3737-1-07 **Establishing fund eligibility for corrective action costs.**

(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)~~paragraph (E) 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 suspected release and 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 the 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 paragraph (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 the 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 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 of fund ineligibility no later than thirty days from the mailing of the determination 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.

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