November 10, 2004

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse
Suite 250
Toledo, Ohio 43624-1680

SYLLABUS: 2004-039

1. Pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when a motor vehicle has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

2. Pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when an airplane has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

3. The release notification reporting requirements of R.C. 3750.06(C) and (D) apply to a discharge of oil, hazardous substances, or extremely hazardous substances made directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer.

4. The release notification reporting requirements of R.C. 3750.06(C) and (D) apply to facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

November 10, 2004

OPINION NO. 2004-039

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse
Suite 250
Toledo, Ohio 43624-1680

Dear Prosecutor Bates:

We have received your request for an opinion concerning the powers and duties granted by R.C. Chapter 3750 to the Lucas County Local Emergency Planning Committee (Lucas County LEPC), which operates the countywide local emergency planning district. You have asked the following questions:

1. Does the owner/operator of a tractor-trailer, truck or other motor vehicle that has an accident within Lucas County resulting in the "release" of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances, have to provide the Lucas County LEPC with the thirty minute notification [immediate verbal notice] and thirty day follow-up written report [written follow-up emergency notice] prescribed by Section 3750.06(C) and (D) of the Ohio Revised Code?

   A. Does it matter whether the tractor-trailer/truck/vehicle is <u>registered</u> in another Ohio county, another state or another country, or are all tractor-trailers/trucks/vehicles that have an accident release in Lucas County required to provide the immediate notification to, and file the follow-up report with, the Lucas County LEPC?

   B. Does it matter whether the tractor-trailer/truck/vehicle is "<u>based</u>" in another Ohio county, another state or another country, or are all tractor-trailers/trucks/vehicles that have an accident release in Lucas County required to provide the immediate notification to, and file the follow-up report with, the Lucas County LEPC?

2. Does the owner/operator of an airplane that has an accident within Lucas County resulting in the "release" of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances, have to provide the Lucas County LEPC with the thirty minute notification [immediate verbal notice] and thirty day follow-up written report [written follow-up emergency notice] prescribed by Section 3750.06(C) and (D) of the Ohio Revised Code?

   A. Does it matter whether the airplane is registered in another Ohio county, another state or another country, or are all airplanes that have an accident release in Lucas County required to provide the immediate notification to, and file the follow-up report with, the Lucas County LEPC?

   B. Does it matter whether the airplane is "based" in another Ohio county, another state or another country, or are all airplanes that have an accident release in Lucas County required to provide the immediate notification to, and file the follow-up report with, the Lucas County LEPC?

3. Does the discharge of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances directly into a municipal sanitary sewer or directly into a drain directly connected to a municipal sanitary sewer constitute a "release" triggering the notification and reporting requirements of Section 3750.06(C) and (D) of the Ohio Revised Code?

4. Do the requirements of Section 3750.06(C) and (D) apply to releases by facilities (including motor vehicles, rolling stock and airplanes) owned or operated by the state or its political subdivisions? [*Cf.* Ohio Att'y Gen. Op. 95-019]

Your questions have arisen in connection with efforts of the Lucas County LEPC to enforce the provisions of R.C. Chapter 3750. The Lucas County LEPC has asked your office to seek civil penalties under R.C. 3750.20(B)(1) for violations of the release notification reporting requirements of R.C. 3750.06, and you are asking for assistance in interpreting these requirements. Accordingly, this opinion interprets and applies provisions of state law for purposes of determining when it might be appropriate to seek civil penalties under R.C. 3750.20(B)(1) for violations of the release notification reporting requirements of R.C. 3750.06.[1]

---

[1] R.C. 3750.20(A) requires the Ohio Attorney General, the county prosecuting attorney, or the city law director, upon the request of the executive committee of the State Emergency Response Commission, the local emergency planning committee, or the fire department having jurisdiction of a location in which a violation has occurred or is occurring, to "prosecute to

For the reasons that follow, we have concluded that, pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when a motor vehicle or an airplane has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee

---

termination or bring an action for injunction" for a violation of R.C. Chapter 3750 or rules adopted or orders issued under it. Pursuant to R.C. 3750.20(B)(1), whoever violates the release notification reporting requirements of R.C. 3750.06 "shall pay a civil penalty of not more than twenty-five thousand dollars for each day of violation."

Violations of R.C. 3750.06 may also result in criminal penalties. Under R.C. 3750.99(A), the reckless violation of R.C. 3750.06 is a felony, subject to a fine between ten thousand and twenty-five thousand dollars and imprisonment for two to four years or, upon a second or subsequent conviction, a fine up to fifty thousand dollars, with each day of violation being a separate offense.

With respect to the imposition of civil penalties for violations of the release notification reporting requirements of R.C. 3750.06(C) and (D), the Stark County Court of Common Pleas noted that the amounts of civil penalties authorized indicate that "the legislature deemed it very important that immediate notification be given concerning a spill." *Stark County Local Emergency Planning Comm. v. Kulka Steel & Equip. Co.*, 79 Ohio Misc. 2d 87, 90, 671 N.E.2d 651 (C.P. Stark County 1996). The court went on to state:

> Notwithstanding the maximum penalties that may be imposed for the two violations, which violations continued to the date of trial, the court, as a matter of law, is also required to consider factors such as the seriousness of the offense, the good faith effort or lack of good faith effort on the part of the defendant to comply, the economic benefit to the defendant company as a result of its failure to comply, compliance history of the defendant company, the degree of willfulness and/or negligence on the part of the defendant company, the probability of harm to the environment, and the extent of the potential harm.

Stark County Local Emergency Planning Comm. v. Kulka Steel & Equip. Co., 79 Ohio Misc. 2d at 90-91. *See generally Steeltech, Ltd. v. United States EPA*, 273 F.3d 652, 656 (6th Cir. 2001) (EPCRA is a strict liability statute, intent is not an element, and the ends of the statute are frustrated by every failure to report, regardless of culpability); *Woodcrest Mfg., Inc. v. United States EPA*, 114 F. Supp. 2d 775, 779 (N.D. Ind. 1999) (under EPCRA, "[o]bviously, an unsuspecting company can accumulate enormous fines in a relatively short period of time").

of the local emergency planning district with a written follow-up emergency notice. Further, the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to a discharge of oil, hazardous substances, or extremely hazardous substances made directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer. The release notification reporting requirements of R.C. 3750.06(C) and (D) also apply to facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions.

R.C. Chapter 3750

R.C. Chapter 3750 governs emergency planning in Ohio for situations involving hazardous chemicals, hazardous substances, extremely hazardous substances, and oil.[2] R.C. Chapter 3750 was enacted to implement the federal Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 100 Stat. 1729 (codified as amended at 42 U.S.C.A. § 11001 et seq.), which is Title III of the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), 100 Stat. 1613 (1986) (codified as amended at 42 U.S.C.A. § 9601 et seq.), which in turn is an act to extend and amend the Comprehensive Environmental Responses, Compensation, and Liability Act of 1980 (CERCLA), 94 Stat. 2767 (codified as amended at 42 U.S.C.A. § 9601 et seq.). *See* 1987-1988 Ohio Laws, Part I, 1321 (Sub. S.B. 367, eff. Dec. 14, 1988) (title) (including among purposes: "to establish the Emergency Response Commission and local emergency planning committees and districts to implement, administer, and enforce, in conjunction with the Environmental Protection Agency and local fire departments, the federal 'Emergency Planning and Community Right-To-Know Act of 1986' in this state"); *Ohio Chamber of Commerce v. State Emergency Response Comm'n*, 64 Ohio St. 3d 619, 597 N.E.2d 487 (1992); 1989 Op. Att'y Gen. No. 89-001 at 2-2 n.2. "EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of health-threatening release." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 86 (1998). EPCRA does not preempt state law, and with limited exceptions allows states to impose reporting requirements more stringent than those imposed by federal law. 42 U.S.C.A. § 11041(a) (West 1995); *Ohio Chamber of Commerce v. State Emergency Response Comm'n.*

Under R.C. Chapter 3750, the State Emergency Response Commission is given responsibility for adopting rules to implement provisions of EPCRA, CERCLA, and other federal statutes governing the identification, listing, reporting, and transportation of hazardous matter and the preparation of plans for possible spills or emergencies. *See* R.C. 3750.02(B) (in addition to referring to EPCRA and CERCLA, also referring to the Hazardous Materials Transportation Act, 88 Stat. 2156 (codified as amended at 49 U.S.C.A. § 5101 et seq. and

---

[2] *See* R.C. 3750.01(B) (defining "[e]xtremely hazardous substance"); R.C. 3750.01(G) (defining "[h]azardous chemical"); R.C. 3750.01(H) (defining "[h]azardous substance"); R.C. 3750.01(J) (defining "[o]il"); *see also* R.C. 3750.02(B)(2)(b) (defining "hazardous materials"); 7B Ohio Admin. Code 3750-1-01(P), (U), (W), (AA); 7B Ohio Admin. Code 3750-25-01.

constituting Title I of the Transportation Safety Act of 1974), and the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816 (codified as amended at 33 U.S.C.A. § 1251 et seq.)); 7B Ohio Admin. Code 3750-1-01 (incorporating definitions from SARA); 1995 Op. Att'y Gen. No. 95-019.

In accordance with EPCRA, the State Emergency Response Commission has also been given responsibility for creating emergency planning districts with authority to prepare and implement chemical emergency response and preparedness plans under R.C. Chapter 3750. *See* 42 U.S.C.A. § 11001 (West 1995); R.C. 3750.03(A). The Commission appoints members of a local emergency planning committee (LEPC) to govern each district. R.C. 3750.03(B). An LEPC is responsible for monitoring regulated facilities within the district, preparing a chemical emergency response and preparedness plan, and conducting compliance and enforcement activities. R.C. 3750.03(D)(6); R.C. 3750.04; *Ohio Chamber of Commerce v. State Emergency Response Comm'n.*[3] Each LEPC must appoint a community emergency coordinator, who is responsible for coordinating the development and implementation of the chemical emergency response and preparedness plan and receiving notices of releases, commonly known as spills. R.C. 3750.03(D)(4).

Your questions concern notification and reporting under R.C. 3750.06, which requires generally that, when certain types of releases of oil, hazardous substances, or extremely hazardous substances occur, the owner or operator of the facility[4] or vessel[5] "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." R.C. 3750.06(C). This verbal notification must be given within thirty minutes after a person at the facility has knowledge of the release, unless notification within that time is impracticable under the circumstances. *Id*. The intent is to

---

[3] A local emergency planning committee is authorized to adopt and enforce rules that are more stringent than the reporting and hazard communication requirements under R.C. Chapter 3750 and rules of the State Emergency Response Commission, but only with a variance from the Commission. R.C. 3750.03(E)(5); R.C. 3750.11. We are not aware of any local rules in this instance, and this opinion does not consider any local rules.

[4] R.C. 3750.01(D) defines "[f]acility" to mean "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 [R.C. 3750.06], the term also includes motor vehicles, rolling stock, and aircraft."

[5] The term "[v]essel" is limited to watercraft. *See* R.C. 3750.01(M). Because your questions relate to facilities, rather than vessels, this opinion does not contain a detailed discussion of the provisions pertaining to vessels.

provide notice about the release at the earliest possible moment so that action can be taken to minimize damage. *See Stark County Local Emergency Planning Comm. v. Kulka Steel & Equip. Co.*, 79 Ohio Misc. 2d 87, 90, 671 N.E.2d 651 (C.P. Stark County 1996); *see also Neighbors for a Toxic Free Community v. Vulcan Materials Co.*, 964 F. Supp. 1448, 1450 (D. Colo. 1997); *United States v. Gen. Am. Transp. Corp.*, 367 F. Supp. 1284, 1288 (D. N.J. 1973).

The owner or operator of the facility is required to submit a written follow-up emergency notice of the release "[a]s soon as practicable but not later than thirty days after the release." R.C. 3750.06(D). This written follow-up emergency notice must be submitted to the LEPC of the district in which the release occurred and to the Director of Environmental Protection or his designated representative. It must contain specified information, including a statement of actions taken to respond to and contain the release, a description of any known or anticipated acute or chronic health risks associated with the release, advice regarding any medical attention that may be necessary for individuals exposed to the substance released, and a summary of actions taken to prevent a recurrence of the release. If significant additional information about a release becomes known within the year following the release, the owner or operator must submit an updated written notice. *Id.*; *see also Neighbors for a Toxic Free Community v. Vulcan Materials Co.*, 964 F. Supp. at 1452 (EPCRA imposes "the requirement that the facility owner where the spill occurred provide a specific post-accident, written explanation of what happened so that individuals affected by the spill will know what steps to take to protect themselves").

The immediate verbal notice and written follow-up emergency notice requirements apply to 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 by rule. R.C. 3750.06(A). The immediate verbal notice and written follow-up emergency notice requirements also apply to 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 by rule. *Id.*[6]

Application of notification and reporting requirements of R.C. 3750.06(C) and (D) to motor vehicle accident resulting in the release of oil, hazardous substances, or extremely hazardous substances

Your first question is whether the owner or operator of a tractor-trailer, truck, or other motor vehicle that has an accident within Lucas County resulting in the release of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances must provide the Lucas County LEPC with the immediate verbal notice and written follow-up emergency notice

---

[6] Notification and reporting requirements also apply to the owners and operators of vessels. R.C. 3750.06(B). They do 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." R.C. 3750.06(E).

prescribed by R.C. 3750.06(C) and (D). To answer this question, it is necessary to consider both the provisions of R.C. 3750.06(C) and (D) and the provisions of 7B Ohio Admin. Code 3750-25-25, enacted by the State Emergency Response Commission to implement R.C. 3750.06. The provisions of rule 3750-25-25 do not precisely track the provisions of R.C. 3750.06, and we give careful consideration to the manner in which the provisions of statute and rule may be harmonized.

We consider first the statutory provisions. For purposes of R.C. Chapter 3750, the term "[r]elease" is defined to mean "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of into the environment," including the abandonment or discarding of closed receptacles that contained any oil, hazardous chemical, hazardous substance, or extremely hazardous substance. R.C. 3750.01(L).[7] "Release" thus is broad enough to encompass any spilling, leaking, or discharge resulting from a motor vehicle accident. Further, the term "[f]acility" is expressly defined, for purposes of R.C. 3750.06 to include motor vehicles. R.C. 3750.01(D); *accord* 7B Ohio Admin. Code 3750-1-01(Q); *see* note 4, *supra*.[8]

Under R.C. 3750.06, the owner or operator of a motor vehicle is subject to the immediate verbal notice and written follow-up emergency notice requirements if a hazardous chemical is produced, used, or stored in the facility and a release of an extremely hazardous substance or hazardous substance occurs in an amount equal to or exceeding a reportable quantity, or if a release of oil occurs in an amount equal to or exceeding a reportable quantity.[9] When a release

---

[7] The term "[r]elease" does not include discharges, emissions, injections, or disposals that are in compliance with statutes, rules, permits, licenses, orders, or plans under R.C. Chapter 1509 (oil and gas), 3704 (air pollution control), 3734 (solid and hazardous waste), or 6111 (water pollution control). R.C. 3750.01(L).

[8] Under rules adopted by the State Emergency Response Commission, the release notification reporting requirements of R.C. 3750.06 are not applicable to "[a]ny emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine." 7B Ohio Admin Code 3750-25-01(B)(10).

[9] The phrasing of R.C. 3750.06 indicates that the release of an extremely hazardous substance or hazardous substance is subject to release notification reporting requirements if the release comes from a facility where a hazardous chemical is produced, used, or stored. Under the terms of the statute, the requirements do not apply if the hazardous chemical itself is released, but only if an extremely hazardous substance or hazardous substance is released. R.C. 3750.06(A).

Provisions of rule enacted by the State Emergency Response Commission adopt this reading of the statute. 7B Ohio Admin. Code 3750-25-01(A). However, they indicate that a release of oil is subject to release notification reporting requirements only if it comes from a

resulting from a motor vehicle accident occurs under these circumstances, the owner or operator

---

facility where a hazardous chemical is produced, used, or stored, which does not precisely track the statutory language. *Id.*; *see* Ohio Legislative Service Comm'n, Bill Analysis, Sub. S.B. 367 (As Reported by H. Energy & Environment), 117th Gen. A., at 23 (the bill "requires that the owner or operator of any facility (not just those where a hazardous chemical is produced, used, or stored) provide notice of a release of oil or certain refined petroleum products in an amount that exceeds the reportable quantity for oil"); *see also* 7B Ohio Admin. Code 3750-25-01(C) (release notification reporting requirements of R.C. 3750.06 are required for "oil" as defined in rule 3750-1-01(AA) and set forth in rule 3750-25-25); 7B Ohio Admin. Code 3750-25-25. *See generally Ohio Chamber of Commerce v. State Emergency Response Comm'n*, 64 Ohio St. 3d 619, 597 N.E.2d 487 (1992).

7B Ohio Admin. Code 3750-25-01 states that a facility, as defined in 7B Ohio Admin. Code 3750-1-01(Q), is subject to the release notification reporting requirements of R.C. 3750.06 only if it meets both of the following criteria:

> (1) Where a hazardous chemical is produced, used or stored; and
> (2) From which there is a release of an extremely hazardous substance or hazardous substance or oil in a quantity equal to or exceeding the applicable reportable quantity established under rules 3750-20-30, 3750-20-50, and 3750-25-20 of the Administrative Code.

Under the language of this rule, a release of oil from a motor vehicle accident is subject to notification and reporting requirements only if the facility from which it comes is a facility where a hazardous chemical is produced, used, or stored. 7B Ohio Admin. Code 3750-25-25(A) adopts more narrow language, applying release notification requirements only to the owner or operator of a facility where a hazardous chemical is "stored."

For purposes of this opinion, we read the rules as providing that, when oil is released from a motor vehicle accident in a reportable amount, the release is subject to R.C. 3750.06. *See generally* R.C. 3750.01(G) ("'[h]azardous 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 … "); 29 C.F.R. § 1910.1200(c) (2004) ("*[h]azardous chemical* means any chemical which is a physical hazard or a health hazard"); *see also* R.C. 3750.02(B)(3) (authorizing the State Emergency Response Commission to "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"); 33 U.S.C.A. § 1321 (West 2001) (defining "oil" and "hazardous substance" for purposes of oil and hazardous substance liability under the Federal Water Pollution Control Act, and requiring notice of any prohibited discharge).

is required to provide immediate verbal notice and a written follow-up emergency notice as prescribed by R.C. 3750.06(C) and (D). As discussed above, these statutory provisions state that the immediate verbal notice must be given to the fire department, the Director of Environmental Protection (or designated representative), and the community emergency coordinator of each emergency planning district that contains an area likely to be affected by the release. R.C. 3750.06(C). It appears that, under this language, a reportable release resulting from an accident occurring within Lucas County should be reported to the Lucas County LEPC. Further, the statute provides that a written follow-up emergency notice must be submitted to the Director of Environmental Protection (or designated representative) and the committee of the district in which the release occurred. R.C. 3750.06(D). Again, it appears that the Lucas County LEPC would be an appropriate recipient of the notice.

Somewhat different notice requirements are imposed by rule, however. Rule 3750-25-25 contains a general provision requiring immediate verbal notice to the community emergency coordinator of each LEPC that contains an area likely to be affected by the release, the fire department with jurisdiction where the release occurred, and the Ohio EPA emergency response unit. 7B Ohio Admin. Code 3750-25-25(A)(1)(a). In addition, rule 3750-25-25 also contains language dealing expressly with transportation-related releases, as follows:

> An owner or operator of a facility from which there is a transportation-related release of hazardous substance, extremely hazardous substance or discharge of oil in an amount equal to or exceeding the reportable quantity as set forth under rules 3750-20-50, 3750-20-30, and 3750-25-20 respectfully [sic], of the Administrative Code *shall provide verbal notice within thirty minutes* after a person at the facility has knowledge of the release or discharge *to the Ohio EPA, emergency response unit* at 800-282-9378 or 614-224-0946 *and to the 911 operator*, or in the absence of a 911 emergency telephone number, to the operator. *The Ohio EPA emergency response unit may immediately notify the community emergency coordinator of the emergency planning district in which the release or discharge occurred*. In the event a committee does not exist for the emergency planning district in which the release or discharge occurred, the Ohio EPA emergency response unit may provide notification to the appropriate local emergency response personnel.

7B Ohio Admin. Code 3750-25-25(A)(1)(c) (emphasis added). A transportation-related release is "a release or discharge during transportation, or storage, incidental to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee." *Id.*

Under this provision, the owner or operator of a facility from which there is a transportation-related release of hazardous substance, extremely hazardous substance, or oil in a reportable amount must provide immediate verbal notice to the Ohio EPA emergency response unit and to the 911 operator. There is no requirement that the owner or operator notify an LEPC directly. Rather, the rule gives the Ohio EPA emergency response unit discretion to decide

whether to notify the LEPC, stating that the Ohio EPA emergency response unit "may" immediately notify the community emergency coordinator of the emergency planning district in which the release occurred, or if there is no committee, "may" notify appropriate local emergency response personnel.

Rule 3750-25-25 does not state expressly that, in situations involving transportation, the notice provided in rule 3750-25-25(A)(1)(c) for transportation-related releases takes the place of the notice required by rule 3750-25-25(A)(1)(a) for releases in general, but that is the apparent intent, because both provisions require notice to the Ohio EPA emergency response unit at the same telephone numbers, and to either the fire department or the 911 operator. On its face, the absence of a requirement in the rule that the owner or operator must notify the LEPC directly of a transportation-related release appears to be inconsistent with the provisions of R.C. 3750.06(C).[10] However, this apparent inconsistency can be justified and harmonized by considering the relationship between the Ohio provisions and related provisions of federal law.

As discussed above, R.C. Chapter 3750 was initially enacted to establish the State Emergency Response Commission and local emergency planning committees and districts in order to implement, administer, and enforce EPCRA. R.C. 3750.02(B) directs the Emergency Response Commission to adopt rules "that are *consistent with and equivalent in scope, content, and coverage* to [EPCRA], and applicable regulations adopted under it." R.C. 3750.02(B)(1) (emphasis added); *see Ohio Chamber of Commerce v. State Emergency Response Comm'n*. The rules must accomplish various purposes, including "[e]stablishing procedures for giving verbal notice of release under [R.C. 3750.06] and prescribing the information to be provided in such a notice and in the follow-up written notice required by that section." R.C. 3750.02(B)(1)(f).

EPCRA requires that emergency notice of the release of certain substances be made in specified circumstances by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees (if established) for any area likely to be affected by the release and also to the state

---

[10] The variation in notice requirements reflects practical appreciation of the difficulty of requiring the owner or operator of every facility to be informed of the means for contacting the community emergency coordinator of each local emergency planning district that may be affected by a release from a motor vehicle. When a facility is fixed in a particular location, it is appropriate to require the owner and operator of the facility to know the telephone number of the community emergency coordinator of the local emergency planning district and to call that number in the event of a release. When a motor vehicle is traveling, however, it may be difficult to ensure that each owner and operator is aware of the phone numbers of the community emergency coordinators of the many local districts through which the motor vehicle may travel. Thus, there may be practical reasons for requiring notice to 911 and to a statewide telephone number for the Ohio EPA emergency response unit, and allowing Ohio EPA to determine which other persons need to be notified. *See generally United States v. Messer Oil Corp.*, 391 F. Supp. 557 (W.D. Pa. 1975); note 12, *infra*.

emergency planning commission of any state likely to be affected by the release. 42 U.S.C.A. § 11004(b)(1) (West 1995). EPCRA has specific provisions governing releases during transportation, stating:

> *With respect to transportation* of a substance subject to the requirements of this section, or storage incident to transportation, *the notice requirements of this section with respect to a release shall be satisfied by dialing 911* or, in the absence of a 911 emergency telephone number, calling the operator.

Id. (emphasis added). Similar language appears in 40 C.F.R. § 355.40, which provides, as an exception to general notice requirements, that an owner or operator of a facility from which there is a transportation-related release "may meet the requirements of this section" by calling the 911 operator, or if there is none, the operator, instead of notifying the community emergency coordinator for the LEPC and the state emergency response commission. 40 C.F.R. § 355.04(b)(4)(ii) (2004).[11] Thus, federal law provides that, in the case of a transportation-related release, the requirements for notice of a release may be met by calling 911.[12] It appears that, in adopting rule 3750-25-25(A)(1)(c), the State Emergency Response Commission incorporated elements of the federal provision.[13]

---

[11] The legislation that initially enacted R.C. 3750.06 stated that federal regulations appearing in 40 C.F.R. Part 355 constituted interim rules in Ohio until the State Emergency Response Commission adopted rules required under R.C. 3750.02 for various purposes, including rules under R.C. 3750.02(B)(1)(f) establishing requirements for notification of releases under R.C. 3750.06. *See* 1987-1988 Ohio Laws, Part I, 1321, 1431-32 (Sub. S.B. 367, eff. Dec. 14, 1988) (section 4, uncodified).

[12] The reasoning behind this provision was explained at 52 Fed. Reg. 13385 (Apr. 22, 1987), as follows:

> Owners and operators of transportation facilities under [42 U.S.C.A. § 11004] are allowed to call the 911 emergency number in lieu of calling the State commission and local committee, or in the absence of a 911 number, the operator. The rationale for this separate reporting is that transportation operators on the road may very well not know the telephone numbers of the relevant State and local entities…. Note that if the release is of a CERCLA hazardous substance, a call to the National Response Center is also required. Local committees should consider training all personnel responsible for receiving telephone notice of such a release, so that proper notification procedures will be maintained.

[13] Rule 3750-25-25(A)(1)(c) continues to require notice to the Ohio EPA emergency response unit, as well as the 911 call, even though the federal statute appears to allow the 911 call to substitute for notice to the state emergency planning commission as well as for notice to

Because the State Emergency Response Commission is directed to adopt rules that are "consistent with and equivalent in scope, content, and coverage" to EPCRA, it appears that the Commission acted reasonably in adopting a rule that allows calls to 911 and the Ohio EPA emergency response unit to take the place of direct verbal notice to an LEPC in the case of a transportation-related release. R.C. 3750.02(B)(1); *see also Ohio Chamber of Commerce v. State Emergency Response Comm'n*. Hence, rule 3750-25-25 appears to be a valid rule to be applied as part of the law of Ohio.[14] Rule 3750-25-25, adopted in accordance with R.C. 3750.02(B)(1)(f), thus establishes procedures for giving immediate verbal notice under R.C. 3750.06.

Although rule 3750-25-25 does not require, in the cases of a transportation-related release, that immediate verbal notice be given to the LEPC, *see* 7B Ohio Admin. Code 3750-25-25(A)(1)(c), it does requires that a written follow-up emergency notice be submitted both to Ohio EPA and to the committee of the planning district in which the release occurred, *see* 7B Ohio Admin. Code 3750-25-25(A)(2)(a).[15] Rule 3750-25-25(A)(2)(a) states expressly that the written follow-up emergency notice requirement applies to the owner or operator of a facility from which a release or discharge occurred "who was required to provide verbal notice under paragraph (A)(1) of this rule." Verbal notice under paragraph (A)(1) includes both notice from a

---

the LEPC. *See* 42 U.S.C.A. § 11004(b)(1) (West 1995); 52 Fed. Reg. 13,386 (Apr. 27, 1987); *Neighbors for a Toxic Free Community v. Vulcan Materials Co.*, 964 F. Supp. 1448, 1453 (D. Colo. 1997). The Ohio Supreme Court has found that EPCRA allows the state flexibility and latitude in adopting its regulatory scheme, and that R.C. 3750.02(B)(1) allows the State Emergency Response Commission to adopt rules that are more stringent than federal law. *See Ohio Chamber of Commerce v. State Emergency Response Comm'n*, 64 Ohio St. 3d 619, 597 N.E.2d 487 (1992).

[14] Under Ohio law, a rule that is adopted under a valid grant of authority from the legislature is part of the law of the state, provided that it is not unreasonable or in conflict with provisions of statute or constitution. *See State ex rel. DeBoe v. Industrial Comm'n*, 161 Ohio St. 67, 117 N.E.2d 925 (1954) (syllabus, paragraph 1); *State ex rel. Kildow v. Industrial Comm'n*, 128 Ohio St. 573, 580, 192 N.E. 873 (1934).

[15] We are aware that, with regard to a transportation-related release, immediate verbal notice is made directly to the 911 operator and the Ohio EPA emergency response unit, but is made to the LEPC only at the discretion of Ohio EPA. 7B Ohio Admin. Code 3750-25-25(A)(1)(c). Should Ohio EPA choose not to inform the LEPC, the LEPC might thus receive a follow-up notice as its first official notification of a transportation-related release. Further, as discussed in connection with the immediate verbal notice, the owner or operator will need to determine how to contact the appropriate LEPC. *See* note 10, *supra*. In the case of a written follow-up notice, however, the time constraints will not be so great.

stationary facility under division (A)(1)(a) and notice of a transportation-related release under division (A)(1)(c).[16]

Thus, even though an LEPC might not receive immediate verbal notice of a release, the LEPC of the district in which the release occurred is entitled to a written follow-up emergency notice. *See* R.C. 3750.06(D). This notice serves the purpose of providing the public, especially persons who may have been affected by a release, with information regarding actions taken to respond to the release, actions taken to prevent a recurrence of the release, and steps they may take to protect themselves. *Id*.; *see also Ohio Chamber of Commerce v. State Emergency Response Comm'n*, 64 Ohio St. 3d at 662 (the purpose of EPCRA " is to provide the public with information concerning hazardous chemicals in their communities and to encourage and support emergency planning efforts at state and local levels"); note 1, *supra*.

We conclude, therefore, that pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when a motor vehicle has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

You have asked if it makes a difference whether the motor vehicle is registered or based in another county, another state, or another country. We do not believe that it does. R.C. Chapter 3750 applies to all facilities in the state and, for purposes of the release notification reporting requirements of R.C. 3750.06, expressly includes motor vehicles within its definition of "[f]acility." R.C. 3750.01(D). Therefore, regardless of where a motor vehicle is registered or based, it is included as a facility and is subject to R.C. 3750.06 and rule 3750-25-25 if it is the source of a transportation-related release of a reportable quantity of oil, hazardous substances, or

---

[16] The written follow-up emergency notice must include:

> (vi) Location of the facility from which the release or discharge occurred (street or mailing address);
>
> (vii) Location of the release or discharge (street(s) county, township, city);
>
> (*a*) Longitude and latitude, if known, or distance and direction from the nearest intersection or milepost if transportation related release or discharge.

7B Ohio Admin. Code 3750-25-25(A)(2)(b)(vi) and (vii). The notice thus encompasses information pertinent to a transportation-related release.

extremely hazardous substances within Ohio. Owners or operators of motor vehicles containing reportable quantities of oil, hazardous substances, or extremely hazardous substances are subject to federal laws and have reason to be aware that they may also be subject to state notification requirements in the case of accidents. Further, the notice requirements consistently refer to the LEPC or district in which the release occurs or that is affected by the release, in contrast with a location in which registration or business operations might take place. *See* R.C. 3750.06(C) and (D); 7B Ohio Admin. Code 3750-25-25(A)(1)(a), (A)(1)(c), and (A)(2)(a).

Application of notification and reporting requirements of R.C. 3750.06(C) and (D) to airplane accident resulting in the release of oil, hazardous substances, or extremely hazardous substances

Your second question is whether the owner or operator of an airplane that has an accident within Lucas County resulting in the release of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances must provide the Lucas County LEPC with the immediate verbal notice and written follow-up emergency notice prescribed by R.C. 3750.06(C) and (D). The analysis of a release from an airplane is analogous to the analysis of a release from a motor vehicle set forth above, and the same conclusions are reached.

R.C. 3750.01(D) and 7B Ohio Admin. Code 3750-1-01(Q), which define "facility," include, for purposes of release notification reporting under R.C. 3750.06, both motor vehicles and aircraft. Therefore, the release of oil, hazardous substances, or extremely hazardous substances from an airplane accident is subject to the same provisions of law that govern releases from a motor vehicle accident, and the same analysis applies. *See generally* 52 Fed. Reg. 13386 (Apr. 22, 1987) (under EPCRA, an air carrier should not wait until the airport of destination to report a release but should give notice "to the State(s) likely to be affected by the release as soon as possible after release"). [17]

Based upon the discussion set forth above, we conclude, accordingly, that, pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when an airplane has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

---

[17] Rules adopted by the State Emergency Response Commission provide that the release notification reporting requirements of R.C. 3750.06 are not required for "[a]ny emergency release of aviation fuel from an aircraft that is in compliance with current applicable Federal Aviation Administration guidelines for such releases." 7B Ohio Admin Code 3750-25-01(B)(12).

Application of notification and reporting requirements of R.C. 3750.06(C) and (D) to discharge of oil, hazardous substances, or extremely hazardous substances directly into municipal sanitary sewer or drain

Your third question is whether the discharge of oil, hazardous chemicals, hazardous substances, or extremely hazardous substances directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer constitutes a release that triggers the notification and reporting requirements of R.C. 3750.06(C) and (D). For the reasons discussed below, we conclude that the release notification reporting requirements of R.C. 3750.06(C) and (D) do apply to a discharge of oil, hazardous substances, or extremely hazardous substances made directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer.

Municipal corporations are authorized to establish and operate sewer systems to provide for the health and welfare of their inhabitants. *See* Ohio Const. art. XVIII, § 4; R.C. 729.11; *State ex rel. Bowman v. Bd. of Comm'rs*, 124 Ohio St. 174, 199, 177 N.E. 271 (1931). A municipal sanitary sewer is part of a system established for the treatment of wastewater before it is discharged into waters of the state, and is subject to appropriate regulation. *See* R.C. 6111.01(E) (sewerage system consists of facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment, but does not include plumbing fixtures, building drains and subdrains, building sewers, or building storm sewers); R.C. 6111.01(G) (disposal system is used for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works); R.C. 6111.03(H); R.C. 6111.032; R.C. 6111.45. A sanitary sewer, used for the disposal of industrial and household wastes, may be distinguished from a storm sewer, used for the disposal of rainwater and other surface or ground drainage. In some circumstances, however, the two types of sewers may be combined or connected. *See* R.C. 6111.01(E); *Webster's Third New International Dictionary* 2012 (unabridged ed. 1993) (defining "sanitary sewer" as "a sewer to dispose of sewage but not water from ground, surface, or storm"); *see also* R.C. 3709.21 (a board of health "may require that no human, animal, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch, or watercourse without a permit" from the board). *See generally Bising v. City of Cincinnati*, 126 Ohio St. 218, 219, 184 N.E. 837 (1933) (city passed a resolution for the installation of a combined storm and sanitary sewer); *State v. D.J. Master Clean*, 123 Ohio App. 3d 388, 704 N.E.2d 301 (Franklin County 1997) (distinguishing discharges permitted into sanitary sewers from those permitted into storm sewers); *H. Hafner & Sons v. Cincinnati Metro. Sewer Dist.*, 118 Ohio App. 3d 792, 794, 694 N.E.2d 111 (Hamilton County 1997) (interceptor sewer receives sanitary flow during dry weather and a combination of sanitary flow and storm water runoff during wet weather).

The release notification reporting requirements of R.C. 3750.06 apply generally to releases of oil, hazardous substances, and extremely hazardous substances. As noted above, the term "[r]elease" is defined generally as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of into the

environment,"[18] except as authorized by law.[19] R.C. 3750.01(L) (emphasis added); *see* note 7, *supra*.

The release notification reporting requirements of R.C. 3750.06(C) and (D) are directed to emergency situations in which there may be immediate harm to people or to the environment. They encompass releases made directly onto the ground, into the water, or into the ambient air because of the potential danger created by such releases. A release made into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer presents the same potential danger. *See, e.g., J. W. Kelley, Kelley's Union 76 v. McNamee*, No. EBR 393186, 1995 Ohio ENV LEXIS 15 (Ohio Envtl. Bd. of Review Dec. 12, 1995) (including findings of fact regarding dangers of petroleum products in sanitary sewer, including fire safety explosion hazard). *See generally Rybacki v. Allstate Ins. Co.*, C.A. No. 03CA0079-M, 2004 Ohio App. LEXIS 1836 (Medina County Apr. 28, 2004) (when underground heating oil storage tank ruptured, appellants were required to pay clean up costs for heating oil in the municipal sewer system).

As discussed above, a municipal sanitary sewer is designed as part of the process of providing for the treatment of industrial or household wastes before they are discharged into the waters of the state. Matter that is discharged into the sanitary sewer may come into contact with people or the environment in various ways. *See generally Red Hill Farm Trust v. Schregardus*, 102 Ohio App. 3d 90, 98, 656 N.E.2d 1010 (Franklin County 1995) ("any system designed to treat or store sewage or industrial waste necessarily poses some threat to the environment due to the possibility of an accident or equipment failure leading to a spill," although not all regulatory provisions address this type of threat). A municipal sanitary sewer may be directly connected with a storm sewer that will discharge wastewater directly into waters of the state. The municipal sanitary sewer may have cracks and leaks that discharge wastewater into the soil. It may have design flaws or capacity limitations that result in the discharge of fumes or wastewater

---

[18] The term "[e]nvironment" is defined to mean "navigable waters and any other surface water, ground water, drinking water supply, land surface or subsurface strata or ambient air." 7B Ohio Admin. Code 3750-1-01(N); *see also* 42 U.S.C.A. § 11049(2) (West 1995) and 40 C.F.R. § 355.20 (2004) (for purpose of state and local emergency response plans, the environment includes "water, air, and land and the interrelationship which exists among and between water, air, and land and all living things").

[19] The prohibition against placing wastes in a location where they cause pollution of waters of the state does not apply to the discharge of wastes into a sewer system tributary to a treatment works, provided that there is compliance with any applicable pretreatment program. R.C. 6111.04(F)(6); *see also* 7A Ohio Admin. Code Chapter 3745-3 (Publicly Approved Treatment Works (POTW) Programs and Standards).

into dwellings or other buildings. *See generally Franklin County Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d 534, 548 (6th Cir. 2001) (in cost recovery action under CERCLA, discussing assessment by Ohio EPA that hazardous substance may move into a seam of a sewer pipe or may migrate down the channel of the sewer); *Trautwein v. Sorgenfrei*, 58 Ohio St. 2d 493, 497-98, 391 N.E.2d 326 (1979) (system was designed as a sanitary sewer but, during heavy rains, receives large quantities of storm water, so that a combination of sewage and storm water backs up into basement drains due to the elevation of the basements); *State ex rel. Livingston Court Apartments v. City of Columbus*, 130 Ohio App. 3d 730, 732, 721 N.E.2d 135 (Franklin County 1998) (property owners have illegally connected their perimeter water drains to the city's sanitary sewer, resulting in the flow of raw sewage and storm water into basements during heavy rains); *McBrayer v. Laidlaw Envtl. Servs., Inc.*, No. 99AP-115, 1999 Ohio App. LEXIS 6486 (Franklin County Dec. 28, 1999). Hence, the discharge of oil, hazardous substances, or extremely hazardous substances into a municipal sanitary sewer constitutes a release of that oil or those substances into the environment, thereby triggering the release notification reporting requirements of R.C. 3750.06(C) and (D).

It is clear that the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to a release of oil, hazardous substances, or extremely hazardous substances onto the ground a short distance from a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer. Under a reasonable construction of R.C. 3750.06, the requirements apply also when the release is made directly into the sewer or the drain, for the consequences are essentially the same. *See generally United States v. Distler*, 671 F.2d 954 (6th Cir. 1981) (case under FWPA requiring investigation to determine the location at which toxic contaminant was introduced into sewer system). Application of the release notification reporting requirements to a release into a municipal sanitary sewer assures immediate verbal notice of the release to the bodies with the knowledge and experience necessary to deal with the release promptly in order to minimize damage, and written follow-up emergency notice to explain to the community what happened and what additional steps might be taken. *See generally Stark County Local Emergency Planning Comm. v. Kulka Steel & Equip. Co.*, 79 Ohio Misc. 2d at 90; *Neighbors for a Toxic Free Community v. Vulcan Materials Co.*, 964 F. Supp. at 1450.

We conclude, therefore, that the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to a discharge of oil, hazardous substances, or extremely hazardous substances made directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer.[20]

---

[20] Provisions other than R.C. 3750.06 govern the operation of sewer systems and discharges into those systems and may require notice in addition to that required by R.C. 3750.06. *See, e.g.*, 7A Ohio Admin. Code 3745-3-04 (prohibition against introducing into a publicly owned treatment works (POTW) various described substances, including pollutants that may create fire or explosion hazards, cause corrosive structural damage or result in toxic gases, obstruct flow, or otherwise interfere with the operation of the POTW, and petroleum oil in amounts that will cause

Application of notification and reporting requirements of R.C. 3750.06(C) and (D) to releases by facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions

Your final question is whether the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to releases by facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions. Under the terms of the statute, the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to the owner or operator of a "facility" from which a release occurs. By statutory definition, "[f]acility" 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*." R.C. 3750.01(D) (emphasis added). "Person" is defined by statute to mean "*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." R.C. 3950.01(K) (emphasis added).[21] Under these definitions, R.C. 3750.06 applies to a facility owned or operated by the State of Ohio or any of its political subdivisions. Therefore, the release notification reporting requirements of R.C. 3750.06(C) and (D) are applicable to public owners or operators of facilities, including motor vehicles, rolling stock, and airplanes.[22]

---

interference or pass through, and requirement that industrial users notify a POTW immediately of any discharge that could cause problems to the POTW). *See generally* R.C. Chapter 6111; *United States v. Bogas*, 920 F.2d 363, 365 (6th Cir. 1990) (Ohio EPA officials allowed rainwater pumped from waste disposal excavation site to be disposed of through the regular sewer system when the rainwater was not significantly contaminated).

[21] R.C. 1.59(C) defines "[p]erson" to include "an individual, corporation, business trust, estate, trust, partnership, and association."

[22] These provisions appear to be consistent with federal law. For example, provisions of CERCLA exclude from the term "owner or operator" a unit of State or local government that acquires ownership or control involuntarily, through circumstances such as bankruptcy, tax delinquency, or abandonment, but decline to apply the exclusion to any State or local government that has caused or contributed to the release or threatened release of a hazardous substance from the facility, stating that "such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title." 42 U.S.C.A. § 9601(20)(D) (West 1995 & Supp. 2003); *see also* 42 U.S.C.A. § 11049(7) (West 1995) (defining "person" to include a state, municipality, or political subdivision of a state); *United States v. Township of Brighton*, 153 F.3d 307 (6th Cir.1998) (a government entity can be the operator of a facility under CERCLA).

Your letter of request notes the existence of 1995 Op. Att'y Gen. No. 95-019, which concluded in the syllabus that, "[w]hen the state or a political subdivision owns and operates a facility, as defined in R.C. 3750.01(D), the governmental entity is not subject to the requirements set forth in R.C. 3750.07, R.C. 3750.08, or R.C. 3750.13." That opinion considered whether three sections of R.C. Chapter 3750 (R.C. 3750.07, R.C. 3750.08, and R.C. 3750.13) applied to facilities owned and operated by the state or a political subdivision and concluded that they did not because, in each case, the statutory requirements applied only to a person who, in addition to owning or operating a facility, was "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. 651, as amended, and regulations adopted under it." 1995 Op. Att'y Gen. No. 95-019 at 2-107 to 2-108 (quoting R.C. 3750.07 and R.C. 3750.08). The 1995 opinion found that the State of Ohio and its political subdivisions were not required by the Occupational Safety and Health Act of 1970 to prepare or have available material safety data sheets and, therefore, were not made subject to the requirements of R.C. 3750.07, R.C. 3750.08, and R.C. 3750.13. The 1995 opinion did conclude, however that the state or a political subdivision of the state "qualifies as a 'person'" for purposes of R.C. Chapter 3750. 1995 Op. Att'y Gen. No. 95-019 at 2-108.

R.C. 3750.06 applies to all owners and operators of facilities, imposing no requirements that they be subject to particular federal provisions. Therefore, 1995 Op. Att'y Gen. No. 95-019 does not affect the conclusion that the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to the State of Ohio and its political subdivisions.

We conclude, accordingly, that the release notification reporting requirements of R.C. 3750.06(C) and (D) apply to facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when a motor vehicle has an accident resulting in the release of a reportable quantity of oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

2. Pursuant to R.C. 3750.06 and 7B Ohio Admin. Code 3750-25-25, when an airplane has an accident resulting in the release of a reportable quantity of

oil, hazardous substances, or extremely hazardous substances, the owner or operator is required to provide immediate verbal notice to the Ohio EPA emergency response unit and the 911 operator (or other operator, if there is no 911 system), but is not required to provide immediate verbal notice directly to the local emergency planning district; however, the owner or operator is required to provide both Ohio EPA and the committee of the local emergency planning district with a written follow-up emergency notice.

3. The release notification reporting requirements of R.C. 3750.06(C) and (D) apply to a discharge of oil, hazardous substances, or extremely hazardous substances made directly into a municipal sanitary sewer or a drain directly connected to a municipal sanitary sewer.

4. The release notification reporting requirements of R.C. 3750.06(C) and (D) apply to facilities (including motor vehicles, rolling stock, and airplanes) owned or operated by the State of Ohio or its political subdivisions.

Respectfully,

JIM PETRO
Attorney General