

**TITLE 165. CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND
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TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 165:27-1-1. Purpose
- 165:27-1-2. Definitions
- 165:27-1-3. Scope
- 165:27-1-4. Authority
- 165:27-1-5. Citation of rules
- 165:27-1-6. Prescribed forms

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

- 165:27-3-1. General requirements
- 165:27-3-2. Eligible person

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

- 165:27-5-1. Qualifications for reimbursement
- 165:27-5-2. Application for reimbursement
- 165:27-5-3. Application for supplemental reimbursement

SUBCHAPTER 7. REIMBURSEMENT

- 165:27-7-1. Reimbursable expenses
- 165:27-7-2. Reimbursement
- 165:27-7-4. Cost recovery
- 165:27-7-6. Conditions for reimbursement
- 165:27-7-7. Exclusions from reimbursement
- 165:27-7-8. Withholding reimbursement
- 165:27-7-9. The Pre-Approval Program
- 165:27-7-9.1. Pre-Approval for Emergency Responses – Exceptions
- 165:27-7-10. Pay-For-Performance procedures
- 165:27-7-11. Purchase order procedures

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

- 165:27-9-1. Hearing, orders, and appeals
- 165:27-9-2. Changes to rules
- 165:27-9-3. Notices
- 165:27-9-4. Severability

[**Authority:** 17 O.S., §§ 52 and 350 et seq.; 27A O.S., § 1-3-101]

[**Source:** Codified 6-25-92]

CHAPTER 27. INDEMNITY FUND

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-1. Purpose

The Indemnity Fund Program will provide reimbursement for corrective action performed of PSTD regulated pollution sites that have resulted from releases of petroleum from storage tank systems. The Indemnity Fund Program as a good steward of monies entrusted to it, will also prioritize cases to most effectively protect the public health, safety and welfare and minimize damage to the environment. In order to accomplish these purposes, the Indemnity Fund Program will reimburse allowable costs incurred for corrective action to eligible parties for eligible releases from eligible tank systems and advise, consult, cooperate with and assist other agencies of this state.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, and in Oklahoma Administrative Code (OAC) 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern" or **"COC"** means chemicals that may pose a threat to human health and the environment.

"Claim" or **"Claims"** means a properly submitted request for reimbursement from the Fund for an eligible suspicion of release ("SOR") or confirmed release case when the co-pay is paid.

"Closed file" means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund and the PSTD Technical Department deems no further corrective action is necessary.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system.

"Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC suspicion of release or confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a suspicion of release or confirmed release that qualifies for Indemnity Fund reimbursement once Fund eligibility has been determined.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused

by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Modified eligibility" means the eligibility process for a suspicion of release ("SOR") case in which substantial compliance review is not required and the Indemnity Fund co-payment is paid upon closure of the SOR case. In the event the SOR case becomes a confirmed release case, a substantial compliance review is required and the statutory co-payment must be remitted within 30 days of the invoice date.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two (2) different tank system locations, are separated by time, or both.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means:

(A) In the case of a storage tank system in service/use on November 8, 1984, or brought into service/use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system.

(B) In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its service/use. A real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"Pay for Performance" or **"PFP"** means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.

"Reimbursement" means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

[**Source:** Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 34 Ok Reg 967, eff 9-11-17; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-1-3. Scope

This Chapter provides a basis that will allow the Indemnity Fund Program to define eligible persons, eligible releases, and eligible tank systems, allowable costs, methods, limitations of reimbursement, corrective action, completed work, and standards that will protect the public health, safety, welfare and the environment, and offers specific procedures for prompt and timely reimbursement of allowable costs to eligible persons.

[**Source:** Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-4. Authority

17 O.S. 2018, §§ 301 et seq. establishes the Oklahoma Petroleum Storage Tank Indemnity Fund.

[**Source:** Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 36 Ok Reg 595, eff 8-1-19]

165:27-1-5. Citation of rules

This Chapter shall be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing the Petroleum Storage Tank Indemnity Fund and may be cited as Chapter 27 of Commission rules.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-6. Prescribed forms

All current, recognized and approved division forms must be used and are available from the PSTD or on the web page at www.occeweb.com, in person or by written request.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15]

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

165:27-3-1. General requirements

In order to qualify for reimbursement from the Fund, a person must meet the following requirements:

- (1) The person must be an eligible storage tank owner or operator, property owner, adjacent property owner, or impacted party who has met applicable criteria for Fund reimbursement, to include Fund eligibility for an OCC confirmed release case, or a PSTD authorized Purchase Order for a Suspicion of Release, that does require modified eligibility. The Director of PSTD may make a formal administrative application without meeting eligibility criteria.
- (2) The claimant must have incurred eligible expenses for an eligible release from an eligible tank for which reimbursement is requested.
- (3) The claimant must submit properly completed forms, purchase orders, reports, and claims for reimbursement to the Fund in accordance with governing statutes, the rules of this Chapter, and OAC 165:25, 165:26, and 165:29 in a format established by PSTD. Failure to submit required paperwork within the required timeframe may result in an enforcement action.
- (4) The release of substances must be from an eligible tank system, either present, abandoned, or formerly present at the facility where the release occurred. It is the sole duty and responsibility of the Indemnity Fund applicant to establish to the satisfaction of the PSTD that a tank system is/was formerly present, and that the tank system contains/contained regulated substances.
- (5) If tanks were in service after November 8, 1984, the person who currently owns either the tank system or the property or both, where a tank system is located, is the eligible person regardless of the person never having sold, stored or otherwise owned or operated the storage tank system while the storage tank system contained regulated substances.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 595, eff 8-1-19]

165:27-3-2. Eligible person

An eligible person can be any of the following who has costs incurred as the result of a confirmed eligible release from a petroleum storage tank system, who has satisfied requirements for PSTD eligibility, and has been issued an Indemnity Fund Eligibility Letter by the PSTD Director.

- (1) An owner or operator of a storage tank system who fulfills the requirements of 17 O.S. § 327.3 and OAC 165:25 or OAC 165:26.
- (2) An owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the property owner and has no responsibility for the release.
- (3) A town or city which has obtained assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for purposes of investigation and remediation of abandoned tank sites where a release of regulated substances has occurred on the property where the tanks are or were located and/or on nearby property within the limits of a single town or city. In any case where an abandoned petroleum storage tank system has released regulated substances onto the property where tanks are located or onto nearby property, within the limits of a single town or city, the city or town may obtain assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for the purpose of investigation and remediation of the site(s).
- (4) Adjacent property owner or impacted party.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 36 Ok Reg 595, eff 8-1-19]

165:27-3-3. Eligible release [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Revoked at 22 Ok Reg 1775, eff 7-1-05]

165:27-3-4. Substantial compliance ¹ [TERMINATED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Terminated by legislative disapproval at 10 Ok Reg 4269, eff 6-9-93¹]

EDITOR'S NOTE: ¹Section 165:27-3-4 was disapproved in its entirety by Senate Bill 455 (Section 28), effective 6-9-93. See also related Editor's Notice published at 10 Ok Reg 4255.

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

- (1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed within the required timeframe in accordance with the standards, requirements, rules, and regulations of PSTD in a format established by PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted unless otherwise directed by PSTD.
- (2) The eligible person must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.
- (3) The eligible person must apply for reimbursement in a format established by PSTD, including a certified affidavit by a Licensed Environmental Consultant that the corrective action costs incurred are true and correct and that the Licensed Environmental Consultant supervised the corrective action performed accompanied with supporting documentation as set forth on the Purchase Order.
- (4) Investigation and remediation work must be supervised/performed by a Licensed Environmental Consultant. Reimbursement will be paid to the eligible person unless the eligible person provides the Fund with a written "Assignment of Benefit" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project upon presentation of a reimbursement request form accompanied by an original invoice.
- (5) Investigation and remediation costs expended prior to submission of a release report to the Commission, shall not be eligible for Indemnity Fund reimbursement.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18]

165:27-5-2. Application for reimbursement

An application for PSTD Eligibility on a confirmed release or a suspicion of release shall be made to the Administrator of the Indemnity Fund in a format established by PSTD and at a minimum include:

- (1) A properly completed "Indemnity Fund Application" with all requested information provided.
- (2) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.
- (3) Contract between Indemnity Fund applicant and Licensed Environmental Consultant.
- (4) Damage Statement or court filed petitions alleging damages from a release of regulated substances (if applicable).

(5) Other Financial Mechanisms allowable besides the Indemnity Fund.

(6) Information deemed sufficient by PSTD staff to substantiate a claim as an impacted party or adjacent property owner and a sworn statement that no other financial mechanisms were in place at the time of discovery of the release. The eligible person must submit any and all property insurance policies to the Indemnity Fund in place at time of the release.

(7) Any other information requested by PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 596, eff 8-1-19]

165:27-5-3. Application for supplemental reimbursement

In order to be considered complete, a request for supplemental reimbursement shall be made in a format established by PSTD and at a minimum contain:

- (1) Supplemental Indemnity Fund reimbursement request.
- (2) Itemized original invoices, if requested by PSTD.
- (3) Any other information as may be required by the Fund.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 35 Ok Reg 1027, eff 10-1-18]

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

- (1) Reasonable, integral and necessary costs directly related to the corrective action. These costs may include but are not limited to such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, and for use of third party property, on a case by case basis, for corrective actions.
- (2) Backfill on active confirmed cases.
- (3) Suspicion of release, and other costs deemed investigatory in nature.
- (4) Costs that are reasonable, integral and necessary.
- (5) Third Party property damage costs and medical injury costs that have been paid by the eligible person as set forth in 17 O.S. § 327.3(I).
- (6) Reasonable, integral and necessary costs for any county, municipality or state agency imposed permit fees, disposal fees or other such fees that may be needed to further corrective actions.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 596, eff 8-1-19]

165:27-7-2. Reimbursement

- (a) Among other requirements an eligible person for reimbursement is required to show:
 - (1) Allowable costs were incurred on or after December 23, 1988.
 - (2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.
 - (3) The eligible person has fully cooperated with PSTD in responding to the release.
- (b) The Petroleum Storage Tank Division will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system allowable costs in excess of one percent (1%) co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than the statutorily set limitations on reimbursement in 17 O.S. § 327.3.
- (c) Indemnity Fund co-payments must be paid by the eligible person within thirty (30) days of invoice date. If the eligible person does not timely pay any Indemnity Fund co-payment within thirty (30) days of invoice date, then corrective actions will continue and the PSTD will seek cost recovery against the eligible person after the petroleum release case closes.
- (d) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable, integral and necessary.
- (e) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the Five Thousand Dollars (\$5,000.00) co-pay has been prepaid or a payment arrangement concerning the co-pay has been agreed to by PSTD and significant compliance with the payment agreement is achieved.
- (f) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with unit cost pricing recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.
- (g) All corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.
- (h) All purchase orders, reports, and other required paperwork must be submitted within the required timeframe in a format established by PSTD.
- (i) When the technology is available, payment of Indemnity Fund claims may be in the form of Electronic Funds Transfer ("EFT").

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 34 Ok Reg 967, eff 9-11-17; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 596, eff 8-1-19]

165:27-7-2.1. Limitations on Reimbursement [REVOKED]

[Source: Added at 22 Ok Reg 1775, eff 7-1-05; Revoked at 23 Ok Reg 1661, eff 7-1-06]

165:27-7-3. Limited reimbursement [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Revoked at 10 Ok Reg 2627, eff 6-25-93]

165:27-7-4. Cost recovery

(a) Cost recovery shall be initiated for all corrective action expenditures from either the Indemnity Fund, Oklahoma Leaking Underground Storage Tank Trust Fund ("LUST Trust Fund"), Oklahoma Leaking Underground Storage Tank Revolving Fund ("LUST Trust Revolving Fund"), or any combination thereof, through an administrative application with notice and hearing. The tank owner, operator or otherwise eligible person shall be assessed the total amount of corrective action costs, administrative and legal expenses, including attorney's fees. Upon issuance of a Commission order, the total amount assessed by order shall be due and payable and shall constitute a judgment lien of the Commission as provided by 17 O.S. § 6.

(b) LUST Trust Fund or LUST Trust Revolving Fund cost recoveries regarding an imminent threat to public health, safety, or the environment; or an unknown, unwilling, or unavailable owner, operator or otherwise eligible person, shall be upon issuance of a Commission order immediately reimbursable from the Indemnity Fund to the LUST Trust Revolving Fund. The Commission order shall establish the Indemnity Fund as the lien holder and shall include administrative and legal expenses. The amount reimbursable to the LUST Trust Revolving Fund will be for corrective action costs only.

[Source: Reserved at 9 Ok Reg 2315, eff 6-25-92; Added at 35 Ok Reg 1027, eff 10-1-18]

165:27-7-5. Methods for reimbursement [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Revoked at 22 Ok Reg 1775, eff 7-1-05]

165:27-7-6. Conditions for reimbursement

(a) Action taken as a result of an eligible release, other than in an emergency, may be made by competitive bid of at least two (2) bidders. When a requirement for bidding is made by PSTD, all bids received shall be forwarded to PSTD and the bid results discussed between the eligible person, PSTD and the PSTD Licensed Environmental Consultant. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one (1) site shall be awarded to the lowest or best bidder as determined by PSTD. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed Environmental Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.

(b) When current costing systems cannot accommodate specific situations, contracts awarded shall be to the lowest or best bidder. The Indemnity Fund Program requires review and approval of all competitive bid actions.

(c) The owner/eligible and Licensed Environmental Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These records include but are not limited to:

- (1) Corrective action plans.
- (2) Remedial action plans
- (3) Contracts and contract negotiations.
- (4) Accounts
- (5) Invoices
- (6) Sales tickets
- (7) Subcontractor invoices
- (8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.

(d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.

(e) Reimbursement shall be made by the Fund only for costs that PSTD determines were actually incurred, were reasonable, allowable and are integral and necessary towards the corrective action performed.

(f) An eligible person with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a ten percent (10%) interest.

(g) An eligible person shall provide application information that will enable the Fund to determine which reimbursement method to use.

(1) Initial, supplemental and final payments. An eligible person may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:

(A) Make application within two (2) years from the date of a closure letter issued by PSTD.

(B) Been determined to be eligible (eligible person, eligible release, eligible tank system) to access the Fund.

(2) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the case closure letter issued by the PSTD or the date the Final Claim Confirmation form is received by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18]

165:27-7-7. Exclusions from reimbursement

(a) Tanks and/or systems owned or operated by the federal government are not eligible for reimbursement from the Fund.

(b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.

- (c) No reimbursement shall be made by the Indemnity Fund to any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for the corrective action taken or to any person for the same cost.
- (d) No reimbursement shall be made for loss of time.
- (e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.
- (f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.
- (g) No reimbursement shall be made for attorney's or legal fees incurred by or rendered against an eligible person for any reason associated with the release case.
- (h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.
- (i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.
- (j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved in advance by the PSTD.
- (k) No reimbursement shall be made to an otherwise ineligible person, or for a release of regulated substances that cannot be tied back to an existing or former storage tank system, or for non-regulated petroleum storage tank system releases or releases of non-regulated substances.
- (l) No reimbursement for corrective action costs will be made for the portion of PSTD-regulated releases commingled with non-regulated substances.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-8. Withholding reimbursement

The Fund may withhold reimbursement payments in whole or in part if any of the following apply:

- (1) Offsetting charges.
- (2) Conflicting, duplicate or unclear assignments.
- (3) Subrogation of reimbursements.
- (4) Pending legal action pertaining to reimbursement or claims.
- (5) Clarification of possible third party payors.
- (6) Investigation or pending investigation of suspected illegal or improper activity.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-9. The Pre-Approval Program

(a) The purpose of the Pre-Approval Program is to reduce, if not eliminate, disallowances of reimbursement for costs incurred and associated with corrective action, as well as to foster a

spirit of cooperation between the Licensed Environmental Consultant, PSTD and the eligible person.

(b) Parties are required to use either or both of the two (2) pre-approval processes developed by PSTD. These two (2) procedures are: Purchase Orders and Pay-For-Performance (PFP). These procedures document the agreement that all parties have reached and must comply with.

(c) An eligible person may opt out of the pre-approval program if they elect, in writing after consultation with the Administrator of the Indemnity Fund, not to participate in the pre-approval program and acknowledges in writing that the eligible person understands that all requests for reimbursement submitted without pre-approval will be subject to non-reimbursement of costs incurred which do not meet the statutory standards for reimbursement set forth in 17 O.S. §327.3 et seq.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 597, eff 8-1-19]

165:27-7-9.1. Pre-Approval for Emergency Responses – Exceptions

(a) Emergency abatements must be reported according to PSTD rules and requirements. Reimbursement of costs incurred as a result of an emergency response are subject to Fund review, and a determination by the Indemnity Fund that there is sufficient information such costs are reasonable, integral, and necessary.

(b) If an emergency response has been declared by the PSTD, immediate action is required.

[Source: Added at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-10. Pay-For-Performance procedures

(a) Pay-For-Performance (PFP) Remediation Proposals are designed for pre-approval of work that is to be performed. Pay-For-Performances shall not be issued on work that has already been completed.

(b) Before a Pay-For-Performance (PFP) Remediation Proposal can be approved, a Remedial Action Plan which satisfies the criteria of OAC 165:29-3-80 must be approved by the PSTD.

(c) A Performance-based Remedial Action Plan must be submitted for review to the PSTD.

(d) The Performance-based Remedial Action Plan Proposal shall include the following information:

- (1) Chronologic summary of site work with type, amount, and location of the release.
- (2) General description of the site geology and hydrology with stratigraphic cross-section.
- (3) Tier I/IA and 2 (if needed) report summary with proposed contaminant clean-up levels
- (4) Description of the proposed remediation technology to be used.
- (5) Schematics showing remediation system layout and remediation equipment.
- (6) Description of performance monitoring methods and list of key monitoring wells.
- (7) Total site remediation cost, contract terms, payment schedule, contract time frame, and warranty period.
- (8) Base map with all well and soil boring locations.
- (9) Detailed facility map with current benzene and TPH groundwater and soil plume maps.
- (10) Detailed facility map with free product thickness, if present.

- (11) Concentration maps of all other chemicals of concern that exceed Oklahoma Risk Based Corrective Action ("ORBCA") Site Specific Target Levels.
- (12) The number of months that will be required to complete the remediation.
- (13) The number of months that remediation will be warranted through continued operation in the event clean up levels have not been reached during the required clean up period.
- (14) Other relevant information to explain the extent and type of the contamination, how the proposed performance based work plan will accomplish the clean up, types of monitoring to be used, and any risks that may be associated with the clean-up that should be addressed.
- (e) All costs associated with the Performance-based Proposal must be included in the Performance-based Remedial Action Plan submitted to the PSTD.
- (f) Any change order or re-design costs will be part of the original Performance-based Work Plan unless otherwise stipulated in the PFP contract.
- (g) Costs associated with the closing of the site may or may not be included in the PFP but will be discussed prior to the execution of the PFP.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-11. Purchase order procedures

- (a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders shall not be issued on work that has been completed without pre-approval.
- (1) All purchase orders must use the appropriate standardized method for a particular scope of work.
- (2) All purchase order requests must be submitted online within the required timeframe by the Licensed Environmental Consultant.
- (3) All purchase order requests submitted will be reviewed and responded to within thirty (30) days.
- (4) If the purchase order request is approved as submitted, the PSTD staff will notify the Licensed Environmental Consultant and eligible person with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.
- (5) If the purchase order request is not approved as submitted, the PSTD staff will contact the Licensed Environmental Consultant or eligible person concerning the necessary changes required or will schedule a meeting, if needed.
- (A) The Licensed Environmental Consultant will then make the agreed revisions and resubmit online the final purchase order to PSTD within the required timeframe.
- (B) When PSTD staff recommends revisions to the purchase order request, the Licensed Environmental Consultant or eligible person will have thirty (30) days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or eligible person does not respond within thirty (30) days, the purchase proposal as originally submitted is void.
- (C) Unless agreed upon by PSTD, the eligible person and the Licensed Environmental Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

(6) In the event the Licensed Environmental Consultant, eligible person, and PSTD cannot agree upon reasonable terms, the purchase order request shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. § 327.3(C), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of PSTD.

(b) Change orders must be submitted prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the Technical staff, unless the total additional costs are less than five percent (5%) of the approved purchase order. Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the Fund.

(c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full, required reports submitted within the required timeframe and approved by PSTD, before reimbursement is requested, unless other payment terms are pre-approved by the PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will contain:

(A) A copy of the approved purchase order (and change order, if applicable).

(B) Required documentation.

(d) Reimbursement claims on purchase orders will be paid within thirty (30) days of receipt.

(e) The Licensed Environmental Consultant, eligible person or both may make application for an Administrative Application for hearing to determine terms and conditions of purchase order approval.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 597, eff 8-1-19]

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-1. Hearing, orders, and appeals

(a) Hearings and appeals to enforce the provisions of this Chapter shall be conducted in accordance with Chapter 5 of Commission rules shall be before an Administrative Law Judge on the PSTD Docket.

(b) The Commission shall issue such orders as it deems necessary to enforce the provisions of this Chapter to protect human health and the environment within the State of Oklahoma.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-9-2. Changes to rules

The adoption of this Chapter shall not preclude the PSTD from subsequently altering, amending, or changing the rules in whole or in part in accordance with 75 O.S. § 250 et seq., of the Administrative Procedures Act.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 36 Ok Reg 598, eff 8-1-19]

165:27-9-3. Notices

Any notices and documents required to be submitted to the Fund or PSTD shall be delivered or mailed to:

- (1) Indemnity Fund mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.
- (2) PSTD mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.
- (3) Delivery address for Indemnity Fund and PSTD: Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 480, Oklahoma City, Oklahoma 73105 (405) 521-4683.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 36 Ok Reg 598, eff 8-1-19]

165:27-9-4. Severability

If any part of this Chapter is adjudged by a court of competent jurisdiction to be invalid for any reason or in any manner, the remainder of this Chapter shall not be affected and shall remain in full force and effect.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92]

APPENDIX A. REQUEST FOR PURCHASE ORDER [REVOKED]

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Revoked at 31 Ok Reg 1013, eff 9-12-14]

**APPENDIX B. REQUEST FOR ACCEPTANCE OF CHANGES
IN APPROVED PURCHASE ORDERS [REVOKED]**

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Revoked at 31 Ok Reg 1013, eff 9-12-14]

[Authority: 17 O.S., §§ 52 and 350 et seq.; 27A O.S., § 1-3-101]

[Source: Codified 6-25-92]