

**TITLE 165. CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 165:27-1-2. Definitions [AMENDED]
- Subchapter 7. Reimbursement
- 165:27-7-1. Reimbursable expenses [AMENDED]
- Subchapter 9. Administrative Provisions
- 165:27-9-3. Notices [AMENDED]

FILED
JUL 25 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

AUTHORITY:

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

COMMENT PERIOD:

October 22, 2015 to January 15, 2016

PUBLIC HEARING:

February 3, 2016

ADOPTION:

February 3, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:

June 9, 2016

EFFECTIVE:

August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Due to recent litigation regarding petroleum releases, staff determined that a definition change of two elements of reimbursable expense should be made. In addition the rules were thoroughly reviewed to tighten up any vocabulary/grammatical inconsistencies and change the room number for the Indemnity fund offices.

CONTACT PERSON:

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ACCEPTED 6/12/16

Office of Administrative Rules

Oklahoma Secretary of State

Docket # 16-529 OAR/cert C.C.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in 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 ("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 SOR or eligible 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.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels 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. ~~The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.~~

"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 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 release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

"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.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one 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 different tank system locations, are separated by time, or both.

"Pay for Performance (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.

"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 Chapter 29 of Commission rules for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR is required.

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

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, and transportation, etc.

(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 costs that have been paid by the eligible person as set forth in 17 O.S. 356.

(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.

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

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) Mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(2) Mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(3) Delivery address: Petroleum Storage Tank Indemnity Fund, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238~~ 480, Oklahoma City, Oklahoma 73105 (405) 521-4683.

(4) Delivery address: Petroleum Storage Tank Division, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238~~ 480, Oklahoma City, Oklahoma 73105 (405) 521-4683.