

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce, Division of State Fire Marshal

Regulation/Package Title: One Call; Hazardous material incident reporting at a shale oil processing premise

Rule Number(s): 1301:7-7-01

Date: September 16, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The regulation mandates that a responsible person (or, if the responsible person is not available, their representative) shall report to the State of Ohio any ‘fire incident at a shale oil processing premises’ or a ‘hazardous material incident at a shale oil processing premises’ by calling a “One-Call” hotline. The rule sets forth the protocol that must be followed; defines “fire incident at a shale oil processing premises” and “hazardous material incident at a shale oil processing premises;” provides the phone number for the “One Call” hotline to which incidents must be reported; and outlines what information must be relayed.

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2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code section 3737.832

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

As a part of a statewide initiative to provide a single point of contact for shale oil related emergencies so appropriate first responders and local authorities can be notified of and respond to shale oil related emergencies in the most expedient manner possible, a “One-Call” hotline has been established. This hotline will provide a single statewide phone number to which incidents can be reported. The dispatch center receiving the calls, operated by the Ohio Department of Natural Resources (ODNR), will then be able to quickly notify or dispatch all appropriate agencies / entities. With regard to shale oil processing premises specifically, the Ohio Department of Commerce, Division of State Fire Marshal (SFM) has sole and exclusive authority to implement fire safety standards. Therefore, the rule is being proposed by the SFM to define when such entities shall report incidents at a shale oil processing premises to the hotline.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The SFM will monitor the use of the One Call system to determine if notification is being made to the hotline and will review statistical data regarding calls received and the responses made thereto. The SFM will also be able to compare data regarding calls to the hotline with data from the Ohio Fire Incident Reporting System (OFIRS) (see #9, below). It is anticipated that there will be enhanced protection of public safety and emergency responders through the use of the hotline. In addition, the hotline will provide a more comprehensive approach to incident resolution and improved notification to and response times from emergency personnel should be measurable.

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Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Initially, the SFM engaged in months of discussions with ODNR and other sister regulatory agencies. Later, the SFM engaged the American Petroleum Institute (API) and the Ohio Oil and Gas Association (OOGA).

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The SFM met, teleconferenced, and/or exchanged correspondence with the API and the OOGA prior to filing the rule with CSI. The SFM worked extensively with these entities to edit and revise the language of the previously filed emergency rule establishing the One-Call hotline. After review of the revised rule, the SFM received positive feedback from both entities. The SFM will also hold a public hearing to further discuss the rule with stakeholders and all interested parties.

Pursuant to discussions with stakeholders, the following changes were made to the language of the permanent rule (as opposed to the emergency rule filed in response to the Governor's Executive Order):

- a) A definition of "emergency responder" was added to include a firefighting agency representative, a fire department representative, and a person performing emergency medical services. Since the contacting of and/or the response by an "emergency responder" in response to a fire incident at a shale oil processing premise can be a triggering event for implementation of the One-Call process, stakeholders sought the inclusion of a definition of such term in the text of the rule. The definition was added.
- b) Originally, the proposed rule was structured in such a way that the One-Call process was to be implemented upon occurrence of a "hazardous material incident at a shale oil processing premise." The definition of a "hazardous material incident at a shale oil processing premise" included a 'fire or explosion' with specified results and an event constituting a violation of the Ohio Fire or Ohio Building Codes that involved either occupancy conditions that impacted life safety or the handling or use of hazardous materials at a shale oil processing premise. Stakeholders were concerned about the triggering events for each category and about both types of events being categorized as a "hazardous material event." The structure of the rule was changed so that "fire incidents at a shale oil processing premise" and "hazardous material incidents at a shale oil

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processing premise” are defined separately and have different triggering events for implementation of the One-Call process.

- c) After the incident types were broken out, the definition of a “fire incident at a shale oil processing premise” was revised. Originally, this type of event was defined to include a fire or incident that resulted in one of four things: 1) the contacting of or response by emergency responders, 2) death or serious physical harm to any person, 3) a substantial risk of death or serious physical harm to any person, and 4) damage to any structure, property, premise or vehicle in an amount over \$1,000. Although the SFM and Stakeholders altered this language many times, ultimately, language regarding conditions 1) and 2) were left in-tact; language regarding condition 3) was deleted in response to Stakeholder concern that the subjective standard would not be readily understandable to industry members and would also result in the One-Call process having to be triggered in response to potential or hypothetical situation rather than situations involving actual harm; language in condition 4) was amended to increase the dollar amount from \$1,000 to \$10,000, and ultimately to \$50,000 in response to industry damage assessments and costs associated with the equipment at these types of facilities. Upon the request of Stakeholders, routine, legal flaring operations (which are frequently conducted at such facilities) were excluded from the definition of a ‘fire incident at a shale oil processing premise’ unless the routine flaring operation results in one of the three conditions for notification (i.e., emergency response, death or serious physical harm, damage in excess of \$50,000).
- d) The definition of “hazardous material incident at a shale oil processing premise” was also refined pursuant to Stakeholder input. After extracting the language regarding actual fire or explosion events and placing it in a separate definition, a “hazardous material incident at a shale oil processing premise” focused on events constituting a violation of the Ohio Fire or Ohio Building Codes that involved either occupancy conditions that impacted life safety or the handling or use of hazardous materials at a shale oil processing premise. Stakeholders were concerned that the inclusion of life safety language was beyond the parameters of the Executive Order and were beyond the scope of the One-Call program. The SFM included the original language because the Ohio Fire Code directly regulates hazardous materials and one of the primary goals of the One-Call process is to provide notification to the State of hazardous material incidents at well pads or downstream sites. The SFM believed it important to include language including both hazardous materials incidents and events affecting a fire protection system for a hazardous material site which resulted in substantial non-compliance with the Ohio Fire Code. After extensive discussions, the reference to life safety systems was removed from the proposed definition. The definition was streamlined to address hazardous material releases in reportable quantities (under other state and federal regulations) that involved releases into, *inter alia*, storm drains, sewers, roadways, or waterways and that could not be remedied within a two-hour period to essentially match existing standard in OAC 1301:7-7-27; OFC Rule 27.

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- e) The initial definition of “shale oil processing premise” included in the proposed rule mirrored that found in Ohio Revised Code (R.C.) 3737.832(A)(3). Stakeholders requested that the relevant R.C. provision be referenced and that a clarifying statement be added to the rule to specifically state that relevant definitions in the rule (including “shale oil processing premise,” natural gas processing facilities,” and “natural gas liquids fractionation facilities”) do not include ‘natural gas compressor stations or other pipeline related natural gas gathering facilities or infrastructure.’ Initially, it was the position of the SFM that fire or explosion incidents or hazardous material incidents at compressor stations should be subject to the One-Call process and state officials should be timely notified so that all proper protocols can be implemented to ensure a quick response which minimizes public exposure to such hazards and to ensure complete remediation. It is further the understanding of the SFM that when relevant R.C. provisions were put in place it was intended that the SFM would have jurisdiction over compressor stations – for purposes of adopting fire safety standards. Industry stakeholders, however, interpret these statutes differently and maintain that while the SFM does have jurisdiction over shale oil processing premises, the definition of shale oil processing premises does not encompass compressor stations. In order to implement the SFM’s One-Call rule, the SFM and industry stakeholders agreed to add the requested language specifically exempting compressor stations from the relevant definitions for purposes of One-Call notification. The parties agreed to engage in further discussions regarding where compressor stations fall within various regulatory schemes, and any necessary safety measures that may need to be implemented regarding compressor stations if, in fact, they are not otherwise subject to appropriate safety and notification measures.
- f) The original language in the proposed rule required reporting of a ‘hazardous material incident at a shale oil processing premise’ to be done immediately, unless such could not be safely done and, in that event, as soon as notification could be done safely. Once the structure of the rule was changed to separate fire or explosion related incidents and hazardous material incidents, the time periods for notification were also amended. The industry was concerned that a subjective “immediate” standard could subject reporting parties to inadvertent violations of reporting requirements based on an interpretation of “immediate” rather than a definitive time-period. The SFM added language to the rule to set forth a finite period of time within which notification must be made regarding fire incidents. Given the nature of such events, the time-frame agreed upon was thirty minutes. However, language was also added, at the request of stakeholders, to provide a period of time for a contractor who might be on-site on behalf of a responsible person to contact the responsible person of the incident and thereafter let the responsible person make the appropriate notification for the facility. Although this essentially allows the notification period regarding fire incidents to potentially be 1 hour, it also provides for notification to

the responsible person of events occurring at their facility in a timely manner. Exceptions to reporting regarding safety were retained.

- g) Regarding notification times for hazardous material related incidents, the industry asked for consideration of spills that could be readily contained and would not need statewide response efforts. Consistent with OAC 1301:7-7-27; OFC Rule 27, the language of the rule was amended to add clarifying language indicating that the One-Call process will not be triggered unless the quantity of material spilled is in a quantity reportable under otherwise existing federal and state regulations. Therefore, a small hazardous material spill in a quantity that is not already reportable, will not trigger the One-Call notification procedures. For quantities that are reportable, notification must be made within 2 hours of when the responsible person becomes aware of the incident. Two hours was chosen to mirror the definitional “if an incident cannot be remedied within 2 hours” and to provide those at the site and/or the responsible person a window of two hours to remedy the situation or to test systems if necessary. If clean-up will not be accomplished within that time-frame (which industry members and experts will be able to determine), the One-Call process must be utilized. Language allowing a 30-minute window for a contractor to contact the responsible person (like that added regarding fire incidents) was also added here at the request of stakeholders. The two-hour time-period was afforded to responsible parties to allow them a period of time to contain and remedy the incidents without notification. However, if the incident cannot be remedied within that two-hour time period, notification must be made. Exceptions to reporting regarding safety were retained.
- h) Initially, the definitional language in the rule simply referenced (where applicable) sections of the R.C. where the definitions already existed. At the request of Stakeholders, the R.C. reference is now followed by the actual definitions contained in the R.C. This was done so that industry members will have all definitions readily available within in the rule language and will not need to be separately accessed.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

As the rule simply requires the reporting of specified information to a centralized dispatching center, no scientific data was used. However, the SFM did base its notification rule on ODNR’s Division of Oil and Gas Resources Management’s (DOGRM) rule. That rule was developed after a review of many laws, regulations and standards set at both the national and state levels. Going forward, the SFM intends to review OFIRS, which is a reporting system used by fire departments to report fires and other incidents to which they respond, including responses to hazardous material incidents. The SFM can utilize the data in OFIRS to compare calls being made to the One Call hotline to ensure that the system is being used and that incidents are being reported correctly.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Consistent with Executive Order 2016-04K, the SFM did not consider regulatory alternatives because the SFM's statutorily mandated method of implementation of rules regarding the subject facilities is through the enactment of rules. Currently, notification is largely voluntary. Without a regulation requiring notification, the SFM – as has been demonstrated in past occurrences – could be notified days after an incident (if notified at all). The proposed regulation requires SFM notification at the time of an incident and provides an opportunity to be proactive. In addition, the proposed rule does not impose a regulatory structure upon shale oil processing premises. It merely requires such facilities to immediately report hazardous material incidents so that an appropriate response can be made.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

A performance-based regulation would not be applicable to the instant regulation. If responsible persons were merely required to report an incident without any specifications regarding who had to be notified or what information had to be provided, reporting persons could technically satisfy the requirement literally by calling anyone. This, of course, would defeat the purpose of the "One-Call" program, which has been designed to ensure that all appropriate responding agencies and entities will be notified of a hazardous situation and will be provided with all appropriate information necessary to ensure that an appropriate response can be made.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

As opposed to ODNR, whose authority ends at a well pad, the SFM has exclusive authority to promulgate the Ohio Fire Code (where the instant rule will be located) and regulations regarding safety standards relating to a shale oil processing premises (which is downstream from the well pad). Current provisions of the OFC (1301:7-7-27(c)(3)(a); OFC Rule 2703.3.1) provide that when hazardous materials are released (in reportable quantities) the fire code official shall be notified. Language was added to the proposed rule to shift this reporting requirement from the local authority the state, i.e., to the One Call Hotline. Therefore, in the event of a reportable incident at a shale oil processing premises, the call to the hotline would be sufficient and responsible persons are not required to also call the local jurisdiction. Therefore, the duplicative regulation has been eliminated.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The “One Call” hotline (1-844-OHCALL1) has already been established and will be administered by ODNR at their 24-hours dispatching center. ODNR has already established notification processes to ensure reported incident information is distributed to other Ohio agencies, including the SFM. Upon notification, the SFM will utilize its own internal processes to provide notification of appropriate SFM personnel. With regard to external implementation of the regulation, the SFM will partner with ODNR and will engage in education efforts so that affected parties will not only know of the existing ‘hotline,’ but will also be informed of their responsibility to report specified incidents. See also response to #18.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community will be all shale oil processing premises owners and operators within the State of Ohio, which includes fractionation plants, of which there are less than half a dozen in the State of Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Any adverse impact is expected to be minimal. There will be no associated licensure / licensure fee. Employer time for compliance should be minimal; this may include the publication of a ‘fact sheet’ type of instrument and/or posting of the “One-Call” hotline number, but such is not mandated in the regulation. There are no fines specifically associated with the regulation; however, the rule will be a part of the Ohio Fire Code (OFC). A violation of the OFC could result in a fine of zero to one thousand dollars; such a fine would only be imposed if a responsible person did not make notification of an incident or did not provide necessary information when making a report as required in the proposed rule. Please note, the rule contemplates situations when notification cannot be safely made under the circumstances and does not require reporting when reporting would be unsafe. No violation would occur (and therefore no fines would be imposed) in that scenario. Likewise, with respect to information that must be provided when a notification is made, the rule states that specified information must be relayed when such “is known or can be reasonable estimated.” There would be no penalty for the failure to report information that was not known and could not be ascertained by the reporting party.

c. Quantify the expected adverse impact from the regulation.

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The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

There is no expected adverse impact from the regulation beyond what could be considered negligible. As compliance with the regulation will only require that a responsible person make notification of a hazardous material incident to a centralized phone number it is anticipated that the costs of compliance will be minimal. In order to comply with other regulations applicable to them (outside of the jurisdiction of the SFM) subject facilities will already have phone equipment on-site; consequently, such will not be a cost associated with the implementation of the SFM’s One-Call process. Once businesses are aware of the One-Call requirements, educate their personnel regarding them, and make the hotline phone number known, there should not be any costs of compliance. The SFM intends to work with its Stakeholders to educate industry members via meetings, a guidance document, and e-mail notifications. These educational efforts will include publication of the One-Call hotline number. Any posting of the phone number is left to the discretion of industry members but should incur only minimal expense such as would be associated with printing out a sheet of paper and posting it in conspicuous locations so it will be readily accessible in the event of a reportable incident. Likewise, the distribution of guidance documents should be minimal as such could be accomplished in digital format, unless the company chose to distribute printed materials. Such is not required by the rule.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Pursuant to and within the parameters of Executive Order 2016-04K, the SFM set out to develop a rule to address notification procedures that could be put into place to help quickly discover and remediate fire and explosion hazards and the release of hazardous substances at shale oil processing premises. The rule developed will streamline state notification requirements by allowing regulated parties to make one single phone call rather than multiple calls to numerous state agencies in the event of a reportable incident. In addition, the hotline will provide a more comprehensive approach to incident resolution and improved notification to and response times from emergency personnel should be measurable. This will increase the efficiency in the notification process and in any necessary remediation efforts since notification will be more timely and clean-up efforts initiated, as a result, more quickly. This will not only help contain possible additional hazards and contaminations, and therefore, costs, but will also more quickly reestablish public safety in the affected and surrounding communities. It is

anticipated that there will also be enhanced protection of public safety and emergency responders through the use of the hotline.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The proposed OFC regulation will be applicable for all shale oil processing premises on an equal basis to ensure that the reporting of hazardous incidents be done. A hazardous material incident can occur equally at any business – small or large – regardless of its size. The purpose of the One Call system is to provide a single point of contact for the coordination of state agency responses to oil and gas related emergencies so it will be possible for all state first responders and subject-matter experts to be notified of a potential incident and respond in the appropriate manner. Relevant state agencies will be able to better respond to emergencies that could affect public safety and the environment if all companies were required to timely and directly notify a single point of contact who can then coordinate statewide notification and response.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties associated with paperwork violations. Nonetheless, the Ohio Revised Code (Rev. Code) provides that a state agency may imposed fines for paperwork violations for first time offenders when “the violation has the potential to cause serious harm to the public interest” or when “the violation presents a direct danger to the public health or safety.” Rev. Code §§ 119.14(C)(1) and (C)(5).

18. What resources are available to assist small businesses with compliance of the regulation?

SFM Code Enforcement inspectors are available to answer questions and discuss relevant code provisions. They can assist affected parties in determining where it might be beneficial to post the “One-Call” hotline phone number, and how best to have reportable information readily available. They can also provide information regarding what constitutes a ‘hazardous material incident.’ In addition, the SFM will work with ODNR to engage in public outreach regarding the One Call hotline and the regulations regarding notification. The intent is to engage industry partners and stakeholders as well as trade associations to distribute guidance documents and to educate those affected by the regulation.