**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Fund for Leaking Petroleum Storage Tanks.**

**R311-207-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Fund.**

(1) Any responsible party who is making any claim against the Petroleum Storage Tank Fund must:

(a) have previously satisfied the requirements of Subsection R311-206-3(1);

(b) have a valid certificate of compliance at the time of product release by the covered PST; and

(c) meet the requirements of Section 19-6-424.

(2) Except as provided in Subsection R311-207-2(3), a responsible party eligible to receive payments in accordance with Section 19-6-419 must submit to the director a written eligibility application to make a claim against the Fund:

(a) during a period for which that tank was covered by the Fund;

(b) within one year after that Fund-covered tank is closed;

(c) within six months after the end of the period during which the tank was covered by the Fund; or

(d) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(3) For eligible releases that are discovered and reported to the director after July 1, 1994, the responsible party shall spend the first $10,000 in eligible costs as determined by the director.

(4) For eligible releases that are discovered before July 1, 1994, the responsible party shall spend the first $25,000 in eligible costs as determined by the director.

(5) Owners and operators of facilities who participate in the EAP after July 1, 2021 without performing a site check:

(a) for new releases, the responsible party shall spend the first $10,000 in eligible costs as determined by the director and will be covered at 100%.

(b) for historic contamination, the responsible party shall spend the first $10,000 in eligible costs as determined by the director and will have release coverage percentages as set forth in Subsection 19-6-428(2).

(6) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2(2), shall constitute a claim against the Fund in accordance with Section 19-6-424.

(7) The responsible party's share of eligible costs remains the same, regardless of the number of responsible parties who are associated with a release and covered by the Fund.

(a) only one responsible party can claim against the Fund per release in accordance with Section 19-6-419.

(8) When a facility has an open release and a subsequent Fund eligible release occurs at that facility, the Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable under Section 19-6-419.

(a) additional Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release.

(b) the director shall determine the allowable coverage for a subsequent release.

(9) The maximum coverage allowed in Section 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

(10) When the director has made a determination that the clean up standards established for the site pursuant to Section R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status.

**R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Fund.**

(1) Upon making a claim for coverage under the Petroleum Storage Tank Fund, and after receiving notice from the director of eligibility to claim against the Fund, the responsible party shall meet compliance time tables issued by the director.

(2) For allowable costs to be covered by the Fund, the director must approve work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6).

(a) work plans must include a budget for the work.

(i) budgets must be in compliance with Subsection R311-207-4(8).

(ii) budgets must include proposed costs in an itemized format as described in Subsections R311-207-4(1) through R311-207-4(5).

(3) Before performing work eligible for reimbursement by the Fund, the consultant must have a Statement of Qualification approved by the director.

(a) the initial Statement of Qualification submittal shall include information about the qualifications of certified PST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.

(b) the Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:

(i) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

(ii) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and

(iii) the consultant carries the following insurance:

(A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of $1,000,000 minimum per occurrence, $2,000,000 minimum general aggregate, and $2,000,000 minimum products or completed operations aggregate;

(B) Comprehensive Automobile Liability Insurance, with limits of $1,000,000 minimum and $2,000,000 aggregate; and

(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(c) the Statement of Qualification must be updated annually in January, and shall be approved by the director for a period of one year.

(i) the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(3)(a) and R311-207-3(3)(b).

(4) Work plans must include the Fund Work Plan Approval Application and Agreement form documenting the claimant's contract with any proposed consultant or other person performing remedial action.

(a) information provided on that form shall demonstrate that the claimant's contract has met the following requirements:

(i) the contract shall be with the consultant and specify the certified PST consultant and other key personnel for which qualifications are submitted under Subsection R311-207-3(3);

(ii) the contract shall require a 100% payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(iii) the consultant shall have no cause of action against the state for payment;

(iv) the contract will specify a subcontracting method consistent with the requirements of Rule R311-207;

(v) the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3(3)(b)(iii);

(vi) payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(vii) the contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(viii) any other requirements specified by the director.

(5) Work plans shall address any additional requirements outlined in 40 CFR 280, Subparts E and F.

(6) The director may waive specific requirements of Rule R311-207 if the director determines there is good cause for a waiver, and that public health and the environment will be protected.

(a) the director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the Fund will be affected.

(7) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the director shall review and approve or disapprove work plans and the corrective action plan and associated budgets.

(8) A request for time and material reimbursement from the Fund must be received by the director within one year from the date the included work was performed or reimbursement shall be denied.

(a) if there are any deficiencies in the request, the claimant has 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient items shall not be reimbursed.

(b) if a release was initially denied eligibility and is subsequently found to be eligible:

(i) work conducted before the determination of eligibility is not subject to the one-year requirement; and

(ii) work conducted after the determination of eligibility is subject to the one-year requirement.

(9) The request for final reimbursement from the Fund must be received by the director within one year from the date of the "No Further Action" letter issued by the director or reimbursement shall be denied.

(a) if a release is re-opened as provided for in the "No Further Action" letter, payments from the Fund may be resumed when approved by the director.

(10) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(a) the director must approve work plans and associated budgets before the consultant initiates any work; and

(b) the contract with the consultant shall comply with Subsection R311-207-3(4).

**R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Fund.**

(1) To receive payment from the Petroleum Storage Tank Fund, a claimant must submit a request for reimbursement to the director.

(2) The request for reimbursement must be on the form provided by the director.

(a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.

(3) Reimbursement will be on a time and material basis as approved in advance by the director.

(4) Costs for time and material reimbursement must be itemized at a minimum to show the following:

(a) amounts allocated to each approved work plan budget;

(b) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;

(c) sampling, reporting, and laboratory analysis costs;

(d) equipment rental and materials;

(e) utilities;

(f) other direct costs; and

(g) other items as determined by the director.

(5) Itemized expenses must state the full name and address of the company or contractor providing materials or performing services.

(6) Expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the director, with a copy of the original bill provided to the director by the claimant.

(a) the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Section R311-207-5 and Subsection R311-207-4(8).

(7) For time and material reimbursement, before receiving payment under Section 19-6-419, the claimant must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the director, unless the director has agreed to other arrangements.

(a) the responsible party remains primarily liable, however, for costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(8) For time and material reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor must include one or more of the following items:

(a) a minimum of three competitive bids by responsive bidders. For a bid to be competitive:

(i) two of the bids must be from bidders who are not related parties;

(ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the "Cost Guidelines for Underground Storage Tank Sites" document dated June 3, 2021, which is incorporated by reference;

(iii) the bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition; and

(iv) the bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(b) sole source justification; or

(c) other documentation as required or requested by the director to document expenses are reasonable, customary, and legitimate.

(9) In accordance with Section 19-6-420, the director may not authorize payment from the Fund for services provided by consultants, contractors, or subcontractors which are not in compliance with the requirements of Rule R311-207 or any other applicable federal, state, or local law.

(10) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the director.

**R311-207-5. Customary, Reasonable and Legitimate Expenses.**

(1) Costs claimed by the claimant in accordance with Subsection 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

(2) The director may determine the amount of Fund monies that will be reimbursed to a claimant for items such as labor, equipment, services, and tasks established according to Section R311-207-7, the Cost Guidelines document, or such other methods that are applicable to the item or task.

(3) As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate:

(a) performing abatement;

(b) investigation;

(c) site assessment;

(d) monitoring;

(e) corrective action activities;

(f) providing alternative drinking water supplies; and

(g) settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(4) If a claim that does not comply with the requirements of Rule R311-207 or the Cost Guidelines is returned by the director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(5) The Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the director.

(a) the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates and the materials at cost to the consultant. Material costs shall include:

(i) adjustments for available discounts;

(ii) refunds;

(iii) rebates;

(iv) allowances which the consultant reasonably should take under the circumstances; and

(v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) in no event shall the price paid by the Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) the consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices, or other documents acceptable to the director.

(d) no reimbursement will be made for labor hours and costs associated with development, patenting, or marketing.

(6) The director may audit or commission an audit of records supporting request for reimbursement or payment at any time.

(a) audits may be determined by random selection or for specific reasons, including the suspicion or discovery of inaccuracies, or deficiencies in complying with regulations.

**R311-207-6. Subrogation.**

(1) When the state makes a payment from the Petroleum Storage Tank Fund, the state has the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible.

(a) the claimant who receives payment from the Fund must execute and deliver the necessary documents and cooperate as necessary to preserve the state's rights and do nothing to prejudice them.

**R311-207-7. Consultant Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.**

(1) Consultants must assign to one of the categories identified in the Cost Guidelines, any service time for an individual that is billed to a claimant or directly to the Fund and for which reimbursement is claimed.

(a) by submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills, and experience.

(2) Materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.

(3) Costs not identified in the Cost Guidelines must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

**R311-207-8. Third Party Claims Apportionment.**

(1) To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(7)(a), the director may utilize budget projections to allocate coverage available for the payment of third party claims before a determination that corrective action has been properly performed and completed.

(a) the director may amend budget projections as frequently as deemed appropriate.

(2) Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based on the order in which an approved and agreed upon claim is received by the director.

**R311-207-9. Consultants Hired by Third Parties.**

(1) A certified PST consultant hired by a third party under Subsection 19-6-409(2)(e) must:

(a) have an approved Petroleum Storage Tank Fund Statement of Qualification in accordance with Subsection R311-207-3(3); and

(b) charge labor rates in accordance with Section R311-207-7.

(2) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release.

(a) the designation shall be made in writing to the director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

(a) work plans and budgets must be pre-approved by the director in accordance with Subsection R311-207-3(10);

(b) the consultant must comply with Sections R311-207-4 and R311-207-5; and

(c) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(8) and R311-207-3(9).

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