

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF A PERMANENT
RULEMAKING OF THE OKLAHOMA
CORPORATION COMMISSION AMENDING
OAC 165:27, INDEMNITY FUND

CASE NO. RM2023-000012

PETROLEUM STORAGE TANK DIVISION'S PROPOSED RULES AMENDING
CHAPTER 27. INDEMNITY FUND
(As of November 20, 2023)

TITLE 165. CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, and in Oklahoma Administrative Code (OAC) 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern" or **"COC"** means chemicals that may pose a threat to human health and the environment.

"Claim" or **"Claims"** means a properly submitted request for reimbursement from the Fund for an eligible suspicion of release ("SOR") or confirmed release case when the co-pay is paid.

"Closed case" means a petroleum release case for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund and the PSTD Technical Department deems no further corrective action is necessary.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any

other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Modified eligibility" means the eligibility process for a suspicion of release ("SOR") case in which substantial compliance review is not required and the Indemnity Fund co-payment is paid upon closure of the SOR case. In the event the SOR case becomes a confirmed release case, a substantial compliance review is required and the statutory co-payment must be remitted within 30 days of the invoice date.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two (2) different tank system locations, are separated by time, or both.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means any person as set forth in 17 O.S. § 303(27), including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a delivery truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

~~"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.~~

"Reimbursement" means repayment of an approved claim to a qualified Claimant or Assignee, or for an Administrative Application, or payment of an approved claim submitted on behalf of a qualified Claimant for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-3. Notices

~~Any notices and documents required to be submitted to the Fund or PSTD shall be delivered or mailed to:~~ The principal office and mailing address of the Indemnity Fund or the Petroleum Storage Tank Division will be posted on the Commission's website.

~~(1) Indemnity Fund mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.~~

~~(2) PSTD mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.~~

~~(3) Delivery address for Indemnity Fund and PSTD: Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 480, Oklahoma City, Oklahoma 73105 (405) 521-4683.~~