

3737-1-02

Public meetings.

- (A) Meetings of the petroleum underground storage tank release compensation board, in addition to the meetings required by section 3737.90 of the Revised Code, may be held at the call of the chairman or vice-chairman or upon a majority vote of a quorum of the members present at a meeting.
- (B) Any person desiring to determine the time, place or purpose of any meeting of the board, may do so by accessing the board's web site at ~~www.petroboard.com~~ www.petroboard.org or contacting the chairman or vice-chairman of the board or personnel employed by the board.
- (C) Any person may provide an email address and be placed on an electronic mailing list for advance notification of all meetings of the board or meetings at which any specific type of public business is to be discussed. The requestor may request notification be provided by fax or first-class mail. Any person requesting notification by first-class mail shall provide a postage-prepaid self-addressed envelope and pay the cost of copying.
- (D) Public notice specifying the date, time and place of all meetings of the board shall be posted on the board's web site at ~~www.petroboard.com~~ www.petroboard.org and at its office.

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3737-1-03

Definitions.

(A) The following definitions are provided for the purposes of clarifying the meaning of certain terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to ~~3737-1-22~~3737-1-23 of the Administrative Code.

- (1) "Applicant" means the responsible person for an underground storage tank system who submits a board-prepared application for fund payment of, or reimbursement for, corrective action costs for an accidental release of petroleum or compensation paid or to be paid to third parties for bodily injury or property damages.
- (2) "Board" means the petroleum underground storage tank release compensation board.
- (3) "Bodily injury" means injury to the body or sickness or disease contracted by a person as the result of an accidental release of petroleum and recoverable pursuant to division (C) of section 3737.92 of the Revised Code. Bodily injury does not include the negligent infliction of emotional distress.
- (4) "Costs" means actual expenses incurred, paid, and documented.
- (5) "Debt service account or accounts" means an account or accounts established for the purpose of making bond principal and interest payments on a regular basis and as may be required by bond covenants.
- (6) "Debt service reserve account or accounts" means a reserve account or accounts established for the purpose of making bond principal and interest payments on a non regular, emergency basis and as may be required by bond covenants.
- (7) "Deductible" means the standard, non-reduced amount which is deducted from the responsible person's assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (E) of section 3737.92 of the Revised Code.
- (8) "Director" means the director of the petroleum underground storage tank financial assurance fund.
- (9) "Fee" means:
 - (a) The annual petroleum underground storage tank financial assurance fee;

- (b) The supplemental petroleum underground storage tank financial assurance fee; ~~or~~
 - (c) ~~Any other fee as established by the board.~~ Late payment fees;
 - (d) Transfer fee;
 - (e) Any and all costs for the collection of delinquent accounts; or
 - (f) Any other fee as established by the board.
- (10) "Financial audit" means an examination of the books, vouchers, and records of a responsible person by the director to determine compliance with this chapter.
- (11) "Financial responsibility" means proof of financial accountability as a condition to acquiring eligibility to the fund in accordance with rule 1301:7-9-05 of the Administrative Code adopted by the fire marshal pursuant to section 3737.882 of the Revised Code.
- (12) "Fire marshal" means the fire marshal of the state of Ohio.
- (13) "Fiscal year" means the time period July first through June thirtieth.
- (14) "Imminent hazard" means the appearance of threatened and impending risk or peril.
- (15) "Indemnify" means to restore or save harmless the board from a loss by payment or replacement to the board any monies advanced or received from any other party, including, but not limited to, the other parties' insurer or the responsible person's insurer, for the payment of corrective action costs or third party compensation for which the board has reimbursed or will reimburse the responsible person or has compensated or will compensate any third party for bodily injury or property damage.
- ~~(15)~~(16) "Markup" means an amount charged by contractors or consultants beyond the actual cost of labor, equipment, or materials, for management, supervision, or administration of the corrective action activities performed.
- ~~(16)~~(17) "Obligated account" means monies segregated and maintained, on a year by year basis, for reimbursing necessary corrective action costs.

~~(17)~~(18) "Obligations" mean undertakings by the board to reimburse or pay a responsible person or the designee of the responsible person.

~~(18)~~(19) "Primary consultant" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.

~~(19)~~(20) "Primary contractor" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.

~~(20)~~(21) "Program task" means one of the tasks defined by rule 3737-1-12 of the Administrative Code.

~~(21)~~(22) "Property damage" means actual and reasonable, incurred or pending expenses for damage to property as the result of an accidental release of petroleum that are not covered by insurance and are recoverable pursuant to division (C) of section 3737.92 of the Revised Code. The following items are a non exhaustive list of items specifically excluded from property damage: loss of profits, loss of business, taxes, utility expenses, punitive damages, exemplary damages, telephone, television, internet, or cable and/or satellite fees, attorney fees or all costs of litigation, including but not limited to court costs, depositions, experts and attorney fees.

~~(22)~~(23) "Reduced deductible" means the reduced amount which is deducted from the responsible person's assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (F) of section 3737.92 of the Revised Code.

~~(23)~~(24) "Release" means a "release" as defined in rule 1301:7-9-13 of the Administrative Code.

~~(24)~~(25) "Responsible person" means a "responsible person" as defined in division (N) of section 3737.87 of the Revised Code.

~~(25)~~(26) "Subcontractor" means a person or organization, other than the primary contractor or primary consultant or a subsidiary thereof, which, at the request of the primary contractor or primary consultant, has undertaken one or more corrective action activities for corrective action at the release site under direction of the primary contractor or primary consultant. Subcontractors do not include persons or entities whose only involvement related to the corrective action is the supply of material or equipment.

(27) "Subrogation" means the board's right to recover costs of corrective actions and compensation to third parties for bodily injury or property damage that the board has paid or will pay to a responsible person or a third party from any other party, including, but not limited to, the other party's insurer and the responsible person's insurer.

~~(26)~~(28) "Suspected release" means a "suspected release" as defined in rule 1301:7-9-13 of the Administrative Code.

~~(27)~~(29) "Tank population" means the number of tanks as defined by division (O) of section 3737.87 of the Revised Code in existence in the state of Ohio at any given time.

~~(28)~~(30) "Technical audit" means an examination of the books, vouchers, and records of a responsible person to determine if the work performed was necessary to meet the requirements of the fire marshal or an order of the director.

(31) "Unclaimed monies trust account" means a trust account established pursuant to section 9.39 of the Revised Code for holding monies unclaimed by the rightful owner.

~~(29)~~(32) "Unobligated balance" means monies which have not been placed in the obligated account, the debt service account or accounts, the debt service reserve account or accounts, the unclaimed monies trust account, or used to purchase certificates of deposit for linked deposits. The unobligated balance includes the balance of monies which may be used to retire bonds, pay third-party bodily injury or property damage claims related to the accidental release of petroleum, to purchase certificates of deposit for linked deposits, to fund the obligated account, to fund the debt service account or accounts, to fund the debt service reserve account or accounts, or for various other expenses the board may incur related to administering sections 3737.90 to 3737.98 of the Revised Code.

~~(30)~~(33) "Year" means twelve consecutive months.

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3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility.

(A) Effective April 1, 1991, and each year thereafter in which the unobligated balance of the financial assurance fund does not exceed forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board shall assess a fee for each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility.

In the event that the unobligated balance of the financial assurance fund exceeds forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds.

(B) The basis for the calculation of the annual fee includes, but is not limited to, the amount needed to meet financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

(C) The director of the fund shall notify each responsible person by May first of each year of the annual fee. In the year in which an annual fee is not assessed, the director of the fund will provide reasonable notification to responsible persons of the non-assessment of fees.

(D) The annual fee is due no later than July first of each year in which an annual fee is imposed. In the event the director determines that a responsible person fails to pay the annual fee by July first of the year in which the fee is imposed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days of the date the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fee and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. No retroactive coverage shall be extended in situations where responsible persons have initially failed to pay fees but later did so, regardless of whether they received notification by the director of such failure.

(E) Except as limited by rule 3737-1-04.1 of the Administrative Code, upon receipt of full payment of the annual fee and any past fees, as determined by the director, upon demonstration of financial responsibility as required by rule 1301:7-9-05 of the Administrative Code, and upon certification that the responsible person is in

compliance with applicable rules for petroleum underground storage tanks adopted by the fire marshal under section 3737.88 of the Revised Code, the director shall issue a certificate of coverage. Payment of the annual fee and any past fees owed, as determined by the director, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the succeeding fiscal year on or before July first will entitle the responsible person to a certificate of coverage in effect for the fiscal year. Payment of the annual fee and any past fees owed, as determined by the director, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the current fiscal year after July first will result in a certificate of coverage for that fiscal year effective on and after the date the board received full payment due, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility.

(F)

(1) In the event that a newly installed underground storage tank is placed in service, the responsible person shall immediately notify the director. In the event that an underground storage tank exists for which a certificate of coverage was not issued in the previous fiscal year, due to an omission, intentional or unintentional, by the responsible person, the responsible person shall immediately notify the director. Upon receipt of notice of a newly installed, or existing underground storage tank, as required by this paragraph of this rule, the director shall notify the responsible person of the assessment of any applicable fees. No certificate of coverage will be issued until the responsible person has notified the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, pays the required annual fees for the new or existing tank, pays all outstanding fees, as determined by the director, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

(2) In the event of a transfer of an underground storage tank, the new responsible person shall notify the director within thirty days of the date of the transfer. Upon receipt of notice of a transfer of an underground storage tank as required by this paragraph of this rule, the director shall notify the new responsible person of the assessment of any applicable fees, including, but not limited to, any fees outstanding at the time of the transfer of the underground storage tank, as determined by the director, and a transfer fee of five hundred dollars per facility.

(a) If a certificate of coverage is in effect at the time of the transfer and the new responsible person notifies the director, pays the transfer fee, demonstrates financial responsibility, and certifies compliance with the fire marshal's rules within thirty days of the date of the transfer, the certificate of coverage shall be effective as of the date of the transfer of the underground storage tank. Where outstanding fees exist at the time

of the transfer, the certificate of coverage is null and void for purposes of coverage.

(b) If a certificate of coverage is not in effect at the time of the transfer or the new responsible person fails to notify the director of the transfer within thirty days, no certificate of coverage will be issued until the new responsible person notifies the director of the transfer; pays the transfer fee; pays any annual fees outstanding for the fiscal year in which the transfer occurred and all subsequent fiscal years of ownership; demonstrates financial responsibility; certifies compliance with the fire marshal's rules; pays any fees outstanding at the time of the transfer, as determined by the director, or conducts a baseline environmental site assessment in accordance with rule 3737-1-04.2 of the Administrative Code; and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

(3) The responsible person shall tender the fees assessed no later than thirty days from the date of notification. If the responsible person fails to submit the annual fees within thirty days after the notification was mailed, the director of the fund shall notify the responsible person of the nonpayment. If the responsible person fails to submit the annual fee within thirty days after the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fees and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. Where a responsible person has failed to inform the director, as is required by this rule, the director is not required to notify the responsible person of fees owed.

(G)

(1) The failure to do any of the following will result in the non-issuance or revocation of a certificate of coverage:

(a) Pay any annual fee authorized by division (B) of section 3737.91 of the Revised Code or supplemental fee authorized by division (C) of section 3737.91 of the Revised Code;

(b) Demonstrate and maintain financial responsibility as required by rule 1301:7-9-05 of the Administrative Code for the deductible or, when appropriate, the reduced deductible established under rule 3737-1-06 of the Administrative Code;

(c) Certify and maintain compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under

section 3737.88 of the Revised Code for each tank for which a certificate of coverage is sought;

(d) Pay any fee assessed pursuant to this chapter; or

(e) Pay any outstanding fees determined by the director to be due.

(2) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of denial.

Once a certificate of coverage has been issued, it may be revoked at any time upon a finding by the director that the criteria of this rule for issuance are not satisfied. Where a certificate of coverage is to be revoked, the director shall issue a notice of pending revocation to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency.

If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of revocation. The director shall provide the fire marshal with a copy of any determination issued pursuant to this rule.

Where the requirements of this rule are not satisfied at the time of a petroleum release, the certificate is null and void for purposes of coverage and the responsible person is not eligible for reimbursement from the fund, regardless of whether the certificate has been revoked.

(H) A responsible person may file with the board written objections to any order or determination of the director issued pursuant to this rule. If the written objection is received by the board within thirty days of the date of mailing of the order or determination, the board shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

(I) The amount of the annual fee is five hundred dollars per tank.

(J) A responsible person shall maintain with the director a current mailing address at which determinations, notices, and orders may be sent. Any determination or order shall be mailed by certified mail to the responsible person's address on file with the board. If the certified mail is returned unclaimed, the order or determination shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.

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3737-1-04.2

Baseline environmental site assessment.

Where ownership of an underground storage tank has transferred and outstanding fees exist at the time of transfer, the new responsible person may elect to pay all fees outstanding at the time of the transfer or conduct a baseline environmental site assessment to establish the concentrations of chemicals of concern existing in soil and groundwater at the underground storage tank site at the time of the transfer. The results of the baseline environmental site assessment will be used by the board as the baseline from which eligibility for payment of or reimbursement for corrective action costs associated with a future accidental release of petroleum will be determined.

(A) The baseline environmental site assessment shall be completed in accordance with paragraph (I)(2)(e) of rule 1301:7-9-12 of the Administrative Code, following the guidelines for underground storage tank closure in place, and include the following components:

- (1) Conduct a review of the fire marshal's files to evaluate the site's compliance history, release history, and the current status of the underground storage tank system(s).
- (2) The new responsible person shall perform a visual site evaluation of the underground storage tank site to identify all evidence of past or present operational problems, including but not limited to, secondary containment systems, tank pit observation wells, surface soil staining, concrete staining, concrete patchwork, areas where piping and pump islands existed, and all potential sources of contamination.
- (3) Soil and water samples shall be collected by installing a minimum of three soil borings and monitoring wells on the underground storage tank site in the areas most likely to contain chemicals of concern. The soil borings and monitoring wells shall be installed, sampled, and analyzed in accordance with paragraphs (H)(1)(d)(ii) of rule 1301:7-9-13 of the Administrative Code. Soil boring and monitoring well locations shall be selected to ensure the evaluation of soil and ground water surrounding the underground storage tank system and be biased towards areas most likely to be contaminated.

All soil samples collected shall be split into two components. One packaged for field screening and one packaged for potential laboratory analysis. Soil samples collected for field screening shall be screened on the underground storage tank site using equipment calibrated in accordance with the manufacturer's instructions.

Samples sent to the laboratory for analysis shall be analyzed for the appropriate chemicals of concern as set forth in paragraph (I)(3) of rule 1301:7-9-12 of the Administrative Code. Laboratory analytical results which are above the action levels set forth in paragraph (J) of rule 1301:7-9-13 of the Administrative Code are subject to the release reporting requirements of

paragraph (D) of rule 1301:7-9-13 of the Administrative Code.

(B) The new responsible person shall prepare and submit a baseline environmental site assessment summary report on a form prescribed by the director within forty-five days after the completion of the baseline environmental site assessment. The baseline environmental site assessment summary report shall include the following information:

- (1) The facility name, address, zip code, and telephone number.
- (2) The underground storage tank owner's name, address, zip code, and telephone number.
- (3) The name, address, zip code, and telephone number of the person(s) performing the baseline environmental site assessment.
- (4) Date the baseline environmental site assessment was completed.
- (5) Underground storage tank system information, including current and historical use, age, materials of construction, size, contents, location, date of last use, and all available precision test results.
- (6) Summary of the review of the compliance history, release history, and current status of the underground storage tank system(s) as required by paragraph (A)(1) of this rule.
- (7) Description of the sample collection procedures which shall include, at a minimum, the following information:
 - (a) A summary of the rationale for sampling and testing locations;
 - (b) A description of the sample collection procedures, sample preservation techniques, sample containers, and decontamination procedures;
 - (c) Details of any field screening conducted, including the instrument readings, instrument used, and instrument calibration, location and depth of sampling points, and sampling methodology;
 - (d) Boring logs and well construction diagrams;
 - (e) Copy of the chain-of-custody form(s) documentation;
 - (f) Date of sample collection;
 - (g) Name and affiliation of the person(s) collecting the samples; and

(h) Identification of the location and depths of all samples submitted for laboratory analysis.

(8) Laboratory data shall be listed in a table which includes:

(a) The applicable action levels for each constituent of concern;

(b) Laboratory analytical sample analysis results;

(c) Name, address, zip code, and telephone number of the laboratory;

(d) Name of the sample analyst;

(e) Instrument calibration information;

(f) Sample analysis method used;

(g) Units of measure;

(h) Laboratory detection and quantization limits used;

(i) Description of whether the sample analyzed is soil or water;

(j) Date the samples were received by the laboratory; and

(k) Date the samples were analyzed by the laboratory.

(9) A site map which accurately depicts the following:

(a) Location of the current underground storage tank system including the number of underground storage tanks;

(b) Location of any other known underground storage tank systems or portions thereof closed-in-place on or permanently removed from the underground storage tank site;

(c) Property boundaries;

(d) Street locations;

(e) Location of above ground structures;

(f) Location of adjacent properties and their use;

(g) Location of any known water wells located on the underground storage tank site;

(h) Location of soil boring(s) and/or monitoring well(s); and

(i) The analytical results shown spatially for all soil and groundwater samples collected.

(10) A description of the native soil at the underground storage tank site.

(11) A description of the visual site evaluation required by paragraph (A)(2) of this rule.

(C) In the event a "Phase II Environmental Site Assessment" has been completed in accordance with ASTM International E1903-11 ("Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process") within six months of the date of the transfer of an underground storage tank system, the results may be used to prepare the baseline environmental site assessment summary report on a form prescribed by the director and shall include the information required by paragraph (B) of this rule.

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Disbursement of the financial assurance fund.

- (A) Once eligibility of the fund has been determined in accordance with rule 3737-1-07 or 3737-1-19 of the Administrative Code and the director of the fund has determined that an application for reimbursement is complete, obligations of the fund will not occur unless and until the deductible or the reduced deductible, as applicable, set forth in rule 3737-1-06 of the Administrative Code has been met. Costs determined to be non-reimbursable pursuant to paragraph (A) of rule 3737-1-09 of the Administrative Code shall not be applied toward the responsible person's deductible or reduced deductible. Reimbursable costs covered by insurance policies or recoverable from any other party shall be applied toward the responsible person's deductible or reduced deductible.
- (B) Obligations of the fund for eligible claims will be made on a first-come, first-served basis as determined by receipt of a completed application in accordance with rule 3737-1-12 of the Administrative Code, except when:
- (1) The fire marshal requests approval of an accelerated review on the basis of the threat posed to human health or the environment by the release to which the claim applies;
 - (2) An accelerated review is granted under paragraph (D) of this rule; or
 - (3) The director determines that efficiency and cost savings will be better served by a non first-come, first-served review.
- Notwithstanding any of the above provisions, the director may prioritize claims for releases that have received no further action status.
- (C) The board may by resolution provide for the payment of claims by installments in a manner and for a period of time it deems appropriate when the board concludes that such action is necessary to maintain the financial soundness of the financial assurance fund.
- (D) A responsible person may file with the board a request for an accelerated review of a claim by submitting an application for hardship status on a form prescribed by the director, and by providing financial documentation to the director that demonstrates approval of hardship status is necessary to prevent an imminent financial hardship to the responsible person.

(1) As a result of such request, the director may:

- (a) Seek additional information from the responsible person to demonstrate imminent financial hardship, including but not limited to, a statement of

assets and liabilities and/or a detailed listing of living expenses and income;

- (b) Request the responsible person sign a release to allow the director to obtain or inspect federal and state tax records; and
 - (c) Request copies of any contracts existing between the responsible person and his/her contractors and subcontractors remediating the site.
- (2) Tank owners who refuse to provide the requested information shall be denied hardship status. Any documentation received by the board for a hardship application may be a public record except if specifically exempt under section 149.43 of the Revised Code.
- (3) Upon review of financial data and/or other information provided by the responsible person, the director shall recommend to the board approval or denial of the request.

The board may accept or reject the director's recommendation. Should the board's action result in the approval of hardship status, the approval shall be for one year from the date of the board's action. A responsible person may file a subsequent request for hardship status on or before the expiration of a one-year period of hardship status.

- (4) The board may suspend or discontinue the hardship program when it determines that doing so is in the interest of the fund. Any hardship statuses that are currently in effect at the time the board suspends or discontinues the hardship program shall remain effective until the expiration of the ~~one-year~~ one-year period from the date the application was approved.

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Limitations of fund coverage.

(A) Nothing in this chapter shall be construed to authorize reimbursement for:

- (1) Costs of corrective actions for releases prior to July 1, 1989;
- (2) Costs of corrective action for a suspected release or release for which the director has issued a determination denying eligibility for reimbursement;
- (3) Litigation costs of any kind incurred by a responsible person including, but not limited to: litigation costs involving acquisition of site access; local, state, or federal permit decisions; any ordinance, rule or regulation; or any order issued by the fire marshal;
- (4) Costs associated with:
 - (a) Achieving compliance with the provisions of sections 3737.881 to 3737.98 of the Revised Code, with the exception of costs associated with corrective action and compensation to third parties for expenses associated with bodily injury or property damages caused by an accidental release of petroleum;
 - (b) Interest or carrying charges of any kind;
 - (c) Insurance premiums other than specific policies or bonds required for corrective action;
 - (d) Studies or surveys of an underground storage tank site or on property nearby other than from a site check or a tier 1 source investigation conducted in accordance with rule 1301:7-9-13 of the Administrative Code; and
 - (e) Corrective action costs which are determined to be non-reimbursable as a result of an audit performed in accordance with this chapter;
- (5) Costs incurred solely in conducting corrective action for non-petroleum products or corrective action for petroleum or petroleum products unrelated to a release from an assured underground storage tank system;
- (6) Costs incurred solely in conducting corrective action for a release from an unassured underground storage tank system;

- (7) Costs not required for performing corrective action completed in accordance with rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code or, where applicable, completed in accordance with an order which establishes corrective action procedures and criteria for the site;
- (8) Costs covered by insurance policies; ~~or recoverable from any other party;~~
- (9) Costs associated with the closure or removal of underground storage tank systems in compliance with rule 1301:7-9-12 of the Administrative Code. Where closure or removal costs, associated with rule 1301:7-9-12 of the Administrative Code, are intermingled with corrective action costs and are not separately ascertainable, the director shall determine corrective action costs to be reimbursed based upon a reasonable standard;
- (10) Costs for corrective action other than those costs which are usual, customary, and reasonable for similar corrective action activities and under similar circumstances, as determined from the fund's experience;
- (11) Costs for corrective actions not submitted in accordance with rule 3737-1-12 of the Administrative Code;
- (12) Additional corrective action costs for a release after a no further action letter has been issued by the fire marshal for the subject release, unless the additional corrective action activities are required by the fire marshal due to the discovery of chemicals of concern, as defined by rule 1301:7-9-13 of the Administrative Code, resulting from the original release but not reasonably discovered prior to the issuance of the no further action letter. Under no circumstances shall additional corrective action costs be reimbursed when the original no further action letter for the subject release is rescinded more than five years from the date it was issued;
- (13) Costs necessary for performing corrective action authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section greater than fifty percent of the usual, customary, and reasonable costs of the least expensive alternative for similar corrective action activities and under similar circumstances as determined from the fund's experience when pre-approval is required by paragraphs (A), (B), ~~and~~ (D) of rule 3737-1-12.1 of the Administrative Code but pre-approval was not sought or granted;:-
- (14) Undocumented corrective action costs, unless the responsible person submits documentation to support the corrective action costs within ninety days from

the date that the director or the director's designee requests such documentation in writing pursuant to rule 3737-1-13 of the Administrative Code; or

- (15) ~~Costs for corrective action and/or third-party claims determined to be non-reimbursable pursuant to paragraph (E) of rule 3737-1-22 of the Administrative Code where the responsible person has failed to comply with rule 3737-1-22 of the Administrative Code that are greater than the lesser of:~~
- (a) Fifty percent of eligible corrective action and third-party claim costs, as determined by the director; or
 - (b) The total of eligible corrective action and third-party claim costs, as determined by the director, minus the amount of the deductible and minus the amount paid by the other party to the responsible person.
- (16) Cost for performing corrective action not authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section; or
- (17) Markup for any of the following:
- (a) Costs of disposal, disposal facilities, and treatment facilities;
 - (b) Internal expenses including labor, supplies, per diem travel expenses, and intra-company billings;
 - (c) Charges for supplies;
 - (d) Charges for materials; or
 - (e) Charges for equipment.
- (B) The board, upon payment or reimbursement from the fund to a responsible person for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person.

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11/30/2009

3737-1-09.1 **Inclusions of fund coverage.**

(A) The following costs shall be specifically reimbursable:

(1) ~~Primary contractor or primary consultant markup~~ Except where prohibited by paragraph (A)(17) of rule 3737-1-09 of the Administrative Code, markup on reimbursable subcontractor charges but only to the extent that the total amount of ~~primary contractor or primary consultant markup~~ all markups is not greater than ten ~~per cent~~percent of the subcontractor's actual reimbursable costs. However, no markup shall be paid for any of the following:

(a) ~~Costs of disposal, disposal facilities, and/or treatment facilities;~~

(b) ~~Markup charged by the subcontractor(s);~~

(c) ~~Primary contractor or primary consultant internal expenses including labor, supplies, per diem travel expenses, and intra-company billings;~~

(d) ~~Charges for supplies;~~

(e) ~~Charges for materials; or~~

(f) ~~Charges for equipment.~~

(2) Per diem for travel costs directly related to corrective action at a release site, up to a maximum amount, as established by the director, to reimburse the costs of mileage, food, and lodging incurred by a primary consultant or primary contractor when the release site is at a distance from the primary consultant's or primary contractor's nearest office of business which, under state of Ohio travel reimbursement policy, would allow for reimbursement. The costs of travel by common carrier (i.e. plane, boat and bus) shall not be reimbursable.

(B) Nothing in any part of this rule shall be interpreted to preclude coverage for corrective action costs or third-party bodily injury or third-party property damage which are generally or specifically included in coverage under Chapter 3737. of the Revised Code or Chapter 3737 of the Administrative Code.

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3737-1-12

Application for reimbursement.

- (A) Responsible persons shall file an application for reimbursement for costs actually incurred in conducting corrective action within one year from the completion date of the program task, as described below. If the responsible person fails to make a timely application for reimbursement under this rule, the costs associated with the task shall be denied.
- (B) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect prior to March 31, 1999, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraphs (F) and (H) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The site assessment program task completion date shall be the date the fire marshal determines site assessment to be complete. The site assessment program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;
 - (4) The remedial action plan program task completion date shall be the date the fire marshal approves the plan. The remedial action plan program task is comprised of those actions set forth in paragraph (J) and paragraph (K) of rule 1301:7-9-13 of the Administrative Code; and
 - (5) The completion date for the remedial action plan implementation program task and the on-going system operation and maintenance program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task and the on-going system operation and maintenance program task are comprised of those actions set forth in paragraph (L) and paragraph (M) of rule 1301:7-9-13 of the Administrative Code.
 - (6) For any costs not associated with an above described program task, the

associated completion date shall be the earliest of:

- (a) A completion date specified by the fire marshal;
- (b) The date the fire marshal issues a no further action determination; or
- (c) The date the work was completed.

(C) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 31, 1999, but before March 1, 2005, the following are completion dates from which the one-year filing periods begin to run for related program tasks:

- (1) The immediate response action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate response action program task is comprised of those actions set forth in paragraphs (G)(1), (G)(3), and (G)(4) of rule 1301:7-9-13 of the Administrative Code;
- (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(2) of rule 1301:7-9-13 of the Administrative Code;
- (3) The tier 1 evaluation program task completion date shall be the date the tier 1 evaluation notification, or the tier evaluation report if appropriate, is required to be submitted to the fire marshal. The tier 1 evaluation program task is comprised of those actions set forth in paragraphs (H), (I), (J) and (K) of rule 1301:7-9-13 of the Administrative Code;
- (4) The tier 2 evaluation program task completion date shall be the date the tier evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraphs (M) and (N) of rule 1301:7-9-13 of the Administrative Code;
- (5) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code;

- (6) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (S) and (T) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (R) of rule 1301:7-9-13 of the Administrative Code; and
 - (7) For any costs not associated with an above described program task, the associated completion date shall be the earliest of:
 - (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or
 - (c) The date the work was completed.
- (D) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in ~~paragraph~~ paragraphs (G)(1) and (G)(2) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(3) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The tier 1 source investigation program task completion date shall be the date the tier 1 delineation notification, tier 1 notification, or ~~the tier one 1~~ evaluation report, if appropriate, is required to be submitted to the fire marshal. The tier 1 source investigation program task is comprised of those actions set forth in paragraph (H) of rule 1301:7-9-13 of the Administrative Code;

- (4) The tier 1 delineation program task completion date shall be the date the tier 1 investigation report is required to be submitted to the fire marshal. The tier 1 delineation program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;
- (5) The tier 2 evaluation program task completion date shall be the date the tier 2 evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraph (L) of rule 1301:7-9-13 of the Administrative Code;
- (6) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (M) of rule 1301:7-9-13 of the Administrative Code;
- (7) The completion date for the interim response action program task associated with a tier evaluation shall be the date the interim response action report is required to be submitted to the fire marshal. The interim response action program task is comprised of those actions set forth in paragraph (K) of rule 1301:7-9-13 of the Administrative Code.
- (8) The completion date for the remedial action plan preparation program task associated with a tier evaluation shall be the date the remedial action plan is required to be submitted to the fire marshal. The remedial action plan preparation program task is comprised of those actions set forth in paragraphs (N)(1) and (N)(2) of rule 1301:7-9-13 of the Administrative Code;
- (9) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (N)(3) and (N)(4) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code; and
- (10) For any costs not associated with an above described task, the associated completion date shall be the earliest of:
 - (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or

- (c) The date the work was completed.
- (E) Where applicable, a responsible person shall submit approvals from the fire marshal to remain in an earlier version of rule 1301:7-9-13 of the Administrative Code. Where a responsible person has been conducting corrective action under an earlier version of rule 1301:7-9-13 of the Administrative Code and elects, or by operation of law, is mandatorily transitioned to continue corrective action under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, the election date or the mandatory transition date shall be used as the completion date for submitting the following costs:
- (1) For program tasks that are incomplete at the date of the election or mandatory transition date, submit all costs incurred within one year from the date of the election or mandatory transition; and
 - (2) For all program tasks that are complete at the time of such election or mandatory transition, submit all costs in accordance with paragraph (B), ~~or~~ (C), or (D) of this rule.
- (F) If the responsible person has made a timely (prior to the original due date for completion) written request to the fire marshal in accordance with rule 1301:7-9-13 of the Administrative Code, to extend the time for completing a program task and if the fire marshal grants that request, the claim submission date for costs associated with that program task shall be as follows:
- (1) For costs incurred prior to the original completion date, any claim for such costs shall be submitted within one year from the original completion date;
 - (2) For costs incurred after the original completion date, any claim for such costs shall be submitted within one year from the newly approved and extended deadline and, if no deadline is stated in the fire marshal's letter, within one year from the date of the letter.
- (G) If the fire marshal issues a ~~deficiency letter or requests~~ written request for additional information, the costs for the additional work required to address the ~~deficiency or fire marshal's requests for additional information~~ are due within one year from the date the work is required to be completed by the fire marshal and if no completion date is stated in the original ~~letter request~~, within one year from the date of the ~~letter request~~. This rule ~~will~~ shall be applied to all ~~the~~ program tasks performed under all versions of rule 1301:7-9-13 of the Administrative Code.
- (H) The application for reimbursement shall include documentation of all notifications

and reports required under applicable versions of rule 1301:7-9-13 of the Administrative Code.

(I) The application for reimbursement shall include the following documentation:

- (1) Certifications by the responsible person and the primary consultant or primary contractor that the information contained in and submitted with the application is true and correct and represents actual costs incurred;
- (2) Invoices, payment records and any other records documenting actual costs incurred and paid related to corrective action; and
- (3) Any other records, site-specific information or other relevant information necessary to demonstrate compliance with cleanup standards and tank rules, or any applicable order, as required by the director.

(J) A responsible person may apply for reimbursement for partial completion of a program task provided that the total amount sought in the application for reimbursement is not less than fifty ~~per cent~~percent of the applicable deductible of the responsible person except:

- (1) For those costs required to be submitted according to paragraph (E)(2), (F), or (G) of this rule, the responsible person shall apply for reimbursement as required by those paragraphs regardless of the total amount sought; and
- (2) For the operation and maintenance and/or the monitoring program tasks, the director may grant permission to the responsible person to submit applications for reimbursement in which the total amount being sought is less than fifty ~~per cent~~percent of the applicable deductible of the responsible person.

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3737-1-12.1 **Mandatory and voluntary pre-approval of corrective action costs.**

- (A) For corrective actions to be performed in accordance with all versions of rule 1301:7-9-13 of the Administrative Code, the responsible person shall submit to the director an application for initial pre-approval of costs for pending corrective actions, as follows:
- (1) Simultaneously with the submission of an interim response action notification, where prior approval of the fire marshal must be obtained, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the interim response action notification;
 - (2) Simultaneously with the submission of a remedial action plan to the fire marshal, the responsible person shall:
 - (a) Submit a copy of the remedial action plan with a brief description of the remedial action alternatives considered, including a discussion of the reliability, effectiveness, cost, and time needed for completion, and the rationale for the selected remedial alternative; and
 - (b) Submit an estimated cost and completion schedule for the remedial actions as set forth in the remedial action plan;
 - (3) Simultaneously with the submission to the fire marshal of a tier 3 evaluation plan where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the tier 3 evaluation plan with a description of the objective; the activities to be conducted; a discussion of the effectiveness, cost and rationale for selecting the tier 3 evaluation; and an implementation schedule and projected completion date;
 - (4) Simultaneously with the submission to the fire marshal of a plan to calibrate or disprove the fate and transport model in conjunction with a tier 2 evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the plan with a description of the objective; the activities to be conducted; and an estimated cost and completion schedule;
 - (5) Simultaneously with the submission to the fire marshal of a monitoring plan in conjunction with a tier evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the monitoring plan.

- (6) If free product is present one year after initiating free product recovery activities, the responsible person shall assess the effectiveness of free product recovery techniques and shall submit a brief written evaluation of the reliability, effectiveness, cost, and time needed for free product recovery in the upcoming year. Said written evaluation shall be submitted on a yearly basis for each year that recovery is ongoing.
- (a) Where free product recovery has been in place for one year, the first evaluation shall be submitted within ninety days following the anniversary date of free product recovery. Subsequent evaluations shall be submitted annually, unless otherwise determined by the director.
- (b) Where free product recovery is in conjunction with a remedial action plan, the annual free product evaluation shall be incorporated into the annual remedial action plan submissions required by this rule.
- (B) Where estimated cost and completion schedules have been pre-approved in accordance with paragraphs (A)(2) and (A)(6) of this rule, the responsible person shall submit pre-approval applications annually, unless otherwise determined by the director, on a form prescribed by the director.
- (C) Upon receipt of a pre-approval application submitted pursuant to this rule, the director shall evaluate the estimated cost and completion schedule. In evaluating the estimated cost and completion schedule to be pre-approved, the director shall consider what is usual, customary and reasonable for similar corrective action activities and under similar circumstances as determined from the fund's experience. At the director's discretion, other options including, but not limited to, pay-for-performance or risk sharing by the consultant and the responsible person may be considered for the corrective actions for which pre-approval is sought. The director shall notify the responsible person of the pre-approved costs and completion schedule.
- (D) The responsible person shall immediately notify the director and submit a revised estimated cost and completion schedule for pre-approval ~~on a form prescribed by the director~~ as follows:
- (1) If during the implementation of the corrective actions for which pre-approval has been granted, the actual costs will exceed the pre-approved costs by twenty ~~per cent~~percent or six thousand dollars, whichever is less; or
- (2) If during the implementation of the corrective actions for which pre-approval was not required by paragraph (A)(3), (A)(4), or (A)(5) of this rule because

the estimated costs did not exceed six thousand dollars, the actual costs will exceed six thousand dollars.

- (E) Where a revised estimated cost and completion schedule is submitted for pre-approval, the director may review the estimated cost and completion schedule in accordance with paragraph (C) of this rule or provide notification to the responsible person that the estimated cost and completion schedule will be evaluated when the application for reimbursement is submitted to the board in accordance with rule 3737-1-12 of the Administrative Code.
- (F) Where an estimated cost and completion schedule is required by this rule, estimated costs shall be detailed on a time and material basis.
- (G) Corrective action costs and completion schedules not submitted for pre-approval in accordance with this rule shall be evaluated for reimbursement and subject to reductions in reimbursement in accordance with rule 3737-1-09 of the Administrative Code.
- (H) Where pre-approval is not required by this rule but is desired by the responsible person, the responsible person may submit to the director a description of the proposed corrective actions and an estimated cost and completion schedule for pre-approval.
- (I) Pre-approval shall not accelerate fund reimbursement for a release. Payment for pre-approved costs shall be contingent upon the proper submission of an application for reimbursement in accordance with rule 3737-1-12 of the Administrative Code, and a determination that a responsible person is eligible to receive reimbursement from the fund.

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3737-1-16

Third-party claims.

- (A) Reimbursement or payment from the fund for compensation paid or to be paid for third-party claims shall be limited to the reasonable costs of bodily injury or property damage, if any, if the responsible person was in compliance with rule 3737-1-19 of the Administrative Code at the time the judgment or settlement was entered and the responsible person has been determined eligible for reimbursement for the third-party claim.
- (B) Upon notifying the board of a third-party claim pursuant to rule 3737-1-19 of the Administrative Code, the responsible person shall keep the board informed of the status of the third-party claim including but not limited to any pending negotiations, litigation, mediations, settlements, or judgments.
- (C) Where there has been a judgment or settlement of a third party lawsuit, the director shall determine and reimburse only those portions, if any, of the judgment or settlement which apply to bodily injury or property damage as defined in paragraphs (A)(3) and (A)(22) of rule 3737-1-03 of the Administrative Code. The board shall have no obligation to pay for the reasonable costs of bodily injury or property damage that are not documented in a third-party claim.
- (D) The total amount reimbursed, including payment to a third party under this rule, shall not exceed the maximum disbursement set forth in division (D)(3) of section 3737.91 of the Revised Code.
- (E) Reimbursement or payment from the fund under this rule shall not include payment or reimbursement for bodily injury or property damage that has been or will be paid from the responsible person's insurance or another party under rule 3737-1-22 of the Administrative Code.
- (F) Determination of third-party eligibility for the responsible person does not constitute an obligation for reimbursement from the fund.
- (G) Nothing in this rule precludes the board from participating or intervening in any pending negotiations, litigation, mediations, or settlement discussions or entering into a settlement with either the responsible person or the third party.
- (H) Nothing in this rule shall be construed that the board is acting as a representative of the responsible person.

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3737-1-17

Petroleum underground storage tank linked deposit program.

(A) In order to participate in the petroleum underground storage tank linked deposit program an applicant must:

- (1) Be headquartered in the state of Ohio;
- (2) Own six or ~~less~~ fewer tanks exclusively in Ohio;
- (3) Be organized for profit;
- (4) Have a total annual revenue of not more than two million dollars and fewer than fifty employees;
- (5) Apply to an eligible lending institution; and
- (6) Certify that the reduced rate loan will be used exclusively for the replacement or upgrading of one or more petroleum underground storage tanks or tank systems in compliance with division (A) of section 3737.88 of the Revised Code.

(B) The board upon receipt of a linked deposit application from the eligible lending institution may accept or reject the application on the basis of:

- (1) The board's evaluation of the eligible owner and the amount to be deposited from the petroleum underground storage tank financial assurance fund including:
 - (a) The manner in which the linked deposit benefit will materially contribute to the relative financial need of the business in question;
 - (b) The economic needs of the area in which the owner's tanks are located;
 - (c) Whether it appears from the linked deposit application that the replacement or improvement of the petroleum underground storage tanks or tank system will allow the eligible owner to continue operations at present levels in an environmentally sound manner; and
 - (d) Such other factors as the board considers appropriate.
- (2) The criteria set forth in paragraph (A) of this rule.

- (3) Whether the amount of the linked deposit requested by the eligible lending institution is no greater than one hundred thousand dollars.

- (C) The board may on an annual basis commit no more than ten percent of the gross receipts of the annual billing of the petroleum underground storage tank financial assurance fund created under section 3737.91 of the Revised Code to be included in the petroleum underground storage tank linked deposit program.

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3737-1-18

Certificate of coverage.

- (A) The board shall issue a certificate of coverage to any responsible person who has met the criteria of division (D) of section 3737.91 of the Revised Code and rule 3737-1-04 of the Administrative Code.
- (B) ~~Effective with the 1992 fiscal year there will be one~~ One master certificate of coverage will be issued for each owner or operator making payment to the fund and a facility certificate of coverage will be issued for each assured facility site.
- (C) The certificate of coverage shall contain the following information:
- (1) The amount of coverage to which the responsible person is entitled from the fund;
 - (2) The time period for which the certificate provides coverage; and
 - (3) The number of tanks which are included in the coverage.

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3737-1-19

Establishing fund eligibility for third-party claims.

(A) As a prerequisite to determining fund payment or reimbursement for compensation paid or to be paid for third-party claims for bodily injury or property damages caused by the accidental release of petroleum resulting in the need for corrective action, the director of the fund shall issue a determination of eligibility where all of the following conditions are established:

- (1) Receipt of an application for eligibility, from a responsible person, for third-party bodily injury or third-party property damage caused by an accidental release of petroleum within thirty days from the first of any of the following events: service of a third-party complaint against a responsible person, the submission of a third-party demand for settlement, or notice of representation of a third party in a lawsuit against a responsible person. Where a third-party eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information in writing and within sixty days from the date of the request. If the responsible person fails to make a written response within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in an eligibility denial. If the responsible person fails to make a written response within thirty days from the date the second request is sent, eligibility shall be denied;
- (2) At the time of the suspected release or release, whichever is first, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to paragraph (E)(1) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;
- (3) One of the following applies:
 - (a) At the time the suspected release or release, whichever is first, was required to be reported to the fire marshal, the petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground

storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

- (4) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
 - (5) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
 - (6) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
 - (7) The responsible person has met the petroleum suspected release and release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code;
 - (8) At the time of the suspected release or release, whichever is first, the petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code; and
 - (9) The responsible person has been determined eligible for payment of or reimbursement for eligible corrective action costs pursuant to rule 3737-1-07 of the Administrative Code.
- (B) A responsible person determined eligible pursuant to paragraph (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:
- (1) Maintaining all records required to be kept by this chapter;
 - (2) Paying all fees assessed;
 - (3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and

- (4) Maintaining compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.
- (C) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule has failed to maintain fund eligibility pursuant to paragraph (B) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.
- If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.
- (D) A responsible person or the fire marshal may file written objections with the board to the director's determination of fund ineligibility no later than thirty days from the mailing of the determination of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.
- (E) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.

Effective:

R.C. 119.032 review dates: 07/31/2014

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3737.90
Rule Amplifies: 3737.92
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11/30/2009

3737-1-20

Fees for materials and services.

~~The board may approve reasonable~~ Reasonable fees ~~to~~ may be charged to persons requesting materials or services from the board.

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3737-1-21

Obligated account.

Prior to the beginning of each fiscal year, the director shall propose that monies be obligated for reimbursement of corrective action costs. The proposed amount to be obligated shall be only that which is reasonably estimated by the director to be paid out for such costs in the upcoming fiscal year. Prior to the start of the upcoming fiscal year, the board shall consider the proposal and approve the amount of monies, representing estimated upcoming fiscal year claim reimbursements, to be transferred, during the first quarter of the upcoming fiscal year, to a special account named obligated account and be expressly used for reimbursements of corrective action costs.

Monies not placed in the obligated account, ~~nor~~ the debt service account or accounts, ~~nor~~ the debt service reserve account or accounts, ~~nor~~ in certificates of deposit purchased for linked deposits, or in the unclaimed monies trust account shall remain in the unobligated balance. At the end of the fiscal year in which monies have been obligated, any excess monies in the obligated account shall remain in that account to reduce the transfer of monies into the obligated account for reimbursements of corrective action costs in the succeeding fiscal year.

If, during the fiscal year, the monies set aside in the obligated account are anticipated to be insufficient to cover reimbursements of corrective action costs for the remainder of the current fiscal year, the director may draw monies from the unobligated balance to obligate additional monies as necessary for reimbursements of corrective action costs, subject to board approval.

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3737-1-22**Subrogation.**

(A) The responsible person shall not in any manner do any act that will impair the board's subrogation rights. The responsible person shall:

(1) Notify the board in writing within thirty days of any action by another party causing and/or contributing to an accidental release of petroleum from an assured underground storage tank system or other sources;

(2) Notify the board of the identity of all other parties against whom the responsible person has or may have a right of recovery;

(3) Notify the other party(s) of the board's right to subrogation under division (I) of section 3737.92 of the Revised Code and that the board may assert its right by written correspondence with the responsible person, the other party(s) or their legal representatives, or may settle or institute and pursue legal proceedings against the other party(s) independently or in conjunction with the responsible person;

(4) Notify the other party(s) that no settlement, compromise, judgment, award, or other recovery in any action or claim by the responsible person shall be binding on the board;

(5) Notify the other party(s) that any settlement, compromise, judgment, award, or other recovery in favor of the responsible person shall not preclude the board from enforcing its subrogation rights against the other party(s); and

(6) Notify the other party(s) that no attorney fees, court costs or other litigation costs shall be assessed against the board for enforcing its subrogation rights.

(B) The responsible person shall cooperate with the board in enforcement of its subrogation rights, including but not limited to:

(1) Providing documents, testimony, and access to experts relating to the other party(s) causing or contributing to the accidental release of petroleum;

(2) Providing reasonable advance notification to the board of any and all settlement meetings; and

(3) Not enter into any settlement agreement without prior notice to and authorization by the board.

(C) Where reimbursement for the costs of corrective action and third-party claims has been withheld pursuant to rule 3737-1-09 of the Administrative Code, and the board recovers any monies under its subrogation rights, the board may reimburse the responsible person the amount withheld only if the amount recovered under the board's subrogation claim is greater than the amount withheld from the responsible person.

(D) If the responsible person has received any monies from any other party or the responsible person's insurance for reimbursement of corrective action costs and/or third-party claims, the responsible person shall indemnify the board the total amount of any monies advanced or received including repayment to the board of any amount the board has reimbursed the responsible person or has compensated any third party, unless the responsible person and the board agree to a lesser amount in a written settlement agreement.

Replaces: 3737-1-22

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3737-1-23

Access and maintenance of confidential personal information.

For purposes of confidential personal information that is maintained by the board, the following definitions apply:

(A) Definitions:

- (1) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.
- (2) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of this rule addressing requirements in section 1347.15 of the Revised Code.
- (3) "Computer system" means hardware, software, and other equipment that stores, maintains, or retrieves personal information using electronic data processing.
- (4) "Confidential personal information" has the same meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by paragraph (D) of this rule.
- (5) "Employee of the board" means each employee of the board regardless of whether he/she holds an appointed office or position within the board. "Employee of the board" is limited to the petroleum underground storage tank release compensation board.
- (6) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (7) "Individual contact" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (8) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (9) "Person" means a natural person.
- (10) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.
- (11) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.

- (12) "Research" means a methodical investigation into a subject.
- (13) "Routine" means commonplace, regular, habitual, or ordinary.
- (14) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees of the board and maintained by the board for internal administrative and human resource purposes.
- (15) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
- (16) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

(B) For personal information systems, whether manual or computer systems that contain confidential personal information, the following rules apply:

- (1) Criteria for accessing confidential personal information. Employees of the board are authorized to access personal information systems for valid reasons in accordance with paragraph (C)(1) of this rule to the extent required to perform assigned job duties;
- (2) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the employee responding to such request shall do all of the following:
- (a) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
- (b) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and
- (c) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.
- (3) Notice of invalid access.

- (a) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, notification shall be delayed for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individual's confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.
- (b) "Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.
- (c) Notification shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.
- (d) Notification may be made by any method reasonable designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.
- (4) Appointment of a data privacy point of contact. The director shall designate an employee to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist with both the implementation of privacy protections for the confidential personal information that the board maintains as well as work to ensure compliance with section 1347.15 of the Revised Code and this rule.
- (5) Completion of a privacy impact assessment. The director shall designate an employee to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.
- (C) Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information regardless of whether the personal information system is a manual system or computer system:
- (1) Performing the following functions constitutes valid reasons for authorized

employees of the board to access confidential personal information:

(a) Responding to a public records request;

(b) Responding to a request from an individual for the list of confidential personal information the board maintains regarding that individual;

(c) Administering a constitutional provision or duty;

(d) Administering a statutory provision or duty;

(e) Administering an administrative rule, provision or duty;

(f) Complying with any state or federal program requirements;

(g) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;

(h) Auditing purposes;

(i) Investigation or law enforcement purposes;

(j) Administrative hearings;

(k) Litigation, complying with an order of the court, or subpoena;

(l) Human resource matters (e.g. hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);

(m) Complying with an executive order or policy; or

(n) Complying with an agency policy or state administrative policy issued by the department of administrative services, the office of budget and management or other similar agency.

(D) The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by the board in accordance with section 1347.15 of the Revised Code:

(1) Social security numbers: 5 U.S.C. 552a . . . "State ex rel Beacon Journal v. Akron (1994), 70 Ohio St. 3d 605.", unless the individual was told that the number would be disclosed.

(2) Records exempt from disclosure under the Ohio Public Records Act: Chapter 149 of the Revised Code.

(E) For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

- (1) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (2) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to the system.
- (3) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (4) Logging requirements regarding confidential personal information in existing manual and computer systems.
 - (a) The board shall require employees of the board who access confidential personal information within the computer system to maintain a log that records that access.
 - (b) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (i) The employee of the board is accessing confidential personal information for official authority purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (ii) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iii) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iv) The employee of the board accesses confidential personal information to the extent necessary to perform assigned job duties and the access is for a valid reason as defined in paragraph (C)(1)

of this rule.

(v) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(a) The individual requests confidential personal information about himself/herself.

(b) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(c) For purposes of this paragraph, the director may choose the form or forms of logging, whether in electronic or paper formats.

(F) Log management. The director or designee shall maintain an electronic or paper log that records access to confidential personal information on existing computer systems for any reason not specified in paragraph (D)(4)(b) of this rule. The director shall issue a policy that specifies the following:

(1) What information shall be captured in the log;

(2) How the log is to be stored; and

(3) How long information kept in the log is to be retained.

Effective:

Five Year Review (FYR) Dates:

Certification

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