

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: Department of Environmental Management
DIVISION: Waste Management
RULE IDENTIFIER: ERLID #: 2182
REGULATION TITLE: UST Review Board Regulations
RULEMAKING ACTION: Proposed Rulemaking
TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice: August 3, 2018

Hearing: September 5, 2018

End of Comment Period: September 10, 2018

SUMMARY OF PROPOSED RULE: The purpose of these Regulations, in accordance with Chapter 12.9 of Title 46 of the Rhode Island General Laws, is as follows: a) to facilitate the clean-up and remediation of releases from certain leaking UST's or UST Systems, in order to protect the environment, including drinking water supplies and public health; b) to provide reimbursement to responsible parties for the eligible costs, incurred by them as a result of the release of petroleum from certain UST's or UST Systems; c) These regulations will also provide for a means of notifying all eligible parties of the functioning of the fund; provide criteria for eligible costs, expenses and other obligations; identify the record keeping required of eligible parties for submission to and reimbursement from the fund; provide criteria for a complete claim, and provide procedures for approving, modifying or denying claims.

COMMENTS INVITED:

The public hearing to receive comments concerning the proposed rulemaking will commence at 10:00 AM on September 5, 2018, at Room 300 at the Department of Environmental Management Offices, 235 Promenade Street, Providence, RI 02908. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300. A record of the hearing will be made. Written comments concerning the regulations proposed for promulgation by the DEM may be submitted either to the Office of Waste Management, 235 Promenade Street, Providence, RI 02908 or via e-mail to joseph.cunningham@dem.ri.gov, no later than 4:00 PM on

September 10, 2018. It is requested that persons who wish to make oral comments during the public hearing submit a copy of their statement for the record. All oral and written comments will be considered in the same manner.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Joseph Cunningham
Department of Environmental Management
Office of Waste Management
235 Promenade Street
Providence, RI 02908

Email Address: joseph.cunningham@dem.ri.gov

WHERE COMMENTS AND PROPOSED REGULATION MAY BE INSPECTED:

Mailing Address: Department of Environmental Management
Office of Customer and Technical Assistance, 2nd Floor
235 Promenade Street
Providence, RI 02908
(401) 222-6822

FOR FUTHER INFORMATION CONTACT:

Kevin Gillen
Department of Environmental Management
Office of Waste Management
235 Promenade Street
Providence, RI 02908
kevin.gillen@dem.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation: The Department has determined that small businesses will not be adversely impacted by the proposed regulations referenced above. However, the public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: R.I. Gen. Laws Chapters 46-12.9

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment: The purpose of this amendment is to repeal the regulation in full because it has been merged into the Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials. Please note that the Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials are being amended simultaneously with the repeal of these regulations.

The Department of Environmental Management proposes to repeal the UST Review Board Regulations. Electronic copies of the proposed rulemaking are available at the Secretary of State and DEM's website at the following web addresses:

<http://sos.ri.gov/ProposedRules/>

<http://www.dem.ri.gov/documents/regulations/index.php>

Regulations

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Part 100.00 - Definitions

100.01 "**Annual Tank Registration Fee**" means the annual fee of five hundred (\$500) dollars per Underground Storage Tank not to exceed two thousand five hundred (\$2,500) dollars per site as set forth in R.I. General Laws § 46-12.9-7(9).

100.02 "**Authorized Representative**" shall mean any individual employed by any Person, including all forms of private, governmental and commercial entities included thereunder, in a position to commit the resources of that Person and bind that person to any responsibilities and/or liabilities set forth under these regulations.

100.03 "**Bodily Injury**" means any physical injury or impairment to the body of a natural person or any physical illness or disease or death resulting from said injury, which has been caused, directly or proximately, by a Release from a UST or UST System.

100.04 "**Claim**" means an application submitted to the Review Board for reimbursement from the Fund.

100.05 "**Claimant**" means a responsible party as defined in subparagraph 100.28 submitting a claim to the Review Board for reimbursement from the Fund.

100.06 "**Cleanup**" means those activities undertaken pursuant to regulations promulgated by the Department for the investigation and remediation of releases from UST's or UST Systems.

100.07 "**Cleanup Goals**" means the extent of corrective action required by the Department to protect human safety, health, and the environment; pursuant to its regulations governing such corrective action.

100.08 "**Closure or Closed**" means the permanent closure of an Underground Storage Tank or Underground Storage Tank System as pursuant to the UST Regulations.

100.09 "**Compliance**" means compliance with the UST Regulations, as determined by the Department.

100.10 "**Contamination**" or "**contaminated**" means the results of a release of petroleum from an Underground Storage Tank or Underground Storage Tank System into the ground water, surface water or soil in quantities which may adversely impact human safety, health or the environment.

100.11 "**Corrective Action**" means implementation of measures to rehabilitate site ground water, surface water, soil, or air to meet cleanup goals.

100.12 "**Corrective Action Plan**" means a plan that addresses contaminated soils or ground water or other related environmental or public health impacts of a release, pursuant to the relevant sections of the Department's UST Regulations.

100.13 "**Department**" means the Rhode Island Department of Environmental Management.

100.14 "**Deductible Limit**" means the amount to be deducted from an amount otherwise eligible for reimbursement hereunder prior to any reimbursement from the Fund as such limits are established by the Rhode Island General Laws § 46-12.9-5.

100.15 "**Director**" means the Director of the Department of Environmental Management or his or her designee within said Department.

100.16 "**Eligible Claimant**" means a claimant served with a notice of eligibility by the Review Board.

100.17 "**Eligible Costs**" means costs, expenses and other obligations as incurred or to be incurred by a responsible party for site investigation, site remediation or other corrective action activities or certain third party damages ordered or directed by the department or voluntarily performed by the responsible party and not specifically identified by the review board as ineligible.

100.18 "**Emergency and Short-Term Response Action**" shall mean any activities undertaken immediately following the discovery of a release of petroleum in order to completely or partially contain, clean up or treat the released material and remove an imminent hazard if it exists.

100.19 "**Fund**" means the Rhode Island Underground Storage Tank Financial Responsibility Fund as established pursuant to Chapter 12.9 of Title 46 of the Rhode Island General Laws.

100.20 "Fund Administrator" means the Clean Water Finance Agency established pursuant to the provisions of Chapter 12.2 of Title 46 of the Rhode Island General Laws or any other agency of State government designated by the Governor.

100.21 "**Groundwater**" shall mean water found underground which completely fill the open spaces between particles of sand, gravel, clay, silt and bedrock fractures. The zone of materials filled with groundwater is called the zone of saturation.

100.22 "**Initial Abatement Action**" means an action taken pursuant to the applicable section of the Department's UST Regulations.

100.23 "**Initial Application for Reimbursement**" means an application submitted by a Claimant pursuant to Part 800 of these Regulations.

100.24 "**Operator**" means any person in control of, or having the responsibility for, the daily operation of an underground storage tank system.

100.25 "**Owner**" means any agency or political subdivision of the state, any municipality, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association or other entity, and any officer, employee or agent thereof.

100.26 "**Person**" means any agency or political subdivision of the State, any municipality, public or private corporation, or authority, individual, trust, firm, joint stock company, partnership, association, or other entity,

and any officer, employee, or agency of such person, or any group of persons, or a natural person, which shall not include any insurance carrier providing environmental impairment insurance relative to a site or insuring any risk arising from the operation of Underground Storage Tank or Underground Storage Tank System.

100.27 (a) "**Petroleum**" means crude oil, crude oil fraction and refined petroleum fractions, including gasoline, kerosene, heating oils, used/waste oil and diesel fuels.

(b) "**Petroleum**" shall mean petroleum product including the following products:

a. Unused or Used distillate and residual oil including but not limited to gasoline, aviation fuels, kerosene, diesel, and heating oils; and

b. Unused or Used crankcase oil, lubricants, hydraulic oils, penetrant oils, tramp oils, quench oils, and other industrial oils.

100.28 "**Property Damage**" shall mean any physical injury to real or personal property, which has been caused, directly or proximately, by a release from a UST or UST System.

100.29 "**Reimbursement**" means an assignment of money made by the Review Board from the Fund in payment of eligible costs, subject to deductible limits and such other provisions of Chapter 12.9, Title 46 of the Rhode Island General Laws.

100.30 "**Reimbursement Fee Schedule**" means the schedule of fees deemed reasonable and customary by the Review Board for clean-up and related activities.

100.31 "**Release**" means any leaking, emitting, discharging, escaping or leaching of petroleum from any Underground Storage Tank or Underground Storage Tank System into the environment.

100.32 "**Remediation**" shall mean the act of implementing, operating and maintaining a Remedy or Remedial Action.

100.33 "**Remediation Regulations**" shall mean the Rules and Regulations for the Investigation of Hazardous Material Releases (DEM-DSR-01-93).

100.34 "**Remedy or Remedial Action**" shall mean those actions taken to rectify the effects of a release of petroleum or petroleum product, so that it does not cause a significant risk to present or future public health or welfare, or the environment.

100.35 "**Request for Reimbursement**" means an application for reimbursement submitted by an eligible Claimant for eligible costs

incurred during the investigation or remediation of a release from a UST or UST System.

100.36 "**Responsible Party**" shall mean the person or persons liable for the release of petroleum or the remediation of a release.

100.37 "**Review Board**" means the Rhode Island Underground Storage Tank Financial Responsibility Review Board as established pursuant to provisions of R.I. General Laws § 47-12.9-8.

100.38 "**Site**" means (a) any location within Rhode Island at which or from which there has been a release of petroleum associated with an Underground Storage Tank or Underground Storage Tank System or any location to which such petroleum has migrated.

(b) "**government site**" shall mean any location owned or occupied, or previously owned or occupied, by any city or town, the state or any agency of the state of which or from which there has been a release of petroleum associated with an underground storage tank and underground storage tank system.

100.39 "**Site Investigation**" means any action taken to determine the character, nature and extent of a petroleum release from a UST or UST System, pursuant to the relevant sections of the Department's UST Regulations.

100.40 "**Third-Party Claim**" shall mean any claim for monetary damages for bodily injury or damage to property brought against a responsible party in a court of competent jurisdiction, which claim has resulted in a final judgment, order or court-approved settlement that explicitly establishes that: the third-party claimant sustained bodily injury, damage to property, or damage to natural resources; the bodily injury, damage to property, or damage to natural resources sustained by the third-party claimant was the direct or proximate result of a release; and that the responsible party is liable for the release.

100.41 "**Underground Storage Tank**" means any one (1) or combination of tanks, including underground pipes connected thereto, used to contain an accumulation of petroleum and the volume of underground pipes thereto, is ten (10%) percent or more beneath the surface of the ground and shall be referenced herein by the acronym "UST." The definition of UST does not include those tanks exempted under Section 5.03 of the UST Regulations.

100.42 "**UST Regulations**" means those Regulations promulgated by the Department pursuant to Chapter 12, Title 14 and Chapter 17.1, Title 42 of the Rhode Island General Laws pertaining to UST's and UST Systems, as is or as amended.

100.43 "**UST System**" means a UST and its associated ancillary equipment and containment system, if any.



Part 200.00 - Purpose and Scope

200.01 **Purpose and Scope** - The purpose of these Regulations, in accordance with Chapter 12.9 of Title 46 of the Rhode Island General Laws, is as follows:

a) to facilitate the clean-up and remediation of releases from certain leaking UST's or UST Systems, in order to protect the environment, including drinking water supplies and public health.

b) to provide reimbursement to responsible parties for the eligible costs, incurred by them as a result of the release of petroleum from certain UST's or UST Systems.

c) These regulations will also provide for a means of notifying all eligible parties of the functioning of the fund; provide criteria for eligible costs, expenses and other obligations; identify the record keeping required of eligible parties for submission to and reimbursement from the fund; provide criteria for a complete claim, and provide procedures for approving, modifying or denying claims.

200.02 To provide for the submission of claims to the Review Board for reimbursement from the Fund and the disbursement of monies from the Fund.

200.03 Claims for the reimbursement of eligible costs, arising from a cost incurred on or after the effective date of these regulations, shall be submitted in accordance with these regulations. However, claims for reimbursement of eligible costs incurred on or after January 1, 1994 for single station/operators and July 8, 1994 for multi-station owner/operators and before the effective date of these Regulations shall be submitted pursuant to Part 1400.

200.04 The Regulations shall be construed to be consistent with Chapter 12.9 of Title 46 of the Rhode Island General Laws wherein said Chapter has established guidelines for reimbursement from the Fund. Any variance between these Regulations and said Chapter shall be controlled by said Chapter.

Part 300.00 - REVIEW BOARD

300.01 **Membership** - The Review Board shall consist of thirteen (13) members and shall be constituted as set forth in R.I. General Laws § 46-12.9-1 et seq.

300.02 **Purposes** - The Review Board shall oversee the administration and implementation of the Fund; review submissions and claims received from parties; determine the eligibility of the parties making said claims; to approve, modify or deny disbursements to eligible parties; and such other powers as set forth in R.I. General Laws § 46-12.9-1 et seq.

300.03 **Meetings/Quorum** - a) The Review Board shall meet no less than four (4) times in a year when claims are pending but may meet more often as may be needed to carry out its purposes. A meeting may be held when a quorum of the Review Board is present. A quorum shall consist of seven members and votes taken shall be valid by simple majority of those present and voting. Minutes of each meeting shall be kept by the Review Board.

b) The Review Board shall comply with the provisions of the R.I.G.L. Open Meeting Law, including the conditions for closed meetings.

c) Prior to any vote on a claim being taken by the Review Board, each member present and voting shall affirm on the record that they have read the transcript of the proceedings which is the subject of the vote being taken.

300.04 **Tank Registration Fee** - The Review Board may levy an annual tank registration fee of five hundred dollars (\$500) per underground storage tank not to exceed two thousand five hundred dollars (\$2,500) per site on underground storage tanks which are subject to financial responsibility regulation and which are used to store petroleum products for which the motor and special fuels tax is inapplicable including, but not limited to, underground storage tanks used for the distribution on no. 2 heating oil, used/waste oil, kerosene, aviation fuel or other materials as deemed appropriate by the review Board; provided, however, that heating oil used solely for on-site consumption shall be exempt from fees assessed by this Review Board.

300.05 **Powers** - The Review Board may authorize and expend funds to execute the duties, obligations and administration of the Review Board

for the satisfaction of claims made to said Review Board under the statute.

300.06 Chairperson -

a) The Review Board shall elect one of its members to serve as chairperson. It shall also elect a member to serve as vice-chairperson. Said chairperson shall have the authority to call and preside over all meetings, set the agenda for all said meetings, and oversee the administration of the daily activities of the Review Board and its employees in the satisfaction of the purpose of the Review Board. The vice-chairperson shall act as the presiding officer in the absence of the chairperson.

b) The chairperson shall have the authority to establish subcommittees with varying functions as approved by the Review Board.

c) Subcommittees established for matters other than claims hearing purposes shall be bound by the provisions of 300.03 (c).

300.07 Annual report - The Review Board shall file, on or before September 30, consistent with state fiscal policy, an annual report of all receipts and disbursements that it receives and awards with the Governor, General Assembly, and the Secretary of State.

300.08 Adoption of Management Policies -

a) Adoption of management policies and rule making shall be in accordance with title 42, chapter 35 of the General Laws of the State of Rhode Island (Administrative Procedures Act (APA) and further, in accordance with the rules and regulations and procedures set forth herein.

b) In addition to other rule making requirements imposed by law, the Review Board shall:

1. Adopt as a rule a description of its organization, stating the general course and method of its operation and the methods whereby the public may obtain information or make submissions or requests;
2. Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available and including a description of all forms and instructions used by the agency;
3. Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;
4. Make available for public inspection all final orders, decisions, and opinions.

c) No Review Board rule, order, or decision is valid or effective against

any person or party, nor may it be invoked by the Review Board for any purpose, until it has been made available for public inspection as herein required, except that this provision is not applicable in favor of any person or party who has actual knowledge thereof.

d) Prior to the adoption, amendment, or repeal of any rule the Review Board shall:

1. Give at least thirty (30) days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the Review Board for advance notice of its rule-making proceeding and published in a newspaper or newspapers having aggregate general circulation throughout the state, provided, however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.
2. Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested consistent with the Administrative Procedures Act. The Review Board shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Review Board, if requested to do so by an interested person, either prior to adoption or within thirty days (30) thereafter shall issue a concise statement of the principle reasons for and against adoption, incorporating therein its reasons for overruling the consideration urged against its adoption.

e) If the Review Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon less than thirty (30) days' notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule so adopted may be effective for a period of no longer than one hundred twenty (120) days renewable once for a period not exceeding ninety (90) days.

f) No rule hereafter adopted is valid unless adopted in substantial compliance with this section, but no contest of any rule on the ground of non-compliance with the procedural requirements of this section may be commenced after two (2) years from its effective date.

g) Filing and Taking effect of Rules -

1. The Review Board shall file forthwith in the office of the Secretary of State a certified copy of each rule adopted by it. The Secretary of State shall keep a permanent register of the rules open to public inspection.
2. Each rule hereafter adopted is effective twenty (20) days after filing, except that:
 - a. if a later date is required by statute or specified in the rule, the later date is the effective date;
 - b. subject to applicable constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the Secretary of State, or at a stated date less than twenty (20) days thereafter, if the Review Board finds that this effective date is necessary because of imminent perils to the public health, safety or welfare. The Review Board's finding and a brief statement of the reasons therefore shall be filed with the rule in the office of the Secretary of State. The Review Board shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

h) Petition for Adoption of Rules - any interested person may petition the Review Board requesting the promulgation, amendment or repeal of any rule. The Review Board shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Upon submission of a petition, the Review Board within thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or initiate rule-making proceedings.



Part 400.00 - Description of Procedures

400.01 Description of Procedures - The following, subject to the conditions and the time frames herein, is a description of the procedures for reimbursement from the Fund.

a) Upon discovery of a Release, notification of the Department and expenditure or anticipated expenditure by the Claimant of more than twenty thousand(\$20,000) dollars of eligible costs, or upon entry of a final judgment for bodily injury or property damage resulting from a third party claim, or in furtherance of an approved settlement of a third-party claim for bodily injury or property damage resulting from a release, a Claimant may file an initial application with the Review Board.

b) Upon receipt of an initial application, the Review Board shall refer

same to the Department for a determination of compliance and the applicability of financial responsibility as required by the US EPA.

c) In the event the Department makes an affirmative determination of compliance and applicability of financial responsibility as required by the US EPA, the Review Board shall notify a Claimant that it is eligible for reimbursement from the Fund. Conversely, the Review Board shall notify the Claimant of ineligibility.

d) An eligible Claimant may then submit a request for reimbursement of eligible costs, as set forth in Part 800.

e) Any party aggrieved by a decision of the Review Board may petition for a hearing pursuant to Part 1300.

400.02 Reimbursement Not Contract - Reimbursement by the Review Board to a Claimant under these provisions shall not be considered a contract and shall not be subject to state procurement regulation.

400.03 Permits Required - Nothing contained in these Regulations shall relieve any Claimant from obtaining the necessary appropriate federal, state, and local authorization, certification, or permits as required.

400.04 Liability for Cleanup - Nothing contained in these regulations shall relieve any Claimant from liability for performing corrective action, in accordance with applicable Federal and State laws, when a release occurs.



Part 500.00 - Administration

500.01 Staff - The Review Board shall cause to be employed a Review Board Executive Director, who shall be responsible for the administrative operations of the Review Board. The Review Board Executive Director shall devote such time to the duties of his or her office as may be required and as shall be prescribed by the Review Board. The Review Board may also cause to be employed such staff or technical and professional consultants as may be required to undertake the powers and duties of the Review Board as set forth at Chapter 12.9 of Title 46 of the Rhode Island General Laws.



Part 600.00 - Notification to Potentially Eligible Claimants

600.01 **Public Notification** - To inform potentially eligible claimants about the existence and the functioning of the Fund, the Review Board shall cause to be published in a newspaper or newspapers having aggregate general circulation throughout the state, a notice of the existence of the Fund and an address from which further information may be obtained. The Review Board will undertake such additional educational and informational activities as it deems advisable. Moreover, the Review Board will coordinate and establish a procedure wherein potentially eligible claimants are informed about the existence and functioning of the Fund, when a release is reported to the Department's UST section as pursuant to the UST Regulations.



Part 700 .00 - Record Keeping

700.01 **Forms** - All applications and other forms to be submitted to the Review Board shall be in compliance with those forms established by the Review Board staff and approved by the Review Board.

700.02 **False Statements** Any person making false or misleading statements on any such application or other form to be submitted to the Review Board may be denied reimbursement from the Fund.

700.03 **Record Keeping** -A Claimant shall keep all records relating to its claim for at least three (3) years from the date of final reimbursement or otherwise disposed of by the Review Board. Upon the written request of the Review Board, these records will be made available to the Review Board, or a designated agent of the Review Board, at any reasonable place within the State designated by the Review Board.



Part 800.00 - Application and Reimbursement Procedures

800.01 **Forms** - Initial and subsequent applications for reimbursement from the Fund shall be made to the Review Board on forms developed by or on behalf of the Review Board.

800.02 A policy and procedure shall be developed and administered by staff and approved by the Board for determining the claims process. The policy will be placed on file at the U.S.T. Review Board office.



Part 900.00 Reimbursement Procedures

900.01 **Recommendation for Reimbursement** - Upon receipt of a request for reimbursement, the Review Board shall request that staff or its designee issue a recommendation for reimbursement of eligible costs. The Review Board may order technical and/or financial audits as deemed necessary by the Review Board.

900.02 **Reimbursement** - Within ninety (90) days following the receipt of a complete request for reimbursement, the Review Board shall consider the recommendation issued by staff and determine the amount of reimbursement due the Claimant, if any, and request that the General Treasurer disburse said amount from the Fund in the manner as prescribed by the Review Board.

900.03 The Review Board shall issue its decision on forms developed by or on behalf of the Review Board. Said forms shall separately list the eligible costs to be reimbursed from the Fund and/or those costs, expenses and other obligation denied reimbursement.

900.04 **Priority** - The Review Board shall consider requests for reimbursement from the Fund in the order received and shall authorize disbursements accordingly, except in cases where the Board has accepted a staff and/or Department recommendation that a particular situation represents an environmental priority or where the Review Board, in its discretion, determines that a particular situation warrants priority.



Part 1000.00 Reimbursement for Third-Party Claims

1000.01 **Third Party Claims** - A third-party claim may be submitted to the Board either in the form of a final judgment or a settlement, or request for settlement.

1000.02 **Initial Application** - Within one hundred twenty (120) days from the entry of final judgment, a responsible party shall submit an initial application for reimbursement to the Review Board. The initial application for reimbursement shall be referred to the Department for a finding of eligibility as pursuant to Part 1100.

1000.03 **Claims**

a) **Final Judgment** - When a claim is submitted to the Board in the form of a final judgment, the Review Board shall determine what costs of said judgment are relative to bodily injury and property damage upon recommendation of the staff.

b) **Settlement** - When a claim is submitted to the Board with a request for settlement or settlement, said request shall be submitted to the staff for review under a policy and procedure adopted by the staff. Final approval of claims and policies and procedures shall be by the Board. The policy will be placed on file at the U.S.T. Review Board office.



Part 1100.00 Eligibility Requirements

1100.01 **Potentially Eligible Claimants**

In order to be eligible for reimbursement from the fund for eligible costs a responsible party must be subject to financial responsibility as required by the EPA (40 CFR Part 280 Subpart H) and:

(1) Have complied with all state technical requirements for underground storage tanks and underground storage tank systems as promulgated by the department of environmental management pursuant to chapter 12 of this title and chapter 17.1 of title 42, including but not limited to, requirements for registration, proper installation, spill containment, line leak detection, corrosion protection, leak detection, tank tightness testing, inventory control, closure and leak or spill reporting;

(2) Have incurred an eligible cost in excess of the deductible amount specified in section 46-12.9-5(b) whether for clean-up or related matters or for claims of third parties as set forth in section 46-12.9-3 resulting

from a release of petroleum, subject to the motor and special fuels tax from an underground storage tank or underground storage tank system. In order to apply for reimbursement from the fund, it shall not be necessary that the third party and the responsible party complete adjudication of any claim before submission to the review board; provided, however, that all such claims shall be reasonably verified and must be demonstrated to the reasonable satisfaction of the review board in order to be considered eligible for reimbursement.

Notwithstanding the financial responsibility requirement of this section, responsible parties may be eligible for reimbursement of eligible costs incurred for government sites provided that:

(1) A city, town, the state or a state agency is the responsible party for a release at the government site and was the owner of said site at the time of the release.

(2) A city, town, the state or a state agency is the responsible party and owner of the government site at the time of application on which a release occurred prior to the city, town or state agency's ownership, provided that the government entity purchased the property prior to March 1, 1998; or

(3) A city, town, the state or a state agency was the responsible party at the time of the release and the government site is owned by a successor in interest at the time of application.

Notwithstanding the requirement that the released petroleum be subject to the motor and special fuels tax, underground storage tanks containing petroleum products for which the motor and special fuels tax is inapplicable including, but not limited to, underground storage tanks used for the distributed of no. 2 heating oil, used/waste oil, kerosene or other materials as deemed appropriate by the review board may be eligible for reimbursement with the following exceptions:

(1) Underground storage tanks containing heating or fuel oils used solely for onsite consumption shall not be eligible.

(2) Underground storage tanks exempted from the department's "regulations for underground storage facilities used for petroleum products and hazardous materials" under section 5.03 and section 9.01 (A-D) shall not be eligible.

1100.02 Compliance with Rules - Any claim resulting from a release from a UST or UST System that is not registered pursuant to, or determined not to be in compliance with the UST Regulations, as of the date the release was discovered, shall not be eligible for reimbursement from the Fund. Provided, however, should a claimant come into

compliance said claimant may become eligible to submit a claim for reimbursement.

1100.03 Determination of Compliance - Upon receipt of an initial application, the Review Board shall request that the Department determine the compliance status of a Claimant, and review its records to determine whether the UST or UST System responsible for the release was registered and in compliance with the UST Regulations as of the date that the release was discovered.

1100.04 Notice of Compliance - The Department shall notify the Review Board of its status of determination within thirty (30) days of receipt of the initial application or if there is no response from the Department regarding compliance in a reasonable time, the Review Board shall consider the issue of compliance by the applicant and may take action on its own in determining compliance. The Review Board shall issue a notice of fund eligibility. The Review Board may place restrictions on eligibility as pursuant to its review of the Department's findings.

1100.05 Right to Enter - To be eligible for reimbursement from the Fund, a Claimant shall allow the Review Board or its designee to enter, during reasonable hours, any UST or UST System location and associated structures, including offices, to:

- a) Inspect any remedial activity;
- b) Inspect records with regard to operation of facilities, remedial work and associated costs; or
- c) Inspect contractor records with respect to remedial work and associated costs.

1100.06 Financial Audit - To be eligible for reimbursement from the Fund, a Claimant shall allow the Review Board or its designee, in its sole discretion, to perform financial audits of all records pertinent to site clean-up to ensure compliance with this rule and to certify eligible remedial costs.

1100.07 Technical Audit - To be eligible for reimbursement from the Fund, a Claimant shall allow the Review Board or its designee, in its sole discretion, to perform technical audits.

1100.08 Payment of Annual Tank Registration Fees - To be eligible for reimbursement from the Fund, a Claimant, if required, shall have paid all annual tank registration fees as pursuant to R.I. General Laws § 46-12.9-7(9).

1100.09 **Field Inspection Fee** - The Review Board may provide for field inspections on each claim to be sure that funds are being spent properly. The cost of said field inspection shall be borne by the applicant; provided, however, that such costs may be reimbursable if applicant has paid its deductible and it is approved by the Review Board.



Part 1200.00 Eligible costs

1200.01 **Eligible Costs** - means costs, expenses and other obligations as incurred or to be incurred by a responsible party for site investigation, site remediation or other corrective action activities or certain third party damages ordered or directed by the department or voluntarily performed by the responsible party and not specifically identified by the review board as ineligible.

1200.02 The Review Board reserves the right to determine allowable reimbursements for reasonable and appropriate eligible costs, incurred after July 8, 1994 and such allowable claims shall be reimbursed at a rate of 100% over a time period (s) determined by the Review Board subject to deductible limits and the provisions of Chapter 12.9, Title 46 of the Rhode Island General Laws and further subject to the availability of funds.



Part 1300.00 Reconsideration/Hearing Procedure

1300.01 **Request for Reconsideration/Petition for Hearing** - A Claimant or any person aggrieved by a decision of the Review Board may petition the Review Board for a hearing pursuant to this section within twenty-one (21) days of notification of the Review Board's decision.

1300.02 **Applicability** - The procedures set forth in this Part apply to all hearings, except for rule making procedures, allowed by the Review Board or required by law.

1300.03 **Petition for Reconsideration/Hearing** - All petitions for reconsideration/hearing shall set forth in writing the salient facts and reasons as to why the petitioner's request for reconsideration warrants

further Review Board action.

1300.04 Place of Hearings - All hearings before the Review Board shall be held at a location specified by the Review Board.

1300.05 Computation of Time - All time periods referenced in these regulations shall be calendar days. Computation of any period of time referred to in these regulations shall begin with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed shall be included. If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

1300.06 Extensions of Time - Any party to an action before the Review Board may petition the Review Board to extend any time limit prescribed by these regulations if meeting the prescribed time limit would unduly burden the party or if an extension is otherwise necessary to the orderly or efficient conduct of the hearing. A request for an extension shall be submitted in writing to the Review Board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties directly involved in the action. Any other party to the action, may object to the request by filing a written objection with the Review Board within five (5) days of receipt of the request, stating the reasons why the request should not be granted. If there is no opposition to the request and if the delay would not prejudice the interests of any other party to the action, the Review Board shall grant the request. If an objection to a request is filed, the Review Board shall consider the reasons for and against the extension and shall rule on the request as on any other motion or appeal. The Review Board Administrator shall notify all parties of the Review Board's actions.

1300.07 Date of Filing - All exhibits, decisions, findings of fact, correspondence, motions, petitions, applications and any other documents governed by these regulations shall be deemed to have been issued by the Review Board on the actual date of issuance, and shall be deemed to have been filed with or received by the Review Board on the actual date of receipt by the Review Board.

1300.08 Identification of Communications - Communications shall contain the name and address of the communicator and the appropriate site identification number, where applicable, pertaining to the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

1300.09 Appearance Before the Review Board

a) Any party to a Review Board hearing or their designated

representative, as allowed under R.I. General Laws 11-27-1 et seq., shall be entitled to enter an appearance, introduce evidence, make agreements and generally participate in the conduct of the hearing. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter as members of the public, may participate in the hearing to the extent required by statute or as the Review Board may permit, in accordance with subsection (b) hereof.

b) Any person having an interest in the proceeding as a member of the public and not otherwise entitled by law to participate may request to be heard by the Review Board and shall briefly state the reason (s) why the person wishes to be heard. The person shall be allowed to be heard if the Review Board determines that the testimony the person proposes to give is relevant, material, not duplicative of other testimony, and necessary to a fair and just proceeding.

1300.10 Representatives - Any party to a hearing before the Review Board shall be represented by an attorney licensed to practice law in the State of Rhode Island or only such other individual as allowed under R.I. General Laws 11-27-1 et seq..

1300.11 Notice of Hearings - When a hearing is scheduled to consider issues raised by a petition for reconsideration/hearing filed pursuant to Part 1400, then notice shall be provided to all parties in a timely manner not to be less than fifteen (15) days prior to the hearing date. The notice shall contain the time, date and place of the hearing and shall contain a statement that the hearing is to consider the issues raised in the petition for hearing.

1300.12 Hearing Record

a) The record of the hearing shall consist of all written comments, staff memoranda prepared for and submitted at the hearing, application form (s) (submitted to the Review Board or the Department), notice (s) of the hearing, the records of the hearing, and all exhibits, motions and findings.

b) All parties and other witnesses testifying at a hearing shall be sworn prior to giving such testimony and all testimony shall be recorded. The Review Board, upon request of a party shall provide, at cost, a duplicate tape of the hearing. Any person desiring a transcript of the hearing prepared by a qualified stenographer shall provide the stenographer and shall bear all expenses associated with the preparation of the transcript. Any transcript so prepared shall be made available to all other parties to the proceeding for copying.

1300.13 Hearing Procedures a) The presiding officer at a hearing shall be the chairperson of the Review Board if present and willing to preside.

If the chairperson is unavailable for whatever reason, the presiding officer shall be the vice-chairperson, if available, or a member of the Review Board selected by those members present at the hearing. The presiding officer shall have the authority to:

1. Rule on issues of evidence;
2. Regulate the course of the hearing;
3. Rule upon issues of procedure; and
4. Take such other action that is necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and state law.

b) The hearing shall be conducted in accordance with the following provisions:

1. The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.
2. Any person testifying before the Review Board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.
3. Whenever it appears that testimony to be offered at the hearing would be more readily understood if presented in written form, the presiding officer shall require the party offering such testimony to submit the testimony in written form provided such requirement will not substantially prejudice the interests of any party to the hearing. Upon request of the party who has been required to submit written testimony, the presiding officer shall direct that the record be held open after the close of the hearing or that the hearing be continued to a later date for the sole purpose of allowing sufficient time to prepare the written submission. All persons offering testimony in written form shall be subject to questioning. This subparagraph shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

c) Direct testimony shall be offered in the following order:

1. The party who filed the petition for hearing and such witnesses as the party may call;
2. Any person (other than Review Board staff) having a direct interest in the matter, including but not limited to, a person to whom a determination of eligibility was issued;
3. Review Board staff members;
4. Representatives from other governmental agencies; and
5. Such other persons as the Review Board has determined will be allowed to testify in accordance with 1300.09(b)

d) The presiding officer shall have the authority to modify the order in which witnesses appear, testify, or are questioned when the order set forth in subsections (c) (1) through (5) cannot be followed or when otherwise necessary to the efficient conduct of the proceeding.

e) The presiding officer and Review Board members shall be allowed to cross examine witnesses. The presiding officer shall allow other parties having a direct interest in the proceeding to cross examine witnesses by asking questions directly of the witnesses, so long as such direct questioning is not disruptive to the proceedings. If the presiding officer determines that such cross examination is disruptive to the orderly conduct of the proceedings, then the presiding officer shall require cross examination to be conducted indirectly, by addressing questions through the presiding officer.

1300.14 **General Evidence**

a) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the Review Board members may be utilized in the evaluation of all evidence submitted to the Review Board.

b) The presiding officer may, at any time, take official notice of the staff file, relevant laws, official regulation and transcripts of other hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts of common knowledge to the general public and physical, technical or scientific facts within its specialized knowledge. The Review Board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.

c) Documentary and real evidence.

1. All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer shall require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the council with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonable suitable for reproduction.
2. All written testimony and documents, materials, and objects admitted into evidence shall be made available during the course

of the hearing for public examination.

d) In any proceeding involving an application, the application and other documents filed with the Review Board, including exhibits and amendments thereto, shall be placed into evidence.

e) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing.

1300.15 Exhibits

a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

c) The party offering an exhibit shall supply the original and three (3) copies thereof to the Review Board.

1300.16 **Late Filing of Exhibits** - A party may request that the record be left open for a specified period of time to accommodate the filing of exhibits or copies of exhibits not available at the hearing. If the other parties to the hearing have no objection to the request of it the Review Board determines that such exhibits are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the exhibits shall be filed.

1300.17 **Advance Filing of Exhibits and Testimony** - The Review Board shall require any party intending to use exhibits to file an original and three (3) copies thereof with the Review Board at a specified time prior to the hearing at which such exhibits are to be introduced.

1300.18 **Signatures** - Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the filing person or by one or more attorneys in their individual names.

1300.19 **Continuance** - Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical witness. Requests for a continuance made prior to a hearing shall be in writing and shall state the reason (s) for the request. Requests for a continuance

made at a hearing may be made orally and shall be entered in the record of the hearing. If the Review Board determines that reasonable cause exists and that no other party will be prejudiced by the delay, the Review Board shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

1300.20 Recess and Adjournment - The Review Board shall, from time to time, at the request of any party or on its own initiative, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

1300.21 Conclusion of Hearing -

a) After the conclusion of the hearing, no other evidence or testimony shall be allowed into the record, except as allowed pursuant to subsection (b).

b) Prior to the conclusion of the hearing a party may request that the record be left open for a specified period of time to accommodate the filing of evidence or testimony not available at the hearing. If the other parties to the hearing have no objection to the request or if the Review Board determines that such evidence or testimony is necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional evidence or testimony shall be filed.

1300.22 Reopening of the Record - At any time prior to a final decision any party to a proceeding or any member of the Review Board may request the presiding officer to reopen the record to consider testimony, evidence or arguments not previously considered. If the presiding officer determines that such testimony, evidence or arguments are necessary to a full consideration of the subject matter of the proceeding the record shall be reopened, provided that written notice of such further proceedings shall be given if the parties are no longer present and further provided that other affected parties and the public shall be notified in an appropriate manner.

1300.23 Orders - Any final orders of the Review Boards shall include findings of fact and conclusions of law, separately stated. Findings of fact, as set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party, in accordance with permission from the Review Board, submits proposed findings of fact, the order shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any order. Upon request a copy of the order shall be delivered and mailed forthwith to each party and to his or her attorney of record.

1300.24 **Judicial Review of Review Board Decisions** - Any person who has exhausted all administrative remedies available to him or her before the Review Board and who has been aggrieved by a final order of the Review Board is entitled to judicial review as pursuant to Chapter 35, Title 42, of the Rhode Island General Laws.

1300.25 Proceedings for Review shall be instituted by filing a complaint in the Superior Court in and for Providence County within thirty (30) days after final order is entered by the Review Board.



Part 1400.00 Claims Arising Prior to the Effective Date of These Regulations

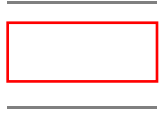
1400.01 Responsible Parties that have incurred eligible costs, expenses or other obligations on or after January 1 or July 8, 1994 and prior to the adoption of these Regulations shall have one hundred and eighty (180) days from the effective date of these Regulations to submit an application for reimbursement under this subparagraph. Said application shall include that information required of a claimant pursuant to Part 800. The Review Board shall then consider said application in the order received and determine the eligibility of all such claimants as pursuant to Part 1100. The Review Board shall then issue notices of eligibility or ineligibility. Upon determining eligibility, the Review Board shall determine the amount of reimbursement due the claimant, if any, and request that the General Treasurer disburse said amount from the Fund pursuant to Part 900.02

1400.02 This Part shall not be applicable to interim requests for reimbursement submitted by eligible claimants on or after the effective date of these regulations.



Part 1500.00 Severability Clause

1500.01 If any of the provisions of these regulations of the applicability thereof is held invalid by any court or competent jurisdiction, the remainder of these provisions of these regulations shall not be affected hereby.



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