

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 )

CAUSE NO. RM 201900008

**FILED**  
NOV 27 2019

PETROLEUM STORAGE TANK DIVISION  
PROPOSED RULES AMENDING CHAPTER 27  
(As of November 22, 2019)

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

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.

~~**"Administrative Application"** means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.~~

~~**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.~~

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

~~**"Assignment of Benefits"** means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.~~

~~**"Assignment of Rights"** (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.~~



**"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 file-case"** means a ~~file-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.

~~"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.~~

**"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 any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content~~ an electronic signature as defined in OAC 165:5-1-3.

~~"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC suspicion of release or confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.~~

~~"Eligible Release" means a suspicion of release or confirmed release that qualifies for Indemnity Fund reimbursement once Fund eligibility has been determined.~~

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

~~"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.~~

~~"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.~~

**"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 it's service/use.

**"Owner"** means: any person as set forth in 17 O.S. § 303(27).

~~(A) In the case of a storage tank system in service/use on November 8, 1984, or brought into service/use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, 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.~~

~~(B) In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of it's service/use. A~~ 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.

~~"Pay for Performance" or "PFP" means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed-to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.~~

**"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 ~~transport~~ **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 ~~a~~ an approved claim to a qualified Claimant or Assignee, or for an Administrative Application, or ~~for such a~~ 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.

~~**"Remediation"** means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.~~

~~**"Site assessment"** means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).~~

~~**"Site characterization"** means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.~~

**"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.

#### 165:27-1-6. Prescribed forms

~~All current, recognized and approved division forms must be used and are available from the PSTD or on the web page at [www.occweb.com](http://www.occweb.com), in person or by written request. Use of the online format established by PSTD is required.~~

### SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

#### 165:27-9-1. Hearing, orders, and ~~appeals~~ exceptions

(a) Hearings ~~and appeals~~ to enforce or exceptions to the provisions of this Chapter or PSTD enabling statutes shall be conducted in accordance with ~~Chapter 5 of Commission rules shall be before an Administrative Law Judge on the PSTD Docket~~ OAC 165:5.

(b) The Commission shall issue ~~such~~ orders after notice and hearing as ~~it deems~~ necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect human property, the public health and safety, and the environment ~~within the State of Oklahoma~~.