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3737-1-12.1 **Mandatory and voluntary pre-approval of corrective action costs.**

(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.

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(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~~percent 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

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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.