

COVERAGE ADDENDUM TO THE CERTIFICATE OF COVERAGE

For the Period July 1, 2011 to June 30, 2012

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COVERAGE ADDENDUM

PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

The Petroleum Underground Storage Tank Release Compensation Board provides this Coverage Addendum to the Certificate of Coverage has issued to you as a responsible person owning or operating a UST in the State of Ohio for the period of July 1, 2011 to June 30, 2012. The Certificate of Coverage states the coverage for which you are entitled from the Ohio Financial Assurance Fund. This Coverage Addendum provides you with the limitations, exclusions, and conditions to your coverage; for this purpose, portions of Chapter 3737. of the Ohio Revised Code and Chapter 3737. of the Ohio Administrative Code are excerpted below.

DEFINITIONS

Terms Important to Your Understanding of the Certificate of Coverage and the Coverage Addendum (Section 3737.87 O.R.C.)

As used in sections 3737.87 to 3737.98 of the Revised Code:

- (A) "Accidental release" means any sudden or non-sudden release of petroleum that was neither expected nor intended by the owner or operator of the applicable underground storage tank system and that results in the need for corrective action or compensation for bodily injury or property damage.
- (B) "Corrective action" means any action necessary to protect human health and the environment in the event of a release of petroleum into the environment, including, without limitation, any action necessary to monitor, assess, and evaluate the release. In the instance of a suspected release, the term includes, without limitation, an investigation to confirm or disprove the occurrence of the release. In the instance of a confirmed release, the term includes, without limitation, the initial corrective action taken under section 3737.88 or 3737.882 of the Revised Code and rules adopted or orders issued under those sections and any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial corrective action is taken.
- (C) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds under section 135.03 of the Revised Code, and agrees to participate in the petroleum underground storage tank linked deposit program provided for in sections 3737.95 to 3737.98 of the Revised Code.
- (D) "Eligible owner" means any person that owns six or fewer petroleum underground storage tanks comprising a petroleum underground storage tank or underground storage tank system.
- (E) "Installer" means a person who supervises the installation of, performance of major repairs on site to, abandonment of, or removal of underground storage tank systems.
- (F) "Major repair" means the restoration of a tank or an underground storage tank system component that has caused a release of a product from the underground storage tank system, the upgrading of a tank or an underground storage tank system component, or the modification of a tank or an underground storage tank system component. "Major repair" does not include routine maintenance for normal operational upkeep to prevent an underground storage tank system from releasing a product.
- (G) "Operator" means the person in daily control of, or having responsibility for the daily operation of, an underground storage tank system.

(H) "Owner" means:

- (1) In the instance of an underground storage tank system in use on November 8, 1984, or brought into use after that date, the person who owns the underground storage tank system;
 - (2) In the instance of an underground storage tank system in use before November 8, 1984, that was no longer in use on that date, the person who owned the underground storage tank system immediately before the discontinuation of its use. The term includes any person who holds, or, in the instance of an underground storage tank system in use before November 8, 1984, but no longer in use on that date, any person who held immediately before the discontinuation of its use, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which the underground storage tank system is located, including, without limitation, a trust, vendor, vendee, lessor, or lessee. The term does not include any person who, without participating in the management of an underground storage tank system and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground storage tank system primarily to protect the person's security interest in it.
- (I) "Person," in addition to the meaning in section 3737.01 of the Revised Code, means the United States and any department, agency, or instrumentality thereof.
- (J) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is a liquid at the temperature of sixty degrees Fahrenheit and the pressure of fourteen and seven-tenths pounds per square inch absolute. The term includes, without limitation, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (K) "Petroleum underground storage tank linked deposit" means a certificate of deposit placed by the treasurer of state with an eligible lending institution pursuant to sections 3737.95 to 3737.98 of the Revised Code.
- (L) "Regulated substance" means petroleum or any substance identified or listed as a hazardous substance in rules adopted under division (D) of section 3737.88 of the Revised Code.
- (M) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of from an underground storage tank system into ground or surface water or subsurface soils or otherwise into the environment.
- (N) Notwithstanding division (F) of section 3737.01 of the Revised Code, "responsible person" means the person who is the owner or operator of an underground storage tank system.
- (O) "Tank" means a stationary device designed to contain an accumulation of regulated substances that is constructed of manmade materials.
- (P) "Underground storage tank" means one or any combination of tanks, including the underground pipes connected thereto, that are used to contain an accumulation of regulated substances the volume of which, including the volume of the underground pipes connected thereto, is ten per cent or more beneath the surface of the ground.

The term does not include any of the following or any pipes connected to any of the following:

- (1) Pipeline facilities, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. 1671, as amended, or the "Hazardous Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C.A. 2001, as amended;
- (2) Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (3) Tanks used for storing heating fuel for consumptive use on the premises where stored;
- (4) Surface impoundments, pits, ponds, or lagoons;
- (5) Storm or waste water collection systems;
- (6) Flow-through process tanks;

- (7) Storage tanks located in underground areas, including, without limitation, basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
 - (8) Septic tanks;
 - (9) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- (Q) "Underground storage tank system" means an underground storage tank and the connected underground piping, underground ancillary equipment, and containment system, if any.
- (R) "Revenues" means all fees, premiums, and charges paid by owners and operators of petroleum underground storage tanks to the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code; proceeds received by the board from any insurance, condemnation, or guaranty; the proceeds of petroleum underground storage tank revenue bonds; and the income and profits from the investment of any such revenues.
- (S) "Revenue bonds," unless the context indicates a different meaning or intent, means petroleum underground storage tank revenue bonds and petroleum underground storage tank revenue refunding bonds that are issued by the petroleum underground storage tank release compensation board pursuant to sections 3737.90 to 3737.948 of the Revised Code.

CREATION OF THE FINANCIAL ASSURANCE FUND
(Section 3737.91(A) O.R.C.)

There is hereby created the petroleum underground storage tank financial assurance fund, which shall be in the custody of the treasurer of state, but is not a part of the state treasury. The fund shall consist of moneys from the following sources:

- (1) All fees collected under divisions (B) and (F) of this section and all supplemental fees collected under division (C) of this section;
- (2) Interest earned on moneys in the fund;
- (3) Appropriations to the fund from the general revenue fund;
- (4) The proceeds of revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code, provided that upon resolution of the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code, all or part of those proceeds may be deposited into a separate account of the fund. Chapters 131. and 135. of the Revised Code do not apply to the establishment, deposit, investment, application, and safeguard of any such account and moneys in any such account.

AUTHORIZATION FOR THE ANNUAL PETROLEUM
UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE FEE TO BE ASSESSED
(Section 3737.91(B) O.R.C.)

For the purposes of paying the costs of implementing and administering this section and sections 3737.90 and 3737.92 of the Revised Code and rules adopted under them; payment or reimbursement of corrective action costs under section 3737.92 of the Revised Code; compensating third parties for bodily injury or property damage under that section; and payment of principal and interest on revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code to raise capital for the fund, there is hereby assessed an annual petroleum underground storage tank financial assurance fee on each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility by rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code. The fee assessed by this division shall be paid to the board by a responsible person for each tank that is subject to the fee. The fee shall be paid not later than the first day of July of each year, except that in 1989 the fee shall be paid by either the first day of September or ninety days after July 11, 1989, whichever is later. The fee is in addition to any fee established by the fire marshal under section 3737.88 of the Revised Code.

The amount of the annual fee due in 1989 and 1990 is one hundred fifty dollars per tank per year. In 1991 and subsequent years the board shall establish the amount of the annual fee in accordance with this division. Not later than the first day of April of

1991 and each subsequent year, the board, in consultation with the administrative agent of the fund with whom the board has entered into a contract under division (B)(3) of section 3737.90 of the Revised Code, if any, shall determine the amount of the annual fee to be assessed in that year and shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the fee at that amount. The fee shall be established at an amount calculated to maintain the continued financial soundness of the fund, provided that if the unobligated balance of the fund exceeds forty-five million dollars on the date that an annual determination is made, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds. Not later than the first day of May of 1991 and each subsequent year, the board shall notify each responsible person by certified mail of the amount of the annual fee per tank due in that year. As used in this paragraph, "proceedings" has the same meaning as in section 133.01 of the Revised Code.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any annual fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any annual fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

**AUTHORIZATION FOR THE ASSESSMENT OF A
SUPPLEMENTAL PETROLEUM UNDERGROUND STORAGE
TANK FINANCIAL ASSURANCE FEE
(Section 3737.91(C) O.R.C.)**

As necessary to maintain the financial soundness of the fund, the board, by rules adopted in accordance with Chapter 119. of the Revised Code, may at any time assess a supplemental petroleum underground storage tank financial assurance fee on tanks subject to the fee assessed under division (B) or (F) of this section in any fiscal year in which the board finds that the unobligated balance in the fund is less than fifteen million dollars. The board, in consultation with the fund's administrative agent, if any, shall establish the amount of the supplemental fee at an amount that will ensure an unobligated balance in the fund of at least fifteen million dollars at the end of the fiscal year in which the supplemental fee is assessed. Not less than thirty days before the date on which payment of the supplemental fee is due under the board's rules, the board shall notify each responsible person by certified mail of the amount of the supplemental fee and the date on which payment of the supplemental fee to the board is due.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

**THE CERTIFICATE OF COVERAGE
(Section 3737.91(D)(1) and (D)(2) O.R.C.)**

- (1) The board shall issue a certificate of coverage to any responsible person who has complied with all of the following:
 - (a) Paid the fee assessed under division (B) or (F) of this section;
 - (b) Demonstrated to the board financial responsibility in compliance with the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code for the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section. If the responsible person utilizes self-insurance as a financial responsibility mechanism, he shall provide the board with an affidavit in which the responsible party certifies that all documentation submitted to the board is true and accurate.
 - (c) Certified to the Board that for each petroleum underground storage tank system for which a certificate of coverage is sought, the responsible person is in compliance with applicable rules for petroleum underground storage tank systems that have been adopted by the fire marshal under section 3737.88 of the Revised Code.

The certificate of coverage shall state the amount of coverage to which the responsible person is entitled from the fund pursuant to division (D)(3) of this section and the time period for which the certificate provides that coverage. An issued certificate of coverage is subject to the condition that the holder timely pay any supplemental fee assessed under division (C) of this section during the time that the certificate is in effect.

- (2) The board shall not issue a certificate of coverage to any responsible person who fails to comply with divisions (D)(1)(a), (b) and (c) of this section.

DISBURSEMENTS FROM THE FINANCIAL ASSURANCE FUND **(Section 3737.91(D)(3) O.R.C.)**

The maximum disbursement from the fund for any single release of petroleum is the difference between the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section and one million dollars. The maximum disbursement from the fund during any fiscal year on behalf of any responsible person shall not exceed in the aggregate one million dollars less the deductible amount if the responsible person owns or operates not more than one hundred tanks comprising underground petroleum storage tanks or underground petroleum storage tank systems, shall not exceed in the aggregate two million dollars less the deductible amount if the responsible person owns or operates not more than two hundred such tanks, shall not exceed in the aggregate three million dollars less the deductible amount if the responsible person owns or operates not more than three hundred such tanks, and shall not exceed in the aggregate four million dollars less the deductible amount if the responsible person owns or operates more than three hundred such tanks. The maximum disbursement from the fund for any single release or for any fiscal year under this division does not in any manner limit the liability of a responsible person for a release of petroleum.

SUBMITTING A CLAIM **(Section 3737.92(B) O.R.C.)**

A responsible person seeking to obtain from the fund payment of or reimbursement for corrective action costs for an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets all of the following criteria:

- (1) The responsible person is eligible under division (D) of this section to receive payment of or reimbursement for the corrective action costs from the fund;
- (2) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;
- (3) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions.

THIRD PARTY CLAIMS **(Section 3737.92(C) O.R.C.)**

A responsible person seeking to obtain from the fund payment of or reimbursement for compensation paid or to be paid to third parties for bodily injury or property damage caused by an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets both of the following criteria:

- (1) The responsible person who submitted the claim is eligible under division (D) of this section to receive payment of or reimbursement for the third-party compensation from the fund;

- (2) There is a legally enforceable judgment against the responsible person for bodily injury or property damage to one or more third parties resulting from the release in the amount stated in the claim, or, if there is a settlement with a third party as a result of the release, the amount of the settlement stated in the claim is reasonable.

CLAIM ELIGIBILITY REQUIREMENTS

(Section 3737.92(D) O.R.C.)

A responsible person is not eligible to receive payment or reimbursement from the fund under division (B) or (C) of this section unless all of the following conditions are met:

- (1) At the time that the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage issued by the board under division (D) of section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
- (2) One of the following applies:
 - (a) The petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.
- (3) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
- (4) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release has occurred;
- (5) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code.
- (6) The petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed.

RIGHT TO APPEAL THE CLAIM DETERMINATION

(Section 3737.92(F) O.R.C.)

If the responsible person who submitted a claim under this section or the fire marshal objects to the determination of the claim made by the director of the fund and files an objection to the determination with the board within thirty days after the mailing of the notification of the determination and finding of fact, if any, the board shall appoint a referee to conduct an adjudication hearing on the determination. The adjudication hearing shall be conducted in accordance with section 119.09 of the Revised Code. For the purposes of adjudication hearings on determinations of the director of the fund, the term "agency" as used in that section includes the board.

If any party is aggrieved by an order of the board made after the adjudication hearing on the determination, the party may appeal the order in accordance with section 119.12 of the Revised Code. For the purposes of appeals of any such orders, the terms "fire marshal" and "building" as used in that section include the board and petroleum underground storage tank, respectively.

**FUND LIABILITY SUBJECT TO AVAILABLE FUNDS;
RESPONSIBLE PERSON'S LIABILITY**
(Section 3737.92(G) O.R.C.)

Neither the state, the board, nor the director of the fund is liable to any responsible person to pay the cost of any corrective action or of third party compensation for a release of petroleum when the fund is depleted of moneys because the amount of the claims made on the fund exceeds the unobligated balance in the fund. However, upon assessing and collecting a supplemental fee under division (C) of section 3737.91 of the Revised Code, the board shall again consider the claim of a responsible person whose claim was not initially honored because of the insufficiency of unobligated balances in the fund to pay that person's claim.

The inability of a responsible person to obtain money from the fund does not in any manner limit the liability of a responsible person for a release of petroleum.

**RIGHT TO APPLY TO FINANCIAL ASSURANCE FUND
DOES NOT LIMIT LIABILITY OF RESPONSIBLE PERSON**
(Section 3737.92(H) O.R.C.)

Neither the right to apply for payment or reimbursement nor the receipt of payment or reimbursement under this section limits the liability of any responsible person to the state for the payment of any corrective action or enforcement costs under sections 3737.882 and 3737.89 of the Revised Code, or to any third party for bodily injury or property damage, resulting from a release of petroleum from an underground storage tank system owned or operated by the responsible person. Neither the right to apply for payment or reimbursement under this section nor any delay by the board or director of the fund in acting upon any claim for any such payment or reimbursement limits or postpones the duty of any responsible person to comply with any order of the fire marshal issued under section 3737.88 or 3737.882 of the Revised Code.

BOARD ENTITLED TO SUBROGATION
(Section 3737.92(I), (J) and (K) O.R.C.)

- (I) The board, upon payment to or reimbursement of a responsible person from the fund for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person. The attorney general, upon the request of the board, may bring a civil action to recover those costs in the court of common pleas of the county in which the release of petroleum occurred.
- (J) Nothing in this section limits the right of the federal government to recover from the responsible person any federal money expended for any corrective or enforcement action as a result of a release of petroleum.
- (K) If the responsible person described in division (D) of this section is a state agency, any payments or reimbursements received by the state agency under this section shall be deposited into the fund from which the expenditures for corrective action or third party compensation originally were made.

RULES OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

DEFINITIONS

Terms Important to Your Understanding of the Certificate of Coverage and the Coverage Addendum

(Section 3737-1-03 O.A.C.)

- (A) The following definitions are provided for the purposes of clarifying the meaning of certain terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to 3737-1-22 of the Administrative Code.
- (1) “Applicant” means the responsible person for an underground storage tank system who submits a board-prepared application for fund payment of, or reimbursement for, corrective action costs for an accidental release of petroleum or compensation paid or to be paid to third parties for bodily injury or property damages.
 - (2) “Board” means the petroleum underground storage tank release compensation board.
 - (3) “Bodily injury” means injury to the body or sickness or disease contracted by a person as the result of an accidental release of petroleum and recoverable pursuant to division (C) of section 3737.92 of the Revised Code. Bodily injury does not include the negligent infliction of emotional distress.
 - (4) “Costs” means actual expenses incurred, paid, and documented.
 - (5) “Debt service account or accounts” means an account or accounts established for the purpose of making bond principal and interest payments on a regular basis and as may be required by bond covenants.
 - (6) “Debt service reserve account or accounts” means a reserve account or accounts established for the purpose of making bond principal and interest payments on a non regular, emergency basis and as may be required by bond covenants.
 - (7) “Deductible” means the standard, non-reduced amount which is deducted from the responsible person’s assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (E) of section 3737.92 of the Revised Code.
 - (8) “Director” means the director of the petroleum underground storage tank financial assurance fund.
 - (9) “Fee” means:
 - (a) The annual petroleum underground storage tank financial assurance fee;
 - (b) The supplemental petroleum underground storage tank financial assurance fee; or
 - (c) Any other fee as established by the board.
 - (10) “Financial audit” means an examination of the books, vouchers, and records of a responsible person by the director to determine compliance with this chapter.
 - (11) “Financial responsibility” means proof of financial accountability as a condition to acquiring eligibility to the fund in accordance with rule 1301:7-9-05 of the Administrative Code adopted by the fire marshal pursuant to section 3737.882 of the Revised Code.
 - (12) “Fire marshal” means the fire marshal of the state of Ohio.
 - (13) “Fiscal year” means the time period July first through June thirtieth.

- (14) "Imminent hazard" means the appearance of threatened and impending risk or peril.
- (15) "Markup" means an amount charged by contractors or consultants beyond the actual cost of labor, equipment, or materials, for management, supervision, or administration of the corrective action activities performed.
- (16) "Obligated account" means monies segregated and maintained, on a year by year basis, for reimbursing necessary corrective action costs.
- (17) "Obligations" mean undertakings by the board to reimburse or pay a responsible person or the designee of the responsible person.
- (18) "Primary consultant" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.
- (19) "Primary contractor" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.
- (20) "Program task" means one of the tasks defined by rule 3737-1-12 of the Administrative Code.
- (21) "Property damage" means actual and reasonable, incurred or pending expenses for damage to property as the result of an accidental release of petroleum that are not covered by insurance and are recoverable pursuant to division (C) of section 3737.92 of the Revised Code. The following items are a non exhaustive list of items specifically excluded from property damage: loss of profits, loss of business, taxes, utility expenses, punitive damages, exemplary damages, telephone, television, internet, or cable and/or satellite fees, attorney fees or all costs of litigation, including but not limited to court costs, depositions, experts and attorney fees.
- (22) "Reduced deductible" means the reduced amount which is deducted from the responsible person's assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (F) of section 3737.92 of the Revised Code.
- (23) "Release" means a "release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (24) "Responsible person" means a "responsible person" as defined in division (N) of section 3737.87 of the Revised Code.
- (25) "Subcontractor" means a person or organization, other than the primary contractor or primary consultant or a subsidiary thereof, which, at the request of the primary contractor or primary consultant, has undertaken one or more corrective action activities for corrective action at the release site under direction of the primary contractor or primary consultant. Subcontractors do not include persons or entities whose only involvement related to the corrective action is the supply of material or equipment.
- (26) "Suspected release" means a "suspected release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (27) "Tank population" means the number of tanks as defined by division (O) of section 3737.87 of the Revised Code in existence in the state of Ohio at any given time.
- (28) "Technical audit" means an examination of the books, vouchers, and records of a responsible person to determine if the work performed was necessary to meet the requirements of the fire marshal or an order of the director.
- (29) "Unobligated balance" means monies which have not been placed in the obligated account, the debt service account or accounts, the debt service reserve account or accounts, or used to purchase certificates of deposit for linked deposits. The unobligated balance includes the balance of monies which may be used to retire bonds, pay third-party bodily injury or property damage claims related to the accidental release of petroleum,

to purchase certificates of deposit for linked deposits, to fund the obligated account, to fund the debt service account or accounts, to fund the debt service reserve account or accounts, or for various other expenses the board may incur related to administering sections 3737.90 to 3737.98 of the Revised Code.

(30) "Year" means twelve consecutive months.

Effective: 11/30/2009

**ANNUAL PETROLEUM UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE FEE,
CERTIFICATION OF COMPLIANCE AND FINANCIAL RESPONSIBILITY
(Section 3737-1-04 O.A.C.)**

(A) Effective April 1, 1991, and each year thereafter in which the unobligated balance of the financial assurance fund does not exceed forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board shall assess a fee for each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility.

In the event that the unobligated balance of the financial assurance fund exceeds forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds.

(B) The basis for the calculation of the annual fee includes, but is not limited to, the amount needed to meet financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

(C) The director of the fund shall notify each responsible person by May first of each year of the annual fee. In the year in which an annual fee is not assessed, the director of the fund will provide reasonable notification to responsible persons of the non-assessment of fees.

(D) The annual fee is due no later than July first of each year in which an annual fee is imposed. In the event the director determines that a responsible person fails to pay the annual fee by July first of the year in which the fee is imposed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days of the date the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fee and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. No retroactive coverage shall be extended in situations where responsible persons have initially failed to pay fees but later did so, regardless of whether they received notification by the director of such failure.

(E) (1) Except as limited by rule 3737-1-04.1 of the Administrative Code, upon receipt of full payment of the annual fee and any past fees owed, upon demonstration of financial responsibility as required by rule 1301:7-9-05 of the Administrative Code, and upon certification that the responsible person is in compliance with applicable rules for petroleum underground storage tanks adopted by the fire marshal under section 3737.88 of the Revised Code, the director shall issue a certificate of coverage. Payment of the annual fee and any past fees owed, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the succeeding fiscal year on or before July first will entitle the responsible person to a certificate of coverage in effect for the fiscal year. Payment of the annual fee and any past fees owed, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the current fiscal year after July first will result in a certificate of coverage for that fiscal year effective on and after the date the board received full payment due, certification of compliance with the fire marshal's rules, and demonstration

of financial responsibility. The failure to do any of the following will result in the non-issuance or revocation of a certificate of coverage:

- (a) Pay any annual fee authorized by division (B) of section 3737.91 of the Revised Code or supplemental fee authorized by division (C) of section 3737.91 of the Revised Code;
 - (b) Demonstrate and maintain financial responsibility as required by rule 1301:7-9-05 of the Administrative Code for the deductible or, when appropriate, the reduced deductible established under rule 3737-1-06 of the Administrative Code;
 - (c) Certify and maintain compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for each tank for which a certificate of coverage is sought; or
 - (d) Pay any fee assessed pursuant to this chapter.
- (2) Where ownership of an underground storage tank has been transferred and notice has been given to the director in accordance with paragraph (F) of this rule, a new certificate of coverage shall be issued to the new underground storage tank owner for the fiscal year in which the transfer occurred provided that the new owner pays a transfer fee of five hundred dollars per facility, pays all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.
- (3) The director shall accept the annual petroleum underground storage tank financial assurance fee required by this rule but shall not issue a certificate of coverage when the criteria of this rule for issuance are not satisfied.
- (4) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of denial.

Once a certificate of coverage has been issued, it may be revoked at any time upon a finding by the director that the criteria of this rule for issuance are not satisfied. Where a certificate of coverage is to be revoked, the director shall issue a notice of pending revocation to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency.

If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of revocation. The director shall provide the fire marshal with a copy of any determination issued pursuant to this rule.

Where the requirements of this rule are not satisfied at the time of a petroleum release, the certificate is null and void for purposes of coverage and the responsible person is not eligible for reimbursement from the fund, regardless of whether the certificate has been revoked.

- (F) In the event that a newly installed underground storage tank is placed in service, the responsible person shall immediately notify the director. In the event that an underground storage tank exists for which a certificate of coverage was not issued in the previous fiscal year, due to an omission, intentional or unintentional, by the responsible person, the responsible person shall immediately notify the director. Upon receipt of notice of a newly installed, or existing underground storage tank, required by this paragraph of this rule, the director shall notify the responsible person of the assessment of any applicable fees. No certificate of coverage will be issued until the responsible person has notified the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, has paid the required annual fees for the new or existing tank, all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

In the event of a transfer of an underground storage tank for which a certificate of coverage is currently in place, the transferee shall give notice to the director within thirty days of the date of the transfer. If the new responsible person notifies the director within thirty days and complies with the requirements set forth in this rule, the certificate of coverage shall be effective as of the date of the transfer of the underground storage tank. If the new responsible person fails to notify the director of the transfer within thirty days or, if no certificate of coverage for the tank is in effect at the time of the transfer, a certificate of coverage will not be effective until the new responsible person notifies the director of the transfer, pays the transfer fee, and all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

The responsible person shall tender the fees assessed no later than thirty days from the date of notification. If the responsible person fails to submit the annual fees within thirty days after the notification was mailed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days after the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fees and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. Where a responsible person has failed to inform the director, as is required by this rule, the director is not required to notify the responsible person of fees owed.

- (G) A responsible person may file with the board written objections to any order or determination of the director issued pursuant to this rule. If the written objection is received by the board within thirty days of the date of mailing of the order or determination, the board shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.
- (H) The amount of the annual fee is six hundred dollars per tank.
- (I) A responsible person shall maintain with the director a current mailing address at which determinations, notices, and orders may be sent. Any determination or order shall be mailed by certified mail to the responsible person's address on file with the board. If the certified mail is returned unclaimed, the order or determination shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.

Effective: 11/30/2009

COVERAGE REINSTATEMENT (Section 3737-1-04.1 O.A.C.)

- (A) Where the board has not issued a valid certificate of coverage to a responsible person for a given underground storage tank, for the prior two or more consecutive fiscal years, the responsible person shall:
 - (1) Comply with the requirements of rule 3737-1-04 of the Administrative Code; and
 - (2) Certify that, prior to payment, there has been no suspected release or release required to be reported to the fire marshal from the underground storage tank system for which coverage is being sought, or any known release is in compliance with the requirements of rule 1301:7-9-13 of the Administrative Code.
- (B) The director shall verify the responsible person is in compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for each tank for which a valid certificate of coverage has not been issued for the prior two or more consecutive fiscal years. Where the director determines that the responsible person is not in compliance with the fire marshal's rules for the underground storage tank system for which coverage is being sought, the certificate of coverage shall be denied in accordance with paragraph (E)(4) of rule 3737-1-04 of the Administrative Code.

- (C) Nothing in any part of this rule shall be interpreted to allow retroactive coverage for suspected releases or releases required to be reported to the fire marshal prior to the effective date of a valid certificate of coverage.
- (D) The rights, limitations, responsibilities, and requirements of rule 3737-1-04 of the Administrative Code in acquiring and maintaining a valid certificate of coverage apply to any certificate of coverage sought and obtained under this rule.

Effective: 11/30/2009

**SUPPLEMENTAL PETROLEUM UNDERGROUND STORAGE TANK FINANCIAL
ASSURANCE FEE
(Section 3737-1-05 O.A.C.)**

- (A) In any fiscal year in which the board finds that the unobligated balance in the financial assurance fund is less than fifteen million dollars, the board may assess a supplemental fee for each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility.
- (B) The basis for the calculation of the supplemental fee will include but will not be limited to the amount needed to meet financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.
- (C) The director of the fund shall notify each responsible person of the supplemental fee no less than thirty days before the date on which the supplemental fee is due.
- (D) The supplemental fee is due no later than thirty days from the date of the notification. In the event a responsible person fails to pay the fee within the thirty-day period set forth in this rule, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the supplemental fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the supplemental fee and a late fee of up to one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief.
- (E) The director shall revoke the certificate of coverage upon the failure to pay the supplemental fee.
- (F) In the event that a new tank is placed in service after July first of the year in which the supplemental fee is imposed, the director shall notify the responsible person by certified mail of the assessment of the fee. The responsible person shall tender the fee assessed no later than thirty days from the date of notification of fees. If the responsible person fails to submit the fee within thirty days after the notification has been mailed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the supplemental fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the supplemental fee and a late fee of up to one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief.
- (G) A responsible person may file with the board written objections to the order of the director no later than thirty days from the mailing of the order. The board, upon receipt of the objections, shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

Effective: 11/30/2009

THE DEDUCTIBLE AND THE REDUCED DEDUCTIBLE
(Section 3737-1-06 O.A.C.)

- (A) The deductible is fifty-five thousand dollars, which deductible may thereafter be modified by the board pursuant to rule 3737-1-15 of the Administrative Code.
- (B) Any responsible person owning, or owning or operating, a total of six or fewer tanks may purchase the reduced deductible of eleven thousand dollars, which reduced deductible may thereafter be modified by the board pursuant to rule 3737-1-15 of the Administrative Code, for all tanks owned by the person eligible to elect the reduced deductible. The additional fee due for the reduced deductible shall be two hundred dollars per tank.
- (C) If a responsible person discovers one or more underground storage tanks, which were previously unknown to the responsible person and which have not been registered with the fire marshal pursuant to rule 1301:7-9-04 of the Administrative Code, on his property, the discovered underground storage tank(s) shall not affect the responsible person's qualification for the reduced deductible for any fiscal year prior to and including the fiscal year of discovery. If the responsible person is required to demonstrate financial responsibility for the discovered underground storage tank(s), the discovered tank(s) shall be used to determine the responsible person's qualification for the reduced deductible in succeeding fiscal years.

Effective: 11/30/2009

ESTABLISHING FUND ELIGIBILITY FOR CORRECTIVE ACTION COSTS
(Section 3737-1-07 O.A.C.)

- (A) As a prerequisite to determining fund payment of or reimbursement for corrective action costs for an accidental release of petroleum, the director of the fund shall issue a determination of eligibility for payment of or reimbursement for such costs where all of the following conditions are established:
 - (1) Receipt of an application for eligibility, from a responsible person, within one year from the date the suspected release or release, whichever is first, was required to be reported to the fire marshal;
 - (2) At the time of the suspected release or release, whichever is first, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to paragraph (E)(1) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;
 - (3) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;
 - (4) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions;
 - (5) One of the following applies:
 - (a) At the time the suspected release or release, whichever is first, was required to be reported to the fire marshal, the petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

- (6) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
 - (7) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
 - (8) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
 - (9) The responsible person has met the petroleum release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code; and
 - (10) At the time of the suspected release or release, whichever is first, the petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code.
- (B) Where an eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information within sixty days from the date of the request. If the responsible person fails to respond within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in the denial of eligibility. If the responsible person fails to provide additional information within thirty days from the date the second request is sent, eligibility shall be denied.
- (C) A responsible person determined eligible pursuant to division (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:
- (1) Maintaining all records required to be kept by this chapter;
 - (2) Paying all fees assessed;
 - (3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and
 - (4) Maintaining compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.
- (D) A responsible person may transfer his rights for reimbursement of eligible costs to another party upon notification and approval of the director. The responsible person is liable for all requirements of this chapter and fund eligibility must be maintained. The transfer of rights does not limit the liabilities of the responsible person. Nothing within this paragraph of this rule shall be deemed to grant standing, to a non responsible person, to bring a claim against the petroleum financial assurance fund.
- (E) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule, has failed to maintain fund eligibility pursuant to paragraph (C) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.

If, after thirty days from the mailing of the notice of the pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any

previously-determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.

- (F) A responsible person or the fire marshal may file written objections with the board to the director's determination to issue a determination of fund ineligibility no later than thirty days from the mailing of the notice of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.
- (G) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.

Effective: 11/30/2009

DISBURSEMENT OF THE FINANCIAL ASSURANCE FUND
(Section 3737-1-08 O.A.C.)

- (A) Once eligibility of the fund has been determined in accordance with rules 3737-1-07 or 3737-1-19 of the Administrative Code and the director of the fund has determined that an application for reimbursement is complete, obligations of the fund will not occur unless and until the deductible or the reduced deductible, as applicable, set forth in rule 3737-1-06 of the Administrative Code has been met. Costs determined to be non-reimbursable pursuant to paragraph (A) of rule 3737-1-09 of the Administrative Code shall not be applied toward the responsible person's deductible or reduced deductible. Reimbursable costs covered by insurance policies or recoverable from any other party shall be applied toward the responsible person's deductible or reduced deductible.
- (B) Obligations of the fund for eligible claims will be made on a first-come, first-served basis as determined by receipt of a completed application in accordance with rule 3737-1-12 of the Administrative Code, except when:
 - (1) The fire marshal requests approval of an accelerated review on the basis of the threat posed to human health or the environment by the release to which the claim applies;
 - (2) An accelerated review is granted under paragraph (D) of this rule; or
 - (3) The director determines that efficiency and cost savings will be better served by a non first-come, first-served review.

Notwithstanding any of the above provisions, the director may prioritize claims for releases that have received no further action status.

- (C) The board may by resolution provide for the payment of claims by installments in a manner and for a period of time it deems appropriate when the board concludes that such action is necessary to maintain the financial soundness of the financial assurance fund.
- (D) A responsible person may file with the board a request for an accelerated review of a claim by submitting an application for hardship status on a form prescribed by the director, and by providing financial documentation to the director that demonstrates approval of hardship status is necessary to prevent an imminent financial hardship to the responsible person.
 - (1) As a result of such request, the director may:
 - (a) Seek additional information from the responsible person to demonstrate imminent financial hardship, including but not limited to, a statement of assets and liabilities and/or a detailed listing of living expenses and income;
 - (b) Request the responsible person sign a release to allow the director to obtain or inspect federal and state tax records; and

- (c) Request copies of any contracts existing between the responsible person and his/her contractors and subcontractors remediating the site.
- (2) Tank owners who refuse to provide the requested information shall be denied hardship status. Any documentation received by the board for a hardship application may be a public record except if specifically exempt under section 149.43 of the Revised Code.
- (3) Upon review of financial data and/or other information provided by the responsible person, the director shall recommend to the board approval or denial of the request.

The board may accept or reject the director's recommendation. Should the board's action result in the approval of hardship status, the approval shall be for one year from the date of the board's action. A responsible person may file a subsequent request for hardship status on or before the expiration of a one-year period of hardship status.

- (4) The board may suspend or discontinue the hardship program when it determines that doing so is in the interest of the fund. Any hardship statuses that are currently in effect at the time the board suspends or discontinues the hardship program shall remain effective until the expiration of the one year period from the date the application was approved.

Effective: 11/30/2009

LIMITATIONS OF FUND COVERAGE (Section 3737-1-09 O.A.C.)

- (A) Nothing in this chapter shall be construed to authorize reimbursement for:
 - (1) Costs of corrective actions for releases prior to July 1, 1989;
 - (2) Costs of corrective action for a suspected release or release for which the director has issued a determination denying eligibility for reimbursement;
 - (3) Litigation costs of any kind incurred by a responsible person including, but not limited to: litigation costs involving acquisition of site access; local, state, or federal permit decisions; any ordinance, rule or regulation; or any order issued by the fire marshal;
 - (4) Costs associated with:
 - (a) Achieving compliance with the provisions of sections 3737.881 to 3737.98 of the Revised Code, with the exception of costs associated with corrective action and compensation to third parties for expenses associated with bodily injury or property damages caused by an accidental release of petroleum;
 - (b) Interest or carrying charges of any kind;
 - (c) Insurance premiums other than specific policies or bonds required for corrective action;
 - (d) Studies or surveys of an underground storage tank site or on property nearby other than from a site check or a Tier 1 Source Investigation conducted in accordance with rule 1301:7-9-13 of the Administrative Code;
 - (e) Corrective action costs which are determined to be non-reimbursable as a result of an audit performed in accordance with this chapter;

- (5) Costs incurred solely in conducting corrective action for non-petroleum products or corrective action for petroleum or petroleum products unrelated to a release from an assured underground storage tank system;
 - (6) Costs incurred solely in conducting corrective action for a release from an unassured underground storage tank system;
 - (7) Costs not required for performing corrective action completed in accordance with rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code or, where applicable, completed in accordance with an order which establishes corrective action procedures and criteria for the site;
 - (8) Costs covered by insurance policies or recoverable from any other party;
 - (9) Costs associated with the closure or removal of underground storage tank systems in compliance with rule 1301:7-9-12 of the Administrative Code. Where closure or removal costs, associated with rule 1301:7-9-12 of the Administrative Code, are intermingled with corrective action costs and are not separately ascertainable, the director shall determine corrective action costs to be reimbursed based upon a reasonable standard;
 - (10) Costs for corrective action other than those costs which are usual, customary, and reasonable for similar corrective action activities and under similar circumstances, as determined from the fund's experience;
 - (11) Costs for corrective actions not submitted in accordance with rule 3737-1-12 of the Administrative Code;
 - (12) Additional corrective action costs for a release after a no further action letter has been issued by the fire marshal for the subject release, unless the additional corrective action activities are required by the fire marshal due to the discovery of chemicals of concern, as defined by rule 1301:7-9-13 of the Administrative Code, resulting from the original release but not reasonably discovered prior to the issuance of the no further action letter. Under no circumstances shall additional corrective action costs be reimbursed when the original no further action letter for the subject release is rescinded more than five years from the date it was issued;
 - (13) Costs for corrective action greater than fifty percent of the usual, customary, and reasonable costs of the least expensive alternative for similar corrective action activities and under similar circumstances as determined from the fund's experience when pre-approval is required by paragraphs (A), (B) and (D) of rule 3737-1-12.1 of the Administrative Code but pre-approval was not sought or granted.
 - (14) Undocumented corrective action costs, unless the responsible person submits documentation to support the corrective action costs within ninety days from the date that the director or the director's designee requests such documentation in writing pursuant to rule 3737-1-13 of the Administrative Code; or
 - (15) Costs for corrective action and/or third-party claims determined to be non-reimbursable pursuant to paragraph (E) of rule 3737-1-22 of the Administrative Code.
- (B) The board, upon payment or reimbursement from the fund to a responsible person for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person.

Effective: 11/30/2009

INCLUSIONS OF FUND COVERAGE
(Section 3737-1-09.1 O.A.C.)

- (A) The following costs shall be specifically reimbursable:
- (1) Primary contractor or primary consultant markup on reimbursable subcontractor charges but only to the extent that the amount of primary contractor or primary consultant markup is not greater than ten per cent of the subcontractor's actual costs. However, no markup shall be paid for any of the following:

- (a) Costs of disposal, disposal facilities, and/or treatment facilities;
 - (b) Markup charged by the subcontractor(s);
 - (c) Primary contractor or primary consultant internal expenses including labor, supplies, per diem travel expenses, and intra-company billings;
 - (d) Charges for supplies;
 - (e) Charges for materials; or
 - (f) Charges for equipment.
- (2) Per diem for travel costs directly related to corrective action at a release site, up to a maximum amount, as established by the director, to reimburse the costs of mileage, food, and lodging incurred by a primary consultant or primary contractor when the release site is at a distance from the primary consultant's or primary contractor's nearest office of business which, under state of Ohio travel reimbursement policy, would allow for reimbursement. The costs of travel by common carrier (i.e. plane, boat and bus) shall not be reimbursable.
- (B) Nothing in any part of this rule shall be interpreted to preclude coverage for corrective action costs or third-party bodily injury or third-party property damage which are generally or specifically included in coverage under Chapter 3737 of the Revised Code or Chapter 3737 of the Administrative Code.

Effective: 11/30/2009

APPLICATION FOR REIMBURSEMENT
(Section 3737-1-12 O.A.C.)

- (A) Responsible persons shall file an application for reimbursement for costs actually incurred in conducting corrective action within one year from the completion date of the program task, as described below. If the responsible person fails to make a timely application for reimbursement under this rule, the costs associated with the task shall be denied.
- (B) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect prior to March 31, 1999, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraphs (F) and (H) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The site assessment program task completion date shall be the date the fire marshal determines site assessment to be complete. The site assessment program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;

- (4) The remedial action plan program task completion date shall be the date the fire marshal approves the plan. The remedial action plan program task is comprised of those actions set forth in paragraph (J) and paragraph (K) of rule 1301:7-9-13 of the Administrative Code; and
 - (5) The completion date for the remedial action plan implementation program task and the on-going system operation and maintenance program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task and the on-going system operation and maintenance program task are comprised of those actions set forth in paragraph (L) and paragraph (M) of rule 1301:7-9-13 of the Administrative Code.
 - (6) For any costs not associated with an above described program task, the associated completion date shall be the earliest of:
 - (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or
 - (c) The date the work was completed.
- (C) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 31, 1999, but before March 1, 2005, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate response action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate response action program task is comprised of those actions set forth in paragraphs (G)(1), (G)(3), and (G)(4) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(2) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The tier 1 evaluation program task completion date shall be the date the tier 1 evaluation notification, or the tier evaluation report if appropriate, is required to be submitted to the fire marshal. The tier 1 evaluation program task is comprised of those actions set forth in paragraphs (H), (I), (J) and (K) of rule 1301:7-9-13 of the Administrative Code;
 - (4) The tier 2 evaluation program task completion date shall be the date the tier evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraphs (M) and (N) of rule 1301:7-9-13 of the Administrative Code;
 - (5) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code;
 - (6) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (S) and (T) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (R) of rule 1301:7-9-13 of the Administrative Code; and
 - (7) For any costs not associated with an above described program task, the associated completion date shall be the earliest of:

- (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or
 - (c) The date work was completed.
- (D) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraph (G) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The tier 1 source investigation program task completion date shall be the date the tier 1 delineation notification or the tier one evaluation report, if appropriate, is required to be submitted to the fire marshal. The tier 1 source investigation program task is comprised of those actions set forth in paragraph (H) of rule 1301:7-9-13 of the Administrative Code;
 - (4) The tier 1 delineation program task completion date shall be the date the tier 1 investigation report is required to be submitted to the fire marshal. The tier 1 delineation program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;
 - (5) The tier 2 evaluation program task completion date shall be the date the tier evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraph (L) of rule 1301:7-9-13 of the Administrative Code;
 - (6) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (M) of rule 1301:7-9-13 of the Administrative Code;
 - (7) The completion date for an interim response action associated with a tier evaluation shall be the date the interim response action report is required to be submitted to the fire marshal. An interim response action is comprised of those actions set forth in paragraph (K) of rule 1301:7-9-13 of the Administrative Code.
 - (8) The completion date for remedial action plan preparation associated with a tier evaluation shall be the date the remedial action plan is required to be submitted to the fire marshal. Remedial action plan preparation is comprised of those actions set forth in paragraphs (N)(1) and (N)(2) of rule 1301:7-9-13 of the Administrative Code;
 - (9) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (N)(3) and (N)(4) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code; and
 - (10) For any costs not associated with an above described task, the associated completion date shall be the earliest of:

- (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or
 - (c) The date the work was completed.
- (E) Where applicable, a responsible person shall submit approvals from the fire marshal to remain in an earlier version of rule 1301:7-9-13 of the Administrative Code. Where a responsible person has been conducting corrective action under an earlier version of rule 1301:7-9-13 of the Administrative Code and elects, or by operation of law, is mandatorily transitioned to continue corrective action under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, the election date or the mandatory transition date shall be used as the completion date for submitting the following costs:
- (1) For program tasks that are incomplete at the date of the election or mandatory transition date, submit all costs incurred within one year from the date of the election or mandatory transition; and
 - (2) For all program tasks that are complete at the time of such election or mandatory transition, submit all costs in accordance with paragraph (B) or (C) of this rule.
- (F) If the responsible person has made a timely (prior to the original due date for completion) written request to the fire marshal in accordance with rule 1301:7-9-13 of the Administrative Code, to extend the time for completing a program task and if the fire marshal grants that request, the claim submission date for costs associated with that program task shall be as follows:
- (1) For costs incurred prior to the original completion date, any claim for such costs shall be submitted within one year from the original completion date;
 - (2) For costs incurred after the original completion date, any claim for such costs shall be submitted within one year from the newly approved and extended deadline and, if no deadline is stated in the fire marshal's letter, within one year from the date of the letter.
- (G) If the fire marshal issues a deficiency letter or requests additional information, the costs for additional work required to address the deficiency or fire marshal's requests for additional information are due within one year from the date the work is required to be completed by the fire marshal and if no completion date is stated in the original letter, within one year from the date of the letter. This rule will be applied to all the program tasks performed under all versions of rule 1301:7-9-13 of the Administrative Code.
- (H) The application for reimbursement shall include documentation of all notifications and reports required under applicable versions of rule 1301:7-9-13 of the Administrative Code.
- (I) The application for reimbursement shall include the following documentation:
- (1) Certifications by the responsible person and the primary consultant or primary contractor that the information contained in and submitted with the application is true and correct and represents actual costs incurred;
 - (2) Invoices, payment records and any other records documenting actual costs incurred and paid related to corrective action; and
 - (3) Any other records, site-specific information or other relevant information necessary to demonstrate compliance with cleanup standards and tank rules, or any applicable order, as required by the director.
- (J) A responsible person may apply for reimbursement for partial completion of a program task provided that the total amount sought in the application for reimbursement is not less than fifty per cent of the applicable deductible of the responsible person except:

- (1) For those costs required to be submitted according to paragraph (E)(2), (F), or (G) of this rule, the responsible person shall apply for reimbursement as required by those paragraphs regardless of the total amount sought; and
- (2) For the operation and maintenance and/or the monitoring program tasks, the director may grant permission to the responsible person to submit applications for reimbursement in which the total amount being sought is less than fifty per cent of the applicable deductible of the responsible person

Effective: 11/30/2009

MANDATORY AND VOLUNTARY PRE-APPROVAL OF CORRECTIVE ACTION COSTS
(Section 3737-1-12.1 O.A.C.)

- (A) For corrective actions to be performed in accordance with all versions of rule 1301:7-9-13 of the Administrative Code, the responsible person shall submit to the director an application for initial pre-approval of costs for pending corrective actions, as follows:
- (1) Simultaneously with the submission of an interim response action notification, where prior approval of the fire marshal must be obtained, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the interim response action notification;
 - (2) Simultaneously with the submission of a remedial action plan to the fire marshal, the responsible person shall:
 - (a) Submit a copy of the remedial action plan with a brief description of the remedial action alternatives considered, including a discussion of the reliability, effectiveness, cost, and time needed for completion, and the rationale for the selected remedial alternative; and
 - (b) Submit an estimated cost and completion schedule for the remedial actions as set forth in the remedial action plan;
 - (3) Simultaneously with the submission to the fire marshal of a tier 3 evaluation plan, where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the tier 3 evaluation plan with a description of the objective; the activities to be conducted; a discussion of the effectiveness, cost and rationale for selecting the tier 3 evaluation; and an implementation schedule and projected completion date;
 - (4) Simultaneously with the submission to the fire marshal of a plan to calibrate or disprove the fate and transport model in conjunction with a tier 2 evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the plan with a description of the objective; the activities to be conducted; and an estimated cost and completion schedule;
 - (5) Simultaneously with the submission to the fire marshal of a monitoring plan in conjunction with a tier evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the monitoring plan.
 - (6) If free product is present one year after initiating free product recovery activities, the responsible person shall assess the effectiveness of free product recovery techniques and shall submit a brief written evaluation of the reliability, effectiveness, cost, and time needed for free product recovery in the upcoming year. Said written evaluation shall be submitted on a yearly basis for each year that recovery is ongoing.
 - (a) Where free product recovery has been in place for one year, the first evaluation shall be submitted within ninety days following the anniversary date of free product recovery. Subsequent evaluations shall be submitted annually, unless otherwise determined by the director.

- (b) Where free product recovery is in conjunction with a remedial action plan, the annual free product evaluation shall be incorporated into the annual remedial action plan submissions required by this rule.
- (B) Where estimated cost and completion schedules have been pre-approved in accordance with paragraphs (A)(2) and (A)(6) of this rule, the responsible person shall submit pre-approval applications annually, unless otherwise determined by the director, on a form prescribed by the director.
- (C) Upon receipt of a pre-approval application submitted pursuant to this rule, the director shall evaluate the estimated cost and completion schedule. In evaluating the estimated cost and completion schedule to be pre-approved, the director shall consider what is usual, customary and reasonable for similar corrective action activities and under similar circumstances as determined from the fund's experience. At the director's discretion, other options including, but not limited to, pay-for-performance or risk sharing by the consultant and the responsible person may be considered for the corrective actions for which pre-approval is sought. The director shall notify the responsible person of the pre-approved costs and completion schedule.
- (D) The responsible person shall immediately notify the director and submit a revised estimated cost and completion schedule for pre-approval on a form prescribed by the director as follows:
- (1) If during the implementation of the corrective actions for which pre-approval has been granted, the actual costs will exceed the pre-approved costs by twenty per cent or six thousand dollars, whichever is less; or
 - (2) If during the implementation of the corrective actions for which pre-approval was not required by paragraph (A)(3), (A)(4), or (A)(5) of this rule because the estimated costs did not exceed six thousand dollars, the actual costs will exceed six thousand dollars.
- (E) Where a revised estimated cost and completion schedule is submitted for pre-approval, the director may review the estimated cost and completion schedule in accordance with paragraph (C) of this rule or provide notification to the responsible person that the estimated cost and completion schedule will be evaluated when the application for reimbursement is submitted to the board in accordance with rule 3737-1-12 of the Administrative Code.
- (F) Where an estimated cost and completion schedule is required by this rule, estimated costs shall be detailed on a time and material basis.
- (G) Corrective action costs and completion schedules not submitted for pre-approval in accordance with this rule shall be evaluated for reimbursement and subject to reductions in reimbursement in accordance with rule 3737-1-09 of the Administrative Code.
- (H) Where pre-approval is not required by this rule but is desired by the responsible person, the responsible person may submit to the director a description of the proposed corrective actions and an estimated cost and completion schedule for pre-approval.
- (I) Pre-approval shall not accelerate fund reimbursement for a release. Payment for pre-approved costs shall be contingent upon the proper submission of an application for reimbursement in accordance with rule 3737-1-12 of the Administrative Code, and a determination that a responsible person is eligible to receive reimbursement from the fund.

Effective: 11/30/2009

REIMBURSEMENT APPLICATION REVIEW

(Section 3737-1-13 O.A.C.)

- (A) The director or the director's designee shall review the application for reimbursement and notify the responsible person of any apparent errors or omissions in the application for reimbursement and request any additional information or documentation which is required to complete the application.
- (B) Additional information may be requested if information contained in and submitted with the application for reimbursement is inconsistent with:
 - (1) Appropriate corrective actions for the release; or
 - (2) Approved reports and plans for the release, or where applicable, an order issued by the fire marshal with regard to the release; or
 - (3) Costs for corrective action which are usual, customary and reasonable for similar corrective action activities and under similar circumstances, as determined from the fund's experience.
- (C) Any additional information or documentation requested to complete the application shall be submitted within ninety days from the date requested by the director or the director's designee. All costs of corrective action that are not documented within ninety days after requested by the director or the director's designee shall not be reimbursed regardless of whether documentation is later provided.
- (D) The fire marshal and the responsible person shall be given written notice of the director's determination to approve, approve with modifications, or deny the application.

Effective: 11/30/2009

MODIFYING THE DEDUCTIBLE OR THE REDUCED DEDUCTIBLE

(Section 3737-1-15 O.A.C.)

- (A) As a last alternative to maintain solvency of the fund and as a method of insuring that funding levels are maintained on the basis of known and estimated obligations of the fund, the board may modify the deductible or the reduced deductible. The basis for the modification of the deductible or the reduced deductible will include but not be limited to the amount needed to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.
- (B) The board shall notify each responsible person by certified mail of the change in the deductible or the reduced deductible no later than the first day of May preceding the first day of the fiscal year in which the deductible amount will apply. If the certified mail is returned unclaimed, it shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.
- (C) The applicable deductible for any claim is the deductible in effect at the time the suspected release or release, whichever is first, for which application for reimbursement is being made.

Effective: 11/30/2009

THIRD-PARTY CLAIMS

(Section 3737-1-16 O.A.C.)

- (A) Reimbursement or payment from the fund for compensation paid or to be paid for third-party claims shall be limited to the reasonable costs of bodily injury or property damage, if any, if the responsible person was in compliance with rule 3737-1-19 of the Administrative Code at the time the judgment or settlement was entered and the responsible person has been determined eligible for reimbursement for the third-party claim.

- (B) Upon notifying the board of a third-party claim pursuant to rule 3737-1-19 of the Administrative Code, the responsible person shall keep the board informed of the status of the third-party claim including but not limited to any pending negotiations, litigation, mediations, settlements, or judgments.
- (C) Where there has been a judgment or settlement of a third party lawsuit, the director shall determine and reimburse only those portions, if any, of the judgment or settlement which apply to bodily injury or property damage as defined in paragraphs (A)(3) and (A)(22) of rule 3737-1-03 of the Administrative Code. The board shall have no obligation to pay for the reasonable costs of bodily injury or property damage that are not documented in a third-party claim.
- (D) The total amount reimbursed, including payment to a third party under this rule, shall not exceed the maximum disbursement set forth in division (D)(3) of section 3737.91 of the Revised Code.
- (E) Reimbursement or payment from the fund under this rule shall not include payment or reimbursement for bodily injury or property damage that has been or will be paid from the responsible person's insurance or another party under rule 3737-1-22 of the Administrative Code.
- (F) Determination of third-party eligibility for the responsible person does not constitute an obligation for reimbursement from the fund.
- (G) Nothing in this rule precludes the board from entering into a settlement with either the responsible person or the third party.
- (H) Nothing in this rule shall be construed that the board is acting as a representative of the responsible person.

Effective: 11/30/2009

CERTIFICATE OF COVERAGE
(Section 3737-1-18 O.A.C.)

- (A) The board shall issue a certificate of coverage to any responsible person who has met the criteria of division (D) of section 3737.91 of the Revised Code and rule 3737-1-04 of the Administrative Code.
- (B) Effective with the 1992 fiscal year there will be one master certificate of coverage issued for each owner or operator making payment to the fund and a facility certificate of coverage issued for each assured facility site.
- (C) The certificate of coverage shall contain the following information:
 - (1) The amount of coverage to which the responsible person is entitled from the fund;
 - (2) The time period for which the certificate provides coverage; and
 - (3) The number of tanks which are included in the coverage.

Effective: 11/30/2009

ESTABLISHING FUND ELIGIBILITY FOR THIRD-PARTY CLAIMS
(Section 3737-1-19 O.A.C.)

- (A) As a prerequisite to determining fund payment or reimbursement for compensation paid or to be paid for third-party claims for bodily injury or property damages caused by the accidental release of petroleum resulting in the need for corrective action, the director of the fund shall issue a determination of eligibility where all of the following conditions are established:

- (1) Receipt of an application for eligibility, from a responsible person, for third-party bodily injury or third-party property damage caused by an accidental release of petroleum within thirty days from the first of any of the following events: service of a third-party complaint against a responsible person, the submission of a third-party demand for settlement, or notice of representation of a third party in a lawsuit against a responsible person. Where a third-party eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information in writing and within sixty days from the date of the request. If the responsible person fails to make a written response within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in an eligibility denial. If the responsible person fails to make a written response within thirty days from the date the second request is sent, eligibility shall be denied;
 - (2) At the time of the suspected release or release, whichever is first, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to paragraph (E)(1) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;
 - (3) One of the following applies:
 - (a) At the time the suspected release or release, whichever is first, was required to be reported to the fire marshal, the petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.
 - (4) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
 - (5) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
 - (6) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
 - (7) The responsible person has met the petroleum release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code;
 - (8) At the time of the suspected release or release, whichever is first, the petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code; and
 - (9) The responsible person has been determined eligible for payment of or reimbursement for eligible corrective action costs pursuant to rule 3737-1-07 of the Administrative Code.
- (B) A responsible person determined eligible pursuant to division (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:

- (1) Maintaining all records required to be kept by this chapter;
 - (2) Paying all fees assessed;
 - (3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and
 - (4) Maintaining compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.
- (C) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule has failed to maintain fund eligibility pursuant to paragraph (B) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.

If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.

- (D) A responsible person or the fire marshal may file written objections with the board to the director's determination to issue a determination of fund ineligibility no later than thirty days from the mailing of the notice of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.
- (E) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.

Effective: 11/30/2009

SUBROGATION (Section 3737-1-22 O.A.C.)

- (A) A responsible person who has any settlement discussions with, or mediation or litigation against another party(s) for causing and/or contributing to the accidental release of petroleum from an assured underground storage tank system for which an eligibility application has been submitted to or approved by the board, shall:
- (1) Notify the board of the identity of all other parties against whom the responsible person has or may have a right of recovery;
 - (2) Provide reasonable advance notification to the board of any and all settlement meetings;
 - (3) Notify the other party(s) that no settlement, compromise, judgment, award, or other recovery in any action or claim by the responsible person shall be binding on the board;
 - (4) Notify the other party(s) of the board's right to subrogation under division (I) of section 3737.92 of the Revised Code and that the board may assert its right by written correspondence with the responsible person, the other party(s) or their legal representatives, or may institute and pursue legal proceedings against the other party(s) independently or in conjunction with the responsible person;
 - (5) Notify the other party(s) that any settlement, compromise, judgment, award, or other recovery in favor of the responsible person shall not preclude the board from enforcing its subrogation rights against the other party(s); and

- (6) Notify the other party(s) that no attorney fees, court costs or other litigation costs shall be assessed against the board for enforcing its subrogation rights.
- (B) The responsible person shall not in any manner do any act that will impair the board's subrogation rights. The responsible person shall:
 - (1) Notify the board in writing within thirty days of any action by another party causing and/or contributing to an accidental release of petroleum from an assured underground storage tank system or other sources; and
 - (2) Not enter into any settlement agreement without prior notice to and authorization by the board.
- (C) The responsible person shall cooperate with the board in enforcement of its subrogation rights, including but not limited to, providing documents, testimony, and access to experts relating to the third party(s) causing or contributing to the accidental release of petroleum.
- (D) As used in this rule subrogation means the board's rights to recover costs of corrective actions and/or third-party claims that the board has paid or will pay to a responsible person or a third party from any other party(s) and/or the other party(s) insurer; and/or a responsible person's insurer.
- (E) If the responsible person fails to comply with this rule, the board shall reimburse corrective action costs and/or third-party claim costs that are the lesser of:
 - (1) Fifty percent of eligible corrective action and/or third-party claim costs, as determined by the board; or
 - (2) The total of eligible corrective action and/or third-party claim costs, as determined by the board, minus the amount of the deductible and minus the amount paid by the other party to the responsible person.
- (F) Where the board has withheld reimbursement for the costs of corrective action and/or third-party claims pursuant to paragraph (D) of this rule, and the board initiates a claim to recover any monies under its subrogation rights, the board may reimburse the responsible person the amount withheld only if the amount recovered under the board's subrogation claim is greater than the amount withheld from the responsible person.
- (G) If the responsible person has received any monies from any other party(s) or the responsible person's insurance for reimbursement of corrective action costs and/or third-party claims, and the board has reimbursed the responsible person for all eligible corrective action costs and/or third-party claims, the responsible person shall indemnify the board the total cost paid by the board to the responsible person for eligible corrective action and/or third-party claims costs unless the responsible person and the board agree to a lesser amount in a written settlement agreement.

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