

Sec. 22a-449e-1. Underground storage tank petroleum clean-up fund

As used in this section:

(a) Definitions

“Applicant” means an owner or operator of any one or combination of underground storage tank systems used to contain motor fuels or used to contain heating fuels for other than consumptive use on the premises which were subject to or would have been subject to demonstration of financial responsibility under 40 CFR Part 280.90 et seq. as said regulation was published in the federal register of October 26, 1988.

“Board” means the underground storage tank petroleum clean-up fund review board established under section 22a-449d of the general statutes.

“Commissioner” means the commissioner of environmental protection or his or her designated agent.

“Department” means the department of environmental protection.

“Fund” means the underground storage tank petroleum clean-up fund established under section 22a-449c of the general statutes.

(b) Organization of the board

(1) Meetings. Regular meetings of the board shall be held at a time and at a location to be determined by the board and kept on file with the Office of the Secretary of State in Hartford, Connecticut. A meeting of the board may be recessed to a time and place certain. Special meetings of the board shall be held at the call of the chairperson or at the call of any three members of the board, at the time and place designated in the call.

(2) Quorums. The presence of at least seven (7) members of the board shall constitute a quorum at any meeting of the board. A decision to approve a claim submitted pursuant to this regulation shall be by majority vote of the board members present and voting. Any vote for a decision to approve a claim submitted pursuant to this regulation which does not result in a majority vote of the board members present and voting shall be deemed a denial of that claim.

(3) Election of Officers. The members of the board shall elect annually, from their number, a chairperson who shall preside at meetings of the board, a vice-chairperson who shall preside at meetings of the board in the absence of the chairperson, and a secretary who shall maintain minutes of all board meetings.

(4) Application Procedure. Applications for reimbursement or payment submitted pursuant to section 22a-449f of the general statutes shall be mailed or personally delivered to the Office of the Commissioner of Environmental Protection in Hartford, Connecticut or such other agent as designated by the board.

(c) Notification to Eligible Parties

The board shall notify eligible parties of the existence of the Underground Storage Tank Petroleum Clean-up fund as follows:

(1) A notice to owners and operators of underground storage tanks who have filed notifications with the commissioner pursuant to section 22a-449 (d)-1 (d) of the regulations of Connecticut state agencies shall be mailed within sixty (60) days after the adoption of these regulations.

(2) A notice shall be distributed concurrently with the dissemination of forms for notification of underground storage tank facilities pursuant to section 22a-449 (d)-1 (d) of

the regulations of Connecticut state agencies.

(d) **Eligible Costs**

Eligible costs shall include reasonable costs incurred as a result of a release or suspected release, provided such costs resulted from activities which were performed in accordance with all applicable laws, and shall include costs incurred for, but not limited to, the following activities:

(1) Implementation of emergency mitigative actions including, but not limited to, actions taken to:

- (A) eliminate sources of pollution;
- (B) prevent or abate imminent fire or explosion hazards;
- (C) intercept and recover free petroleum; and
- (D) remove, store for an interim period and dispose of polluted soils.

(2) Preparation and submittal to the commissioner of a proposed investigative scope of study which includes, but is not limited to:

- (A) locations and depths of ground water monitoring wells;
- (B) locations of soil and surface water sampling;
- (C) a sampling and analytical program, including parameters to be tested, sampling and analytical methods, and quality assurance and quality control procedures; and
- (D) a schedule and cost estimate for conducting the investigation.

(3) Conducting an investigation to characterize the existing and potential extent and degree of soil, air, surface water and ground water pollution.

(4) Preparation and submittal to the commissioner of an engineering report which includes, but is not limited to, the following:

- (A) a detailed description of the investigation performed;
- (B) an analysis of the existing and potential extent and degree of soil, air, surface water and ground water pollution which is on, is emanating from or has emanated from the site;
- (C) an evaluation of alternatives for remedial actions to abate such pollution;
- (D) proposal of a preferred alternative with supporting justification;
- (E) proposal of a detailed program and schedule to implement the preferred remedial actions;
- (F) proposal of soil, air, surface water and ground water monitoring programs to determine the degree to which the remedial actions have been effective, and a schedule for performing all monitoring; and
- (G) a cost estimate for implementation of the preferred remedial action strategy.

(5) Preparation of contract plans and specifications for remedial actions, and actions necessary to obtain all permits required for such actions, including any reasonable legal or technical fees necessary for such actions.

(6) Performance of remedial actions.

(7) Performance of studies and monitoring programs to determine the effectiveness of the remedial actions.

(8) Payment of third party claims for bodily injury, property damage and damage to natural resources.

(e) **Records Required for Submission of Claims**

(1) All applications for costs incurred other than those applications specified in

subdivision (2) of this subsection shall be submitted on forms prescribed by the board to the commissioner of environmental protection or another agent designated by the board, and shall include the following records and information:

(A) location of the underground storage tank system from which the release emanated, or from which a release was suspected to have emanated;

(B) name, address and telephone number of each owner and operator of the underground storage tank system from which the release emanated or from which a release was suspected to have emanated;

(C) date and method of discovery of the release;

(D) date the release was reported to the department and to the board;

(E) what the applicant believes to be the cause of the release and all information documenting the basis for that belief;

(F) estimated amount and type of petroleum released;

(G) facility component or components, including registration numbers of components, responsible for the release;

(H) description of the services rendered and the dates of services rendered, and copies of all bills for costs incurred as a result of the release or of a suspected release, indicating whether or not such costs have been paid, and which costs represent the first ten thousand dollars borne by the responsible party;

(I) a demonstration that the costs incurred were the result of a release or suspected release from an underground storage tank system, and that the system was one for which the responsible party was or would have been required to demonstrate financial responsibility under 40 CFR Part 280.90 et seq., as published in the Federal Register of October 26, 1988;

(J) for costs other than those associated with legal representation, medical services or emergency mitigative actions, and other than for activities occurring prior to the adoption of these regulations or performed by consultants who were retained prior to the adoption of these regulations, a description of the process used to obtain three (3) written bids for services rendered, copies of those bids and reason(s) specified if any lower bid was not selected. This requirement shall apply only to those investigatory or remedial services performed which exceed five thousand dollars in cost;

(K) copies of all required notifications, as required by section 22a-449 (d)-1 (d) of the regulations of Connecticut state agencies, submitted to the department as notification of the underground storage tank system from which the release or suspected release emanated and the reasons for failure to submit any notifications to the department as required by section 22a-449 (d)-1 (d) of the regulations of Connecticut state agencies;

(L) report from a consultant as to the responsible party's compliance status, for a period of at least three years immediately prior to the date of the release or suspected release, with regard to those provisions of the general statutes and regulations of Connecticut state agencies governing the installation, operation and maintenance of underground storage tanks. Such report shall include verification of compliance or a description of the date, nature, extent and degree of each violation;

(M) copies of all certifications, if any, by the commissioner that the elements described in subdivisions (1) through (7) of subsection (d) have been performed to the satisfaction of the commissioner;

(N) copies of any approvals, permits, orders, notices of violation, or lawsuits including referrals for civil action issued by the commissioner regarding the site;

(O) verification that the responsible party has borne the first ten thousand dollars of all costs of the release;

(P) for applications relating to third party claims, the information specified in subparagraphs (B), (C), (F) and (G) of subdivision (2) of this subsection;

(Q) signature of the applicant, and the individual or individuals responsible for actually preparing the application, who shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals immediately responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense;” and

(R) date the application was completed and signed.

(2) All applications to the board which are submitted only by third parties for bodily injury, property damage or damage to natural resources suffered by them shall be submitted on forms prescribed by the board to the commissioner of environmental protection, or another agent designated by the board, and shall include the following records and information:

(A) location of the underground storage tank system from which the release emanated, or from which a release was suspected to have emanated;

(B) nature of the claim for bodily injury, property damage or damage to natural resources and date on which the injury or damage was discovered;

(C) evidence that the claim was finally adjudicated or settled with the prior written approval of the board before an application for reimbursement or payment was made;

(D) description of the services rendered and the dates of services rendered, and copies of all bills for costs incurred as a result of the release or of the suspected release, indicating whether or not such costs have been paid, and which costs represent the first ten thousand dollars borne by the responsible party;

(E) for costs other than those associated with legal representation, medical services or emergency mitigative actions, and other than for activities occurring prior to the adoption of these regulations or performed by consultants who were retained prior to the adoption of these regulations, a description of the process used to obtain three (3) written bids for services rendered, copies of those bids and reason(s) specified if any lower bid was not selected. This requirement shall apply only to those services performed which exceed five thousand dollars in cost;

(F) certifications from licensed professionals substantiating third party claims for bodily injury, property damage and damage to natural resources, including, but not limited to, statements from licensed physicians, claims adjusters and attorneys;

(G) all documents relating to attempts by the applicant to recover costs from the responsible party, and evidence that the responsible party notified the board as soon as practicable of the release and of any third party claim resulting from the release;

(H) signature of the applicant, and the individual or individuals responsible for actually

preparing the application, who shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals immediately responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense;”

(1) date the application was completed and signed.

(3) The board may at any time require a responsible party or an applicant to submit additional information which the board deems necessary to act upon an application. The board may reject an application for failure to submit such required information.

(4) An applicant may submit supplemental claims for payment or reimbursement as new costs are incurred in connection with a release or suspected release. Such supplemental applications to the board shall be submitted on forms prescribed by the board and shall include such records and information as required in subdivision (1) or (2) of this subsection as the board deems necessary.

(5) Within fifteen (15) days of the date an applicant, individual, or individuals responsible for actually preparing an application becomes aware of a change in any information submitted to the board under these regulations, or that any such information was inaccurate or misleading or that any relevant information was omitted, the applicant, individual, or individuals shall submit the correct or omitted information to the board.

(f) Procedures for Application Review

(1) Upon filing of an application, the commissioner or another agent designated by the board shall determine if the application complies with the requirements of subdivision (1) or (2) of subsection (e).

(2) An application shall only be deemed complete by the commissioner or another agent designated by the board upon satisfactory fulfillment of the requirements of subdivision (1) or (2) of subsection (e).

(3) Upon receipt of a complete application, the board shall take the following actions:

(A) Refer the application to the commissioner who shall:

(i) evaluate whether the costs were incurred after July 5, 1989, and if the release or suspected release was from an underground storage tank system for which the responsible party was or would have been required to demonstrate financial responsibility under 40 CFR Part 280.90 et seq. as said regulation was published in the federal register of October 26, 1988.

(ii) evaluate whether the underground storage tank system from which a release emanated was subject to the notification procedures of section 22a-449 of the general statutes, whether such a notification was completed and, if such notification was not completed, whether the responsible party knowingly and intentionally failed to notify the commissioner;

(iii) evaluate whether the release resulted from a reckless, wilful, wanton or intentional act or omission of a responsible party;

(iv) evaluate whether the release occurred from an underground storage tank system which, at the time of the release, was not in compliance with an order issued by the commissioner or with the general statutes and regulations governing the installation,

operation and maintenance of underground storage tanks and such lack of compliance was a proximate cause of such release;

(v) determine whether the first ten thousand dollars of costs of the release have been borne by the responsible party;

(vi) determine whether third party claims were finally adjudicated or settled with the prior written approval of the board before application for reimbursement or payment was made to the board;

(vii) evaluate whether grounds for recovery under section 22a-449f (b) of the general statutes exist, in which case section 22a-449f (a) prohibits the board from ordering reimbursement or payment from the fund;

(viii) review and investigate any or all requests for reimbursement or payment by a responsible party for costs other than third party claims for bodily injury and property damage.

(ix) evaluate the eligibility of the applicant for payment of costs incurred and/or reimbursement of costs paid, and in the case of a third party applicant, the eligibility of the applicant for payment or reimbursement of claims for bodily injury, property damage and/or damage to natural resources;

(x) evaluate whether some or all of the costs incurred and/or paid were incurred as a result of a release or a suspected release;

(xi) evaluate, based on costs and standards prevalent in the relevant market or industry or other relevant information, whether some or all of the costs incurred were reasonable in amount for the goods and/or services provided;

(xii) determine whether proper notice of the release and of third party claims has been provided to the board as soon as practicable; and

(xiii) prepare a written report of such review and investigation including his or her evaluation and recommendations for the board to act on such application.

(B) Refer the application or portions of the application to a consultant who is under contract to the commissioner for a review and investigation pursuant to subdivision (3) of this subsection for a review and investigation of any or all requests for payment of claims by third parties for bodily injury, or the amount of claims for property damage. The consultant shall submit to the board a written report of such review and investigation, of the conclusions reached and of the recommendations of such consultant for action by the board on such application.

(4) The board shall render a decision not more than forty-five (45) days after the date an application is received by the commissioner, or another agent designated by the board for the receipt of applications, provided such application included all information required by subdivision (1) or (2) of subsection (e) when received. Any decision of the board shall briefly state the grounds for any denial and shall be deemed issued upon deposit in the mail.

(g) Payment of Claims

(1) Upon authorization of the board, the commissioner shall reimburse the applicant for authorized costs or make payment to vendors for services rendered. Payments shall be made based upon the availability of monies in the fund. In the event that sufficient monies do not exist in the fund to make reimbursements, the commissioner shall retain the outstanding claims and shall make future payments pending availability of monies in the fund. Such

payments shall be processed based upon the date the claim was approved by the board in order of approval date, the oldest approved claim processed first.

(2) Where costs incurred may be of a continuing nature, the applicant may submit monthly requests for payment on a form provided by the board. The form shall indicate a documented accounting of expenses authorized, cumulative expenses to date, cumulative payments received to date, and verification of payments made. The minimum monthly payment shall not be less than five thousand dollars (\$5,000.00) unless the total cost authorized for payment does not exceed five thousand dollars (\$5,000.00). The board may, at its discretion, preauthorize such ongoing costs for a period not to exceed twelve (12) months.

(h) Assistance rendered to the board by the commissioner of environmental protection

The commissioner may provide the following services to the board:

(1) Notify eligible parties of the existence of the fund in accordance with subsection (c) of these regulations:

(2) Receive, review and investigate applications for claims;

(3) Prepare reports and recommendations on applications;

(4) Maintain records, information, applications and minutes of board meetings as well as other administrative records, as needed;

(5) Contract with consultants for those services necessary for the board to perform its function as provided in section 22a-449c of the general statutes and these regulations, the costs of such contractual services to be funded as administrative costs as provided in section 22a-449c of the general statutes, as amended by section 1 of Public Act 91-254;

(6) Provide other administrative services, as needed, for the board to perform its function as provided in section 22a-449a to section 22a-449h, inclusive, of the general statutes.

(Effective October 4, 1991)