

SUMMARY OF PROPOSED CHANGES

10 CSR 100-2.010 – Definitions

Section (11):

Adds “or Beneficiary” to the definition of “Fund Beneficiary”

Section (12):

Adds “or Participant” to the definition of “Fund Participant”

Section (13):

Adds the definition of “incurred” to clarify deadlines for submissions for reimbursement identified in 10 CSR 100-5.010 (12)(A)1.

Rules of
Department of Natural Resources
Division 100-Petroleum Storage Tank Insurance Fund Board of Trustees
Chapter 2-Definitions

Title Page

10 CSR 100-2.010 Definitions 3

PURPOSE: This rule defines certain terms used in this division.

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, used to contain an accumulation of petroleum and the volume of which, including the volume of the above-ground pipes connected thereto, is ninety percent (90%) or more above the surface of the ground, and is utilized for the sale of products regulated by Chapter 414, RSMo. It does not include:

- (A) A farm or residential tank of one thousand one hundred (1,100) gallons or less used for storing motor fuel for noncommercial purposes;
- (B) Tanks used for storing heating oil for consumptive use on the premises where stored;
- (C) Septic tanks;
- (D) Pipeline facilities, including gathering lines, regulated under-
 - 1. The federal Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481), as amended; or
 - 2. The federal Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129), as amended;
- (E) Pipeline facilities regulated under state laws comparable to the provisions of law referred to in subsection (D) of this section;
- (F) Surface impoundments, pits, ponds, or lagoons;
- (G) Storm water or waste water collection systems;
- (H) Flow-through process tanks;
- (I) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
- (J) Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; and
- (K) Transformers, circuit breakers, or other electrical equipment.

(2) "Airline company" means any person, firm, partnership, corporation, trustee, receiver or assignee, and all other persons, whether or not in a representative capacity, undertaking to engage in the carriage of persons or cargo for hire by commercial aircraft pursuant to certificates of convenience and necessity issued by the federal Civil Aeronautics Board, or successor thereof, or any noncertificated air carrier authorized to engage in irregular and infrequent air transportation by the federal Civil Aeronautics Board, or successor thereof.

(3) "Annual aggregate" means the dollar amount of all benefits available to a fund participant for the period of time stated on the declarations page of each participation agreement issued by the board, regardless of how many separate occurrences, releases, or third party claims may occur during this same period. State law establishes the annual aggregate at two (2) million dollars.

(4) "Board" means the board of trustees of the Petroleum Storage Tank Insurance Fund, or its employee, designated agent, or representative.

(5) "Bodily injury" means physical injury, sickness, disease or damage to the body sustained by a person, including death resulting from any of these at any time. It does not include any loss or damage of an intangible nature, such as pain and suffering, mental distress, or loss of use of any benefit. Nor does it mean personal injury.

(6) "Claim" means a written demand for money or services, including the service of a lawsuit, which is filed and adjudicated in a manner consistent with Missouri law.

(7) "Cleanup" consists of all actions necessary to investigate, contain, control, analyze, assess, treat, remediate, or mitigate the risks of a petroleum release to achieve risk-based standards established by the Department of Natural Resources.

(8) "Deductible" means that portion of a covered loss borne by a fund participant for each occurrence before the participant is entitled to recovery from the fund for that occurrence.

(9) "Emergency response" means immediate actions taken to contain a release or eliminate a serious hazard.

(10) "Fund" means the Petroleum Storage Tank Insurance Fund.

(11) "Fund beneficiary" or **"Beneficiary"** means any person who takes responsibility for cleanup of one (1) or more releases from tanks taken out of use prior to December 31, 1997, and who qualifies to receive monies from the Petroleum Storage Tank Insurance Fund under section 319.131.9 or 319.131.10, RSMo.

(12) "Fund participant" or **"Participant"** means an owner or operator of a tank who has applied for and been accepted by the board as a person for whom the Petroleum Storage Tank Insurance Fund is serving as a financial responsibility mechanism under section 319.114, RSMo, or section 414.036, RSMo; or the owner of land upon which such a tank is located, if such person is named as an additional insured; or any other person named as an additional insured by the board.

(13) "Incurred" means the date on which work or services occur, regardless of the date of invoice or payment.

(14) "In use" means the tank contains an accumulation of petroleum which is more than a de minimus amount; that is, the tank is not empty.

(15) "Marine terminal" means a large storage facility which receives product via barge or similar conveyance. It does not mean bulk storage facilities located near lakes or rivers, such as are used by petroleum distributors, and which typically receive product via truck.

(16) "Occurrence" means any sudden or non-sudden accidental release of petroleum from a tank that results in a covered loss.

(17) "Out of use" means the tank is empty-that is, it does not contain more than a de minimus amount of petroleum-and is no longer regularly being used to store petroleum.

(18) "Personal injury" means injury, other than bodily injury, arising out of one (1) or more of the following offenses:

- (A) False arrest, detention, imprisonment;
- (B) Malicious prosecution;
- (C) Wrongful entry into or eviction of a person from a room, dwelling, premises, or property that the person occupies; or
- (D) Invasion of right of private occupancy.

(19) "Petroleum storage tank" means:

- (A) An underground storage tank, as defined in section 319.100, RSMo, which is used to store petroleum; or
- (B) An aboveground storage tank, as defined in this rule.

(20) "Pipeline terminal" means a large storage facility which receives product via pipeline.

(21) "Property damage" means physical injury to or destruction of tangible property, excluding all resulting loss of use of that property. It does not include loss or damage of an intangible nature. Loss or damage of an intangible nature includes, but is not limited to, loss or interruption of business, pain and suffering, lost income, mental distress, loss of use of any benefit, and punitive damages.

(22) "Railroad corporation" means all corporations, companies or individuals now owning or operating, or which may hereafter own or operate, any railroad in this state.

(22) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or subsurface soils.

(23) "Site" means real property held under one (1) deed, except that in exceptional circumstances involving very large tracts of land, the board may, at its discretion, recognize separate portions of a large tract as separate tank sites.

(24) "Tank" means-

- (A) An underground storage tank, as defined in section 319.100, RSMo, which is used to store petroleum; or
- (B) An aboveground storage tank, as defined in this rule.

AUTHORITY: section 319./29, RSMo 2016.

* Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed March 31, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 3, 2003, effective May 30, 2004. Amended: Filed Sept. 1, 2006, effective July 30, 2007. Amended: Filed Aug. 13, 2012, effective March 30, 2013. Amended: Filed Feb. 15, 2018, effective Sept. 30, 2018.

*Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008.

SUMMARY OF PROPOSED CHANGES

10 CSR 100-4.010 Participation Requirements for Petroleum Storage Tanks

Section Title & Scope

The title changes from “Underground Storage Tanks” to “**Petroleum Storage Tanks,**” expanding applicability to combine the UST and AST rules.

The PURPOSE statement replaces references to *underground* tanks and *insurance coverage* with **petroleum storage tanks** and **participation in the PSTIF**. The annual participation fee wording changes from singular (*is*) to plural (**are**).

Section (1): Eligibility

- Eligibility expands from *underground storage tanks (USTs)* to **regulated petroleum storage tanks**, including ASTs that require financial responsibility under state regulations.
- The definition removes “*used to store petroleum*” and replaces it with **financial responsibility requirement language**.
- Minor wording updates convert “apply” language from “so indicate by applying” to “**apply.**”

Section (2): Required Application Information

- Broadened terminology from UST-only to **all tanks**, including both USTs and ASTs.
- Required documentation is reorganized to distinguish **UST system requirements** (leak detection, tightness tests, cathodic protection, spill/overfill prevention, corrosion protection) versus **AST system requirements**.
- Several original phrases referring specifically to “USTs” are replaced with “**tanks**” or “**UST systems**” for clarity and consistency.
- Adds explicit documentation requirements for ASTs, which were not previously included in this rule.

Financial Responsibility Documentation

- Minor wording changes clarify “required fees” and “other documentation.”
- No substantive rule change to thresholds (\$10,000 deductible, \$100k net worth / \$50k working capital, etc.), but wording is tightened.

Section (3): Fees

Changes to fee structure:

- Annual fee for **double-walled USTs increases from \$100 to \$125** per tank.
- Annual fee for **other USTs increases from \$125 to \$150** per tank.
- Annual fee for **ASTs < 25,000 gallons: \$125 per tank annually**
- Annual fee for **ASTs ≥ 25,000 gallons: \$150 per tank annually**
- Adds a **late fee**:
 - **\$10 per tank, minimum \$50**, when documentation or fees are received after the renewal date.
- Removes refund provision for terminated coverage and replaces it with:
 - **“All fees are fully earned on the effective date of coverage. No refunds will be issued.”**

Section (4) & (5): Application Review and Coverage

- Effective date of coverage becomes the **later of**:
 - the date compliance evidence is received, **or**
 - **the date all required documentation and fees have been received.**

- Coverage language broadened from UST releases to **petroleum storage tank releases**.
- Declarations page wording changed from “insured” to “**participating.**”

Section (6): Renewals & Ongoing Participation

- Applicants must renew coverage on **all active tanks**, otherwise **no tanks at the site will be accepted for renewal**.
- The words “on the date that such fees were due” to clarify that failure to pay renewal fees within ten days results in nonrenewal.
- Significant rewrite of extended reporting period provisions:
 - Clarifies that ERPs are available when a tank is **taken out of use or sold**.
 - Extended reporting period must be selected in **whole-year increments** (≥ 1 year) and may last **up to 5 years**, subject to fund sunset.
 - **If some tanks remain active**, a tank taken out of use is limited to **one (1) year** of extended reporting.
 - **Out-of-use tanks must meet all regulatory requirements** to retain extended reporting coverage.

Section (7): Ownership, Operator, Landowner, and New Tanks

- Expands “UST” references to “**tank(s)**” to reflect broader applicability.
 - Clarifies that coverage ceases upon change of ownership and may be followed by an optional extended reporting period.
 - Updates new-tank installation requirements by removing “pro-rata” wording and requiring payment of **fees assessed in Section (3)**.
 - Clarifies that new tanks added during a participation period must be added to retain coverage.
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10 CSR 100-4.020 - omitted in its entirety.

**Rules of
Department of Natural Resources
Division 100-Petroleum Storage Tank Insurance Fund Board of Trustees
Chapter 4-Participation Requirements**

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Title 10 - DEPARTMENT OF NATURAL RESOURCES
Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees
Chapter 4 - Participation Requirements for *[Underground]* **Petroleum** Storage Tanks

10 CSR 100-4.010 Participation Requirements for *[Underground]* **Petroleum** Storage Tanks

PURPOSE: This rule sets forth the procedures to be followed by owners or operators of *[underground]* **petroleum** storage tanks who wish to **participate in** *[obtain insurance coverage from]* the Petroleum Storage Tank Insurance Fund, and establishes the *[annual]* participation fees which *[is]***are** required for coverage.

(1) Any owner or operator of *[an underground]* **a regulated petroleum** storage tank *[(UST)]* which is in use and is *[used to store petroleum]* **required by the state of Missouri to demonstrate financial responsibility under 10 CSR 26-3 and 2 CSR 90-30.086** may apply to participate in the fund, except that-

- (A) Current or former refinery sites are not eligible for participation in the fund;
- (B) Petroleum pipeline or marine terminals are not eligible for participation in the fund; and
- (C) Owners and operators of hazardous substance underground storage tank (UST) systems, as defined in section 319.100, RSMo, may not obtain coverage for their hazardous substance UST systems.

(2) Any owner or operator who wishes to participate in the fund shall *[so indicate by applying]* **apply** for coverage on a form specified by the board. An application shall-

- (A) Include a certification that the petroleum tanks meet or exceed and are in compliance with all technical standards established by the Missouri Department of Natural Resources and the Missouri Department of Agriculture;
- (B) Be submitted for each site for which the applicant desires coverage;
- (C) Include information on all tanks known to exist at the site, including aboveground storage tanks and underground storage tanks which contain a hazardous substance, or which are out of use;
- (D) Include documentation as required by the board to demonstrate that the applicant has a reasonable assurance of the integrity of all *[USTs]* **tanks** on the site which are in use. This documentation shall include:
 - 1. **For UST systems, [Monthly] monthly** leak detection records, except in the following cases:
 - A. For USTs installed before July 1, 2017, or compartments of such tanks, which are being put into use for the first time, current tank and line tightness tests shall be provided;
 - B. For UST systems being put back into use after being out of use, current tank and line tightness tests shall be provided; *[and]*
 - C. For operating UST systems being purchased by a new owner, current tank and line tightness tests shall be provided if at least two (2) current months' leak detection records are not available from the prior owner;
 - 2. **For UST systems, [Evidence] evidence** that pressurized lines are equipped with line leak detectors which are in working order, unless the entire UST system is a double-wall system and monitoring devices are adequate to detect a leak;
 - 3. **For UST systems with cathodic protection, [Evidence] evidence** that the cathodic protection system*[, if any,]* is functioning properly;

4. Evidence that *[the]* UST tank lining, if any, has been properly installed and inspected according to accepted industry practices;

5. Evidence that *[the]* UST **system** is equipped with corrosion protection and spill/overfill prevention devices, as required in 10 CSR 26-2;

6. **For UST systems, *[Line]* line and~~*[or]*~~ tank tightness tests**, as required in 10 CSR 26-2; *[and]*

7. For AST systems, a demonstration, performed within the previous twelve (12) months, that all piping connected to or is part of the AST system for which coverage is being sought is liquid tight; and

8. *[Any other]* **Other** documentation as may reasonably be required by the board;

(E) Include documentation as required by the board demonstrating that the applicant has the ability to pay the first ten thousand dollars (\$10,000) in the event he or she makes a claim for benefits from the fund.

1. For non-public entities, such documentation shall include:

A. A letter of credit for this amount from a federally insured financial institution in the favor of the Petroleum Storage Tank Insurance Fund;

B. One (1) or more certificates of deposit which total this amount. The applicant shall submit documentation from the custodian of such certificates that assures the board of their existence and preservation for the purposes described herein;

C. Financial statements indicating that the net worth of the applicant is at least one hundred thousand dollars (\$100,000), or that the applicant has at least fifty thousand dollars (\$50,000) working capital;

D. A written guarantee from another person or entity demonstrating the ability to pay this amount in a manner outlined in this rule. The provider of the guarantee shall disclose the relationship between that person or entity and the applicant;

E. A letter signed by an officer of a federally insured financial institution attesting to the ability of the applicant to pay this amount; or

F. Any other method determined by the board to be reasonable and sufficient.

2. For public entities, documentation requirements are as follows:

A. Cities with a population greater than three thousand (3,000), none;

B. Cities with a population of three thousand (3,000) or less, a copy of the most recent annual audit of the city's finances, or a current set of financial statements;

C. First class or second-class counties, or charter counties, none;

D. Third class counties, a copy of the most recent annual audit of the county's finances, or a current set of financial statements; or

E. Schools, sewer districts, fire districts, and other similar entities, a copy of current financial statements; and

(F) Applicants must apply for coverage on all **active** tanks in use at a site or *[the board will not insure any of the tanks]* **no tanks at the site will be accepted for participation**. The only exception~~*s are*~~ is aboveground **storage** tanks not required by the Department of Agriculture to have financial responsibility.

(3) Procedures Regarding Payment of Fees.

(A) Participation fees shall be paid by all applicants, as follows:

1. For double-walled USTs - one hundred **twenty-five** dollars ~~*[(\$100)]*~~ **(\$125)** per tank annually; *[and]*

2. For all other USTs - one hundred ~~*[twenty-five]*~~ **fifty** dollars ~~*[(\$125)]*~~ **(\$150)** per tank annually.

3. For ASTs less than twenty-five thousand (25,000) gallons – one hundred twenty-five dollars (\$125) per tank annually; and

4. For ASTs twenty-five thousand (25,000) gallons or more – one hundred fifty dollars (\$150) per tank annually.

(B) A late fee of ten dollars (\$10) per tank, with a minimum of fifty dollars (\$50), may be charged if any fee or required documentation is received after the participation agreement renewal date.

(C) In addition, at the time of initial application, the applicant shall pay an additional one hundred dollars (\$100) per tank, as required by section 319.129.2, RSMo, unless such fee has already been paid.

(D) If the required fees are not submitted with the application, and all other aspects of the application are acceptable, the board shall notify the applicant of the amount of such fees which are due and shall indicate

that such fees are due and payable within fourteen (14) days. Failure by the applicant to submit [such] **required** fees in a timely manner shall result in rejection of the application, and no coverage shall exist.

(E) *[In the event that participation in the fund is terminated prior to the end of the period of coverage, participation fees shall be refunded on the basis of the percentage of days remaining in the coverage period.]*
All fees are fully earned on the effective date of coverage. Refunds will not be issued if participation is cancelled or terminated during the participation period.

(4) The board shall review applications within thirty (30) days of receipt and shall respond to such applications in writing with a notice of acceptance, a request for clarification or information, or a rejection of the application.

(A) If the response is a notice of acceptance, it shall include the items specified in section (5) of this rule.

(B) If the response is a request for clarification or information, it shall specify a date by which the applicant must respond.

(C) If the response is a rejection, it shall identify the additional information needed or list the reason(s) coverage is being denied. If the applicant submitted participation *[and/]* or one- (1-) time fees with the application, the fees shall be returned or refunded.

(5) Upon determination *[that]* an applicant has met the requirements for participation in the fund, the board shall issue a declarations page and participation agreement to the applicant, specifying the effective date of coverage and other terms and conditions of such coverage as the board may deem appropriate.

(A) The effective date of coverage shall be the later of

1. the date *[that]* the board receives evidence *[that]* all tanks and piping for which coverage is being sought are *[being]* operated in compliance with pertinent statutes and regulations, including evidence demonstrating a reasonable assurance *[that]* the *[USTs are]* **tank system is not leaking or**

2. the date all required documentation and fees have been received.

(B) The declarations page and participation agreement shall confirm coverage for risks associated with sudden or non-sudden accidental releases arising from the operation of *[USTs]* **petroleum storage tanks**, including costs of cleaning up such releases, third-party property damage, and third-party bodily injury, subject to the limits specified in sections 319.129 through 319.131, RSMo. These benefits are subject to the following limits:

1. A per occurrence limit of one (1) million dollars;
2. An annual aggregate limit of two (2) million dollars; and
3. A deductible of ten thousand dollars (\$10,000) per occurrence.

(C) The declarations page shall specify the person or persons *[being insured by]* **participating** in the fund, the name and location of the business or operation where the *[USTs]* **tanks** are located, and the specific *[USTs]* **tanks** which are covered.

(D) For the purposes of coverage as well as cancellation, nonrenewal of coverage, or termination of coverage discussed elsewhere in this rule, 12:01 a.m. shall be the time of day that such actions become effective.

(6) *[In order to]* **To** continue *[their]* participation in the fund, participants are required to **apply to** renew their participation annually.

(A) The board shall notify participants approximately sixty (60) days in advance of the end of their coverage period and shall invite participants to renew their coverage for another twelve- (12-) month period *[of time]*.

(B) Participants shall submit such information as may be required by the board prior to the end of their coverage period. Any participant who fails to do so shall receive a notice from the board, giving the participant sixty (60) days to submit such information *[in order]* to continue participation in the fund. At the end of the sixty (60) days, if the participant has failed to submit the required information, coverage may be cancelled.

(C) Applicants must apply to renew their coverage on all tanks in use at a site or *[the board will not insure any of the tanks]* **no tanks at the site will be accepted for renewal**. The only exception *[s are]* **is** aboveground tanks not required by the Department of Agriculture to have financial responsibility.

(D) Upon determination *[that]* the participant has met the requirements for continued participation in the fund, the board shall issue a new declarations page confirming that fact and specifying the effective date(s) of coverage. Other terms and conditions of such coverage contained in the participation agreement previously issued for that site shall remain in effect for the new coverage period unless the board amends the terms and conditions in writing.

(E) *[In order to]* **To** continue participation in the fund, participants shall pay such fees as are set forth in subsection (3)(A). If such fees are not submitted with the renewal application, and the application is accepted, the board shall notify the applicant of the amount of such fees which are due and shall indicate that such fees are due and payable within ten (10) days. Failure by the applicant to submit such fees in a timely manner shall result in nonrenewal of coverage *[on the date that such fees were due]* and any participation agreement documents issued shall be rescinded.

(F) *[If at the end of a policy period, all of the previously -insured USTs]* **When a participation agreement expires or is terminated, if previously participating tanks** have been taken out of use **or sold**, *[the owner/operator of the tanks(s) shall no longer be insured for costs resulting from sudden or non-sudden releases, since there cannot be a release from an empty tank. Instead, the owner or operator]* **participant** may apply for an extended reporting period. The extended reporting period allows named persons to give notice of claim for a release which occurred while the *[previously-insured]* tanks(s) was/*[were]* *[in use]* **participating**, but which is not yet known.

1. Participation fees for the extended reporting period shall be paid at the same rates as specified in subsection (3)(A) above.

2. Terms and conditions of coverage shall be contained in an endorsement to the participation agreement issued by the board to the fund participant(s).

3. The extended reporting period shall *[consist of one- (1-) year increments. It shall not last for more than]* **be selected in whole-year increments not less than one (1) year, up to a maximum of five (5) years** per the terms below. The period shall *[after it first]* commence*[s]* on the date of purchase, and in no case beyond the sunset date of the fund established by the Missouri General Assembly.

A. In the event a tank(s) is taken out of use during a participation period but participating tanks remain active, the maximum extended reporting period shall be one (1) year from the date the tank(s) was taken out of service.

B. Out of use tanks must be in compliance with all applicable regulations to retain coverage under an extended reporting period endorsement.

4. The board reserves the right to grant extended reporting periods at its sole discretion.

(7) The following procedures shall be followed when there is a change of ownership, change of operator, change of landowner, or a new tank is installed:

(A) If the ownership of a *[UST]* **tank(s)** changes during the period of coverage, coverage shall cease on the date ownership changes. At its sole discretion, the board may offer the former owner an opportunity to purchase an extended reporting period, as described in subsection (6)(F) of this rule;

(B) If, during the period of coverage as specified by the board, the operator of the *[UST]* **tank(s)** changes, the owner shall notify the board in writing of the change and the effective date of such change. The board shall issue an endorsement to the participation agreement which shall include the effective date of termination of participation by the previous operator;

(C) If, during the period of coverage as specified by the board, the owner of the real estate on which the tank(s) is located changes, the fund participant shall notify the board in writing of the change and the effective date of such change. The board shall issue an endorsement to the participation agreement which shall include the effective date of termination of participation by the previous landowner; and

(D) If, during the period of coverage as specified by the board, a fund participant installs one (1) or more *[additional]* tanks at *[an insured]* the participating site *[and desires coverage for the new tank(s)]*, the fund participant must notify the board, provide such information as the board may require to demonstrate the integrity of the new tank(s), and pay the *[new tank fee(s) and a pro-rata portion of the annual]* fee(s) assessed in section (3) of this rule.

*AUTHORITY: sections 319.129, 319.131, and 319.133, RSMo 2016. * Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed Nov. 15, 2001, effective May 30, 2002. Amended: Filed Nov. 3, 2003, effective*

May 30, 2004. Amended: Filed Sept. 1, 2006, effective July 30, 2007. Amended: Filed Aug. 13, 2012, effective March 30, 2013. Amended: Filed Feb. 15, 2018, effective Sept. 30, 2018.

**Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008; 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998, 1999, 2001, 2008; and 319.133, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008.*

[10 CSR 100-4.020 Participation Requirements for Aboveground Storage Tanks

PURPOSE: This rule sets forth the procedures to be followed by owners or operators of aboveground storage tanks who wish to obtain insurance coverage from the Petroleum Storage Tank Insurance Fund and establishes the annual participation fee which is required for coverage.

(1) Any owner or operator of an aboveground storage tank (AST) which is in use may apply to participate in the fund, except-

(A) Current or former refinery sites or petroleum pipeline or marine terminals are not eligible for participation in the fund.

(2) Any owner or operator who wishes to participate in the fund shall so indicate by applying for coverage on a form specified by the board. An application shall-

(A) Include a certification that the petroleum tanks meet or exceed and are in compliance with rules established by the Missouri Department of Agriculture;

(B) Be submitted for each site for which the applicant desires coverage;

(C) Include information on all tanks known to exist at the site, including underground storage tanks, hazardous substance tanks, and aboveground storage tanks which are out of use;

(D) Include documentation as required by the board to demonstrate that the applicant has a reasonable assurance of the integrity of all ASTs on the site which are in use or temporarily out of use. This documentation shall include:

1. A demonstration, performed within the previous twelve (12) months, that any piping which is connected to or part of the aboveground storage tank(s) for which cover-age is being sought is liquid tight; and

2. Other documentation as may reason-ably be required by the board;

(E) Include documentation as required by the board in order to demonstrate that the applicant has the ability to pay the first ten thousand dollars (\$10,000) in the event he or she makes a claim for benefits from the fund. Such documentation shall include:

1. A letter of credit for this amount from a federally-insured financial institution in the favor of the Petroleum Storage Tank Insurance Fund;

2. One (1) or more certificates of deposit which total this amount. The applicant shall submit documentation from the custodian of such certificates that assures the board of their existence and preservation for the purposes described herein;

3. Financial statements indicating that the net worth of the applicant is at least one hundred thousand dollars (\$100,000), or that the applicant has at least fifty thousand dol-lars (\$50,000) working capital;

4. A written guarantee from another person or entity demonstrating the ability to pay this amount in a manner outlined in this rule. The provider of the guarantee shall dis-close the relationship between that person or entity and the applicant;

5. A letter signed by an officer of a federally-insured financial institution attesting to the ability of the applicant to pay this amount; or

6. Any other method determined by the board to be reasonable and sufficient; and

(F) Applicants must apply for coverage on all tanks in use at a site or the board will not insure any of the tanks. The only exceptions are aboveground tanks not required by the Department of Agriculture to have financial responsibility.

(3) Procedures Regarding Payment of Fees.

(A) Participation fees shall be paid by all applicants, as follows:

1. For tanks less than twenty-five thou-sand (25,000) gallons - one hundred dollars (\$100) per tank annually; and

2. For tanks twenty-five thousand (25,000) gallons or larger - two hundred dollars (\$200) per tank annually.

(B) In addition, at the time of initial application, the applicant shall pay an additional one hundred dollars (\$100) per tank, as required by section 319.129.2, RSMo, unless such fee has already been paid.

(C) If the required fees are not submitted with the application, and all other aspects of the application are acceptable, the board shall notify the applicant of the amount of such fees which are due and shall indicate that such fees are due and payable within fourteen

(14) days. Failure by the applicant to submit such fees in a timely manner shall result in rejection of the application, and no coverage shall exist.

(D) In the event that participation in the fund is terminated prior to the end of the period of coverage, participation fees shall be refunded on the basis of the percentage of days remaining in the coverage period.

(4) The board shall review applications within thirty (30) days of receipt and shall respond to such applications in writing with a notice of acceptance, a request for clarification or information, or a rejection of the application.

(A) If the response is a notice of acceptance, it shall include the items specified in section (5) of this rule.

(B) If the response is a request for clarification or information, it shall specify a date by which the applicant must respond.

(C) If the response is a rejection, it shall identify the additional information needed or list the reason(s) coverage is being denied. If the applicant submitted participation and/or one- (1-) time fees with the application, the fees shall be returned or refunded.

(5) Upon determination that an applicant has met the requirements for participation in the fund, the board shall issue a declarations page and participation agreement to the applicant, specifying the effective date of coverage and other terms and conditions of such coverage as the board may deem appropriate.

(A) The effective date of coverage shall be the date that the board receives evidence that all tanks and piping for which coverage is being sought are being operated in compliance with pertinent statutes and regulations, including evidence demonstrating a reasonable assurance that ASTs are not leaking.

(B) The declarations page and participation agreement shall confirm coverage for risks associated with sudden or non-sudden accidental releases arising from the operation of ASTs, including costs of cleaning up such releases, third-party property damage, and third-party bodily injury, subject to the limits specified in sections 319.129 through 319.131, RSMo. These benefits are subject to the following limits:

1. A per occurrence limit of one (1) million dollars;

2. An annual aggregate limit of two (2) million dollars; and

3. A deductible of ten thousand dollars (\$10,000) per occurrence.

(C) The declarations page shall specify the person or persons being insured by the fund, the name and location of the business or operation where the tanks are located, and the specific tanks which are covered.

(D) For the purposes of coverage as well as cancellation, nonrenewal of coverage, or termination of coverage discussed elsewhere in this rule-12:01 a.m. shall be the time of day that such actions become effective.

(6) In order to continue participation in the fund, participants are required to renew their participation annually.

(A) The board shall notify participants approximately sixty (60) days in advance of the end of their coverage period and shall invite participants to renew their coverage for another twelve- (12-) month period of time.

(B) Participants shall submit such information as may be required by the board, including:

1. A demonstration, performed within the previous twelve (12) months, that any piping which is connected to or part of the ASTs for which coverage is being sought is liquid tight; and

2. Other documentation as may reasonably be required by the board.

(C) Any participant who fails to do so shall receive a notice from the board, giving the participant sixty (60) days to submit such information in order to continue participation in the fund. At the end of the sixty (60) days, if the participant has failed to submit the required information, coverage may be cancelled.

(D) Applicants must apply to renew their coverage on all tanks in use at a site or the board will not insure any of the tanks. The only exceptions are aboveground tanks not required by the Department of Agriculture to have financial responsibility.

(E) Upon determination that the participant has met the requirements for continued participation in the fund, the board shall issue a new declarations page confirming that fact and specifying the effective date(s) of coverage. Other terms and conditions of such coverage contained in the participation agreement previously issued for that site shall remain in effect for the new coverage period unless the board amends the terms and conditions in writing.

(F) In order to continue participation in the fund, participants shall pay such fees as are set forth in subsection (3)(A) above. If such fees are not submitted with the renewal application, and the application is accepted, the board shall notify the applicant of the amount of such fees which are due and shall indicate that such fees are due and payable within ten

(10) days. Failure by the applicant to submit such fees in a timely manner shall result in nonrenewal of coverage on the date that such fees were due.

(G) If at the end of a participation period, all of the previously-insured ASTs have been taken out of use, the owner and/or operator of the tank(s) shall no longer be insured for costs resulting from sudden or non-sudden releases, since there cannot be a release from an empty tank. Instead, the owner or operator may apply for an extended reporting period. The extended reporting period allows named persons to give notice of claim for a release which occurred while the previously-insured tank(s) was/were in use, but which is not yet known.

1. Participation fees for the extended reporting period shall be paid on such tanks at the same rates as specified in subsection (3)(A) above.

2. Terms and conditions of coverage shall be contained in an endorsement to the participation agreement issued by the board to the fund participant(s).

3. The extended reporting period shall consist of one- (1-) year increments, but shall not last for more than five (5) years after it commences and in no case beyond the sunset date of the fund established by the Missouri General Assembly.

4. The board reserves the right to grant extended reporting periods at its sole discretion.

(7) The following procedures shall be followed when there is a change of ownership, change of operator, or change of landowner, or a new tank is installed:

(A) If the ownership of an AST changes during the period of coverage, coverage shall cease on the date ownership changes. At its sole discretion, the board may offer the former owner an opportunity to purchase an extended reporting period, as described in subsection (6)(F) of this rule;

(B) If, during the period of coverage as specified by the board, the operator of the AST changes, the owner shall notify the board in writing of the change and the effective date of such change. The board shall issue an endorsement to the participation agreement which shall include the effective date of termination of participation by the previous operator;

(C) If, during the period of coverage as specified by the board, the owner of the real estate on which the tank(s) are located changes, the fund participant shall notify the board in writing of the change and the effective date of such change. The board shall issue an endorsement to the participation agreement which shall include the effective date of termination of participation by the previous landowner; and

(D) If, during the period of coverage as specified by the board, a fund participant installs one (1) or more additional tanks at an insured site and desires coverage for the new tank(s), the fund participant must notify the board, provide such information as the board may require to demonstrate the integrity of the new tank(s), and pay the new tank fee(s) and a pro-rata portion of the annual fee(s) assessed in section (3) of this rule.

*AUTHORITY: sections 319.129, 319.131, and 319.133, RSMo 2016. * Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed Nov. 15, 2001, effective May 30, 2002. Amended: Filed Nov. 3, 2003, effective May 30, 2004. Amended: Filed Sept. 1, 2006, effective July 30, 2007. Amended: Filed April 13, 2009, effective Oct. 30, 2009. Amended: Filed Aug. 13, 2012, effective March 30, 2013. Amended: Filed Feb. 15, 2018, effective Sept. 30, 2018.*

**Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008; 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998, 1999, 2001, 2008; and 319.133, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008.]*

SUMMARY OF PROPOSED CHANGES

10 CSR 100-5.010 – Claims for Cleanup Costs

All references to “prior approval” or “pre-approval” were changed to “preapproval” for consistency.

Section (1): Notice of Claim

(1) Changes “reasonably suspects” to “should know” to reduce subjectivity.

Section (3): Board Authority Over Eligibility Issues

- Clarifies that cost eligibility is tied to cleanup requirements under the Department of Natural Resources Risk-Based Corrective Actions Guidance (10 CSR 10-25.018).
- This does not change procedure, but updates the reference standard the Board must use.

Section (4):

(A) Participation agreement Claims

- Removes the words “or is discovered” to align with coverage provided by participation agreements.

(B) Eligibility of Certain Legacy Sites

- Removes the restriction on one type of legacy claim that requires continued participation in the fund for the legacy benefits to continue. The restriction is replaced with the requirement that the site must maintain financial assurance in accordance with MoDNR and MDA rules.

New Section (5)

Makes clear that the board has the authority to approve consultants. This right is in the participation agreement, but not in the rules.

Section ~~(10)~~ (11): Ineligible Costs

Items are added to the list of non-reimbursable costs for the sake of clarity:

- Adds disposal of tank contents and cleaning rinsate to ineligible activities.
- Adds markup exclusions for:
 - air sample analyses,
 - purchase of remediation system,
 - additional clarification work requested by the Board or its administrator.
- Updates references from “participation document” to “coverage document” issued under 10 CSR 100-4.010(5) and 4.020(5).

Section ~~(12)~~ (13): Reimbursement Procedures

- Invoices must be submitted within one (1) year, replacing the former two-year deadline and adds a deadline of six (6) months after MoDNR determines no further action is required.
 - Requires a signed statement certifying the invoices are true and accurate, replacing older photocopy/original language, which required certification.
 - Submission must occur in the manner directed by the board, not to a specific address.
 - Deletes language encouraging accumulation of invoices until a project phase is complete to allow more flexibility for interim payments. The new language does not make a substantive change to the rule or PSTIF claim payment policies, but it more closely reflects modern processes.
- These changes tighten timelines and strengthen invoice documentation rules.

10-CSR 100-5.020– Claims Appeal Procedure

Shortens appeal deadlines and expands submission options:

- The time to object to a payment decision is reduced from 180 days to 60 days.
- The time to request executive director review is reduced from 60 days to 30 days.
- The time to request Board review is reduced from 60 days to 30 days.
- Adds email as an acceptable method for submitting appeal requests.

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

Title

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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]* **should know** 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; or
- (C) Learns that petroleum contamination exists on or near a tank 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 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]* **pre**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]* **requirements established** by the Department of Natural Resources **Risk Based Corrective Actions Guidance. See 10 CSR 25-18.010.**

(4) Fund participants or beneficiaries may request pre~~/~~-approval and reimbursement of costs from the fund-

- (A) For a release that occurs *[or is discovered]* on a date that the participant is participating in the fund.
 - 1. The fund participant must provide notice of claim to the board *[while the participant is insured and before expiration or cancellation of the participant's coverage]* **prior to the expiration or cancellation of the participation agreement** or during an extended reporting period granted by the board under **10 CSR 100-4.010 or 10 CSR 100-4.020.**
 - 2. Fund participants get cleanup costs approved in advance, as described in this rule.
 - 3. A fund participant who has properly made a claim may request that the board assign his or her benefits for cleanup costs to another party, and the board may, with the consent of the other party and at the board's sole discretion, agree to such assignment;
- (B) For a site where one (1) or more petroleum storage tank(s) was~~/were~~ in use on December 31, 1997, 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 **must be pre**approved *[in advance,]* as described in this rule.
 - 2. *[In order to]* **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]* **financial assurance compliance as determined by the state of Missouri (10 CSR 26-3 and 2 CSR 90-30.086)** *[as long as such tanks are in use]*. 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]* **noncompliance** are not eligible. *[Should the owner or operator elect to participate in the fund again, he or she may become eligible under subsection (4)(A) for any new release];*

(C) For 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. 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.

3. Fund beneficiaries must get **preapproval of** cleanup costs *[approved in advance]*, as described in this rule;

(D) For 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 and beneficiaries must get **preapproval of** cleanup costs *[approved in advance]*, as described in this rule; and

(E) For a site where underground storage tanks which contained petroleum were taken out of use prior to December 31, 1985, and the current owner purchased such site before December 31, 1985, provided such site was reported to the board on or before June 30, 2000. For the purposes of this subsection, current owner shall mean the person who owns a site at the time it is reported to the Petroleum Storage Tank Insurance Fund Board of Trustees or its designated representative.

1. Fund beneficiaries must get **preapproval of** cleanup costs *[approved in advance]*, as described in this rule.

(5) The board may, but is not obligated to, approve all environmental and other consultants used on behalf of participants or beneficiaries to conduct work or provide services for which reimbursement is sought.

(6) 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 air-line 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 sub-stances 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 non-commercial 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 wastewater 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.

(7) The following persons may request preapproval of costs and reimbursement 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.

(8) 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.

(9) Fund participants and beneficiaries who desire reimbursement from the fund are required to seek preapproval of cleanup costs by following the procedures outlined below:

(A) Tank Removal-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 and an anticipated schedule for the tasks; and

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) Site Characterization-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 and submit the bid(s) or proposal(s) to the board. The bids or cost estimates must include:

A. A description of all tasks and services which may be necessary;

B. A site conceptual model;

C. Clearly presented conclusions regarding the current and reasonably anticipated future uses of potentially impacted properties;

D. The anticipated schedule of events;

E. Estimated costs for all field activities, with drilling quoted on a per lineal foot basis;

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

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

H. 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

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

(C) Risk Assessment.

1. Prior to preparing a risk assessment, a fund participant or beneficiary must submit one (1) or more cost estimate(s) to the board.

A. The cost estimate(s) must include the anticipated schedule of events and/or tasks.

B. The cost estimate(s) may be combined with a cost estimate for site characterization.

C. The cost estimate(s) may include costs for both a Tier 1 and a Tier 2 risk assessment.

D. The cost estimate(s) may include costs for preparation of a corrective action plan.

2. The board may require a fund participant or beneficiary to submit a cost estimate for a Tier 2 or Tier 3 risk assessment.

(D) Corrective Action.

1. Prior to conducting corrective action in response to a release, a fund participant or beneficiary must obtain an adequate number of bids or proposals, each of which must include a schedule, from qualified contractors or consultants to adequately compare costs of alternatives for achieving the applicable corrective action standards. These proposals may include:

A. Treatment, reduction of concentrations, removal, or remediation of chemicals of concern;

B. Mitigation or elimination of complete exposure pathways;

C. Preventing future receptors; or

D. Any combination thereof.

2. Prior to conducting corrective action, a fund participant or beneficiary must submit the bid(s) or proposal(s) to the board.

3. When corrective action includes the lease or 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 and provide such bids to the board. A fund participant or beneficiary who is paid salvage value for remediation equipment after corrective action is completed shall report such to the board, which will reduce its reimbursement for decommissioning and removal of said remediation equipment by that amount.

(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.

(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.

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

(A) Costs incurred to characterize the extent of and assess risks posed by 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.

(11) 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[;], **disposal of tank contents and cleaning rinsate;**

(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 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 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, soil, **air**, or vapor samples;

(H) Markup by the environmental consultant or contractor of major subcontracted work, such as drilling, well installation, [or] pushprobe investigation, **or purchase of remediation system;**

(I) Repairs and maintenance of tanks and lines;

(J) Tank and line tightness tests;

(K) Preparation of claim submittals;

(L) Preparation of clarification required by the board or its administrator regarding reimbursement requests;

(M) 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;

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

(O) Other costs excluded by [the participation]the coverage document issued by the board to fund participants (see 10 CSR 100-4.010(5) and 10 CSR 100-4.020(5)).

(12) 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.

(13) 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 reimbursement from the fund:

(A) Persons requesting reimbursement 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]* **in the manner directed by the board.**

1. Such invoices must be submitted within *[two (2) years]* **one (1) year** of the date the costs were incurred **or within six (6) months of a determination by the Missouri Department of Natural Resources that no further action is required to address the identified release, whichever comes first.** Failure to submit invoices within that time frame shall waive the fund participant's or beneficiary's rights, and those of their successors and assigns, to any benefits which would have otherwise been paid by the Petroleum Storage Tank Insurance Fund Board of Trustees for such costs.

2. *[Original invoices are requested; if photocopies are submitted, they]* **Invoices** must be accompanied by a signed statement certifying *[that the copies]* **they** are true and accurate.

3. Invoices must match the general format of the previously submitted cost estimate;

(B) If the person requesting reimbursement 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 reimbursements as the project progresses]* **Invoices may be submitted prior to the completion of a phase of work. The board or its agent may delay consideration until such time as the scope is complete or all related invoices are submitted. If delayed consideration of an invoice causes financial hardship, participants or beneficiaries may request earlier consideration and reimbursement may be granted at the discretion of the board or its agent;**

(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 reimbursement 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 reimbursement. 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) For claims made under subsection (4)(A), the first reimbursement for eligible costs will be reduced by the applicable deductible. For claims made under subsections (4)(B), (C), (D), or (E), the first reimbursement for eligible costs will be reduced by ten thousand dollars (\$10,000).

AUTHORITY: sections 319.129 and 319.131, RSMo 2016.* Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed March 31, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 15, 2001, effective May 30, 2002. Amended: Filed Aug. 1, 2014, effective March 30, 2015. Amended: Filed Feb. 15, 2018, effective Sept. 30, 2018.

*Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008 and 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998, 1999, 2001, 2008.

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)]~~**sixty (60)** 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)]~~**thirty (30)** 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)]~~**thirty (30)** days of receipt of the executive director's decision to the board's mailing **or email** 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]~~ its 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), (4)(D), or (4)(E).

(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 2016. * Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed Feb. 15, 2018, effective Sept. 30, 2018.

*Original authority: 319.129, RSMo 1989, amended 1991, 1996, 1998, 2001, 2008 and 319.131, RSMo 1989, amended 1991, 1994, 1995, 1996, 1998, 2001, 2008.