

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

TITLE 200

RULES AND REGULATIONS FOR PETROLEUM RELEASE REMEDIAL
ACTION CASH FUND

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TITLE 200
RULES AND REGULATIONS FOR PETROLEUM RELEASE
REMEDIAL ACTION REIMBURSEMENT FUND
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NEBRASKA ADMINISTRATIVE CODE

Title 200 - Rules and Regulations for Petroleum Release Remedial Action Cash Fund

Chapter 1 - Application for Reimbursement and Department Review

Unless defined in the Petroleum Release Remedial Action Act, Neb. Rev. Stat. § 66-1501 et seq., the words used in this title are to be given their plain and ordinary meaning.

001 A responsible person may apply to the department, according to the procedure set out in this chapter, for reimbursement from the fund for the costs of remedial action and for the costs of paying third-party claims.

002 Applications for full or partial reimbursement are to be on a completed form provided by the department and include any additional information deemed necessary and requested by the department. Applications will not be considered received until the department determines they are complete.

003 The completed application will include, at a minimum, the following information:

003.01 The identity of the responsible person and the applicant;

003.02 A description of the applicant as a responsible person or designated representative;

003.03 The location of the release;

003.04 The tank facility registration number assigned by the Nebraska State Fire Marshal, if applicable, of the tank from which petroleum was released;

003.05 Information regarding insurance payments or settlements related to the release that have been or may be received;

003.06 A detailed description of all costs and documentation for all costs incurred and/or paid by the responsible person for the remedial action and/or third-party claim;

003.07 An acknowledgment that the responsible person will be responsible for reimbursing the fund in accordance with Neb. Rev. Stat. § 66-1527;

003.08 A designated representative statement, if applicable, signed by the responsible person and properly certified;

003.09 A verification, signed by the applicant and properly certified, attesting that the information contained in the application is true and accurate; and

003.10 An acknowledgement that the recipient's accounting records related to the cost submitted may be audited by the Department and that, if such records are not provided, the recipient may be required to reimburse the fund for any payments previously received.

004 A responsible person may apply for partial reimbursement of the actual cost of remedial action incurred in accordance with Neb. Rev. Stat. § 66-1523(3).

004.01 Applications for partial reimbursement may be made following completion and department acceptance of approved stages of remedial action and associated cost estimates.

004.02 If any approved stage of remedial action is projected to take more than ninety days to complete, partial payments may be requested every sixty days. When reimbursement is requested prior to completion of an approved stage, the department may withhold 10% of such payment until the approved stage is completed.

005 A responsible person may designate a person to whom the responsible person assigns any right, title, or interest which the responsible person may have in and to the proceeds from a reimbursement for remedial action and such designated representative may submit an application for reimbursement under this Title.

006 An application for reimbursement is to be filed in a timely manner following the completion of each approved stage of remedial action only when the cumulative costs of the remedial stages approved by the department have exceeded the applicable statutory deductible.

006.01 Complete applications are to be submitted to the department within one year of the compliance date established by the department when the remedial stage is approved or within one year of the actual completion date of the remedial stage, whichever is later, where costs were incurred:

006.01A After June 11, 1997;

006.01B During the completion of approved stages of remedial action; and

006.01C In amounts in excess of the applicable deductible.

006.02 Applications submitted to the department subsequent to the time limits established in 005.01 of this chapter will be subject to reimbursement reduction or denial. Applicants who submit an incomplete application within the time limits set forth in 005.01 of this chapter will have an additional thirty (30) days, after receipt of written notification from the department specifying deficiencies, to submit supplemental information correcting all deficiencies and will not be subject to reimbursement reductions under this section.

007 The department will review all complete applications for reimbursement submitted by responsible persons or their designated representatives. No reimbursement may be made unless the department makes the eligibility determinations in Neb. Rev. Stat. § 66-1525.

007.01 In the event immediate remedial action is necessary to protect human health or the environment, as determined by the department, the plan for immediate remedial action which the department requires the responsible person to take may be submitted after the action has been taken.

008 The department will apply a schedule of reasonable rates developed in accordance with Neb. Rev. Stat. § 66-1518(3) in reviewing all costs for remedial action in an application for reimbursement.

008.01 The reimbursement for remedial action costs will in no event exceed the actual costs incurred by the responsible person or his or her designated representative.

008.02 The department may require competitive bidding for equipment or services.

009 The department may withhold action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

010 The department may deny or reduce as much as one hundred percent (100%) a reimbursement for costs of a remedial action for failure by the responsible person or their designated representative to comply with department timetables, or any applicable federal, state, or local statutory or regulatory requirements, including the provisions of these regulations. The responsible person will be responsible for the amount of any reductions.

011 The department may require an audit to assure compliance with these regulations. The audit will be limited to persons who have received payments from the fund. The department reserves the right to contract with an independent accounting firm to conduct the audit.

011.01 The recipient's accounting records relating to remedial actions are to be made available to the department at the time and place of the department's choosing. The audit will include, but not be limited to, such tests of the accounting records to determine that:

011.01A Funds were expended in a manner consistent with that reported to the department.

011.01B Proper equipment inventory records exist.

011.01C All necessary information needed to determine that costs represented were actually incurred.

011.02 Any funds paid to a recipient which are determined to be disallowed according to these regulations will be considered a debt to the fund. If this debt is not paid within a

reasonable period after demand, the state may reduce the debt by making an offset against other requests for reimbursement or by taking other action permitted by law.

011.03 Discovery of fraud or other misuse of payments received from the fund may result in referral to the Attorney General for appropriate action and/or in denial or reduction of additional reimbursements from the fund.

012 Within thirty (30) days following receipt of notification of departmental action disapproving any part of an application for reimbursement, the applicant may petition for review of the disapproved portion pursuant to Title 115 of the Nebraska Administrative Code.

013 Reimbursement for Fixtures and Tangible Personal Property.

013.01 All fixtures reimbursed by the fund which are attached to real property at the time of site closure are owned by the responsible person or the property owner, if different from the responsible person.

013.02 The department may require a responsible person to reuse tangible personal property that was previously used in other remedial actions. Such equipment need not be warranted by the responsible person.

013.03 The department will require a warranty on all new remediation equipment for a period of one year following the remediation system startup. The department will also require a warranty that installation of all equipment, whether it be new, used or provided by the Seller, will be done in a workmanlike manner in accordance with standard procedures and will perform as designed for a period of one year following installation.

Enabling Legislation: Neb. Rev. Stat. §66-1518, 66-1529.01