, OHIO THAT HAD BEEN APPROVED BY MORE THAN SIXTY PERCENT  
OF THAT COMMITTEE'S VOTING MEMBERS; AND

WHEREAS, SUPPLEMENTAL INFORMATION TO THE APPLICATION FOR A  
VARIANCE TO REQUIRE ADVANCED MEDICAL SYSTEMS, INCORPORATED TO  
SUBMIT REPORTS UNDER SECTION 3750.08 WAS SUBMITTED BY THE  
CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE ON APRIL 3,  
1995; AND

WHEREAS, UPON CONSIDERATION OF THE FACTORS SET FORTH IN SECTION 3750.02(B)(2)(E), THE COMMISSION FINDS THAT ADVANCED MEDICAL SYSTEMS, INCORPORATED POSES A SUBSTANTIAL RISK OF CATASTROPHIC INJURY TO PUBLIC HEALTH OR SAFETY, OR TO THE ENVIRONMENT, OR POSES AND EXTRAORDINARY RISK OF INJURY TO EMERGENCY RESPONSE PERSONNEL RESPONDING TO A RELEASE OF COBALT 60 FROM THAT FACILITY FOR THE FOLLOWING REASONS:

- (1) COBALT 60, A RADIOACTIVE MATERIAL, IS PRESENT AT ADVANCED MEDICAL SYSTEMS, INCORPORATED IN SEVERAL FORMS: SEALED AND NON SEALED (LOOSE) AND AS LOW LEVEL RADIOACTIVE WASTE IN DRUMS. EXPOSURE TO A RELEASE FROM THE NON SEALED (LOOSE) OR LOW LEVEL RADIOACTIVE WASTE IN DRUMS PRESENTS A THREAT TO HUMAN HEALTH, SPECIFICALLY TO EMERGENCY RESPONDERS. THE HEALTH AFFECTS CAN VARY DEPENDING ON THE DURATION AND INTENSITY OF EXPOSURE. THE HEALTH AFFECTS CAN RANGE FROM ACUTE TO CHRONIC AND SOME EXPOSURES CAN BE LETHAL. THE HEALTH AFFECTS OF A RADIOACTIVE EXPOSURE ARE PRESENTED IN ATTACHMENT I OF THE APRIL 3, 1995, SUBMISSION TO THE COMMISSION BY THE SECRETARY OF THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE;
- (2) THE FACILITY IS LOCATED WITHIN SEVENTY FIVE FEET OF A RESIDENTIAL AREA CONTAINING OVER 5,967 PEOPLE WITHIN A ONE HALF MILE RADIUS, SEVEN FACILITIES POSSESSING EXTREMELY HAZARDOUS SUBSTANCES ARE LOCATED WITHIN THIS AREA, AND TWO SCHOOLS WITH AN ENROLLMENT OF 587 ARE WITHIN THIS AREA. THIS INFORMATION WAS PROVIDED IN ATTACHMENT E OF THE APRIL 3, 1995, SUPPLEMENTAL SUBMISSION PROVIDED BY THE CUYAHOGA COUNTY COMMITTEE SECRETARY; AND
- (3) ADVANCED MEDICAL SYSTEMS, INCORPORATED IS LICENSED FOR THE STORAGE OF 290,000 CURIES OF SEALED COBALT 60 AND AT THE FACILITY ACCORDING TO THE U.S. NUCLEAR REGULATORY COMMISSION LICENSE ISSUED TO IT AND SUBMITTED IN ATTACHMENT G ON APRIL 3, 1995. ACCORDING TO ATTACHMENT F, 529.4 CURIES OF NON SEALED COBALT 60 WAS PRESENT IN THE WASTE HOLD UP TANK ROOM IN 1988. BASED ON THE 5.272 YEAR HALF LIFE OF COBALT 60, APPROXIMATELY 230 CURIES OF NON SEALED COBALT 60 REMAIN. IN ADDITION, ACCORDING TO THE PRESENTATIONS OF MR. JACK GROBE OF THE NUCLEAR REGULATORY COMMISSION, TO THE EXECUTIVE COMMITTEE ON MARCH 27, 1995, AND TO THE COMMISSION ON APRIL 12, 1995, 29 CURIES OF NON SEALED COBALT 60 IS PRESENT IN THE DRY WASTE STORAGE ROOM

BASEMENT AREA OF ADVANCED MEDICAL SYSTEMS, INCORPORATED. THIS FACT IS ALSO STATED IN A LETTER DATED APRIL 12, 1995, FROM DWIGHT MILLER, AN ATTORNEY REPRESENTING ADVANCED MEDICAL SYSTEMS, INCORPORATED, TO JANE HARF, COMMISSION CHAIR;

- (4) THE FREQUENCY WITH WHICH SEALED AND NON SEALED COBALT 60 IS PRESENT AT ADVANCED MEDICAL SYSTEMS, INCORPORATED, IS THREE HUNDRED SIXTY FIVE DAYS PER YEAR.

THEREFORE, LET IT BE KNOWN, BY THE APPROVAL OF SIXTY PERCENT OR MORE OF THE COMMISSION'S VOTING MEMBERS THAT THE COMMISSION FINDS BY A PREPONDERANCE OF THE SCIENTIFIC EVIDENCE BASED UPON GENERALLY ACCEPTED SCIENTIFIC PRINCIPLES OR LABORATORY TESTS THAT:

- (1) THE COBALT 60 PRESENT AT ADVANCED MEDICAL SYSTEMS, INCORPORATED POSES A SUBSTANTIAL RISK OF CATASTROPHIC INJURY TO PUBLIC HEALTH OR SAFETY OR TO THE ENVIRONMENT, OR POSES AN EXTRAORDINARY RISK OF INJURY TO EMERGENCY RESPONSE PERSONNEL RESPONDING TO A RELEASE FROM THE FACILITY; AND
- (2) THE DEVELOPMENT AND IMPLEMENTATION OF A LOCAL EMERGENCY RESPONSE PLAN FOR RELEASES OF COBALT 60 AT ADVANCED MEDICAL SYSTEMS, INCORPORATED WILL REDUCE THE RISK OF CATASTROPHIC INJURY TO PUBLIC HEALTH OR SAFETY OR TO THE ENVIRONMENT, OR WILL REDUCE THE EXTRAORDINARY RISK OF INJURY TO RESPONDING EMERGENCY RESPONSE PERSONNEL, IN THE EVENT OF A RELEASE OF THE SUBSTANCES OR CHEMICALS; AND
- (3) REQUIRING ANNUAL REPORTING AS SET FORTH UNDER SECTION 3750.08 IS NECESSARY FOR THE DEVELOPMENT AND MAINTENANCE OF THE CUYAHOGA COUNTY LOCAL EMERGENCY RESPONSE PLAN; AND

NOW THEREFORE, LET IT BE KNOWN, BY APPROVAL OF SIXTY PERCENT OF THE VOTING MEMBERS OF THE COMMISSION, THAT AN ORDER GRANTING CUYAHOGA COUNTY'S LOCAL EMERGENCY PLANNING COMMITTEE APPLICATION FOR A VARIANCE REQUIRING THE SUBMITTAL OF AN ANNUAL INVENTORY REPORT BY ADVANCED MEDICAL SYSTEMS, INCORPORATED FOR NON SEALED COBALT 60 UNDER SECTION 3750.08, IS HEREBY AUTHORIZED.

FURTHERMORE, BE IT RESOLVED THAT THE COMMISSION, IN ITS AUTHORIZATION TO THE CHAIR OF THE COMMISSION TO ISSUE AN ORDER

GRANTING THE CUYAHOGA COUNTY LOCAL EMERGENCY PLANNING COMMITTEE'S REQUEST FOR A VARIANCE TO REQUIRE ADVANCED MEDICAL SYSTEMS, INCORPORATED TO FILE AN ANNUAL INVENTORY IN ACCORDANCE WITH SECTION 3750.08 OF THE OHIO REVISED CODE, REMAIN IN EFFECT UNTIL SUCH TIME AS THE AMOUNT OF NON SEALED COBALT 60 AT ADVANCED MEDICAL SYSTEMS, INCORPORATED IS LESS THAN 10 CURIES.

IF LESS THAN SIXTY PERCENT OF THE VOTING MEMBERS OF THE COMMISSION VOTE TO APPROVE ISSUANCE OF AN ORDER GRANTING CUYAHOGA COUNTY'S LOCAL EMERGENCY PLANNING COMMITTEE'S APPLICATION FOR A VARIANCE REQUIRING ADVANCE MEDICAL SYSTEMS, INCORPORATED, TO SUBMIT AN ANNUAL INVENTORY REPORT UNDER SECTION 3750.08 OF THE REVISED CODE, THE CHAIR OF THE COMMISSION IS HEREBY AUTHORIZED TO ISSUE AN ORDER TO THE COMMITTEE DENYING THIS APPLICATION.

RECORD OF MOTION:

_____	FOR
_____	AGAINST
_____	ABSTAIN

I HEREBY CERTIFY THIS RESOLUTION WAS APPROVED BY SIXTY PERCENT OF THE VOTING MEMBERS OF THE STATE EMERGENCY RESPONSE COMMISSION MEMBERS AT THE MEETING ON THIS 16TH DAY OF JUNE, 1995.

\_\_\_\_\_  
JANE HARF, CHAIR  
STATE EMERGENCY RESPONSE COMMISSION



# Title XXXVII

## HEALTH—SAFETY—MORALS

Complete to June 1, 1994

Publisher's Note: References to OJur, Am Jur, and ALR were compiled from the Ohio Code Research Guide (Lawyers Co-operative Publishing Company).

### Chapter 3750

#### EMERGENCY PLANNING

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 75.131

#### LAW REVIEW COMMENTARIES

37 Cities & Villages 10 (March 1989). New Hazardous Materials Legislation And Ohio's Municipalities. Nancy K. Grant and David H. Hoover.

#### NOTES ON DECISIONS AND OPINIONS

##### 1. Prior law

OAG 89-001. Prior to the adoption of RC Ch 3750, county officials were authorized to cooperate with the emergency response commission or local emergency planning districts and committees by RC 307.85, but had no duty to participate in the activities thereof, and state law imposed no penalties on county officials for nonperformance of emergency planning and response duties.

OAG 89-001. Prior to the adoption of RC Ch 3750, a local emergency planning committee appointed by the emergency response committee was not a county board and the members of such a committee were not county officers for purposes of RC 309.09, and the county prosecutor had no duty to serve as legal adviser to the committee members or the corresponding local emergency planning district.

OAG 89-001. Prior to the adoption of RC Ch 3750, state law implementing the "Emergency Planning and Community Right-to-Know Act of 1986," 42 USC Ch 116, consisted of governor's executive order 87-16 and the rules, orders, and resolutions of the emergency response commission then in effect.

#### CROSS REFERENCES

Emergency services, applicability, 5915.18  
Environmental protection director, maintenance of records, 745.01  
Sunshine law inapplicable to, 121.22

#### 3750.01 Definitions

As used in this chapter:

- 3750.01 Definitions
- 3750.02 Emergency response commission; members; meetings; powers and duties; rulemaking powers
- 3750.03 Emergency planning districts; local emergency planning committees
- 3750.04 Chemical emergency response and preparedness plan
- 3750.05 Applicability; facility representatives; notice of applicability; provision of information; agricultural producer exemption
- 3750.06 Required notices
- 3750.07 List of hazardous chemicals; material safety data sheet
- 3750.08 Emergency and hazardous chemical inventory form
- 3750.09 Protection of trade secrets
- 3750.10 Access to information
- 3750.11 Enforcement of local rules; emergency response lock box units
- 3750.12 Fire marshal; rules governing labelling at bulk storage areas
- 3750.13 Filing fees
- 3750.14 Emergency planning and community right-to-know fund
- 3750.15 Emergency planning and community right-to-know reserve fund
- 3750.16 Entry upon private property for inspection or investigation
- 3750.17 Prohibitions
- 3750.18 Orders
- 3750.19 Environmental board of review; appeals
- 3750.20 Civil actions; injunctive relief; investigations; penalties
- 3750.21 Liability for violation of confidentiality of trade secrets
- 3750.99 Penalties



(A) "Confidential business information" means the types or categories of information identified in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code.

(B) "Extremely hazardous substance" means a substance identified or listed by the rules adopted under division (B)(1)(a) or (C)(5) of section 3750.02 of the Revised Code.

(C) "Emergency planning district" means an emergency planning district or joint emergency planning district designated under section 3750.03 of the Revised Code or a joint interstate emergency planning district established by agreement under that section.

(D) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with such person. For the purposes of section 3750.06 of the Revised Code, the term also includes motor vehicles, rolling stock, and aircraft.

(E) "Fire department" means a fire department of a municipal corporation or township, a township fire district, a joint township fire district, a private fire company or volunteer fire company that has entered into an agreement for the use and operation of fire-fighting equipment with a municipal corporation, township, township fire district, or joint township fire district or, in a municipal corporation or township where no such fire department or district exists and no such agreement is in effect, the fire prevention officer of the municipal corporation or township.

(F) "First response equipment" means equipment, other than emergency response and firefighting vehicles, designed primarily for the purpose of facilitating the safe and efficient response to unanticipated and unauthorized releases of hazardous substances and extremely hazardous substances.

(G) "Hazardous chemical" has the meaning given to that term in 29 C.F.R. 1910.1200 (c). The term also includes chemicals identified or listed in rules adopted under division (C)(5) of section 3750.02 of the Revised Code, but does not include any of the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the food and drug administration of the United States department of health and human services;

(2) Any substance present as a solid in any manufactured item, to the extent that exposure to the substance does not occur under normal conditions of use;

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public, including, without limitation, household and consumer products that are stored prior to or displayed for distribution to the consumer when in the same form and concentration and products that are not intended for distribution to the general public and are in the same form and concentration as products packaged for distribution to and use by the general public, unless the chemical is subject to a reporting requirement for which a variance has been issued under division (B) or (C) of section 3750.11 of the Revised Code;

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(H) "Hazardous substance" means a substance identified or listed by the rules adopted under division (B)(1)(c) or (C)(5) of section 3750.02 of the Revised Code.

(I) "Local emergency planning committee" means the local emergency planning committee of an emergency planning district, joint emergency planning district, or joint interstate planning district established under section 3750.03 of the Revised Code.

(J) "Oil" means oil of any kind or in any form including, without limitation, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(K) "Person" means the state, any political subdivision, any other state or local body, the United States and any agency or instrumentality thereof, and any person as defined in section 1.59 of the Revised Code.

(L) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of into the environment, including, without limitation, the abandonment or discarding of barrels, containers, and other closed receptacles that contained any oil, hazardous chemical, hazardous substance, or extremely hazardous substance. The term does not include any discharge, emission, injection, or disposal into the environment of any oil, hazardous chemical, hazardous substance, or extremely hazardous substance that is in compliance with Chapter 1509., 3704., 3734., or 6111. of the Revised Code, rules adopted thereunder, the terms or conditions of a current and valid permit or license, or order, issued thereunder, or a plan approval made thereunder.

(M) "Vessel" means every watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Governmental function, management of releases of oil and hazardous and extremely hazardous substances as, 2744.01  
Hazardous chemical inventory reporting, definitions, OAC 3750-1-01  
Identification of hazardous chemicals, OAC 3750-30-25

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

#### 3750.02 Emergency response commission; members; meetings; powers and duties; rulemaking powers

(A) There is hereby created the emergency response commission consisting of the directors of environmental protection, health, and industrial relations, the chairmen of the public utilities commission, industrial commission, and state and local government commission, the fire marshal, the adjutant general, and the attorney general as members ex officio, or their designees; notwithstanding section 101.26 of the Revised Code, the chairmen of the respective standing committees of the senate and house of representatives that are primarily responsible for considering environmental issues who may participate fully in all the commission's deliberations and activities, except that they shall serve as nonvoting members; and ten members to be appointed by the governor with the advice and consent of the senate. The appointed members, to the extent practicable, shall have technical expertise in the field of emergency response. Of the appointed members, two shall represent

environmental advocacy organizations, one shall represent the interests of petroleum refiners or marketers or chemical manufacturers, one shall represent the interests of another industry subject to this chapter, one shall represent the interests of municipal corporations, one shall represent the interests of counties, one shall represent the interests of chiefs of fire departments, one shall represent the interests of professional fire fighters, one shall represent the interests of volunteer fire fighters, and one shall represent the interests of local emergency management agencies.

An appointed member of the commission may also serve as a member of the local emergency planning committee of an emergency planning district. An appointed member of the commission who is also a member of a local emergency planning committee shall not participate as a member of the commission in the appointment of members of the local emergency planning committee of which he is a member, in the review of the chemical emergency response and preparedness plan submitted by the local emergency planning committee of which he is a member, in any vote to approve a grant to his district, nor in any vote of the commission on any motion or resolution pertaining specifically to his district or the local emergency planning committee on which he serves. A commission member who is also a member of a local emergency planning committee shall not lobby or otherwise act as an advocate for his district to other members of the commission to obtain from the commission anything of value for his district or the local emergency planning committee of which he is a member. A member of the commission who is also a member of a local emergency planning committee may vote on resolutions of the commission that apply uniformly to all local emergency planning committees and districts in the state and do not provide a grant or other pecuniary benefit to his district or the committee of which he is a member.

The governor shall make the initial appointments to the commission within thirty days after the effective date of this section. Of the initial appointments to the commission, five shall be for a term of two years and five shall be for a term of one year. Thereafter, terms of office of the appointed members of the commission shall be for two years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. The commission may at any time by a vote of two-thirds of all the members remove any appointed member of the commission for misfeasance, nonfeasance, or malfeasance. Members of the commission shall serve without compensation but shall be reimbursed for the reasonable expenses incurred by them in the discharge of their duties as members of the commission.

The commission shall meet at least annually and shall hold such additional meetings as are necessary to implement and administer this chapter. Additional meetings may be held at the behest of the chairman or a majority of the members. The commission shall, by adoption of internal management rules under division (B)(9) of this section, establish an executive committee and delegate to it the performance of such of the commission's duties and pow-

ers under this chapter as are required or authorized to be so delegated by that division. The commission may organize itself into such additional committees as it considers necessary or convenient to implement and administer this chapter. The director of environmental protection shall serve as chairman of the commission and the executive committee. The commission shall annually select from among its members a vice-chairman and a secretary to keep a record of its proceedings. Except as otherwise provided in this chapter, a majority of the voting members of the commission constitutes a quorum and the affirmative vote of a majority of the voting members of the commission is necessary for any action taken by the commission. Meetings of the executive committee conducted for the purpose of determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce this chapter or rules adopted or orders issued under it are not subject to section 121.22 of the Revised Code pursuant to division (D) of that section.

Except for the purposes of Chapters 102. and 2921. and sections 9.86 and 109.36 to 109.366 of the Revised Code, serving as an appointed member of the commission does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.

(B) The commission shall:

(1) Adopt rules in accordance with Chapter 119. of the Revised Code that are consistent with and equivalent in scope, content, and coverage to the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001, and applicable regulations adopted under it:

(a) Identifying or listing extremely hazardous substances and establishing a threshold planning quantity for each such substance. To the extent consistent with that act and applicable regulations adopted under it, the rules may establish threshold planning quantities based upon classes of those substances or categories of facilities at which such substances are present.

(b) Listing hazardous chemicals, establishing threshold quantities for those chemicals, establishing categories of health and physical hazards of those chemicals, establishing criteria or procedures for identifying those chemicals and the appropriate hazard categories of those chemicals and establishing ranges of quantities for those chemicals to be used in preparing emergency and hazardous chemical inventory forms under section 3750.08 of the Revised Code. To the extent consistent with that act and applicable regulations adopted under it, the rules may establish threshold quantities based upon classes of those chemicals or categories of facilities where those chemicals are present.

To the extent consistent with that act, the threshold quantities for purposes of the submission of lists of hazardous chemicals under section 3750.07 and the submission of emergency and hazardous chemical inventory forms under section 3750.08 of the Revised Code may differ.

(c) Identifying or listing hazardous substances and establishing reportable quantities of each of those substances and each extremely hazardous substance. In addition to being consistent with and equivalent in scope, content, and coverage to that act and applicable regulations adopted under it, the rules shall be consistent with and equivalent in scope, content, and coverage to regulations identifying or listing hazardous substances and reportable quantities of those substances adopted under the "Comprehensive Environmental Response, Compensation, and Li-

bility Act of 1980," 94 Stat. 2779, 42 U.S.C.A. §602, as amended.

(d) Prescribing the information to be included in the lists of hazardous chemicals required to be submitted under section 3750.07 of the Revised Code;

(e) Prescribing the information to be included in the emergency and hazardous chemical inventory forms required to be submitted under section 3750.08 of the Revised Code. If the commission establishes its own emergency and hazardous chemical inventory form, the rules shall authorize owners and operators of facilities who also have one or more facilities located outside the state for which they are required to submit inventory forms under the federal act and regulations adopted under it to submit their annual inventories on forms prescribed by the administrator of the United States environmental protection agency under that act instead of on forms prescribed by the commission and shall require those owners or operators to submit any additional information required by the commission's inventory form on an attachment to the federal form.

(f) Establishing procedures for giving verbal notice of releases under section 3750.06 of the Revised Code and prescribing the information to be provided in such a notice and in the follow-up written notice required by that section;

(g) Establishing standards for determining valid needs for the release of tier II information under division (B)(4) of section 3750.10 of the Revised Code;

(h) Identifying the types or categories of information submitted or obtained under this chapter and rules adopted under it that constitute confidential business information;

(i) Establishing criteria and procedures to protect trade secret and confidential business information from unauthorized disclosure;

(j) Establishing other requirements or authorizations that the commission considers necessary or appropriate to implement, administer, and enforce this chapter.

(2) Adopt rules in accordance with Chapter 119. of the Revised Code to implement and administer this chapter that may be more stringent than the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001 and regulations adopted under it. Rules adopted under this division shall not be inconsistent with that act or the regulations adopted under it. The rules shall:

(a) Prescribe the information to be included in the chemical emergency response and preparedness plans prepared and submitted by local emergency planning committees under section 3750.04 of the Revised Code;

(b) Establish criteria and procedures for reviewing the chemical emergency response and preparedness plans of local emergency planning committees required by section 3750.04 of the Revised Code and the annual exercise of those plans and for providing concurrence or requesting modifications in the plans and the exercise of those plans. The criteria shall include, without limitation, the requirement that each exercise of a committee's plan involve, in addition to local emergency response and medical personnel, either a facility that is subject to the plan or a transporter of materials that are identified or listed as hazardous materials by regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C.A. 1801, as amended.

(c) Establish policies and procedures for maintaining information submitted to the commission and local emergency planning committees under this chapter, and for receiving and fulfilling requests from the public for access to review and to obtain copies of that information. The criteria and procedures shall include the following require-

ments and authorizations regarding that information and access to it:

(i) Information that is protected as trade secret information or confidential business information under this chapter and rules adopted under it shall be kept in files that are separate from those containing information that is not so protected;

(ii) The original copies of information submitted to the commission or committee shall not be removed from the custody and control of the commission or committee;

(iii) A person who, either in person or by mail, requests to obtain a copy of a material safety data sheet submitted under this chapter by a facility owner or operator shall submit a separate application for each facility for which a material safety data sheet is being requested;

(iv) A person who requests to receive by mail a copy of information submitted under this chapter by a facility owner or operator shall submit a separate application for each facility for which information is being requested, and shall specify both the facility for which information is being requested and the particular types of documents requested;

(v) Only employees of the commission or committee shall copy information in the files of the commission or committee;

(vi) The commission or committee may require any person who requests to review or obtain a copy of information in its files to schedule an appointment for that purpose with the information coordinator of the commission or committee at least twenty-four hours before arriving at the office of the commission or committee for the review or copy.

(vii) Any person who seeks access to information in the files of the commission or a local emergency planning committee shall submit a written application, either in person or by mail, to the information coordinator on a form provided by the commission or committee. The person also shall provide his name and current mailing address on the application and may be requested by the commission or committee to provide basic demographic information on the form to assist in the evaluation of the information access provisions of this chapter and rules adopted under it. Application forms may be obtained by mail or in person or by request by telephone at the office of the commission or committee during regular business hours. Upon receipt of a request for an application by telephone or mail, the information coordinator shall promptly mail an application to the person who requested it.

(viii) The application form shall provide the applicant with a means of indicating that his name and address are to be kept confidential. If the applicant so indicates, that information is not a public record under section 149.43 of the Revised Code and shall not be disclosed to any person who is not a member or employee of the commission or committee or an employee of the environmental protection agency. When a name and address are to be kept confidential, they also shall be deleted from the copy of the application required to be placed in the file of the facility under division (B)(2)(c)(xii) of this section and shall be withheld from any log of information requests kept by the commission or committee pursuant to that division.

(ix) Neither the commission nor a local emergency planning committee shall charge any fee for access to review information in its files when no copies or computer searches of that information are requested;

(x) An applicant shall be informed of the cost of copying, mailing, or conducting a computer search of information on file with the commission or committee before such a copy or search is made, and the commission or committee



shall collect the appropriate fees as established under section 3750.13 of the Revised Code. Each applicant shall acknowledge on the application form that he is aware he will be charged for copies and computer searches of that information he requests and for the costs of mailing copies of the information to him.

(xi) The commission or committee may require a person requesting copies of information on file with it to take delivery of them in the office of the commission or committee whenever it considers the volume of the information to be large enough to make mailing or delivery by a parcel or package delivery service impractical;

(xii) When the commission or committee receives a request for access to review or obtain copies of information in its files, it shall not routinely notify the owner or operator of the facility involved but instead shall either keep a log or file of requests for the information or shall place a copy of each completed application form in the file for the facility to which the application pertains. Such a log or file shall be available for review by the public and by the owners and operators of facilities required to submit information to the commission or committee under this chapter and rules adopted under it.

(d) Require that claims for the protection, as a trade secret, of information obtained under this chapter regarding extremely hazardous substances identified or listed in rules adopted under division (B)(1)(a) of this section and hazardous chemicals identified or listed in rules adopted under division (B)(1)(b) of this section be submitted to the administrator of the United States environmental protection agency for determination under section 322 of the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1747, 42 U.S.C.A. 11042, and regulations adopted under that section;

(e) Establish criteria and procedures for the issuance of variances under divisions (B) and (C) of section 3750.11 of the Revised Code. The rules shall require that, before approval of an application for a variance, the commission or committee find by a preponderance of the scientific evidence based upon generally accepted scientific principles or laboratory tests that the extremely hazardous substances, hazardous chemicals, or hazardous substances that would be subject to the reporting requirement pose a substantial risk of catastrophic injury to public health or safety or to the environment, or pose an extraordinary risk of injury to emergency management personnel responding to a release of the chemicals or substances, when the substances or chemicals are present at a facility in an amount equal to or exceeding the quantity for which reporting would be required under the reporting requirement for which the variance is sought. The rules shall also require that before approval of an application for a variance the commission or committee find by a preponderance of the evidence that the development and implementation of a local emergency response plan for releases of the substances or chemicals covered by the reporting requirement will reduce the risk of catastrophic injury to public health or safety or to the environment, or will reduce the extraordinary risk of injury to responding emergency management personnel, in the event of a release of the substances or chemicals and find by a preponderance of the evidence that the reporting requirement is necessary for the development of such a local emergency response plan. The rules shall require that when determining whether the substances or chemicals that would be subject to the reporting requirement pose a substantial risk of catastrophic injury to public health or safety or to the environment, or pose an extraordinary risk of

injury to emergency management personnel responding to a release of the substance or chemical the commission or committee consider all of the following factors:

(i) The specific characteristics and degree and nature of the hazards posed by a release of the extremely hazardous substances, hazardous chemicals, or hazardous substances;

(ii) The proximity of the facilities that would be subject to the reporting requirement to residential areas, to areas where significantly large numbers of people are employed or otherwise congregate, and to environmental resources that are subject to injury;

(iii) The quantities of the extremely hazardous substances, hazardous chemicals, or hazardous substances that are routinely present at facilities that would be subject to the reporting requirement;

(iv) The frequency with which the extremely hazardous substances, hazardous chemicals, or hazardous substances are present at the facilities that would be subject to the reporting requirement in quantities for which reporting would be required thereunder.

(f) Establish criteria and procedures for the issuance of orders under division (D) of section 3750.11 of the Revised Code requiring the placement of emergency response lock box units. The rules shall require that before approval of an application for issuance of such an order the commission or committee find by a preponderance of the scientific evidence based upon generally accepted scientific principles or laboratory tests that the presence of the extremely hazardous substances, hazardous chemicals, or hazardous substances in the quantities in which they are routinely or intermittently present at the facility for which the order is sought pose a substantial risk of catastrophic injury to public health or safety or to the environment, or pose an extraordinary risk of injury to responding emergency management personnel, in the event of a release of any of those substances or chemicals from the facility. The rules shall require that before approval of an application for issuance of such an order the commission or committee also find by a preponderance of the evidence that the placement of an emergency response lock box unit at the facility is necessary to protect against the substantial risk of catastrophic injury to public health or safety or the environment, or to protect against an extraordinary risk of injury to responding emergency management personnel, in the event of a release of any of the extremely hazardous substances, hazardous chemicals, or hazardous substances routinely or intermittently present at the facility. The rules shall require that when determining whether the extremely hazardous substances, hazardous chemicals, or hazardous substances present at the facility pose a substantial risk of catastrophic injury to public health or safety or to the environment, or pose an extraordinary risk of injury to responding emergency management personnel, in the event of a release of any of those substances or chemicals from the facility the commission or committee consider all of the following factors:

(i) The specific characteristics and the degree and nature of the hazards posed by a release of the extremely hazardous substances, hazardous chemicals, or hazardous substances present at the facility;

(ii) The proximity of the facility to residential areas, to areas where significantly large numbers of people are employed or otherwise congregate, and to environmental resources that are subject to injury;

(iii) The quantities of the extremely hazardous substances, hazardous chemicals, or hazardous substances that are routinely present at the facility;

(iv) The frequency with which the extremely hazardous substances, hazardous chemicals, or hazardous substances are present at the facility.

(g) Establish procedures to be followed by the commission and the executive committee of the commission for the issuance of orders under this chapter.

(3) In accordance with Chapter 119. of the Revised Code adopt rules establishing reportable quantities for releases of oil that are consistent with and equivalent in scope, content, and coverage to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 862, 33 U.S.C.A. 1321, as amended, and applicable regulations adopted under it.

(4) Adopt rules in accordance with Chapter 119. of the Revised Code establishing criteria and procedures for identifying or listing extremely hazardous substances in addition to those identified or listed in rules adopted under division (B)(1)(a) of this section and for establishing threshold planning quantities and reportable quantities for the added extremely hazardous substances; for identifying or listing hazardous chemicals in addition to those identified or listed in rules adopted under division (B)(1)(b) of this section and for establishing threshold quantities and categories of health and physical hazards for the added hazardous chemicals; and for identifying or listing hazardous substances in addition to those identified or listed in rules adopted under division (B)(1)(c) and for establishing reportable quantities for the added hazardous substances. The criteria for identifying or listing additional extremely hazardous substances and establishing threshold planning quantities and reportable quantities therefor and for identifying or listing additional hazardous chemicals and establishing threshold quantities and categories of health and physical hazards for the added hazardous chemicals shall be consistent with and equivalent to applicable criteria therefor under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001 and regulations adopted under it. The criteria for identifying additional hazardous substances and for establishing reportable quantities of the added hazardous substances shall be consistent with and equivalent to the applicable criteria for identifying or listing hazardous substances and establishing reportable quantities therefor under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, and regulations adopted under it. The rules shall require that, before identifying or listing any such additional extremely hazardous substance, hazardous chemical, or hazardous substance and establishing a threshold planning quantity, threshold quantity, or reportable quantity therefor, the commission find by a preponderance of the scientific evidence based on generally accepted scientific principles or laboratory tests that the substance or chemical poses a substantial risk of catastrophic injury to public health or safety or to the environment, or poses an extraordinary risk of injury to emergency management personnel responding to a release of the chemical or substance, when the chemical or substance is present at a facility in an amount equal to the proposed threshold planning quantity or threshold quantity or, in the instance of a proposed additional extremely hazardous substance or hazardous substance, poses a substantial risk of catastrophic injury to public health or safety or to the environment if a release of the proposed reportable quantity of the substance occurs. The rules shall further require that, before so identifying or listing a substance or chemical, the commission find by a preponderance of the evidence that the development and implementation of state or local emergency response plans

for releases of the substance or chemical will reduce the risk of a catastrophic injury to public health or safety or to the environment, or will reduce the extraordinary risk of injury to responding emergency response personnel, in the event of a release of the substance or chemical and find by a preponderance of the evidence that the identification or listing of the substance or chemical is necessary for the development of state or local emergency response plans for releases of the substance or chemical. The rules shall require that the commission consider the toxicity of the substance or chemical in terms of both the short-term and long-term health effects resulting from exposure to it and its reactivity, volatility, dispersibility, combustibility, and flammability when determining the risks posed by a release of the substance or chemical and, as appropriate, when establishing a threshold planning quantity, threshold quantity, reportable quantity, or category of health or physical hazard for it.

(5) Adopt rules in accordance with Chapter 119. of the Revised Code establishing criteria and procedures for receiving and deciding claims for protection of information as a trade secret that are applicable only to extremely hazardous substances and hazardous chemicals identified or listed in rules adopted under division (C)(5) of this section. The rules shall be equivalent in scope, content, and coverage to section 322 of the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1747, 42 U.S.C.A. 11042, and regulations adopted under it.

(6)(a) After consultation with the fire marshal, adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for the construction, placement, and use of emergency response lock box units at facilities that are subject to this chapter. The rules shall establish all of the following:

(i) Specific standards of construction for lock box units:

(ii) The specific types of information that shall be placed in the lock box units required to be placed at a facility by an order issued under division (D) of section 3750.11 of the Revised Code which shall include the location of on-site emergency fire-fighting and spill cleanup equipment; a diagram of the public and private water supply and sewage systems serving the facility that are known to the owner or operator of the facility; a copy of the emergency and hazardous chemical inventory form for the facility most recently required to be submitted under section 3750.08 of the Revised Code from which the owner or operator may withhold information claimed or determined to be trade secret information pursuant to rules adopted under division (B)(2)(d) of this section, or pursuant to division (B)(14) of this section and rules adopted under division (B)(5) of this section, and confidential business information identified in rules adopted under division (B)(1)(h) of this section; a copy of the local fire department's and facility's emergency management plans for the facility, if any; a current list of the names, positions, addresses, and telephone numbers of all key facility personnel knowledgeable in facility safety procedures and the locations at the facility where extremely hazardous substances, hazardous chemicals, and hazardous substances are produced, used, or stored. The rules shall stipulate that, in the instance of lock box units placed voluntarily at facilities by the owners or operators of the facilities, such information shall be maintained in them as is prescribed by agreement by the owner or operator and the fire department having jurisdiction over the facility.

(iii) The conditions that shall be met in order to provide safe and expedient access to a lock box unit during a

release or threatened release of an extremely hazardous substance, hazardous chemical, or hazardous substance.

(b) Unless the owner or operator of a facility is issued an order under division (D) of section 3750.11 of the Revised Code requiring him to place a lock box unit at the facility, he may place a lock box unit at the facility at his discretion. If he chooses to place a lock box unit at the facility, the responsibility to deposit information in the lock box unit is in addition to any other obligations established in this chapter.

(c) Any costs associated with the purchase, construction, or placement of a lock box unit shall be paid by the owner or operator of the facility.

(7) In accordance with Chapter 119. of the Revised Code, adopt rules governing the application for and awarding of grants under division (C) of section 3750.14 and division (B) of section 3750.15 of the Revised Code;

(8) Adopt rules in accordance with Chapter 119. of the Revised Code establishing reasonable maximum fees that may be charged by the commission and local emergency planning committees for copying information in the commission's or committee's files to fulfill requests from the public for that information.

(9) Adopt internal management rules governing the operations of the commission. The internal management rules shall establish an executive committee of the commission consisting of the director of environmental protection or his designee, the attorney general or his designee, one of the appointed members of the commission representing industries subject to this chapter to be appointed by the commission, one of the appointed members of the commission representing the interests of environmental advocacy organizations to be appointed by the commission, and one other appointed member or member ex officio of the commission to be appointed by the commission. The executive committee has exclusive authority to issue enforcement orders under section 3750.18 of the Revised Code and to request the attorney general to bring a civil action, civil penalty action, or criminal action under section 3750.20 of the Revised Code in the name of the commission regarding violations of this chapter, rules adopted under it, or orders issued under it. The internal management rules may set forth the other specific powers and duties of the commission that the executive committee may exercise and carry out and the conditions under which the executive committee may do so. The internal management rules shall not authorize the executive committee to issue variances under division (B) or (C) of section 3750.11 of the Revised Code or orders under division (D) of that section.

(10) Oversee and coordinate the implementation and enforcement of this chapter and make such recommendations to the director of environmental protection as it considers necessary or appropriate to improve the implementation and enforcement of this chapter;

(11) Make allocations of moneys under division (B) of section 3750.14 of the Revised Code and make grants under division (C) of section 3750.14 and division (B) of section 3750.15 of the Revised Code;

(12) Designate an officer of the environmental protection agency to serve as the commission's information coordinator under this chapter;

(13) Not later than twelve months after the effective date of this section, develop and distribute a state emergency response plan that defines the emergency response roles and responsibilities of the state agencies that are represented on the commission and that provides appropriate coordination with the national contingency plan and the regional contingency plan required by section 105 of the

"Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 42 U.S.C.A. 9601, as amended. The plan shall ensure a well-coordinated response by state agencies that may be involved in assisting local emergency responders during a major release of oil or a major sudden and accidental release of a hazardous substance or extremely hazardous substance. The plan may incorporate existing state emergency response plans by reference. At least annually, the commission and the state agencies that are represented on it shall jointly exercise the state plan in conjunction with the exercise of a local emergency response plan by a local emergency planning committee under section 3750.04 of the Revised Code. After any such exercise, the commission shall review the state plan and make such revisions in it as the commission considers necessary or appropriate.

(14) Receive and decide claims for the protection of information as a trade secret that pertain only to extremely hazardous substances and hazardous chemicals identified or listed by rules adopted under division (C)(5) of this section. If the commission determines that the claim meets the criteria established in rules adopted under division (B)(5) of this section, it shall issue an order to that effect in accordance with section 3750.18 of the Revised Code. If the commission determines that the claim does not meet the criteria established in those rules, it shall issue an order to that effect in accordance with section 3750.18 of the Revised Code.

(15) Annually compile, make available to the public, and submit to the president of the senate and the speaker of the house of representatives a summary report on the number of facilities estimated to be subject to regulation under sections 3750.05, 3750.07, and 3750.08 of the Revised Code, the number of facilities reporting to the commission, an estimate of the percentage of facilities in compliance with those sections, and recommendations regarding the types of activities the commission considers necessary to improve such compliance. The commission shall base its estimate of the number of facilities that are subject to regulation under those sections on the current estimates provided by the local emergency planning committees under division (D)(6) of section 3750.03 of the Revised Code.

(C) The commission may:

(1) Procure by contract the temporary or intermittent services of experts or consultants when those services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(2) Enter into contracts or agreements with political subdivisions or emergency planning districts for the purposes of this chapter;

(3) Accept on behalf of the state any gift, grant, or contribution from any governmental or private source, for the purposes of this chapter;

(4) Enter into contracts, agreements, or memoranda of understanding with any state department, agency, board, commission, or institution to obtain the services of personnel thereof or utilize resources thereof for the purposes of this chapter. Employees of a state department, agency, board, commission, or institution providing services to the commission under any such contract, agreement, or memorandum shall perform only those functions and provide only the services provided for in the contract, agreement, or memorandum.

(5) Identify or list extremely hazardous substances in addition to those identified or listed in rules adopted under division (B)(1)(a) of this section and establish threshold planning quantities and reportable quantities for the addi-



tional extremely hazardous substances, identify or list hazardous chemicals in addition to those identified or listed in rules adopted under division (B)(1)(b) of this section and establish threshold quantities and categories or [sic] health and physical hazards for the added chemicals, and identify or list hazardous substances in addition to those identified or listed in rules adopted under division (B)(1)(c) of this section and establish reportable quantities for the added hazardous substances. The commission may establish threshold planning quantities for the additional extremely hazardous substances based upon classes of those substances or categories of facilities at which they are present and may establish threshold quantities for the additional hazardous chemicals based upon classes of those chemicals or categories of facilities where they are present. The commission shall identify or list such additional substances or chemicals and establish threshold planning quantities, threshold quantities, reportable quantities, and hazard categories therefor in accordance with the criteria and procedures established in rules adopted under division (B)(4) of this section and, after compliance with those criteria and procedures, by the adoption of rules in accordance with Chapter 119. of the Revised Code. The commission shall not adopt rules under division (C)(5) of this section modifying any threshold planning quantity established in rules adopted under division (B)(1)(a) of this section, any threshold quantity established in rules adopted under division (B)(1)(b) of this section, nor any reportable quantity established in rules adopted under division (B)(1)(c) of this section.

If, after the commission has adopted rules under this division identifying or listing an extremely hazardous substance, hazardous chemical, or hazardous substance, the administrator of the United States environmental protection agency identifies or lists the substance or chemical as an extremely hazardous substance or hazardous chemical under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001, or identifies or lists a substance as a hazardous substance under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, the commission shall rescind its rules adopted under this section pertaining to the substance or chemical and adopt the appropriate rules under division (B)(1)(a), (b), or (c) of this section.

(6) From time to time, request the director of environmental protection to review implementation, administration, and enforcement of the chemical emergency response planning and reporting programs created by this chapter and rules adopted under it regarding their effectiveness in preparing for response to releases of extremely hazardous substances, hazardous chemicals, and hazardous substances. After completion of any such review, the director shall report his findings to the commission. Upon receipt of the director's findings, the commission may make such recommendations for legislative and administrative action as the commission finds necessary or appropriate to promote achievement of the purposes of this chapter.

(D) Except as provided in section 3750.06 of the Revised Code, nothing in this chapter applies to the transportation, including the storage incident to transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(E) This chapter authorizes the state, through the emergency response commission and environmental protection agency, to establish and maintain chemical emergency response planning and preparedness, community right-to-

know, and hazardous substance and extremely hazardous substance release reporting programs that are consistent with and equivalent in scope, coverage, and content to the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001 and regulations adopted under it, except as otherwise specifically required or authorized in this chapter. The commission and agency may do all things necessary, incidental, or appropriate to implement, administer, and enforce this chapter and to perform the duties and exercise the powers of the state emergency response commission under that act and regulations adopted under it and under this chapter.

HISTORY: 1991 H 298, eff. 7-26-91  
1988 S 367

## CROSS REFERENCES

Prohibition: 3750.17

Commercial hazardous waste incinerators, continuation or termination of restrictions, 3734.124  
Protection of trade secrets, 4905.82  
Toxic chemical release, enforcement of local rules, 3751.06  
Emergency response commission, membership, operating rules, OAC 3750-10-01, 3750-10-05  
Public review of plan exercises, OAC 3750-20-84  
State emergency response commission, OAC 3750-1 to 3750-50  
Trade secrets, OAC Ch 3750-60

## LIBRARY REFERENCES

### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Baldwin's Ohio Township Law, Text 75.131  
Hardy, Ohio Environmental Law, Text 5.01, 5.02(A), 5.07(A)

### NOTES ON DECISIONS AND OPINIONS

#### 1. Regulatory authority

64 OS(3d) 619, 597 NE(2d) 487 (1992), Ohio Chamber of Commerce v Emergency Response Comm. The language "equivalent in scope, content, and coverage" in RC 3750.02(B)(1) prescribes only minimum regulatory requirements and does not prevent the emergency response commission from promulgating rules that impose reporting requirements on owners and operators of regulated facilities that exceed the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 et seq.

EBR 252245, 772246, and 252247 (1-17-91), Ohio Chamber of Commerce v Emergency Response Comm. OAC 3750-30-20, requiring submission of very specific, detailed, scaled maps of facilities showing the location of certain chemicals, is a lawful exercise of the state emergency response commission's regulatory authority under RC 3750.02.

EBR 252245, 772246, and 252247 (1-17-91), Ohio Chamber of Commerce v Emergency Response Comm. While RC 3750.02(B)(1) is somewhat ambiguous in stating that the regulatory authority of the state emergency response commission should be exercised in a manner "consistent with" and "equivalent in scope, content, and coverage" with federal laws and regulations, neither the impact nor effect of these words is that the state regulations must be "identical" to the federal provisions.

#### 2. Immunity from liability

OAG 91-014. Persons who voluntarily render advice to the emergency response commission or to local emergency planning committees in an emergency situation are entitled to immunity from civil liability under those circumstances prescribed by RC 2305.232.

OAG 91-014. Members of the emergency response commission who have been appointed under RC 3750.02 and members of a local emergency planning committee who have been appointed pursuant to RC 3750.03 are entitled to immunity from criminal prosecutions, civil suits, and actions for removal from office or employment for violations of RC Ch 102, 2921.42, or 2921.43 in the circumstances prescribed by RC 102.08.

OAG 91-014. The appointed members of the state emergency response commission, established by RC 3750.02, are entitled to the immunity conferred upon officers and employees by RC 9.86.

### 3750.03 Emergency planning districts; local emergency planning committees

(A) The emergency response commission shall, by resolution, designate emergency planning districts to prepare and implement district chemical emergency response and preparedness plans under this chapter. The commission may designate existing political subdivisions or multijurisdictional planning organizations as districts and may revise its designation of districts as it considers necessary or appropriate. At the request of the local emergency planning committees of two or more adjoining districts, the commission may designate those districts to constitute a joint emergency planning district. The commission also may enter into agreements with adjoining states or adjoining political subdivisions of contiguous states to establish joint interstate emergency planning districts.

(B) The commission shall, by resolution, appoint the members of the local emergency planning committee of each emergency planning district. The committee shall consist of such number of members as the commission considers appropriate but shall include, without limitation, representatives from each of the following groups or organizations: elected state and local officials, law enforcement personnel, emergency management personnel, fire-fighting personnel, first aid personnel, health personnel, local environmental personnel, hospital personnel, transportation personnel, broadcast and print media personnel, community groups, and owners and operators of facilities subject to this chapter.

If a district consists only of territory within one county, the commission shall appoint the members of the committee of the district from a list of persons submitted to the commission by the board of county commissioners of that county. If the district or joint district contains territory that lies wholly or partly within two or more counties, the commission shall appoint the members of the committee from the lists of persons submitted to the commission by the board of county commissioners of each county having territory within the district or joint district. Members of the committee for a joint interstate district shall be appointed in the manner provided in the agreement establishing the district.

The terms of office of the members of a committee for a district other than a joint interstate district shall be for two years, with each term ending on the same day of the same month as did the term it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Members may be reappointed and vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. The committee, by a two-

thirds vote of all its members, may at any time remove a member for misfeasance, malfeasance, or nonfeasance or, at the request of the committee, the commission may remove a member of the committee for any of those reasons.

The members of the committee for a joint interstate district shall be appointed, shall serve for such terms, and are subject to removal from the committee in the manner provided in the agreement establishing the district.

Except for the purposes of Chapters 102., 2744., and 2921. of the Revised Code, serving as a member of a committee does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.

(C) The commission may, as it considers appropriate, modify its designation of emergency planning districts, the composition of the groups and organizations represented on the committee, or the number of members representing any of those groups or organizations on the committee, provided that each of the organizations or groups enumerated in division (B) of this section is represented on the committee. Members of the public may, by written petition, request the commission to modify the representation of those groups or organizations on the committee. If the commission reduces or eliminates representation of a group or organization on a committee, it shall declare the position of the member representing that group or organization to be abolished, and the person whose position is so abolished shall cease to serve as a member of the committee on the effective date of the commission's declaration. Appointments of members to fill positions established as a result of modification of the composition of the committee shall be made in the same manner as original appointments under this section.

If the commission alters the boundaries of an existing emergency planning district, designates a joint district, or enters into an agreement to establish a joint interstate district, it shall, within thirty days after the effective date of the action, appoint a committee for each district created by or whose boundaries were altered by that action. Upon the appointment of a committee for each such district, the committee of each of the districts that existed prior to that action shall cease to exist.

(D) A local emergency planning committee shall:

(1) Appoint a chairman and vice-chairman and a secretary to keep a record of its proceedings;

(2) Adopt bylaws for the conduct of its business;

(3) Appoint an information coordinator who shall be responsible for maintaining the committee's files of information received under this chapter and rules adopted under it and for receiving and fulfilling requests from the public for that information;

(4) Appoint a community emergency coordinator who shall be responsible for coordinating the development and implementation of the chemical emergency response and preparedness plan of the district and for receiving verbal and follow-up written notices of releases of hazardous substances and extremely hazardous substances provided under section 3750.06 of the Revised Code;

(5) Except as otherwise authorized by division (E)(4) of this section, obtain any thing to be purchased, leased, leased with an option or agreement to purchase, or constructed, in accordance with the provisions of sections 307.86 to 307.92 of the Revised Code applicable to boards of county commissioners;

(6) Establish and carry out a program to monitor regulated facilities within the district and to conduct compliance and enforcement activities to ensure that the facilities have submitted the information required by sections 3750.05, 3750.07, and 3750.08 of the Revised Code. Not later than the first day of October of each year, each committee shall submit a summary report of the compliance and enforcement activities of the committee during the previous calendar year. The report also shall contain an estimate of the number of facilities within the emergency planning district that are required to comply with any of those sections and, based upon the submission of emergency and hazardous chemical inventory forms required to be submitted on or before the immediately preceding first day of March under section 3750.08 of the Revised Code, the number of facilities within the district that are in compliance with those sections.

(E) A local emergency planning committee may:

(1) Receive and accept from any public or private source for the purposes of this chapter gifts, grants, or contributions of money, services of personnel, and real or personal property or their use. A municipal corporation, county, or township may, for the purposes of this chapter, make contributions of money, services of personnel, and real or personal property or their use to or on behalf of the district in which it is located.

If, as a result of the redesignation of a district, designation of a joint district, or establishment of a joint interstate district by the commission, a municipal corporation, county, or township is withdrawn from a district that remains in existence, the committee of that remaining district shall ascertain the funds on hand, credits, and real and personal property of the district and shall make an equitable apportionment and distribution in money or in kind of that money and property between the political subdivision and the district from which it was withdrawn.

(2) Appoint and fix the compensation of employees necessary or appropriate to perform the functions of a committee under this chapter within the district. Employees of a district shall be considered county employees for the purposes of Chapter 124. of the Revised Code and other provisions of the Revised Code applicable to employees.

(3) Request, in writing, that the commission, pursuant to division (A) of section 3750.05 of the Revised Code, designate an additional facility within the district as being subject to the emergency planning and notification requirements of sections 3750.04 and 3750.05 of the Revised Code:

(4) Enter into an agreement with the board of health of a city or general health district, a political subdivision that is located wholly or partly within the district, a countywide emergency management agency established under section 5915.06 of the Revised Code having jurisdiction within all or a portion of the district, or a regional authority for emergency management created under section 5915.07 of the Revised Code having jurisdiction within all or a portion of the district, whereby the board of health, political subdivision, agency, or authority will exercise any power, perform any function, or render any service on behalf of the committee that the committee may exercise, perform, or render under this chapter. The agreement shall specify the powers, functions, and services of the committee that the board of health, political subdivision, agency, or authority is authorized to exercise, perform, or render and shall establish either in specific terms or by prescribing a method for determining them the amounts of any payments to be made by the committee to the board of health, political

subdivision, agency, or authority for performance of the agreement.

Upon entering into an agreement under division (E)(4) of this section and within the limitations prescribed in it, the board of health, political subdivision, agency, or authority may exercise the same powers as the committee with respect to the performance of any function or rendering of any service under the agreement. An agreement authorized under this section does not diminish the authority of the committee to exercise any power or perform any function being exercised or performed on its behalf by the board of health, political subdivision, agency, or authority under the agreement.

(5) By resolution, adopt rules establishing requirements for reporting or providing the names and amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at facilities within its emergency planning district: for the reporting or providing of information regarding locations where those substances or chemicals are stored at those facilities; or for the reporting of releases of extremely hazardous substances, hazardous substances, or oil that are more stringent than the reporting and hazard communication requirements under this chapter and rules adopted under it by the commission. The rules may include, without limitation, reporting requirements regarding the names, amounts, or storage locations of chemicals described in division (G)(3) of section 3750.01 of the Revised Code. A committee shall not create or require the use of forms other than those approved by the commission. Before enforcing such a more stringent requirement, the committee shall obtain a variance from the commission under division (B) of section 3750.11 of the Revised Code. No person shall violate a rule adopted under division (E)(5) of this section.

(6) Enter into contracts with persons for the development or provision of the training programs, seminars, or other forms of educational programs that are required to be included in the plan of each district under division (A)(11) of section 3750.04 of the Revised Code:

(7) Do all things necessary, incidental, or appropriate to perform the duties and exercise the powers of a committee under this chapter, and rules adopted under it, and under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001, and regulations adopted under it.

(F) The local emergency planning committee of an emergency planning district lying wholly within the boundaries of a county shall be considered a county board and shall receive the services of the auditor and prosecuting attorney of the county in the same manner as other county boards. If a district or joint district contains territory within two or more counties, the committee shall designate the county auditor of one of the counties in the district as the fiscal officer of the district and shall designate the prosecuting attorney of one of the counties as legal advisor of the district. The prosecuting attorney shall provide such services to the district as are required or authorized to be provided to county boards under Chapter 309. of the Revised Code. The committee of a joint interstate district shall designate a fiscal officer and legal advisor under this division in the same manner as a joint district unless the agreement establishing the joint interstate district provides otherwise.

Moneys received by the committee of a district lying wholly within the boundaries of a county shall be credited to a special emergency planning fund in the treasury of the county. If a district or joint district contains territory within two or more counties, moneys received by the committee



shall be credited to a special emergency planning fund in the treasury of the county whose county auditor has been designated by the committee as the fiscal officer of the district. The fund shall be administered by the committee of the district, and moneys credited to the fund shall be expended only for the purposes of carrying out the powers and duties of the committee under this chapter and rules adopted and orders issued under it. Moneys received by the committee of a joint interstate district shall be credited, administered, and expended in the same manner as in a joint district unless the agreement establishing the joint interstate district provides otherwise.

HISTORY: 1991 H 298, eff. 7-26-91  
1988 S 367

#### CROSS REFERENCES

Prohibition: 3750.17

Political subdivision, emergency planning district, joint emergency planning district and joint interstate emergency planning district as, 2744.01

Toxic chemical release, enforcement of local rules, 3751.06

Transportation of hazardous materials through emergency planning district, provision of information, 4905.81

Special emergency planning fund, OAC 3750-50-05

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Baldwin's Ohio Township Law, Text 75.131

#### NOTES ON DECISIONS AND OPINIONS

##### 1. Immunity from Liability

OAG 91-014. Persons who voluntarily render advice to the emergency response commission or to local emergency planning committees in an emergency situation are entitled to immunity from civil liability under those circumstances prescribed by RC 2305.232.

OAG 91-014. Members of the emergency response commission who have been appointed under RC 3750.02 and members of a local emergency planning committee who have been appointed pursuant to RC 3750.03 are entitled to immunity from criminal prosecutions, civil suits, and actions for removal from office or employment for violations of RC Ch 102, 2921.42, or 2921.43 in the circumstances prescribed by RC 102.08.

OAG 91-014. Members of a local emergency planning committee, established by RC 3750.03, are entitled to the immunity afforded public officers and employees as prescribed by RC Ch 2744.

#### 3750.04 Chemical emergency response and preparedness plan

(A) Within ninety days after the effective date of this section, the local emergency planning committee of each emergency planning district shall prepare and submit to the emergency response commission a chemical emergency response and preparedness plan for the district. The district's plan shall contain all of the following:

(1) An identification of each facility within the district that meets either of the following qualifications:

(a) Has an extremely hazardous substance present at the facility in an amount that exceeds the threshold planning quantity for the substance established in rules adopted

under division (B)(1)(a) or (C)(5) of section 3750.02 of the Revised Code;

(b) Is required to participate in the emergency planning process by an order issued under division (A) of section 3750.05 of the Revised Code.

(2) An identification of all facilities within the district that are contributing or subjected to additional risk due to their proximity to facilities identified under division (A)(1) of this section;

(3) An identification of routes likely to be used for the transportation of extremely hazardous substances to and from each facility identified under division (A)(1) of this section;

(4) The methods and procedures to be followed by owners and operators of facilities identified under division (A)(1) of this section and by local emergency response and medical personnel to respond to releases of extremely hazardous substances;

(5) The designation of a community emergency coordinator for the district, identification of the facility emergency coordinator for each facility identified under division (A)(1) of this section, and identification of the heads of the emergency response organizations for designated areas or political subdivisions within the district;

(6) An identification of procedures for reliable, effective, and timely notification and communication among emergency responders within the district and to the public in the event of a release of an extremely hazardous substance from a facility identified under division (A)(1) of this section;

(7) The development of methods for determining the occurrence of a release of an extremely hazardous substance from each facility identified under division (A)(1) of this section and for identifying the geographic area or population likely to be affected by such a release;

(8) A composite statement of specialized equipment, facilities, personnel, and emergency response organizations available within the district to respond to releases of extremely hazardous substances;

(9) The development of evacuation plans including, but not limited to, provisions for a precautionary evacuation and for alternative traffic routes in the event of a release of an extremely hazardous substance from a facility identified under division (A)(1) of this section;

(10) A plan for mutual aid to other emergency planning districts and for the allocation of emergency response facilities, equipment, and personnel for responding to releases of extremely hazardous substances;

(11) A plan for the development or provision of training programs, seminars, and other forms of educational programs for the personnel of facilities identified under division (A)(1) of this section, emergency response personnel of political subdivisions within the district, and medical personnel;

(12) The development of methods and schedules for exercising the plan;

(13) Such other information as the commission requires by rules adopted under division (B)(2)(a) of section 3750.02.

The committee shall base its plan on information obtained from the commission, the environmental protection agency, emergency management agencies of the state and political subdivisions within the district, and facilities identified under division (A)(1) of this section.

(B) The committee annually shall submit the plan to the commission not later than the seventeenth day of October for review and concurrence. The commission shall review the plan to ensure that it complies with division (A) of this

section and rules adopted under divisions (B)(2)(a) and (b) of section 3750.02 of the Revised Code, and to ensure that it is coordinated with the plans of adjoining districts. The commission shall endeavor to review each such plan and provide notice of concurrence with the plan or of recommendations for modifications to it within sixty days after its submission to the commission. The commission may assign the highest priority for review to plans applying to geographic areas having the greatest number of facilities that pose the greatest risk of harm to the public health or safety or to the environment.

If the commission finds that the plan submitted by a committee complies with division (A) of this section and rules adopted under divisions (B)(2)(a) and (b) of section 3750.02 of the Revised Code and is coordinated with the plans of adjoining districts, the commission shall, within sixty days after submission of the plan, issue an order in accordance with section 3750.18 of the Revised Code concurring with the plan. If the commission finds that the plan submitted by a committee does not comply with division (A) of this section and rules adopted under divisions (B)(2)(a) and (b) of section 3750.02 of the Revised Code or is not coordinated with the plans of adjoining districts, the commission shall, by issuance of such an order within that sixty-day period, refuse to concur with the plan and direct the committee to submit a modified plan that complies with those requirements within a reasonable time, not exceeding sixty days, after issuance of the order.

(C) Each committee shall conduct an exercise of its plan at least annually. The committee shall notify the commission at least thirty days before each such exercise, and the commission shall observe each such exercise. The commission shall review each such exercise in accordance with the rules adopted under division (B)(2)(b) of section 3750.02 of the Revised Code and shall either concur with the conduct of the exercise or direct the committee to make modifications in the exercise of the plan in accordance with those rules.

If the commission finds that the committee's exercise of its plan complies with the criteria established in rules adopted under division (B)(2)(b) of section 3750.02 of the Revised Code, the commission shall issue an order in accordance with section 3750.18 of the Revised Code concurring with the conduct of the exercise. If the commission finds that the committee's exercise of its plan does not comply with those criteria, the commission shall, by issuance of such an order, refuse to concur with the conduct of the exercise and direct the committee to make modifications in the exercise of the plan that comply with those rules.

Each committee shall annually, or more frequently if changed circumstances in the district or at any facility in the district so require, review the plan of the district. The review shall include, without limitation, an evaluation of the need for funds, personnel, training, equipment, and facilities to develop, revise, implement, and exercise the plan and recommendations and requests to the commission regarding any additional funds that may be needed for those purposes and the means for providing them.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Prohibition: 3750.17

Chemical emergency response plans, exercises, definitions, issuance of orders, OAC 3750-20-70 to 3750-20-84

#### LIBRARY REFERENCES

##### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Hardy, Ohio Environmental Law, Text 5.02(A)

#### 3750.05 Applicability; facility representatives; notice of applicability; provision of information; agricultural producer exemption

(A) Each facility that has an extremely hazardous substance present in an amount that exceeds the threshold planning quantity for the substance established by rules adopted under division (B)(1)(a) or (C)(5) of section 3750.02 of the Revised Code is subject to this section and section 3750.04 of the Revised Code. Upon the written request of the local emergency planning committee of the emergency planning district in which a facility is located, the emergency response commission may, by issuance of an order in accordance with section 3750.18 of the Revised Code, designate an additional facility as being subject to the requirements of this section and section 3750.04 of the Revised Code if the commission determines from the request that, due to the size of the facility, the nature of its operations, or its proximity to a residential area or an area where significant numbers of people work or congregate, participation in the emergency planning process under this section and section 3750.04 of the Revised Code is necessary or appropriate to protect the public health or safety or the environment. At least forty-five days before issuance of such an order the commission shall mail written notice to the owner or operator of the facility by certified mail, return receipt requested, and shall notify the public, by the publication of notice in a newspaper of general circulation in the county where the facility is located, of the commission's intention to approve the request and to issue the order and that the public may submit written comments to the commission regarding approval of the request during that time. The commission shall not issue any such order unless at least sixty per cent of the voting members of the commission vote to approve the request and issuance of the order. Designations under this division shall be made on the basis of individual facilities rather than on a categorical basis.

(B) Within thirty days after the committee of a district is appointed under section 3750.03 of the Revised Code, the owner or operator of any facility located in the district and identified under division (A) of this section shall select a facility representative and provide the name of the representative to the committee. The facility representative is the person who will participate in the district's emergency planning process as the facility emergency coordinator. If the owner or operator changes its facility emergency coordinator, the owner or operator shall promptly provide the name of the new facility emergency coordinator to the committee.

If an extremely hazardous substance first becomes present at a facility on or after the effective date of this section in an amount that exceeds the threshold planning quantity established for the substance in rules adopted under division (B)(1)(a) of section 3750.02 of the Revised Code, or if, after rules have been adopted under division (C)(5) of section 3750.02 of the Revised Code, an extremely hazardous substance becomes present at a facility in an amount that exceeds the threshold planning quantity for the extremely hazardous substance, the owner or operator of

the facility shall notify the emergency response commission and the local emergency planning committee of the emergency planning district in which the facility is located that the facility is subject to this section and section 3750.04 of the Revised Code within sixty days after first acquiring the substance. If rules are adopted under division (C)(5) of section 3750.02 of the Revised Code, or if rules adopted under division (B)(1)(a) or (C)(5) of that section are amended, and a facility has present an extremely hazardous substance in an amount exceeding the threshold planning quantity for the extremely hazardous substance established in those rules or amended rules, the owner or operator of the facility shall notify the commission and the local emergency planning committee of the emergency planning district in which the facility is located that the facility is subject to this section and section 3750.04 of the Revised Code within sixty days after adoption or amendment of the rules. If the owner or operator had not previously been required to select a facility emergency coordinator under this division, he shall select one and provide his name to the committee within sixty days after first acquiring the extremely hazardous substance or within sixty days after adoption or amendment of the rule, as appropriate.

(C) Upon the request of the committee having jurisdiction, the owner or operator of a facility identified in division (A) of this section shall promptly provide to the committee the information necessary for developing and implementing the chemical emergency response and preparedness plan for the district.

(D) An agricultural producer who has complied with section 302 of the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1730, 42 U.S.C.A. 11002, and divisions (B) and (C) of this section is not subject to the requirements of sections 3750.07 and 3750.08 of the Revised Code nor to the payment of filing fees under division (A) of section 3750.13 of the Revised Code with respect to his agricultural production activities.

(E) No owner or operator of a facility shall fail to comply with this section or an order issued under division (A) of this section.

HISTORY: 1988 S 367, eff. 12-14-88

#### UNCODIFIED LAW

1988 S 367, § 5, eff. 12-14-88, reads, in part: (A) Notification of the local emergency planning committee of the emergency response district in which a facility is located of the name of the facility emergency coordinator in compliance with subparagraph (d)(1) of section 303 of the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1731, 42 U.S.C.A. 11003, constitutes compliance with division (B) of section 3750.05 of the Revised Code.

#### CROSS REFERENCES

Prohibition: 3750.17

Facilities subject to emergency planning requirements, OAC 3750.20-01, 3750.20-05  
Facilities subject to hazardous chemical reporting requirements, OAC 3750.30-01

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Hardy, Ohio Environmental Law, Text 5.02(B), 5.07(B)(D)

#### 3750.06 Required notices

(A) The owner or operator of a facility where a hazardous chemical is produced, used, or stored and from which a release of an extremely hazardous substance or hazardous substance occurs in an amount equal to or exceeding the reportable quantity prescribed in rules adopted under division (B)(1)(c) or (C)(5) of section 3750.02 of the Revised Code shall provide the notices required by divisions (C) and (D) of this section. The owner or operator of any facility from which a release of oil occurs in an amount equal to or exceeding the reportable quantity prescribed in rules adopted under division (B)(3) of section 3750.02 of the Revised Code shall provide the notices required by divisions (C) and (D) of this section.

(B) The owner or operator of a vessel from which a release of a hazardous substance or an extremely hazardous substance occurs in an amount equal to or exceeding the reportable quantity prescribed in rules adopted under division (B)(1)(c) or (C)(5) of section 3750.02 of the Revised Code, or from which a release of oil occurs in an amount equal to or exceeding the reportable quantity prescribed in rules adopted under division (B)(3) of section 3750.02 of the Revised Code, shall provide the notices required by divisions (C) and (D) of this section, except that those notices need be provided to only the director of environmental protection or his designated representative. Upon receiving a verbal emergency notice under this division, the director or his representative shall immediately notify the community emergency coordinator of the emergency planning district in which the release occurred of the release. Upon receipt of a written follow-up emergency notice or revised written follow-up emergency notice under division (D) of this section, the director or his representative shall immediately send a copy of it to that community emergency coordinator.

(C) Except as provided in division (E) of this section, if any release described in division (A) or (B) of this section occurs, the owner or operator of the facility or vessel from which the release occurred shall immediately notify verbally, by telephone, radio, or in person, the community emergency coordinator of each emergency planning district that contains an area likely to be affected by the release, the fire department having jurisdiction where the release occurred, and the director of environmental protection or his designated representative. The verbal notification shall be given within thirty minutes after a person at the facility or aboard the vessel has knowledge of the release, unless notification within that time is impracticable under the circumstances. To the extent known at the time notice is given and that response to the release will not be delayed, the notice shall include all of the following information:

- (1) The location of the release;
- (2) The chemical name or identity of any substance involved in the release and whether the substance is an extremely hazardous substance;
- (3) An estimate of the quantity of any substance released into the environment;
- (4) The time and duration of the release;
- (5) The environmental medium or media into which the substance was released;
- (6) Any known or anticipated acute or chronic health risks associated with the release and, if known to the informant, advice regarding medical attention necessary for individuals exposed to the substance released;
- (7) Proper precautions to take as a result of the release, including evacuation and other proposed response actions, unless that information is readily available to the commu-



nity emergency coordinator pursuant to the plan of the district prepared under section 3750.04 of the Revised Code:

(8) The name and telephone number of the person or persons to be contacted for further information;

(9) Such other information as may be required by rules adopted under division (B)(1)(f) of section 3750.02 of the Revised Code.

(D) As soon as practicable but not later than thirty days after the release, the owner or operator of a facility or vessel from which a release described in division (A) or (B) of this section occurred shall submit to the committee of the district in which the release occurred and to the director or his designated representative a written, follow-up emergency notice of the release setting forth and updating the information provided in the verbal notice given under division (C) of this section and including all of the following additional information:

(1) Actions taken to respond to and contain the release;

(2) Any known or anticipated acute or chronic health risks associated with the release;

(3) Where appropriate, advice regarding medical attention necessary for individuals exposed to the substance released;

(4) A summary of all actions taken by the owner or operator to prevent a recurrence of the release. Any information submitted pursuant to division (D)(4) of this section is subject to Evidence Rule 407.

(5) Such other information as is required by rules adopted under division (B)(1)(f) of section 3750.02 of the Revised Code.

If significant additional information about a release becomes known during the period between submission of the written report required by this division and one year after the release, the owner or operator shall submit to the committee and the director or his authorized representative an updated written notice within three days after learning the additional information.

(E) This section does not apply to any release of an extremely hazardous substance, hazardous substance, or oil from a facility that results in exposure to persons solely within the site or sites on which the facility is located.

(F) No person shall fail to provide any verbal or written release notification or to update a written release notification required by this section and by rules adopted under division (B)(1)(f) of section 3750.02 of the Revised Code.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Penalty: 3750.99(A)  
Prohibition: 3750.17

Emergency release notification, OAC Ch 3750-25

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Baldwin's Ohio Township Law, Text 75.131  
Hardy, Ohio Environmental Law, Text 5.02(B), 5.07(B)(E)

#### LAW REVIEW COMMENTARIES

3 Health L J of Ohio 113 (May/June 1992), Oil Spill Reporting Requirements, David L. Yausky.

#### 3750.07 List of hazardous chemicals: material safety data sheet

(A) Except as otherwise authorized in division (E) of this section, any person who owns or operates a facility and is required to prepare or have available a material safety data sheet for a hazardous chemical under the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended, and regulations adopted under it shall, within thirty days after the effective date of this section, submit to the local emergency planning committee of the emergency planning district in which the facility is located, the emergency response commission, and the fire department having jurisdiction over the facility, a list of any hazardous chemicals that are produced, used, or stored at the facility in an amount that equals or exceeds the threshold quantity applicable to the hazardous chemical established by rules adopted under division (B)(1)(b) of section 3750.02 of the Revised Code. The hazardous chemicals shall be grouped together on any such list by the categories of health and physical hazards prescribed in rules adopted under that division. The list shall include all of the following:

(1) A listing of the hazardous chemicals in the manner prescribed by rules adopted under division (B)(1)(d) of section 3750.02 of the Revised Code including chemical abstract service numbers and alphabetical groupings of the chemicals;

(2) The chemical name or common name of each such chemical and any hazardous component thereof;

(3) Any hazardous component of each hazardous chemical on the list that comprises more than one per cent by weight of the hazardous chemical or, if the hazardous component is a carcinogen, comprises more than one-tenth of one per cent by weight of the hazardous chemical;

(4) For each hazardous chemical, an indication as to whether the owner or operator chooses to withhold information about it from disclosure as a trade secret and, if so, whether the owner or operator has filed a claim with the administrator of the United States environmental protection agency for protection of that information as a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or with the commission pursuant to rules adopted under division (B)(5) of that section, as appropriate;

(5) Any other information required by rules adopted under division (B)(1)(d) of section 3750.02 of the Revised Code.

(B) The owner or operator of a facility may meet the requirements of division (A) of this section for a hazardous chemical that consists of a mixture of hazardous chemicals by doing either of the following:

(1) Providing the information required by division (A) of this section for each component in the mixture that is a hazardous chemical. If the owner or operator reports on this basis, the quantity of each hazardous chemical in the mixture shall be determined by multiplying by the weight of the mixture the concentration of the hazardous chemical in the mixture that comprises more than one per cent of the mixture by weight or, if the chemical is a carcinogen, more than one-tenth of one per cent by weight.

(2) Providing the information required by division (A) of this section on the mixture itself, provided that the owner's or operator's reporting of mixtures on this basis is consistent with his reporting of mixtures under section 3750.08 of the Revised Code. If the owner or operator reports on this basis, the total quantity of the mixture shall be reported.

(C) Upon the request of the committee of the district in which a facility is located or the commission, the owner or operator of a facility subject to this section shall, within thirty days after receiving the request, submit to the committee or commission the material safety data sheet for any hazardous chemical on the list submitted by the owner or operator under division (A), (D), or (E) of this section. Upon the request of any person, a committee shall make available to that person the material safety data sheet for any hazardous chemical identified in a list submitted to the committee under division (A), (D), or (E) of this section. If the committee does not have the requested material safety data sheet, it shall request the sheet from the owner or operator of the facility who listed the chemical for which the sheet was requested. The owner or operator shall submit the sheet to the commission or committee within thirty days after receiving the commission's or committee's request. Upon receiving the sheet, the committee shall make it available to the person who requested it. When making material safety data sheets available to persons requesting them, the committee shall protect from disclosure trade secret information that is subject to protection under division (B)(14) of section 3750.02 of the Revised Code and rules adopted under divisions (B)(1)(i) and (B)(2)(d) of that section.

(D) Except as otherwise authorized in division (E) of this section, within three months after the discovery of new information about a hazardous chemical identified in the list required by division (A) of this section, within three months after obtaining a hazardous chemical for which reporting is required by division (A) of this section, or within three months after adoption of a rule under division (C)(5) of section 3750.02 of the Revised Code identifying or listing an additional hazardous chemical which is produced, used, or stored at his facility in an amount equal to or exceeding the threshold quantity for the hazardous chemical established by those rules, the owner or operator of a facility shall prepare and submit to the commission and to the committee and fire department having jurisdiction over the facility a revised list that meets the requirements of that division and contains the new information. If the owner or operator submits a revised list due to discovery of new information about a hazardous chemical on the current list for which the committee or the commission had requested a material safety data sheet, the owner or operator shall also submit a revised material safety data sheet to the committee or commission, as appropriate.

(E) The owner or operator of any facility at which no more than ten hazardous chemicals are produced, used, or stored in an amount that exceeds the threshold quantity applicable to the hazardous chemical established by rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code may submit to the commission and the committee and fire department having jurisdiction over the facility the material safety data sheets applicable to those chemicals instead of the list required under division (A) of this section. If an owner or operator who submitted material safety data sheets under this division discovers new information about a hazardous chemical for which a material safety data sheet was so submitted, he shall submit a revised material safety data sheet for the hazardous chemical to the commission, committee, and fire department within three months after discovery of the new information. If an owner or operator who has submitted material safety data sheets for nine or fewer hazardous chemicals under this division obtains a hazardous chemical for which reporting is required under division (A) of this section or, pursuant to division (D) of this section, is first

required to report a hazardous chemical identified or listed by rules adopted under division (C)(5) of section 3750.02 of the Revised Code, he shall submit a material safety data sheet for it to the commission, committee, and fire department within three months after obtaining the hazardous chemical or adoption of the rule identifying or listing the hazardous chemical. If an owner or operator who has submitted material safety data sheets for ten hazardous chemicals under this division obtains a hazardous chemical for which reporting is required under division (A) of this section or is first required under division (D) of this section, he shall, within three months after obtaining the hazardous chemical or adoption of the rule identifying or listing the hazardous chemical, prepare and submit a list containing the information required in that division for all of the hazardous chemicals stored, handled, or processed at the facility for which reporting is required under that division.

(F) No owner or operator of a facility where a hazardous chemical is stored, handled, or processed in an amount that exceeds the threshold quantity for the hazardous chemical established in rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code shall fail to:

(1) Submit either the list of hazardous chemicals required to be submitted and containing the information required by division (A) of this section or to submit material safety data sheets for the hazardous chemicals in compliance with division (E) of this section;

(2) Comply with a request to provide a material safety data sheet as required by division (B) of this section;

(3) Submit either a revised list of hazardous chemicals or a revised material safety data sheet as required by division (D) of this section or to submit a list, material safety data sheet, or revised material safety data sheet in compliance with division (E) of this section.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Prohibition: 3750.17

List or material safety data sheets (MSDS) reporting requirements for subject facilities, OAC 3750-30-15

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Baldwin's Ohio Township Law, Text 75.131  
Hardy, Ohio Environmental Law, Text 5.03(A)(C), 5.07(C)

#### 3750.08 Emergency and hazardous chemical inventory form

(A) Each owner or operator of a facility who is required to prepare or have available a material safety data sheet for a hazardous chemical under the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended, and regulations adopted under it, or who is required to submit a list under division (A), (D), or (E), or is authorized to submit material safety data sheets instead of that list under division (E), of section 3750.07 of the Revised Code and who had present at the facility during the preceding calendar year an amount of a hazardous chemical exceeding the applicable threshold quantity established by rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code, shall annually by the first day

of March submit to the local emergency planning committee of the emergency planning district in which the facility is located, the emergency response commission, and the fire department having jurisdiction over the facility an emergency and hazardous chemical inventory form containing tier I information as prescribed in divisions (A)(1) to (4) of this section. The owner or operator may instead submit an inventory form containing tier II information as prescribed in divisions (B)(1) to (7) of this section for any hazardous chemical present at the facility. If the commission, committee, or fire department having jurisdiction over a facility has requested under division (B) of this section that the owner or operator of a facility submit an inventory form containing tier II information as prescribed in that division, the owner or operator shall by the first day of March of each year subsequent to that request submit to the commission, committee, and fire department an inventory form containing tier II information as prescribed in divisions (B)(1) to (7) of this section instead of an inventory form containing the tier I information prescribed in this division, until such time as the commission authorizes the owner or operator to resume the annual submission of an inventory form containing tier I information. An owner or operator who has been so required to annually submit an inventory form containing tier II information may, at any time, request the commission to authorize the owner or operator to resume annual submission of an inventory form containing tier I information.

The emergency and hazardous chemical inventory form shall include as tier I information all of the following information with respect to each hazardous chemical that was present at the facility during the preceding calendar year in an amount exceeding the applicable threshold quantity:

(1) An estimate of the maximum amount in pounds of the hazardous chemicals in each category established in rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code that were present at the facility at any time during the preceding calendar year. The estimate for each such category shall be provided in the appropriate reporting range established by those rules.

(2) An estimate of the average daily amount in pounds of the hazardous chemicals in each such category that were present at the facility during the preceding calendar year. The estimate for each such category shall be provided in the appropriate reporting range established by those rules.

(3) The general location at the facility of hazardous chemicals in each category;

(4) Any other information required by rules adopted under division (B)(1)(e) of section 3750.02 of the Revised Code.

(B) Upon the request of the commission or the committee or fire department having jurisdiction over the facility, the owner or operator of a facility that is subject to this section shall submit an emergency and hazardous chemical inventory form containing tier II information as prescribed in divisions (B)(1) to (7) of this section within thirty days after receiving the request.

An emergency and hazardous chemical inventory form shall include as tier II information the following additional information for each hazardous chemical that was present at the facility during the preceding calendar year in an amount exceeding the applicable threshold quantity:

(1) The chemical name or common name of the hazardous chemical as provided on the material safety data sheet and its chemical abstract service number;

(2) An estimate of the maximum amount in pounds of the hazardous chemical that was present at the facility at any time during the preceding calendar year. The estimate

shall be provided in the appropriate reporting range established by rules adopted under division (B)(1)(b) of section 3750.02 of the Revised Code.

(3) An estimate in pounds of the average daily amount of the hazardous chemical that was present at the facility during the preceding calendar year. The estimate shall be provided in the appropriate reporting range established by those rules.

(4) A brief description of the manner of storage of the hazardous chemical;

(5) The location at the facility of the hazardous chemical;

(6) An indication as to whether the owner or operator chooses to withhold information about the hazardous chemical from disclosure as a trade secret and, if so, whether he has filed a claim with the administrator of the United States environmental protection agency for protection of that information as a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or with the commission pursuant to rules adopted under division (B)(5) of that section, as appropriate;

(7) Any other information required by rules adopted under division (B)(1)(e) of section 3750.02 of the Revised Code.

If the commission has not prescribed emergency and hazardous chemical inventory forms, the owner or operator shall submit the information required by divisions (A)(1) to (4) or (B)(1) to (7) of this section to the commission by letter.

(C) No owner or operator of a facility where a hazardous chemical is produced, used, or stored in an amount that exceeds the threshold quantity for the chemical established in rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code shall fail to submit:

(1) An emergency and hazardous chemical inventory form containing tier I information as required by division (A) of this section;

(2) An emergency and hazardous chemical inventory form containing tier II information in compliance with division (B) of this section when requested to do so under that division or when required to do so under division (A) of this section.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Prohibition: 3750.17

Emergency and hazardous chemical inventory form, OAC 3750-30-20

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Hardy, Ohio Environmental Law, Text 5.01, 5.03(C), 5.07(C)

#### 3750.09 Protection of trade secrets

(A) Except as otherwise provided in division (E) of this section, any person who is required to provide information to the emergency response commission, the local emergency planning committee of the emergency planning district in which a facility owned or operated by the person is located, or the fire department having jurisdiction over the facility, under the reporting requirements in sections



3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code or the rules adopted under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code, may withhold from submission to the commission, committee, fire department, or any other person the specific chemical identity, including the chemical name and other specific identification, of an extremely hazardous substance or hazardous chemical identified or listed by rules adopted under division (B)(1)(a) or (b) of section 3750.02 of the Revised Code on the grounds that the information constitutes a trade secret if either of the following conditions is met:

(1)(a) At the time of submitting the information sought to be classified as a trade secret, the owner or operator of the facility submits a claim for protection of that information as a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code and submits a copy of the required report that indicates that such a claim has been filed and contains the generic class or category of the chemical identity in place of the specific chemical identity and that is accompanied by a copy of the substantiation supporting the trade secret claim that was submitted to the administrator of the United States environmental protection agency. The owner or operator may withhold from the copy of the substantiation submitted to the commission, committee, or fire department the specific chemical identity claimed to be a trade secret and information identified as confidential business information in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code.

(b) A determination of the claim remains pending pursuant to those rules.

(2) It has been determined pursuant to those rules that a trade secret exists.

(B) Except as otherwise provided in division (E) of this section, any person who is required to provide information to the commission, the local emergency planning committee of the emergency planning district in which a facility owned or operated by the person is located, or the fire department having jurisdiction over the facility, under the reporting requirements in section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code or the rules adopted under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code may withhold from submission to the committee, fire department, or any other person the specific chemical identity, including the chemical name or other specific identification, of an extremely hazardous substance or hazardous chemical identified or listed in rules adopted under division (C)(5) of section 3750.02 of the Revised Code on the grounds that the information constitutes a trade secret if either of the following conditions is met:

(1)(a) At the time of submitting the information sought to be classified as a trade secret, the owner or operator of the facility submits a claim to the commission for protection of that information as a trade secret pursuant to rules adopted under division (B)(5) of section 3750.02 of the Revised Code along with the report that the owner or operator is required to submit to the commission and submits to the committee or fire department a copy of the required report that indicates that such a claim has been filed with the commission and that contains the generic class or category of the chemical identity in place of the specific chemical identity and that is accompanied by a copy of the substantiation supporting the trade secret claim that was submitted to the commission. The owner may withhold from the copy of the substantiation submitted to the committee or fire department the specific chemical identity claimed to be a trade secret and information identified as

confidential business information in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code.

(b) A determination of the claim remains pending pursuant to those rules and division (B)(14) of that section.

(2) It has been determined pursuant to those rules and division (B)(14) of that section that a trade secret exists.

(C) No person shall withhold the specific identity of a chemical on the grounds that it is a trade secret:

(1) From any report enumerated in division (A) or (B) of this section, if it has been determined pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code, or pursuant to division (B)(14) and rules adopted under division (B)(5) of that section, that no trade secret exists;

(2) In any notification of a release required by section 3750.06 of the Revised Code;

(3) When required to provide the specific chemical identity to a health professional, physician, or nurse pursuant to division (E) of this section.

(D) The governor may, pursuant to section 322 of the "Emergency Planning and Community Right-to-Know Act of 1986," 100 Stat. 1747, 42 U.S.C.A. 11042, request the administrator of the United States environmental protection agency to provide specific chemical identities that are claimed or have been determined to be trade secret information or the substantiations, explanations, or supplemental information supporting trade secret protection claims submitted to or determined by the administrator pursuant to that section and rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code regarding facilities located in this state that are subject to this chapter. The governor shall not make available to any member of the commission or committee who is not also an officer or employee of the state or a political subdivision any information claimed or determined to be a trade secret or confidential business information obtained under this division or pursuant to rules adopted under division (B)(5) of section 3750.02 of the Revised Code. Any trade secret and confidential business information obtained under this division or pursuant to rules adopted under division (B)(5) of that section shall be protected from unauthorized disclosure in accordance with rules adopted under division (B)(1)(i) of that section.

(E)(1) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised Code shall provide the specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any health professional who submits to the owner or operator a written request and statement of need for the specific chemical identity. The written statement of need shall be a statement of the health professional that he has a reasonable basis to believe that all of the following conditions pertain to the request:

(a) The information is needed for purposes of diagnosis or treatment of an individual;

(b) The individual being diagnosed or treated has been exposed to the chemical concerned;

(c) Knowledge of the specific chemical identity of the chemical will assist in diagnosis and treatment.

An owner or operator to whom such a written request and statement of need is submitted shall provide the requested information to the health professional promptly after receiving the request and statement of need, subject to division (E)(4) of this section.

(2) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised Code shall provide a copy of a material safety data sheet or emergency and hazardous chemical inventory form that contains the



specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any treating physician or nurse who requests that information if the physician or nurse determines that all of the following conditions pertain to the request:

- (a) A medical emergency exists;
- (b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first aid diagnosis or treatment;
- (c) The individual being diagnosed or treated has been exposed to the chemical concerned.

The owner or operator shall provide the requested information to the physician or nurse immediately upon receiving such a request. The owner or operator shall not require any such treating physician or nurse to provide a written confidentiality agreement or statement of need as a precondition for disclosure of a specific chemical identity under this division; however, the owner or operator may require the treating physician or nurse to provide a written confidentiality agreement under division (E)(4) of this section and a statement setting forth the conditions listed in divisions (E)(2)(a) to (c) of this section as soon after the request is made as circumstances permit.

(3) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised Code shall provide the specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any health professional, including, without limitation, a physician, toxicologist, or epidemiologist, who is either employed by or under contract with a political subdivision and who submits to the owner or operator a written request for the information, a written statement of need for the information that meets the requirements of division (E)(3) of this section, and a written confidentiality agreement under division (E)(4) of this section. The owner or operator shall promptly after receipt of the written request, statement of need, and confidentiality agreement provide the requested information to the local health professional who requested it.

The written statement of need for a specific chemical identity required by division (E)(3) of this section shall describe with reasonable detail one or more of the following health needs for the information:

- (a) To assess exposure of persons living in a local community to the hazards of the chemical concerned;
- (b) To conduct or assess sampling to determine exposure levels of various population groups to the chemical concerned;
- (c) To conduct periodic medical surveillance of population groups exposed to the chemical concerned;
- (d) To provide medical treatment to individuals or population groups exposed to the chemical concerned;
- (e) To conduct studies to determine the health effects of exposure to the chemical concerned;
- (f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(4) Any person who obtains information under division (E)(1) or (3) of this section shall, as a precondition for receiving that information, enter into a written confidentiality agreement with the owner or operator of the facility from whom the information was requested that the person will not use the information for any purpose other than the health needs asserted in the statement of need provided thereunder, except as otherwise may be authorized by the terms of the agreement or by the person providing the information.

(F)(1) A member of the commission, officer or employee of the environmental protection agency, member or employee of a committee, or officer or employee of a fire department shall not request the owner or operator of a facility subject to this chapter to submit to him a trade secret claim or copy thereof; report required by section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code; substantiation of a trade secret claim or copy thereof or explanation or supporting information pertaining to a trade secret claim or copy thereof, that contains any information claimed or determined to be a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or identified as confidential business information by rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code. If any such member, officer, or employee knows or has reason to believe that any such trade secret claim, report, substantiation, or explanation or supporting information pertaining to a trade secret claim contains any such information, he shall immediately return it to the owner or operator of the facility who submitted it without reading it and shall request the owner or operator to submit the appropriate report or substantiation that does not contain the information claimed or determined to be a trade secret or so identified as confidential business information.

(2) A member of the commission who is not also an employee of the state or a political subdivision, member or employee of a committee, or officer or employee of a fire department shall not request the owner or operator of a facility subject to this chapter to submit to him a trade secret claim or copy thereof; report required by section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code; substantiation of a trade secret claim; or explanation or supporting information pertaining to a trade secret claim or copy thereof, that contains any information claimed or determined to be a trade secret pursuant to division (B)(14) of section 3750.02 of the Revised Code and rules adopted under division (B)(5) of that section or any information identified as confidential business information by rules adopted under division (B)(1)(h) of that section that pertains to such a claim. If any such member, officer, or employee knows or has reason to believe that any such trade secret claim, report, substantiation, or explanation or supporting information pertaining to any such trade secret claim contains any such information, he shall immediately return it to the owner or operator of the facility who submitted it without reading it and shall request the owner or operator to submit the appropriate report or substantiation that does not contain the information so claimed or determined to be a trade secret or so identified as confidential business information.

(G) No member of the commission or his designee, officer or employee of the environmental protection agency, member or employee of a committee, health professional, physician, nurse, or other person who receives information claimed or determined to be a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or pursuant to division (B)(14) of that section and rules adopted under division (B)(5) of that section, or who receives confidential business information identified in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code shall release the information to any person not authorized to have that information under division (C) of this section or rules adopted under division (B)(1)(i) of that section. Vio-

lation of this division is not also a violation of section 1331.51<sup>1</sup> of the Revised Code.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Penalty: 3750.99(B)

Prohibition: 3750.17

Trade secrets, OAC Ch 3750-60

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Baldwin's Ohio Township Law, Text 75.131

### 3750.10 Access to information

(A) Any person who seeks to review or obtain copies of information submitted to the emergency response commission or a local emergency planning committee under this chapter and rules adopted under it shall submit a written application to the information coordinator of the commission or committee in accordance with the policies and procedures in rules adopted under division (B)(2)(c) of section 3750.02 of the Revised Code. Upon submission of a completed application, the information coordinator shall provide the applicant access to or copies of the information requested, or shall perform the requested computer search and provide the applicant with the information obtained from it, in accordance with those policies and procedures, subject to the restrictions under division (B)(5) of this section on the release of information on emergency and hazardous chemical inventory forms submitted under section 3750.08 of the Revised Code that is designated as tier II information and to the restrictions on the disclosure of trade secret and confidential business information established in rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code.

(B)(1) Upon receiving the written request of an officer or employee of the state or a political subdivision acting in his official capacity, the commission or committee shall make available to the officer or employee an emergency and hazardous chemical inventory form that contains tier II information. If the commission or committee does not have the requested inventory form containing that information, it shall request the owner or operator of the facility to submit one. The owner or operator of the facility shall submit the requested inventory form to the commission or committee within thirty days after receiving the request to submit it. Upon receipt of the requested inventory form, the commission or committee shall provide it to the public officer or employee who requested it, subject to the restrictions on the disclosure of trade secret and confidential business information established in rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code.

(2) Upon receiving an application from any person to review or obtain a copy of an emergency and hazardous chemical inventory form containing tier II information that is in the possession of the commission or committee, the commission or committee shall provide the applicant access to review the form or obtain a copy of it in accordance with the policies and procedures established in rules

adopted under division (B)(2)(c) of section 3750.02 of the Revised Code, subject to the restrictions under division (B)(5) of this section on the release of information on emergency and hazardous chemical inventory forms designated as tier II information and to the restrictions on the disclosure of trade secret and confidential business information established in rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code.

(3) If the commission or committee does not have the requested inventory form containing tier II information and if the requested inventory form pertains to a hazardous chemical that was present at the facility in an amount equal to or exceeding ten thousand pounds at any time during the preceding calendar year, the commission or committee shall request the owner or operator of the facility to submit an emergency and hazardous chemical inventory form containing tier II information regarding the hazardous chemical. The owner or operator of the facility shall submit the requested inventory form to the commission or committee within thirty days after receiving the request to submit it. Upon receiving the requested inventory form, the commission or committee shall provide access to review it or a copy of it to the applicant in accordance with the policies and procedures established in rules adopted under division (B)(2)(c) of section 3750.02 of the Revised Code, subject to the restrictions under division (B)(5) of this section on the release of information on emergency and hazardous chemical inventory forms designated as tier II information and to the restrictions on the disclosure of trade secret and confidential business information established in rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code.

(4) If the commission or committee does not have the requested inventory form containing tier II information and if the requested inventory form pertains to a hazardous chemical that was present at the facility in an amount less than ten thousand pounds at any time during the preceding calendar year, the person's application for access to review or obtain a copy of the inventory form shall contain the person's statement of general need for the information, in addition to the other information required on the application form. If the commission or committee finds that the applicant's statement of general need for the information constitutes a valid need for it under rules adopted pursuant to division (B)(1)(g) of section 3750.02 of the Revised Code, the commission or committee shall request the owner or operator of the facility to submit an inventory form that contains tier II information pertaining to the hazardous chemical. The owner or operator of the facility shall submit the requested inventory form to the commission or committee within thirty days after receiving the request to submit it. Upon receiving the requested inventory form, the commission or committee shall provide access to review it or a copy of it to the applicant in accordance with the policies and procedures established in rules adopted under division (B)(2)(c) of section 3750.02 of the Revised Code, subject to the restrictions on the release of tier II information in division (B)(5) of this section and to the restrictions on the disclosure of trade secret and confidential business information established in rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code.

(5) The owner or operator of a facility may request in writing that the storage location of a hazardous chemical at a facility provided on an emergency and hazardous chemical inventory form containing tier II information submitted under this section or section 3750.08 of the Revised Code

<sup>1</sup>So in original; should this read "1333.51"?

not be disclosed to any person who is not an officer or employee of the state or a political subdivision acting in his official capacity. If the owner or operator of a facility has submitted such a request to the commission or a committee, the commission or committee shall not disclose information concerning the specific storage location of the hazardous chemical at the facility to any person who is not an officer or employee of the state or a political subdivision acting in his official capacity.

(C) No owner or operator of a facility where a hazardous chemical is stored, handled, or processed in an amount that exceeds the threshold quantity for the hazardous chemical established in rules adopted under division (B)(1)(b) or (C)(5) of section 3750.02 of the Revised Code shall fail to submit an emergency and hazardous chemical inventory form containing tier II information in compliance with division (A) or (B) of this section when requested to do so under either of those divisions.

**HISTORY:** 1988 S 367, eff. 12-14-88

**Prohibition:** 3750.17

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Hardy, Ohio Environmental Law, Text 5.03(C)

### 3750.11 Enforcement of local rules; emergency response lock box units

(A) Except as provided in division (E) of this section, no local emergency planning committee shall enforce any resolution, rule, or requirement for the reporting or providing of the names or amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at facilities under the jurisdiction of the committee; for the reporting or providing of information regarding locations where those substances or chemicals are stored at those facilities; or for the reporting of releases of extremely hazardous substances, hazardous substances, or oil, that is not consistent with and equivalent in scope, content, and coverage to the reporting and hazard communication provisions of this chapter and rules adopted under it, unless the committee first obtains a variance from the emergency response commission under division (B) of this section.

(B) A committee shall, prior to commencing enforcement of any such requirement, submit a copy of it to the commission along with an application for a variance from division (A) of this section in accordance with rules adopted under division (B)(2)(e) of section 3750.02 of the Revised Code. On or before the date that the committee submits the variance application to the commission, the committee shall mail by certified mail, return receipt requested, notice of the application and a summary of the reporting requirement to the owner or operator of each facility within the emergency planning district that the committee determines would be subject to the reporting requirement. If the commission finds that the resolution, rule, or requirement meets the criteria for issuance of a variance established in those rules, it shall approve the application and issue an order granting the variance in accordance with section 3750.18 of the Revised Code. The commission shall not issue any order approving a variance application unless at least sixty per cent of the voting members of the commission vote to approve the application and

issuance of the order. If less than sixty per cent of the voting members of the commission vote to approve a variance application, the commission shall issue an order denying the variance.

(C) Except as provided in division (G) of this section, no political subdivision shall enforce any ordinance, resolution, rule, or requirement adopted on or after the effective date of this section, or any amendment adopted on or after the effective date of this section to any such ordinance, resolution, rule, or requirement that was in effect on the effective date of this section, for the reporting or providing of the names or amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored, at facilities within the political subdivision; for the reporting or providing of information regarding locations where those substances or chemicals are stored at those facilities; or for the reporting of releases of those extremely hazardous substances, hazardous substances, or oil that is not consistent with, equivalent to, and no more stringent than the reporting and hazard communication requirements of this chapter and rules adopted under it, unless the political subdivision first obtains a variance under this division.

A political subdivision that seeks to obtain a variance under this division shall submit a copy of the ordinance, resolution, rule, or requirement to the committee of the district in which the political subdivision is located along with an application for a variance in accordance with rules adopted under division (B)(2)(e) of section 3750.02 of the Revised Code. On or before the date that the political subdivision submits the variance application to the committee, the political subdivision shall mail by certified mail, return receipt requested, notice of the application and a summary of the reporting requirement to the owner or operator of each facility within the political subdivision that the political subdivision determines would be subject to the reporting requirement. If, in the opinion of the committee, the ordinance, resolution, rule, or requirement of the political subdivision meets the criteria for issuance of a variance established in those rules and does not conflict with any resolution, rule, or requirement adopted by the committee, the committee shall, by resolution, approve issuance of the variance and send a copy of its resolution, of the political subdivision's variance application, and of the ordinance, resolution, rule or requirement, to the commission. The committee shall not approve issuance of a variance under this division unless at least sixty per cent of the voting members of the committee vote to approve it. If the commission finds that the committee has approved issuance of a variance and that the ordinance, resolution, rule, or requirement of the political subdivision meets the criteria for issuance of a variance established in those rules, it shall approve the application and issue an order in accordance with section 3750.18 of the Revised Code granting the variance. The commission shall not issue any order approving a variance application unless at least sixty per cent of the voting members of the commission vote to approve the application and issuance of an order granting the variance. If less than sixty per cent of the voting members of the commission vote to approve a variance application, the commission shall issue an order denying the variance.

This division does not affect the validity or enforceability of any such ordinance, resolution, rule, or requirement of a political subdivision adopted prior to the effective date of this section. However, this division applies to any amendment to any such ordinance, resolution, rule, or requirement, which amendment is adopted on or after the effective date of this section and establishes a reporting requirement that is not consistent with, equivalent to, and



no more stringent than the reporting and hazard communication requirements of this chapter and rules adopted under it.

(D) No political subdivision shall enforce any ordinance, resolution, rule, or requirement adopted on or after the effective date of this chapter requiring the placement of emergency response lock box units at any facility where an extremely hazardous substance, hazardous chemical, or hazardous substance is produced, used, or stored. The fire department of a political subdivision having jurisdiction over a facility and the owner or operator of such a facility may enter into an agreement under which the owner or operator will place and maintain an emergency response lock box unit at his facility in compliance with rules adopted under division (B)(6) of section 3750.02 of the Revised Code. If the fire department of a political subdivision and an owner or operator of such a facility are unable to enter into such an agreement and if the fire department believes that placement of a lock box unit at the facility is necessary to protect public health and safety and the environment or to protect emergency management personnel responding to a release of any such substance or chemical from the facility, the fire department, in accordance with rules adopted under division (B)(2)(f) of section 3750.02 of the Revised Code, may submit an application to the committee of the district in which the facility is located for issuance of an order requiring the owner or operator to place a lock box unit at his facility that complies with the rules adopted under division (B)(6) of section 3750.02 of the Revised Code. On or before the date that the fire department submits the application for issuance of such an order, the fire department shall mail by certified mail, return receipt requested, notice of the application to the owner or operator of the facility for which issuance of the order is sought. If, in the opinion of the committee, the application meets the criteria for issuance of such an order established in the rules adopted under division (B)(2)(f) of that section, the committee shall, by resolution, approve issuance of the order and send a copy of its resolution and the fire department's application to the commission. The committee shall not approve an application for issuance of such an order unless at least sixty per cent of the voting members of the committee vote to approve it. If the commission finds that the committee has approved the application and that the application meets the criteria for issuance of such an order established in rules adopted under division (B)(2)(f) of that section, it shall approve the application and issue an order in accordance with section 3750.18 of the Revised Code requiring the owner or operator to place one or more emergency response lock box units at his facility in accordance with the approved application and rules adopted under division (B)(6) of that section. The commission shall not approve an application for issuance of such an order unless at least sixty per cent of the voting members of the commission vote to approve the application and issuance of the order. If less than sixty per cent of the voting members of the commission vote to approve the application, the commission shall issue an order denying the application. No person shall violate an order issued under this division.

(E) A committee may, by resolution, adopt rules requiring the placarding of bulk hazardous chemical storage areas within its district in accordance with rules adopted by the fire marshal under section 3750.12 of the Revised Code and rules establishing such procedures as are necessary to implement and enforce that requirement. The rules may exempt the owner or operator of a facility who, with the approval of the committee, installs and maintains an emergency lock box unit that complies with the rules adopted

under division (B)(6) of section 3750.02 of the Revised Code from compliance with requirements for placarding of bulk hazardous chemical storage areas. As used in this division, "bulk hazardous chemical storage area" has the same meaning as in division (D) of section 3750.12 of the Revised Code. No person shall violate a rule adopted under this division.

(F) Except as provided in division (G) of this section, this section shall not be construed to authorize a political subdivision, other than a municipal corporation or county that has adopted a charter in accordance with Sections 3 and 4 of Article X, Ohio Constitution, to adopt or enforce any ordinance, resolution, rule, or requirement for the reporting or providing of the names or amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at facilities located within their boundaries; for the reporting or providing of information regarding locations where those substances or chemicals are stored at those facilities; or for the reporting of releases of extremely hazardous substances, hazardous substances, or oil. Nothing in this section or division (E)(5) of section 3750.03 of the Revised Code shall be construed to authorize a local emergency planning committee, municipal corporation, or charter county to enforce any ordinance, resolution, rule, or requirement that identifies or lists as an extremely hazardous substance any substance that is not so identified or listed in rules adopted under division (B)(1)(a) or (C)(5) of section 3750.02 of the Revised Code, that identifies as a hazardous chemical any chemical, other than a chemical identified in division (G)(3) of section 3750.01 of the Revised Code, that is not so identified or listed in rules adopted under division (B)(1)(b) or (C)(5) of that section, or that identifies as a hazardous substance any substance that is not so identified in rules adopted under division (B)(1)(c) or (C)(5) of that section.

(G) A political subdivision that owns, operates, or is served by a public water system as defined in section 6109.01 of the Revised Code may establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for its public water system and that are located within scientifically derived wellhead protection areas.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Prohibition: 3750.17

Toxic chemical release, enforcement of local rules, 3751.06

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—L<sup>2</sup>C Analysis, p 5-1017

#### 3750.12 Fire marshal: rules governing labelling at bulk storage areas

The fire marshal, after consultation with the emergency response commission, shall adopt rules in accordance with Chapter 119, of the Revised Code establishing standards governing the placement of placards or labels containing specified information at bulk storage areas of hazardous chemicals for the purposes of division (E) of section 3750.11 of the Revised Code. The rules shall, without limitation, do all of the following:



(A) Establish standards that are consistent with those established for this purpose by the national fire protection association or with other nationally recognized standards and stipulate that the owner or operator of a facility may, at his discretion, utilize the system of placarding or labeling established by the national fire protection association;

(B) Provide that if more than one hazardous chemical is present at a bulk storage area, a placard or label concerning only the chemical that is the most hazardous as determined under this chapter and rules adopted under it need be placed at the area;

(C) Stipulate that the information that may be contained on placards or labels is subject to the restrictions on the release of trade secret information and confidential business information under this chapter and rules adopted under it;

(D) Stipulate that any facility whose primary function is to offer a hazardous chemical for retail sale directly to the consumer is not subject to any placarding or labeling requirement established by a local emergency planning committee under division (E) of section 3750.11 of the Revised Code, provided that the facility is one commonly recognized by the general public as a retail sales facility for hazardous chemicals.

As used in this section, "bulk storage area" means any area at which at least ten thousand gallons of a hazardous chemical in liquid form or at least fifty thousand pounds of a hazardous chemical in solid form are stored. The term does not include process vessels.

HISTORY: 1988 S 367, eff. 12-14-88

Prohibition: 3750.17

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

#### 3750.13 Filing fees

(A)(1) Except as provided in division (A)(3) or (4) of this section, the owner or operator of a facility required to annually file an emergency and hazardous chemical inventory form under section 3750.08 of the Revised Code shall submit with the inventory form a filing fee of one hundred dollars. In addition to the filing fee, the owner or operator shall submit with the inventory form the following additional fees for reporting inventories of the individual hazardous chemicals and extremely hazardous substances produced, used, or stored at the facility:

(a) Except as provided in division (A)(1)(b) of this section, an additional fee of ten dollars per hazardous chemical enumerated on the inventory form in excess of five;

(b) An additional fee of fifty dollars per extremely hazardous substance enumerated on the inventory form. The fee established in division (A)(1)(a) of this section does not apply to the reporting of the inventory of a hazardous chemical that is also an extremely hazardous substance to which the inventory reporting fee established in division (A)(1)(b) of this section applies.

The total fees required to accompany any inventory form shall not exceed twenty-five hundred dollars.

(2) An owner or operator of a facility who fails to submit such an inventory form within thirty days after the applicable filing date prescribed in section 3750.08 of the

Revised Code shall submit with the inventory form a late filing fee of fifteen per cent of the total fees due under division (A)(1) or (4) of this section, in addition to the fees due under division (A)(1) or (4) of this section. The late filing fee shall be compounded every three months until the total fees due under division (A)(1) or (4) of this section are submitted to the emergency response commission.

(3) The owner or operator of a facility who, during the preceding year, was required to pay a fee to a municipal corporation pursuant to an ordinance, rule, or requirement that was in effect on the effective date of this section for the reporting or providing of the names or amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at the facility may claim a credit against the fees due under division (A)(1) or (4) of this section for the fees paid to the municipal corporation pursuant to its reporting requirement. The amount of the credit claimed in any reporting year shall not exceed the amount of the fees due under division (A)(1) or (4) of this section during that reporting year, and no unused portion of the credit shall be carried over to subsequent years. In order to claim a credit under this division, the owner or operator shall submit with the emergency and hazardous chemical inventory form a receipt issued by the municipal corporation or other documentation acceptable to the commission indicating the amount of the fee paid to the municipal corporation and the date on which the fee was paid.

(4) An owner or operator who submits inventory forms for not more than thirty-five facilities that meet all of the following conditions shall submit with the forms a flat fee of twenty-five dollars:

(a) The facility exclusively stores crude oil or liquid hydrocarbons or other fluids resulting, obtained, or produced in connection with the production or storage of crude oil or natural gas.

(b) The crude oil, liquid hydrocarbons, or other fluids stored at the facility are conveyed directly to it through piping or tubing.

(c) The facility is located on the same site as, or on a site adjacent to, the well from which the crude oil, liquid hydrocarbons, or other fluids are produced or obtained.

(d) The facility is used for the storage of the crude oil, liquid hydrocarbons, or other fluids prior to their transportation off the premises of the facility for sale, use, or disposal.

An owner or operator who submits inventory forms for more than thirty-five facilities that meet all of the conditions prescribed in divisions (A)(4)(a) to (d) of this section shall submit to the commission a base fee of twenty-five dollars in addition to a filing fee of ten dollars for each facility reported in excess of thirty-five, but not exceeding a total fee of seven hundred dollars. An owner or operator of such facilities shall submit the forms for all such facilities owned or operated by him in this state to the commission at the same time together with the applicable fee under division (A)(4) of this section.

As used in division (A)(4) of this section, "owner or operator" means the person who actually owns or operates any such facility and any other person who controls, is controlled by, or is under common control with the person who actually owns or operates the facility.

(B) The emergency response commission and the local emergency planning committee of an emergency planning district may establish fees to be paid by persons, other than public officers or employees, obtaining copies of documents or information submitted to the commission or a committee under this chapter. The fees shall be established at a level calculated to defray the costs to the commission

or committee for copying the documents or information but shall not exceed the maximum fees established in rules adopted under division (B)(8) of section 3750.02 of the Revised Code.

(C) Except as provided in this division and division (B) of this section, and except for fees authorized by section 3737.22 of the Revised Code or rules adopted under sections 3737.82 to 3737.882 of the Revised Code and collected exclusively for either of those purposes, no committee or political subdivision shall levy any fee, tax, excise, or other charge to carry out the purposes of this chapter. A committee may charge the actual costs involved in accessing any computerized data base established by the commission under this chapter or by the United States environmental protection agency under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001.

(D) Moneys collected by the commission under this section shall be credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code.

HISTORY: 1991 H 298, eff. 7-26-91  
1989 H 421; 1988 S 76, S 367

#### CROSS REFERENCES

Prohibition: 3750.17

Annual inventory filing fees and form, OAC 3750-50-01

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Hardy, Ohio Environmental Law, Text 5.07(D)

### 3750.14 Emergency planning and community right-to-know fund

(A) There is hereby created in the state treasury the emergency planning and community right-to-know fund. Moneys received by the emergency response commission under section 3750.13 of the Revised Code and civil penalties imposed under division (B) of section 3750.20 of the Revised Code shall be credited to the fund until an aggregate amount of five million dollars has been credited to it during a fiscal year. All moneys in excess of five million dollars so received during a fiscal year shall be credited to the emergency response and community right-to-know reserve fund created in section 3750.15 of the Revised Code.

(B) The emergency response commission shall administer the emergency planning and community right-to-know fund. On or before the first day of May of each year, the commission shall allocate moneys in the fund for grants to each of the following entities or classes of entities in the percentages stated:

(1) To the commission, not less than fifteen nor more than twenty-five per cent of the moneys in the fund;

(2) To local emergency planning committees, not less than sixty-five nor more than seventy-five per cent of the moneys in the fund;

(3) To fire departments, not less than five nor more than fifteen per cent of the moneys in the fund.

Moneys credited to the fund under section 3750.13 of the Revised Code from the fees paid by the owner or

operator of a facility who first submitted an emergency and hazardous chemical inventory form for the facility on or before the first day of March of the current year shall not be considered when making allocations under divisions (B)(1), (2), and (3) of this section, but shall be distributed pursuant to division (E) of this section. The allocated moneys shall be distributed at the start of each fiscal year. The commission's decisions on the distribution of moneys from the fund are not appealable.

(C) From the moneys allocated under division (B)(1), (2), or (3) of this section, as appropriate, the commission shall make grants from the fund to the commission, local emergency planning committees, and fire departments for implementation and administration of this chapter and rules adopted under it, including, without limitation, the development and implementation of chemical emergency response and preparedness plans. The commission shall make grants under this division in accordance with rules adopted under division (B)(7) of section 3750.02 of the Revised Code. In making grants to committees and fire departments under this division, the commission shall consider the needs of the emergency planning district or fire department in terms of the minimum amount of money necessary for a committee to prepare or revise, exercise, and review its chemical emergency response and preparedness plan in terms of its minimum requirements for personnel and essential office equipment; the number of facilities in the district or under the jurisdiction of the fire department that are subject to section 3750.05 of the Revised Code; the amounts of extremely hazardous substances produced, used, or stored in the district or territory under the jurisdiction of the fire department; the amounts of hazardous materials transported in or through the district or territory under the jurisdiction of the fire department; and the population within the district or under the jurisdiction of the fire department that resides in close proximity to facilities that are subject to that section and to principal routes for the transportation of hazardous materials identified or listed by regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C.A. 1801, as amended.

Each application for a grant under this division shall be made in accordance with rules adopted under division (B)(7) of section 3750.02 of the Revised Code and shall demonstrate that the grant will enhance the ability of the recipient or, in the case of the commission, the state as a whole to prepare for and respond to releases of hazardous substances and extremely hazardous substances. A fire department shall apply for and receive a grant under this division only through the committee for the emergency planning district in which the fire department is located.

(D)(1) Moneys received by the commission, committees, and fire departments under this section shall not be used to do any of the following:

(a) Acquire first response equipment, except as otherwise provided in division (D)(4) of this section;

(b) Defray costs for copying and mailing hazardous chemical lists, material safety data sheets, or emergency and hazardous chemical inventory forms submitted under this chapter for distribution to the public;

(c) Reimburse any person for expenditures incurred for emergency response and cleanup of a release of oil, a hazardous substance, or an extremely hazardous substance;

(d) Perform any assessment of damages to natural resources resulting from a release of oil, a hazardous substance, or an extremely hazardous substance.

(2) The commission may use moneys in the fund to pay the costs incurred by other state agencies in implementing

and administering the requirements of this chapter and rules adopted under it.

(3) In making a grant under this section to the fire department of a municipal corporation that is collecting a fee pursuant to an ordinance, rule, or requirement for the reporting or providing of the names and amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at facilities in the municipal corporation that was in effect on the effective date of this section, the commission shall first determine the amount of the grant for which the fire department would otherwise be eligible under this section and shall subtract from that amount the total amount of the moneys collected by the municipal corporation during the preceding year pursuant to the reporting requirement, as certified to the commission in the grant application. If that calculation yields a positive remainder, the commission may make a grant to the fire department in that amount. Otherwise, the fire department is not eligible for a grant under this section for that year.

(4) After a committee determines that the initial training needs for emergency management personnel within its emergency planning district set forth in the committee's plan or most recent review of its plan under section 3750.04 of the Revised Code have been met, a committee may make grants from the moneys it receives under this section to fire departments located within the district for the purchase of first response equipment.

(5) During the first three fiscal years commencing after December 14, 1988, political subdivisions within an emergency planning district may apply to the committee of the district for reimbursement of moneys spent and in-kind contributions made by the political subdivision to the committee at any time prior to the committee's receipt of its first grant under this section for performance of the functions of a local emergency planning committee. The committee may make grants from the moneys it receives under this section during those fiscal years to reimburse any portion of the contributions made by a political subdivision to the committee to the extent that the committee considers that moneys are available for that purpose.

(E) In the year in which the owner or operator of a facility who is subject to filing an emergency and hazardous chemical inventory form for the facility first files a form for the facility, the commission shall make a grant to the local emergency planning committee of the emergency planning district in which the facility is located for the total amount of the fees and any penalties collected under division (A)(1), (2), or (4) of section 3750.13 of the Revised Code in that year in connection with the filing of the form for the facility. The amount of the grant provided under this division shall be in addition to any grant provided to the committee under division (C) of this section or division (B) of section 3750.15 of the Revised Code. The amount of a grant to be provided under this division shall not be considered in determining the committee's need for a grant under division (C) of this section or division (B) of section 3750.15 of the Revised Code or in determining the amount of any such grant. If a committee also will receive a grant under division (C) of this section, the grant provided under this division shall accompany that grant. If a committee will not receive a grant under division (C) of this section in a year in which the committee is to receive a grant under this division, the grant under this division shall be made to the committee at the time that the grants under division (C) of this section are distributed. Moneys received by a local committee under this division shall be used for the same

purposes as the grants received under division (C) of this section.

HISTORY: 1991 H 298, eff. 7-26-91  
1988 S 367

#### CROSS REFERENCES

Prohibition: 3750.17

Emergency planning and community right-to-know fund, OAC 3750-50-03  
Grant application for funds in the emergency planning and community right-to-know fund, OAC 3750-50-10  
Reimbursement for emergency planning costs incurred, OAC 3750-50-15

#### LIBRARY REFERENCES

##### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 3-1017  
Baldwin's Ohio Township Law, Text 75.131  
Hardy, Ohio Environmental Law, Text 5.02(A), 5.07(D)

#### 3750.15 Emergency planning and community right-to-know reserve fund

(A) There is hereby created in the state treasury the emergency planning and community right-to-know reserve fund consisting of all moneys credited to it under section 3750.14 of the Revised Code. Fifty per cent of the moneys in the reserve fund shall be used for the grant program under division (B) of this section, and fifty per cent of the moneys shall be held in reserve for the purposes of division (C) of this section. The emergency response commission shall administer the reserve fund.

(B) The commission may make grants from the reserve fund to the commission, local emergency planning committees, and fire departments for the development and implementation of chemical emergency response and preparedness plans, advanced training, data management, performing hazard analysis and vulnerability studies for purposes of developing or revising their plans, and the acquisition of first response equipment. No more than twenty-five per cent of the moneys available for grants in any year shall be available to the commission. A fire department may apply for and receive a grant only through the committee for the local emergency planning district in which the fire department is located. Grants to committees and fire departments for advanced training, data management, performing hazard analysis and vulnerability studies, or the acquisition of first response equipment shall be made only when expenditures for that purpose are identified as being needed in the chemical emergency response and preparedness plan of the district prepared under section 3750.04 of the Revised Code or in the most recent review of the plan conducted under division (C) of that section. The commission shall make grants under this division in accordance with rules adopted under division (B)(7) of section 3750.02 of the Revised Code governing the awarding of those grants.

Each application for a grant under this division shall be made in accordance with rules adopted under division (B)(7) of section 3750.02 of the Revised Code governing applications for grants under this division and shall demonstrate that the grant will enhance the ability of the recipient or, in the case of the commission, the state as a whole to prepare for and respond to releases of hazardous substances



and extremely hazardous substances. All applications for grants from the reserve fund to a committee and to fire departments within the jurisdiction of a committee shall be submitted by the committee to the commission at the same time. Each application from a committee shall demonstrate that expenditures from applicable local revenues for the purpose of preparedness for emergency response to those releases and for administration of the district's emergency response program did not decline during the immediately preceding three years. No grant under this division shall exceed one hundred thousand dollars.

No grant shall be made under this division unless the grantee provides matching funds equal to twenty-five per cent of the amount requested. If two or more committees submit a joint application for a grant to promote cooperative emergency planning and training or to share first response equipment, the matching requirement shall be reduced to ten per cent of the amount requested. The matching funds required by this division may consist of contributions of money by any person or of contributions in kind through the purchase of first response equipment; however, moneys allocated under section 3750.14 of the Revised Code shall not be used to provide any of the matching funds required by this division.

Grant moneys awarded to the commission under this division may be expended, by contract, to support the participation of any state agency in chemical emergency response planning and training or to acquire first response equipment for any state agency whose needs have been identified in the state emergency response plan prepared under division (B)(13) of section 3750.02 of the Revised Code. The state agency receiving moneys from the commission shall provide the required matching funds from moneys available to the agency, other than those received under division (D)(2) of section 3750.14 of the Revised Code.

Grant moneys awarded under this division shall not be used to do either of the following:

- (1) Reimburse any person for expenditures incurred for emergency response and cleanup of a release of oil, a hazardous substance, or an extremely hazardous substance;
- (2) Perform any assessment of damages to natural resources resulting from a release of oil, a hazardous substance, or an extremely hazardous substance.

(C) If in any fiscal year less than five million dollars is credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code, the director of budget and management, upon the certification of the commission, may transfer up to fifty per cent of the moneys in the reserve fund to that fund. The director shall transfer only such amounts of the reserve fund to the fund as are necessary to ensure that all budgetary requirements of the fund are met, provided that expenditures from the fund shall not exceed five million dollars during any fiscal year.

HISTORY: 1991 H 298, eff. 7-26-91  
1988 S 367

#### CROSS REFERENCES

Prohibition: 3750.17

Emergency planning and community right-to-know reserve fund, OAC 3750-50-20

Emergency planning and community right-to-know reserve fund, grant application, OAC 3750-50-25

#### LIBRARY REFERENCES

##### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Baldwin's Ohio Township Law, Text 75.131

#### 3750.16 Entry upon private property for inspection or investigation

The director of environmental protection or his designated representative, a member of the emergency response commission who is also an officer or employee of the state or a political subdivision, a member of the local emergency planning committee of the emergency planning district having territorial jurisdiction who is also an officer or employee of the state or a political subdivision, or the designated representative of the fire department having territorial jurisdiction, 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 or investigate, obtain samples, and examine or copy any records to determine compliance with this chapter and rules adopted and orders issued under it. The director, commission, committee, or fire department, or a designated representative of any of them, may apply for and any judge of a court of record may issue 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 within the court's territorial jurisdiction, provided that the designated representative of the commission or committee shall also be an officer or employee of the state or a political subdivision.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Prohibition: 3750.17

Public water systems, entry upon private or public property by EPA to inspect or investigate, 6109.34

#### LIBRARY REFERENCES

##### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

#### 3750.17 Prohibitions

(A) No person shall violate any section of this chapter or a rule adopted or order issued under it.

(B) No person shall falsify, tamper with, or render inaccurate any information or records required to be submitted under any section of this chapter, a rule adopted under it, or an order issued under it. Violation of this division is not also a violation of division (C) of this section and is not falsification under section 2921.13 of the Revised Code.

(C) No person who is required to submit information under this chapter, a rule adopted under it, or an order issued under it shall submit any information that is inaccurate or misleading. It is an affirmative defense in any civil action or civil penalty action brought under section 3750.20 of the Revised Code for an alleged violation of this division that the submission of the inaccurate or misleading information resulted from a good faith error that occurred not-



withstanding the maintenance of procedures that were adopted by the owner or operator to avoid such an error.

(D) No person shall influence, intimidate, harass, or retaliate by any means or method against the director of environmental protection or an officer or employee of the environmental protection agency, a member or employee of the emergency response commission or a local emergency planning committee, an officer or employee of a fire department, an emergency responder, or an officer or employee of this state or a political subdivision, so as to hinder or attempt to hinder him from carrying out his duties under this chapter and rules adopted under it. Violation of this division is not intimidation under section 2921.03 of the Revised Code.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Penalty: 3750.20(B), 3750.99(C)(D)

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

### 3750.18 Orders

The executive committee of the emergency response commission may issue orders requiring the owner or operator of a facility or other responsible person at a facility to abate a violation of any section of this chapter or a rule adopted under it, and orders requiring a local emergency planning committee or fire department to comply with this chapter or rules adopted under it.

Enforcement orders issued under this section and other orders issued by the commission under this chapter shall be issued in accordance with procedures established by the commission by rules adopted under division (B)(2)(g) of section 3750.02 of the Revised Code. Issuance of an enforcement order under this section is not a condition precedent to bringing a criminal, civil, or civil penalty action under section 3750.20 of the Revised Code.

HISTORY: 1988 S 367, eff. 12-14-88

#### CROSS REFERENCES

Penalty: 3750.20(B), 3750.99(A)

Disclosure of trade secret information, OAC 3750-60-93

Executive committee, issuance of orders, OAC 3750-10-07

Orders issued by the commission; appeal from commission's determination of the sufficiency of trade secrecy claim; appeal from determination of the validity of trade secrecy claim, OAC 3750-60-80, 3750-60-83, 3750-60-85

Plan and exercise reviews, exercise orders, OAC 3750-20-74, 3750-20-81, 3750-20-82

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Hardy, Ohio Environmental Law, Text 5.07(E)

### 3750.19 Environmental board of review; appeals

The environmental board of review created in section 3745.02 of the Revised Code has exclusive original jurisdiction over any matter that may be brought before it under Chapter 3745, of the Revised Code or this chapter. For purposes of this section, the terms "any person," "act," and "action" have the same meanings as in section 3745.04 of the Revised Code.

Any person who has been aggrieved or adversely affected by an act or action of the commission or the executive committee of the commission may appeal to the environmental board of review seeking an order vacating or modifying the act or action or requiring the commission or executive committee to perform an act or action. The person appealing to the board shall be known as the appellant and the commission or executive committee and any party substantially supporting the finding of the commission shall be known as an appellee. The appeal shall be in the form of a notice of appeal and shall set forth the action complained of and the grounds upon which the appeal is based. The appeal shall be filed with the board within thirty days after notice of the act or action. Notice of the filing of the appeal shall be filed with the commission or executive committee within three days after the appeal is filed with the board. Within fourteen days after receipt of the notice of appeal, the commission or executive committee shall prepare and certify to the board a record of proceedings out of which the appeal arises, including all documents. The setting of a hearing, the conduct of the hearing, the availability of a stay, the board's decision-making process, and all other procedures of the board that are established in Chapter 3745, of the Revised Code and are not inconsistent with this chapter shall govern hearings under this section. For purposes of hearings held under this chapter or Chapter 3745, of the Revised Code, the board may employ hearing examiners to conduct hearings and may create a record by stenographic means or by the use of audio electronic recording devices, as it determines.

Notwithstanding any provision of Chapter 119, or 3745, of the Revised Code, no adjudication hearing shall be held by the commission or executive committee prior to any act or action under this chapter. All appeals of acts or actions by the commission shall be heard in a hearing de novo before the board. Appeals from orders of the board shall be conducted in accordance with section 3745.06 of the Revised Code.

HISTORY: 1988 S 367, eff. 12-14-88

Disclosure of trade secret information, OAC 3750-60-93

Orders issued by the commission; appeal from commission's determination of the sufficiency of trade secrecy claim; appeal from determination of the validity of trade secrecy claim, OAC 3750-60-80, 3750-60-83, 3750-60-85

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Hardy, Ohio Environmental Law, Text 13.01, 13.03(B)(C)

### 3750.20 Civil actions; injunctive relief; investigations; penalties

(A) The attorney general, the prosecuting attorney of the county, or the city director of law of the city where a violation has occurred or is occurring, upon the written request of the executive committee of the emergency

response commission, the local emergency planning committee, or the fire department having jurisdiction where the violation has occurred or is occurring, shall prosecute to termination or bring an action for injunction against any person who has violated or is violating any section of this chapter or rules adopted or orders issued under it. 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 any section of this chapter or a rule adopted or order issued under it. The court shall give precedence to such an action over all other cases.

Upon the certified written request of any person, the director of environmental protection shall conduct such investigations and make such inquiries as are necessary to secure compliance with this chapter and the rules adopted or orders issued under it. The director or the commission may, upon request or upon their own initiative, investigate or make inquiries into any alleged violation of this chapter or rules adopted or orders issued under it.

(B)(1) Whoever violates section 3750.06 of the Revised Code or an order issued under section 3750.18 of the Revised Code to enforce that section shall pay a civil penalty of not more than twenty-five thousand dollars for each day of violation.

(2) Whoever violates division (B) of section 3750.17 of the Revised Code shall pay a civil penalty of not more than twenty-five thousand dollars for each violation.

(3) Whoever violates section 3750.05, 3750.07, or 3750.08 of the Revised Code, divisions (C)(1) to (3) of section 3750.09 of the Revised Code, division (C) of section 3750.10, a rule adopted under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code, an order issued under section 3750.18 of the Revised Code to secure compliance with any of those sections or rules, division (E)(5) of section 3750.03 of the Revised Code, division (E) of section 3750.11 of the Revised Code, or division (C) of section 3750.17 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each day of violation.

(4) Whoever violates a provision of this chapter or a rule adopted under it for which no civil penalty is otherwise provided shall pay a civil penalty of not more than ten thousand dollars for each day of violation. The attorney general, the prosecuting attorney of the county, or the city director of law of the city where a violation of this chapter or of a rule adopted or order issued under it has occurred or is occurring, upon the written request of the executive committee of the commission, the committee of the emergency planning district, or of the fire department having jurisdiction where the offense has occurred or is occurring, shall bring an action under this division against any person who has committed or is committing any such violation. All civil penalties received under divisions (B)(1) to (4) of this section pursuant to actions brought upon the written request of the executive committee of the emergency response commission shall be credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code. All civil penalties received under those divisions pursuant to actions brought upon the written request of a local emergency planning committee or fire department shall be credited to the special emergency planning fund created in section 3750.03 of the Revised Code of the district in which the violation occurred.

(C) Any action for injunction or civil penalties under division (A) or (B) of this section is a civil action governed by the Rules of Civil Procedure.

HISTORY: 1988 S 367, eff. 12-14-88

Disclosure of trade secret information. OAC 3750-60-93

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017  
Hardy, Ohio Environmental Law, Text 5.07(E)

#### LAW REVIEW COMMENTARIES

1 Environmental L J of Ohio 117 (May/June 1990). Environmental Criminal Enforcement Reaches New High in 1989, J. Michael Marous.

#### 3750.21 Liability for violation of confidentiality of trade secrets

A member of the emergency response commission, officer or employee of the environmental protection agency, member or employee of a local emergency planning committee, officer or employee of a fire department, health professional, physician, nurse, or other person who receives information classified as a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code, information classified as a trade secret pursuant to division (B)(14) of that section, or information identified as confidential business information by rules adopted under division (B)(1)(h) of that section and who violates division (G) of section 3750.09 of the Revised Code or otherwise discloses information classified as a trade secret or identified as confidential business information pursuant to those rules or that division to a person not authorized to have that information under division (D) of section 3750.09 of the Revised Code or rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code, is liable in damages in a civil action to the owner of the trade secret or confidential business information for any injury or loss to person or property sustained by him resulting from the violation or unauthorized disclosure of that information. Any owner of information so classified as a trade secret or identified as confidential business information who, as a result of a violation of division (G) of section 3750.09 of the Revised Code or by disclosure of trade secret or confidential business information to a person not authorized to have it pursuant to division (D) of section 3750.09 of the Revised Code or rules adopted under division (B)(1)(i) of section 3750.02 of the Revised Code, sustains any injury or loss to person or property may bring a civil action for damages and other appropriate relief against the person who violated that division or otherwise disclosed the trade secret or confidential information to a person not so authorized to have it.

In such a civil action, if the plaintiff establishes by a preponderance of the evidence, and if the trier of fact finds, that the defendant violated that division or otherwise disclosed information classified as a trade secret or identified as confidential business information to a person not so authorized to have it, and that the plaintiff sustained injury or loss to person or property as a result of the violation or unauthorized disclosure of the information, the trier of fact may award compensatory damages and such other relief as the trier of fact finds appropriate.

In any civil action under this section the court may award costs and reasonable attorney's fees to the prevailing party.

Liability imposed under this section for a violation of division (G) of section 3750.09 of the Revised Code is in addition to other civil liability, if any, under the Revised Code or common law of this state and in addition to any civil penalty that is imposed for the same violation under section 3750.20 of the Revised Code or any criminal penalty that is imposed for the same violation under section 3750.99 of the Revised Code.

**HISTORY:** 1988 S 367, eff. 12-14-88

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Baldwin's Ohio Township Law, Text 75.131

#### 3750.99 Penalties

(A) Whoever recklessly violates section 3750.06 of the Revised Code or an order issued under section 3750.18 of the Revised Code to enforce that section is guilty of a felony and shall be fined at least ten thousand but not more than twenty-five thousand dollars or imprisoned for at least two but not more than four years, or both. Each day of violation is a separate offense. Upon a second or subsequent conviction for such an offense, the offender shall be fined at least twenty-five thousand but not more than fifty

thousand dollars for each day of violation or imprisoned for at least two but not more than four years, or both.

(B) Whoever purposely violates division (G) of section 3750.09 of the Revised Code shall be fined not more than twenty thousand dollars or imprisoned for not more than one year, or both. Each violation is a separate offense.

(C) Whoever recklessly violates division (B) of section 3750.17 of the Revised Code is guilty of a felony and shall be fined at least ten thousand but not more than twenty-five thousand dollars or imprisoned for at least two but not more than four years, or both. Each violation is a separate offense. Upon a second or subsequent conviction for such an offense, the offender shall be fined at least twenty-five thousand but not more than fifty thousand dollars for each violation or imprisoned for at least two but not more than four years, or both.

(D) Whoever recklessly violates division (D) of section 3750.17 of the Revised Code is guilty of a felony and shall be fined at least ten thousand but not more than twenty-five thousand dollars or imprisoned for at least two but not more than four years, or both. Each violation is a separate offense.

**HISTORY:** 1988 S 367, eff. 12-14-88

Disclosure of trade secret information, OAC 3750-60-93

#### LIBRARY REFERENCES

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Hardy, Ohio Environmental Law, Text 5.07(E)