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Requirements for
Reimbursement from the
Corrective Action Fund
Effective June 15, 2009



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As of June 15, 2009 there are new requirements for the Application and Payment Process for the Corrective Action Fund (CAF). These new requirements will streamline and improve the Bureau's ability to effectively manage and maintain the solvency of the Corrective Action Fund. This brochure will explain the new procedures for submitting claims for payment and applications for zero or reduced deductibles.

Corrective Action Eligible and Ineligible Costs and Expenditures

- Payments from the CAF will be made for approved deliverables only.
- The Department will not pay for the cost of repairing or replacing remediation equipment or monitoring wells that were negligently or intentionally damaged or destroyed by the owner or operator.

Means Test to Determine Deductible

The means test for demonstrating inability or reduced ability to pay the \$10,000 deductible for a Minimum Site Assessment, as required by Section 74-6N-13(C) of the Ground Water Protection Act, has been simplified.

- Before or with submission of the minimum site assessment workplan, the owner or operator must submit the following information:
 - a letter explaining why the owner or operator is unable to pay the first \$10,000 of the cost of an MSA,
 - copies of the owner's or operators federal tax returns for the immediately preceding 2 years,
 - other financial documentation,
 - and any other relevant evidence

The Bureau will determine eligibility for a reduced or zero deductible using a computer program developed by the federal Environmental Protection Agency for determining ability to pay. In addition to using this program, the Bureau will consider whether payment of a full or partial deductible will impair the owner's or operator's ability to remain in business and whether

the owner or operator is capable of raising revenues to pay the deductible.

Obtaining Facility and Owner ID Numbers for Purposes of Corrective Action

The Bureau will assign owner and facility ID numbers to owners or operators who are exempt from registration and tank fee requirements. Assigning these numbers facilitates the Bureau's ability to track owners and operators.

- Owners and operators must submit the following information in order to obtain a facility and owner ID:
 - Owner or operator's name
 - Owner or operator's address
 - E-mail address and telephone number
 - Address of the tank or site that requires corrective action

Application for Payment at Responsible Party and State Lead Sites

The application and payment procedures formerly included in Section 501 of the Petroleum Storage Tank Rules have now been divided into three separate sections of 20.5.17 NMAC: Section 24, which covers applications for payment at Responsible Lead Party sites; Section 25, which covers the application process for State Lead sites and Section 26, which covers those application procedures that are shared by Responsible Party and State Lead sites. Under the new rules:

- When payment from CAF has been assigned by the owner or operator to a contractor, the contractor must, if the Department reasonably believes that the firm is not making timely payments on work performed under an approved workplan, provide proof that he has paid all subcontractor invoices in a timely fashion
- An original, signed oath or affirmation must be submitted with only the first application for payment for each workplan.
- The owner, operator or contractor must submit with the claim, information concerning any insurance that might cover corrective action for a release at a site for which the claim is being made, including:

- Amount of insurance coverage
- Telephone number of a contact person within the insurance company
- Whether the applicant has filed an insurance claim for the release, and if so, the amount sought and the amount the insurance has paid.

- All documents submitted as part of an application for payment must be clean and easy to read by prohibiting the documents having alterations, corrections or erasures.

Application and Payment Process

- All applications for payment must be submitted to the Department within 90 days of written approval of a deliverable.
- Owners, operators and contractors may request 30 day extensions to the 90 day deadline for good cause. Good causes are defined as:
 - Unavoidable circumstances beyond the owner's, operator's or contractor's control.
- Requests for an extension must be submitted in writing within the 90 day period for submitting an application for payment.
- The Bureau will review applications for payment in the order they are received and will pay or reject a claim within 60 days of receiving the claim. If a claim is rejected, the Bureau shall notify the owner, operator or contractor in writing of the inadequacies that caused the rejection.
- Owners, operators and contractors may correct and resubmit rejected applications within 30 days of the date of notice of inadequacies. The department may decline to review any applications that has been rejected and resubmitted more than 2 times (which consists of the initial application and two resubmitted applications).

Subrogation

- Insurance information must be provided with the first application for payment.