

335-6-16-.07 Trust Fund Fee and Charge.

(1) In order to participate in the liability limitations and reimbursement benefits of the Tank Trust Fund, an UST and/or AST owner or operator shall pay an annual Tank Trust Fund Fee, if any. The Commission may set annual fees the total of which shall not exceed \$150 per regulated tank.

(2) Each year UST and/or AST owners or operators will be notified by the Department of the amount of the required Tank Trust Fund Fee, if any, which will be due within thirty (30) days of the invoice date. For underground storage tanks and/or aboveground storage tanks brought into service on or after October 1 of each year the Tank Trust Fund fee is due with the registration of the tank(s) with the Department.

(3) To protect the financial integrity of the fund, the Commission may make special assessments of Tank Trust Fund Fees. However, the total fee, if any, shall not exceed \$150 per regulated tank per year. Special assessment fees will be due within thirty (30) days of the invoice date.

(4) The failure to pay Tank Trust Fund Fees, if any, within the time prescribed by the Department shall make the owner or operator of an UST and/or AST liable for a late charge penalty in an amount not to exceed \$100 per tank for each day such payment is delinquent and will result in the loss of Trust Fund eligibility. The Department, for good cause shown, may abate all or part of said late charge penalty.

(5) The Trust Fund Fee is set at \$0.00 per tank.

(6) The Trust Fund Charge is set at ~~\$0.012~~ \$0.01 per gallon.

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335-6-16-.09 Scope of Tank Trust Fund Coverage.

(1) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions and for compensation of third parties for bodily injury and property damage resulting from accidental releases arising from the operation of an UST or AST which stores motor fuels.

(2) The financial responsibility requirements for eligible UST owners or operators will be \$5,000 for UST owners or operators per occurrence and \$10,000 per occurrence for AST owners or operators for taking response actions and compensation of third parties, unless another amount is established by the Commission.

(3) The monies expended from the Tank Trust Fund to eligible UST owners or operators for response actions may be disbursed only up to such sum as will cause the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986, and other federal laws governing disbursements of federal funds for clean up and/or third party claims to come into effect.

(4) "Per Occurrence Indemnification Limit." The total amount of reimbursement available from the fund as a result of a release from underground or aboveground storage tanks shall not exceed under any circumstance the per occurrence indemnification limit established under this rule, which shall be determined by the commission upon recommendation of the Trust Fund Management Board, on an annual basis. In no event shall combined claims against the fund for payment of response actions and third-party claims exceed the per occurrence indemnification limit.

(a) If the per occurrence indemnification limit is increased, such increased limit shall be available for response actions costs and/or third party claims as to those existing sites that are eligible for trust fund benefits, but such increased limits shall not be available to existing sites where the Department, as of the effective date of such increase, has issued a No Further Action Letter.

(b) ~~Beginning December 7, 2018, the~~ The per occurrence indemnification limit is set at ~~one million, seven hundred fifty thousand dollars (\$1,750,000)~~ two million dollars (\$2,000,000), less the applicable deductible.

(5) The indemnification limit of the Tank Trust Fund with respect to satisfaction of third party claims shall be in the following amounts:

(a) For owners and operators of motor fuels underground and aboveground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of motor fuels per month based on annual throughput for the previous calendar year; \$1 million per occurrence,

(b) For all other owners and operators of motor fuels underground and aboveground storage tanks; \$500,000 per occurrence;

(c) For owners and operators of 1 to 100 motor fuels underground and aboveground storage tanks, \$1 million annual aggregate; and

(d) For owners and operators of more than 101 motor fuels underground and aboveground storage tanks, \$2 million annual aggregate.

(6) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions required by the Department, where that owner or operator's UST or AST system was found not to be the source of the release which prompted the Department's requirement for the response action.

(7) The financial responsibility requirements for eligible UST or AST owners as described in paragraph (2) above of this Rule, shall upon approval by the Commission, be waived.

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335-6-16-.14 Applications for Payment.

(1) Applications for reimbursement for costs of response actions shall be submitted on a form established by the Department which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the Department, or which the applicant may wish to provide. Documentation of charges to include actual invoices must be submitted as part of the application, as required by the Department.

(2) The application shall contain the following statement which shall be signed by the owner, ~~or~~ operator, and or the project manager of the contracting firm responsible for performance of response actions where applicable:

I certify to the best of my knowledge and belief: that the costs presented herein represent actual costs incurred in the performance of response actions related to this site during the period of time indicated on this application; and that no charges are presented as part of this application that did not result from the performance of response actions which were necessary due to the release of motor fuels at this site. I have personally examined and am familiar with the information submitted in this payment request and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in this payment request, I certify that the information is true, accurate, and complete, and that this payment request does not duplicate any request for payment for any charge previously submitted to the Department.

~~(3) The application shall contain the following statement which shall be signed by the owner or operator:~~

~~I certify that an unintentional release has occurred from a motor fuel underground storage tank system or aboveground storage tank system at the site~~Reserved.

(4) Applications for payments may be submitted following acceptance by the Department of completed response actions. Such response actions may include but are not limited to the following:

(a) Completion of site stabilization activities which were authorized by the Department.

(b) Completion and submittal of a report for a Preliminary Investigation.

(c) Implementation of a Free Product Removal System.

(d) Completion and submittal of a report for a Secondary Investigation and Development of a Corrective Action Plan.

(e) Implementation of a Corrective Action Plan.

(f) Provision of an alternate water supply.

(g) Completion and submittal of Risk Assessment.

(5) Applications for payments for the implementation of corrective action may be submitted ninety (90) days following initiation of work to implement the corrective action plan and at ninety (90) day intervals thereafter until completion of the authorized activities. Upon request, the Department may approve interim payments at more frequent intervals.

(6) All payments shall be subject to approval by the Department. Should a site inspection, review of documentation or other information available to the Department reveal a discrepancy between the work performed and the work addressed by a payment application, the Department may deny payment or may require the Tank Trust Fund to be reimbursed.

(7) An application for payment must be received within eighteen (18) months from the date of the approval of the associated cost proposal in order to be eligible for payments from the Tank Trust Fund.

(8) Except as provided for in rules 335-6-16-.12(c)(1), payments shall not be made for response actions performed at a site until the Department has reviewed and approved a cost proposal for that work and until funds have been obligated from the Tank Trust Fund for completion of that particular stage of work.

(9) For payment of third party claims the UST or AST owner or operator must submit an application to the Department attaching the original or a certified copy of a final judgment, enforceable in this state with proof of payment of the first \$5,000 for a UST or \$10,000 for a AST, as the case may be no later than thirty (30) days after notification of judgment.

(10) Payments for response actions, the cost of which exceed the scope or amount of the approved cost proposal for that action, are subject to approval by the Department.

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