Rules of
Department of Natural Resources
Division 100—Petroleum Storage Tank Insurance Fund Board of Trustees
Chapter 5—Claims

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 100—Petroleum Storage Tank Insurance Fund Board of Trustees
Chapter 5—Claims

10 CSR 100-5.010 Claims for Cleanup Costs

PURPOSE: This rule describes who can make claims against the Petroleum Storage Tank Insurance Fund, when and how such claims must be made, requirements to seek preapproval of costs, what costs the fund considers eligible, and how to request payment from the fund.

(1) A notice of claim must be submitted in writing to the board as soon as reasonably possible after a fund participant or beneficiary described in section (4) of this rule:

(A) Knows or reasonably suspects that a release from a tank has occurred;

(B) Receives notice of the assertion of an obligation to pay cleanup costs or damages as a result of a release from tanks on the property;

(C) Plans to remove one (1) or more petroleum storage tanks; or

(D) Learns that petroleum contamination exists on site at levels such that a cleanup is required by the Department of Natural Resources.

(2) Except as described below, prior to the initiation of any work where cleanup costs will be incurred, whether within the deductible or in excess of the deductible, the cleanup costs must first be approved by the board. Failure to obtain approval of the budgeted cleanup costs may subject the fund participant or fund beneficiary to reduction or denial of benefits.

(A) Fund participants or beneficiaries are not required to obtain prior approval of the board for the costs of necessary first aid or emergency response.

(B) In cases where first aid or emergency response is provided, the fund participant or beneficiary must notify the board of such activities as soon as practical.

(3) The board retains final authority to make a determination concerning all eligibility issues, including but not limited to whether costs for products and services were reasonable, and whether the costs incurred were necessary to achieve the cleanup required by the Department of Natural Resources.

(4) Fund participants or beneficiaries may receive monies from the fund for the following sites:

(A) A site where petroleum storage tanks are in use or temporarily closed, and the owner or operator is participating in the fund at the time a release is discovered.

1. Fund participants must give notice of claim and get cleanup costs approved in advance, as described in this rule.

2. For cleanup costs resulting from a release from an aboveground storage tank, costs incurred prior to July 1, 1997, are not eligible;

(B) A site where petroleum storage tank(s) is/are in use or temporarily closed, the owner or operator applied to participate in the fund by December 31, 1997, that application was ultimately accepted by the board, there are ongoing costs of cleanup associated with a release from one (1) or more of those tanks which occurred prior to the date the application was accepted, and the cleanup began after August 28, 1989.

1. Fund participants must get cleanup costs approved in advance, as described in this rule.

2. Costs incurred prior to the date of acceptance by the board of the application for participation are not eligible.

3. In order to maintain its status as an eligible site, the owner or operator of any petroleum storage tanks at the site must maintain participation in the fund as long as such tanks are in use or are temporarily closed. Failure to do so shall result in the site becoming ineligible; costs incurred after the date of cancellation or nonrenewal of participation in the fund are not eligible. Should the owner or operator elect to participate in the fund again, the site may become eligible under subsection (4)(A) for any new release;

(C) A site where a release occurred as a result of the operation of one (1) or more petroleum storage tanks, cleanup began or will begin after August 28, 1989, and the tank(s) from which the release occurred was/were taken out of use prior to December 31, 1997, provided such site was documented by or reported to the Department of Natural Resources prior to December 31, 1997.

1. For the purposes of this subsection, evidence of a site being documented by or reported to the Department of Natural Resources may include, but is not limited to:

A. Completion of a tank registration form;

B. Completion of the notification form circulated by the Department of Natural Resources in 1995–1997;

C. A letter, sent via U.S. mail or overnight delivery service, identifying the location of the site and indicating the existence or prior existence of tanks on the site;

D. A written message transmitted via facsimile, identifying the location of the site and indicating the existence or prior existence of tanks on the site;

E. A Site Assessment Report or similar report, submitted to the department, identifying the site as one where tanks were previously operated; or

F. Any other similar documentation which is determined by the board to provide reasonable evidence of such fact.

2. Costs incurred prior to August 28, 1995, are not eligible.

3. Fund beneficiaries may be required by the board to provide evidence that the site was documented by or reported to the Department of Natural Resources prior to December 31, 1997; and

(D) A site described in subsection (4)(B) or (4)(C), except the release occurred and was being remediated prior to August 28, 1989.

1. Fund participants must get cleanup costs approved in advance, as described in this rule.

2. Costs incurred prior to August 28, 1996 are not eligible.

(5) Fund participants or beneficiaries may not receive monies from the fund for the following sites:

(A) Sites owned by a railroad corporation, as defined in section 388.010, RSMo, or airline company as defined in section 155.010, RSMo, at the time the release occurred;

(B) Sites contaminated by a release from a tank that—

1. Is or was used to store hazardous substances when the release occurred;

2. Is a farm or residential tank of one thousand one hundred (1,100) gallons or less, which is used for storing motor fuel for noncommercial purposes;

3. Is or was used, at the time of the release, for storing heating oil for consumptive use on the premises;

4. Is a septic tank or part of a storm water or waste water collection system;

5. Is a flow-through process tank;

6. Is situated in an underground area, such as a basement, the tank is on or above the floor; or

7. Is part of a transformer, circuit breaker, or similar electrical equipment; and

(C) Sites contaminated by a release of petroleum from a tank which is or was located at a refinery, pipeline terminal, or marine terminal.

(6) The following persons may request payment from the fund:

(A) A fund participant;

(B) A fund beneficiary; or

(C) A creditor, or the creditor's subsidiary, who is a successor in interest as defined in section 319.131.3, RSMo.

(7) Persons who believe they have suffered property damage, bodily injury, or other damages, or have incurred costs to clean up petroleum contamination on their property resulting from the operation of tanks on an adjacent or nearby site, may not request payment directly from the fund. Such claims must be made directly to the fund participant.

(8) Fund participants and beneficiaries are required to seek preapproval of cleanup costs by following the procedures outlined below:

(A) Prior to removal of a petroleum storage tank, or other activity involving excavation of contaminated soil, a fund participant or beneficiary must—

1. Obtain an adequate number of bids or proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid. The bids or cost estimates must include all tasks and services which may be necessary;

2. Submit the bid(s) or proposal(s) to the board, including:

A. A cost estimate for excavation and hauling of contaminated soil, expressed as a unit cost (e.g., per ton or per cubic yard);

B. A cost estimate for disposal or treatment of contaminated soil;

C. A cost estimate for backfill, expressed as a unit cost;

D. A cost estimate for removal, treatment and/or disposal of contaminated water which may be encountered during the excavation;

E. A cost estimate for project management, supervision and reporting;

F. A cost estimate for collection and/or analysis of soil and water samples;

G. A contingency cost estimate, expressed as unit costs, for any additional costs which may be incurred if field conditions warrant or necessitate more work than anticipated; and

H. A cost estimate for any other anticipated cleanup costs;

(B) Prior to conducting a site characterization which is required in response to a release, a fund participant or beneficiary must—

1. Obtain an adequate number of bids or proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid. The bids or cost estimates must include all tasks and services which may be necessary; and

2. Submit the bid(s) or proposal(s) to the board, including:

A. A cost estimate for field activities;

B. A cost estimate for laboratory analysis of soil and/or water samples, as appropriate;

C. A cost estimate for project management, oversight, data analysis, reporting, and similar activities, as appropriate;

D. A contingency cost estimate, expressed in unit costs, for additional costs which may be incurred if field data indicates the need for expanded field investigation; and

E. A cost estimate for any other anticipated costs associated with the site characterization;

(C) Prior to conducting corrective action required in response to a release, a fund participant or beneficiary must—

1. Obtain an adequate number of bids or proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid; and

2. Submit the bid(s) or proposal(s) to the board;

(D) When corrective action includes the purchase and installation of equipment designed to clean up petroleum contamination, the fund participant or beneficiary is required to solicit competitive bids for such equipment;

(E) The board will respond in writing to bid(s) or cost estimate(s) submitted by fund participants or beneficiaries, and will state whether the bid(s) or cost estimate(s) are eligible, reasonable, and necessary. This response will be based on information submitted for each project, as well as information available to the board from its review of other cost estimates and its processing of similar claims. To the extent possible, the board's response will note which specific tasks, rates or items are deemed to be ineligible, unreasonable or unnecessary, and will explain the reason for its decision;

(F) If the bid(s) or cost estimate(s) submitted to the board are incomplete, or contain costs which are higher than the board determines to be reasonable, the board may—

1. Agree to pay a lesser cost;

2. Ask the fund participant or beneficiary to solicit additional cost estimates; or

3. Ask the fund participant or beneficiary to demonstrate how the estimate was prepared; and

(G) The board reserves the right to reject any proposed costs or estimates if, in the opinion of the board and at its sole discretion, such costs are ineligible, unreasonable or unnecessary.

(9) The fund will recognize eligible, reasonable and necessary costs incurred for the following activities:

(A) Costs incurred to characterize the extent of petroleum contamination which results from a release from a petroleum storage tank; and

(B) Costs incurred for corrective actions taken in accordance with state or federal regulations in response to a release from a petroleum storage tank.

(10) Costs not associated with cleanup of a release from a petroleum storage tank are not eligible. Such costs include, but are not limited to:

(A) Costs of excavation solely necessary to remove a petroleum storage tank;

(B) Costs of removal of tanks or piping, cleaning of the tank, transportation and disposal of the tank and piping;

(C) Costs of demolition and removal of buildings, canopies, dispensers, etc.;

(D) Costs of excavation, transport, treatment or disposal of soil which is not contaminated with petroleum at levels such that the Department of Natural Resources requires corrective action, except that—

1. The cost of removal of concrete or similar surface material, overburden, or fill material which is necessary to access contaminated soil for removal is eligible; and

2. Costs for removal, transport, and treatment or disposal of backfill which surrounds underground tanks or piping, which is removed during tank closure activities, and which is contaminated at a level such that the Department of Natural Resources prohibits placement of the material back into the excavated area, are eligible;

(E) Costs for environmental site assessments, or similar work, the purpose of which is to determine whether or not a release has occurred;

(F) Markup of costs charged by a treatment or disposal facility which is used for disposition of contaminated soil;

(G) Markup of costs charged by a laboratory for analysis of water or soil samples;

(H) Markup by the environmental consultant or contractor of major subcontracted work done as part of a site characterization, such as drilling, well installation or push-probe investigation;

(I) Repairs and maintenance of tanks and lines;

(J) Tank and line tightness tests;

(K) Preparation of claim submittals;

(L) Paving or resurfacing, except as required as a result of necessary cleanup activities. Claims for resurfacing shall be paid on a depreciated basis, or on the basis of the actual cash value of the surface which existed immediately prior to the cleanup; in no case shall costs for resurfacing be recognized as eligible expenses unless the costs of cleanup were incurred after May 3, 1999;

(M) Installation of new tanks, lines, spill/overfill prevention devices, etc.; or

(N) Other costs excluded by the document issued by the board to fund participants (see 10 CSR 100-4.010(4) and 10 CSR 100-4.020(4)).

(11) The board shall have the authority to investigate as needed in response to the submission of a notice of claim or invoices.

(A) The board shall have the right, but not the obligation, to—

1. Make inspections of sites for which the fund participant or beneficiary has given notice of claim;

2. Request and review records concerning the operation of tanks at the site, maintenance of the tank system, site characterization or corrective actions; or

3. Take recorded statements from tank owners, operators, their employees, contractors, consultants, local officials, or other persons with pertinent knowledge or information about a claim.

(B) Fund participants and beneficiaries must provide copies of records and reports which the board requests as part of its claim investigation.

(C) Neither the fund participant or beneficiary nor the board shall waive any rights expressed in Missouri law or the coverage document issued by the board by virtue of the participant or beneficiary submitting notice of claim or invoices, or the board investigating the claim.

(12) When a fund participant or beneficiary incurs costs for cleanup of petroleum contamination, he or she shall comply with the procedures set forth below to request payment from the fund:

(A) Persons requesting payment from the fund must send invoices for the work done, along with a copy of any reports generated by consultants, contractors or laboratories as part of the work, to the address specified by the board. Original invoices are requested; if photocopies are submitted, they must be accompanied by a signed statement certifying that the copies are true and accurate;

(B) If the person requesting payment is not the owner of the land where the work is being or has been done, he or she must submit either proof of payment or lien waivers with the invoices;

(C) To the extent possible, invoices should be accumulated and submitted as a batch when a project, or phase of a project, is complete. In cases where the size of a project would present a financial hardship, the fund will make periodic payments as the project progresses;

(D) The board may, for the purposes of standardizing claim submittals and assisting persons in preparing such submittals, require submission of a form along with invoices, summarizing the costs for which payment is being sought, identifying the purposes of such costs, and providing such other information as may be needed to more efficiently process claims;

(E) The board will respond in writing to every request for payment. If the response indicates some or all costs are being disallowed or denied, the response will identify those costs and the reason for such disallowance or denial; and

(F) Eligible costs will be reduced by any applicable deductible prior to payment being made.

AUTHORITY: sections 319.129, 319.131, and 319.132, RSMo Supp. 1998. Original rule filed April 1, 1999, effective Nov. 30, 1999.*

**Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998; 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998; and 319.133, RSMo 1989, amended 1991, 1996, 1998.*

10 CSR 100-5.020 Claims Appeal Procedure

PURPOSE: This rule sets forth the procedures to be followed in the event a person wishes to appeal a claim payment decision.

(1) If a fund participant or beneficiary disagrees with a payment decision, he or she must send or deliver the objection(s) or reason(s) for the disagreement in writing to the party designated by the board to process claims within one hundred eighty (180) days of the date the check or the claim denial is issued.

(2) The board's agent or staff responsible for processing claims must then review the appeal and respond in writing to the fund participant or beneficiary within thirty (30) days of receipt of the appeal.

(3) If the fund participant or beneficiary still disagrees with the administrator's decision, he or she may request further review by sending a written request within sixty (60) days of receipt of the administrator's decision to the board's executive director.

(4) The executive director will then review the claim file and the previous decisions, and will respond in writing to the fund participant or beneficiary within thirty (30) days of receipt of the request. The executive director must—

(A) Affirm the decision previously made;

(B) Refer the appeal to the board of trustees; or

(C) Specify additional information or clarification which is needed. In this case, the executive director must then take one (1) of the two (2) steps listed above within thirty (30) days of receipt of the additional information or clarification, or, if no response is received, may terminate the appeal.

(5) If the executive director affirms the previous decision, and the fund participant or beneficiary is still dissatisfied, he or she may request review by the board by sending a written request within sixty (60) days of receipt of the executive director's decision to the board's mailing address.

(6) If this occurs, or if the executive director refers the appeal to the board, the board will consider the appeal at one (1) of its two (2) next regularly-scheduled meetings. Board deliberations will be in a "non-contested hearing" format; the fund participant or beneficiary will have opportunity to present information to the board in open session, and the board may also hear a presentation from its staff or third-party administrator. The board may limit the time allowed for such presentations. The board may deliberate and make its decision in closed session in accordance with section 610.021, RSMo. The board's decision will be communicated in writing to the fund participant or beneficiary within fourteen (14) days after the board meeting at which a decision is made.

(7) While the board may, at its sole discretion, choose to consider an appeal which is not submitted according to the deadlines imposed by sections (1), (3) or (5) of this rule, it is under no obligation to consider or take action on such requests, and may deny a claim based upon the failure to timely comply with the deadlines stated in this section.

AUTHORITY: section 319.129, RSMo Supp. 1998. Original rule filed April 1, 1999, effective Nov. 30, 1999.*

**Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998.*

10 CSR 100-5.030 Third-Party Claims

PURPOSE: This rule describes the procedures to be followed in the event there is a third-party claim against a tank owner or operator who is insured by the fund, and summarizes what third-party coverage is provided by the fund.

(1) In the event that a fund participant receives notice from a third party, alleging property damage or bodily injury as a result of a release from a petroleum storage tank, he or she must notify the board in writing as soon as reasonably possible. Any written notice received by a fund participant which asserts an obligation to pay damages must be forwarded to the board. The fund participant must provide notification to the board while coverage is in effect, or during an extended reporting period allowed by the board.

(2) Fund participants must immediately send copies of any demands, notices, summonses or legal papers received in connection with a claim or suit, and must—

(A) Authorize the board to obtain all records and other information available regarding the claim or suit;

(B) Cooperate with the board in the investigation, settlement or defense of the claim or suit; and

(C) Assist the board, upon request, in the enforcement of any right against any person or organization which may be liable to the fund participant because of injury or damage covered by the fund.

(3) No fund participant may, except at the participant's own cost, voluntarily make any payments of compensatory damages because of bodily injury or property damage without the prior consent of the board.

(4) Coverage for such damages does not include coverage for any loss or damage of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

(5) The fund does not provide third party coverage of any kind for releases from petroleum storage tanks at sites described in 10 CSR 100-5.010(4)(B), (4)(C), or (4)(D).

(6) The board has the right to defend any suit seeking property or bodily injury damages, and may investigate and settle any claim for third-party damages or suit at its sole discretion.

(7) The board has no obligation to defend any claim or suit for damages not covered by the fund.

AUTHORITY: sections 319.129 and 319.131, RSMo Supp. 1998. Original rule filed April 1, 1999, effective Nov. 30, 1999.*

**Original authority 319.129, RSMo 1989, amended 1991, 1996, 1998; and 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998.*