

3737-1-22

**Subrogation.**

- (A) 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;
  - (2) Notify the board of the identity of all other parties against whom the responsible person has or may have a right of recovery;
  - (3) 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 settle or institute and pursue legal proceedings against the other party(s) independently or in conjunction with the responsible person;
  - (4) 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;
  - (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 cooperate with the board in enforcement of its subrogation rights, including but not limited to:
- (1) Providing documents, testimony, and access to experts relating to the other party(s) causing or contributing to the accidental release of petroleum;
  - (2) Providing reasonable advance notification to the board of any and all settlement meetings; and
  - (3) Not enter into any settlement agreement without prior notice to and authorization by the board.

- (C) Where reimbursement for the costs of corrective action and third-party claims has been withheld pursuant to rule 3737-1-09 of the Administrative Code, and the board recovers 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.
- (D) If the responsible person has received any monies from any other party or the responsible person's insurance for reimbursement of corrective action costs and/or third-party claims, the responsible person shall indemnify the board the total amount of any monies advanced or received including repayment to the board of any amount the board has reimbursed the responsible person or has compensated any third party, unless the responsible person and the board agree to a lesser amount in a written settlement agreement.

Five Year Review (FYR) Dates:

---

Certification

---

Date

Promulgated Under:	119.03
Statutory Authority:	3737.90
Rule Amplifies:	3737.92
Prior Effective Dates:	07/01/2003, 04/01/2007, 04/01/2008, 11/30/2009, 01/01/2015