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3737-1-19 **Establishing fund eligibility for third-party claims.**

(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

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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 suspected release and 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 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

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(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 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.

(E) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.