ENVIRONMENTAL QUALITY

CHAPTER 58

MONTANA PETROLEUM TANK RELEASE COMPENSATION BOARD

Subchapter 3

Substantive Rules

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Substantive Rules

17.58.301 GUIDELINES FOR PUBLIC PARTICIPATION (1) Pursuant to 2-3-103, MCA, the board declares that any interested person is encouraged to participate in its deliberations. The following policies will support this objective.

(2) The board shall provide access to the interested parties e-mail list link on the board web site for persons who wish to know about the board's proposed rules and rulemaking proceedings. Any person may add their name and e-mail address to the board's interested parties e-mail list.

(3) The board shall post a copy of its preliminary or tentative agenda on the board web site sufficiently in advance of each meeting.

(4) Upon specific request and payment of reasonable copying fees, the board shall send copies of board determinations, orders, and decisions to any person making such a request. (History: 2-3-103, MCA; IMP, 2-3-103, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.302 CONDUCT OF BOARD MEETINGS (1) All meetings of the board, other than contested case hearings, shall be conducted by the presiding officer. In the absence of the presiding officer, the vice-presiding officer shall exercise the presiding officer's powers.

(2) The presiding officer may call any meeting of the board to order, pursuant to notice, when he or she determines that a quorum is present. A quorum is at least four members present, physically or by teleconference media.

(3) The presiding officer may impose time limits on the oral presentation of any person appearing before the board at any meeting other than a contested case hearing.

(4) The presiding officer may appoint a hearing examiner to conduct a contested case hearing within the agenda of a board meeting. A member of the board, including the presiding officer, may question a witness through and by leave of a hearing examiner so appointed. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99.)

17.58.303 OFFICERS; VOTING (1) The board shall elect a presiding officer and a vice-presiding officer for terms of one year each at its first meeting after October 1 of each year.

(2) Members shall vote on all motions in the order prescribed in Robert's Rules of Order.

(3) All votes must be personally cast, whether in person, by a teleconference medium, or by mail ballot if the presiding officer has, by unanimous consent, adopted a mail ballot procedure for all board members. No voting by proxy may be counted. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96.)

Rules 17.58.304 through 17.58.310 reserved

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) "Act" means Title 75, chapter 11, part 3, and 17-7-502, MCA.

(2) "Actually incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) costs actually expended to complete the work required to prepare or implement a corrective action plan, in an amount less than or equal to the corrective action plan budget, as shown by a dated invoice and receipt; or

(b) documented compensation made to a third party for bodily injury or property damage caused by a release.

(3) "Automobile," for purposes of reimbursing eligible costs, means a light vehicle as defined at 61-1-139, MCA.

(4) "Belonging to the federal government," with respect to determining eligibility of a petroleum storage tank, means:

(a) currently under the possession and control of a federal agency, or

(b) located on land held by a federal agency if the petroleum storage tank is operated by a contractor for the primary benefit of a federal agency. However, if the contract binds the operator to hold the federal agency harmless from liability for any release from the petroleum storage tank and the federal agency required its contractor to make this commitment prior to March 31, 1990, the petroleum storage tank is not considered as belonging to the federal government.

(5) "Board staff" means those employees of the Petroleum Tank Release Compensation Board hired by the board pursuant to 75-11-318, MCA.

(6) "Bodily injury," as defined in 75-11-302, MCA, requires proof to a reasonable degree of medical certainty based on competent evidence as opposed to conjecture or speculation.

(7) "Consumptive use" means any use which burns or otherwise consumes heating oil.

(8) "Consultant" means a professional person or organization of such persons who advise petroleum storage tank owners or operators with respect to planning and implementing corrective action.

(9) "Corrective action plan" means a written plan approved by the department specifying all corrective actions necessary to respond to a release. Each corrective action plan must include the cost of each corrective action specified in the plan.

(10) "Corrective action plan budget" means the costs listed in the corrective action plan and preliminarily approved in writing by the board staff for obligation by the board pursuant to 75-11-309(5), MCA.

(11) "Day" means a calendar day, including weekends and holidays. Whenever a period of days specified in the Act or this chapter ends on a day state offices are not open for business, the period ends on the next day state offices are open.

(12) "De minimis" means that amount of a hazardous substance, as defined in this rule, which when mixed with a petroleum product does not alter the detectability of the petroleum product, effectiveness of corrective action, or toxicity of the petroleum product to any significant degree.

(13) "Department" means the Department of Environmental Quality.

(14) "Farm tank" is defined at ARM 17.56.101.

(15) "Hazardous substance" means:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601(14), as amended;

(b) a substance identified by the administrator of the United States Environmental Protection Agency as a hazardous substance pursuant to section 102 of CERCLA, 42 USC 9602, as amended; or

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 USC 6903(5), as amended, including a substance listed or identified in 40 CFR 261.

(16) "Heating oil" is defined at ARM 17.56.101.

(17) "Hydraulic lift tank" is defined at ARM 17.56.101.

(18) "Inactive tank" is defined at ARM 17.56.101.

(19) "Motor fuel" is defined at ARM 17.56.101.

(20) "Necessarily incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) only those costs incurred that are needed to prepare or implement a corrective action plan, in an amount less than or equal to the costs listed in the corrective action plan budget;

(b) costs incurred to complete work, approved by the department in writing, to respond to an emergency at the site of a release, in order to prevent more extensive damage or injury than would have occurred without such approval; or

(c) in the case of third party damages, payment for damages that are a direct and proximate consequence of the release.

(21) "Noncommercial purposes" is defined at ARM 17.56.101.

(22) "Oil/water separator" is defined at ARM 17.56.101.

(23) "Out of service" is defined at ARM 17.56.101.

(24) "Reasonably incurred," for purposes of reimbursing eligible costs caused by a release from a petroleum storage tank, means:

(a) the costs incurred:

(i) to complete the work required to prepare or implement an approved corrective action plan, in an amount less than or equal to the costs listed in the corrective action plan budget;

(ii) to complete work, approved by the department in writing, to respond to an emergency at the site of a release in order to prevent more extensive damage or injury than would have occurred without such approval; or

(iii) in accordance with ARM 17.58.341 and 17.58.342 and that are not presumed to be unreasonable by those rules; or

(b) compensation paid to third parties for bodily injury or property damage when it is more likely than not that such injury or damage was caused by a release.

(25) "Release discovery date" means the earliest of:

(a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.56.502(1), provided that a release is confirmed in any manner provided in ARM 17.56.504 or 17.56.506 after the condition is discovered;

(b) the date that the owner or operator had actual knowledge of a release; or

(c) the date that the release is confirmed in any manner provided in ARM 17.56.504.

(26) "Residential tank" is defined at ARM 17.56.101.

(27) "Site/facility" means a complex of petroleum storage tanks under the same ownership on a contiguous piece of property.

(28) "Stored for noncommercial purposes", with respect to motor fuel, means any type of storage, except the following:

(a) storing for resale under license from the Weights and Measures Bureau, Department of Commerce (82-15-105, MCA); or

(b) storing for later removal to another location where the fuel will be resold.

(29) "Subcontractor" means a person who performs billable labor in association with a corrective action at the release site when that person is under contract with the contractor/consultant. Subcontractor services do not include delivery or pickup services.

(30) "Tank," as used in 75-11-302(21), MCA, means a fully enclosed stationary device designed to contain an accumulation of petroleum or petroleum products of more than 60 gallons (227L) and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(31) "Vendor" means a person who provides materials necessary for corrective action at the release site or services away from the release site. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1990 MAR p. 1784, Eff. 9/14/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2003 MAR p. 557, Eff. 1/17/03; AMD, 2004 MAR p. 3018, Eff. 12/17/04; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.312 ELIGIBILITY REQUIREMENTS (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-308, MCA; NEW, 1990 MAR p. 1784, Eff. 9/14/90; AMD, 1991 MAR p. 2263, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; REP, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.313 APPLICABLE COPAYMENTS FOR COMMINGLED PETROLEUM STORAGE TANK RELEASES (1) An owner or operator of a site with more than one eligible release from separate petroleum storage tanks whose plumes have commingled shall be reimbursed for eligible costs caused by each release, as specified in 75-11-307(4)(b), MCA. The provisions of 75-11-307(4)(b), MCA, shall be applied separately to each release. If there are costs that are incurred when an ineligible release from a petroleum storage tank has commingled with an eligible release from a separate petroleum storage tank, the owner or operator may not be reimbursed without evidence establishing that it is more likely than not that the costs were caused by the eligible release.

(2) An owner or operator of a site with more than one eligible release from the same petroleum storage tank whose plumes have commingled shall be reimbursed for eligible costs caused by each release, as specified in 75-11-307(4)(b), MCA. The provisions of 75-11-307(4)(b), MCA, shall be applied separately to each such release. If there are costs that are incurred when an ineligible release has commingled with an eligible release from the same petroleum storage tank, the owner or operator may not be reimbursed without evidence establishing that it is more likely than not that the costs were caused by the eligible release.

(3) A person who seeks reimbursement from the fund at a rate different than that provided in 75-11-307(4)(b)(i), MCA, must prove that it is more likely than not that no leaking petroleum storage tank at the site is eligible under that section. (History: 75-11-318, MCA; IMP, 75-11-307, MCA; NEW, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

Rules 17.58.314 through 17.58.322 reserved

17.58.323 VOLUNTARY REGISTRATION (1) An owner or operator may register a petroleum storage tank with the board for the purposes of determining potential eligibility of the petroleum storage tank for reimbursement under the petroleum tank release cleanup fund.

(2) An owner or operator may apply for such registration by submitting to the board a signed and otherwise completed application on a form provided by the board.

(3) The board may investigate and consult with other regulatory agencies concerning the information submitted in the forms to confirm the accuracy of the information submitted by the owner or operator. If a regulatory agency has information or the board discovers information that indicates the owner or operator submitted false or inaccurate information, the board may deny the application.

(4) If a regulatory agency has reported noncompliance regarding the operation and management of the petroleum storage tank, the board may deny the application.

(5) If the information on the form would, if true, establish potential eligibility and no inaccuracies have been discovered by or reported to the board, the board shall issue a statement to the owner or operator indicating potential eligibility for reimbursement.

(6) The board may delegate to the board staff the authority to issue determinations of potential eligibility for reimbursement when that determination is based on prior board decisions and similar material facts, subject to the owner or operator's right to be heard by the board. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

Rule 17.58.324 reserved

17.58.325 ELIGIBILITY DETERMINATION (1) Upon receipt of a completed application for eligibility, the board shall determine eligibility in accordance with 75-11-308 and 75-11-309, MCA. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) The applicable state rules referenced in 75-11-308(1)(b)(ii) and 75-11-309(1)(b), MCA, are:

(a) the following provisions of the International Fire Code (IFC 2009) are applicable to aboveground storage tanks. A copy of the code may be obtained from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or online with cost at www.iccsafe.org:

(i) 312.1 Vehicle impact protection shall be provided by posts that comply with Section 312.2 or by other approved physical barriers that comply with Section 312.3;

(ii) 2203.2 An approved, clearly identified, and readily accessible emergency disconnect switch shall be provided at an approved location to stop the transfer of fuel to the fuel dispensers in the event of a fuel spill or other emergency. An emergency disconnect switch for exterior fuel dispensers shall be located within 100 feet of, but not less than 20 feet from, the fuel dispensers;

(iii) 2206.7.3 Dispensing devices, except those installed on top of a protected aboveground tank that qualifies as vehicle-impact resistant, shall be protected against physical damage by mounting on a concrete island six inches or more in height;

(iv) 2206.7.5.1 Dispensing hoses for Class I and II liquids shall be equipped with a listed emergency breakaway device designed to retain liquid on both sides of a breakaway point. Such devices shall be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to hose-retrieving mechanisms, the emergency breakaway device shall be located between the hose nozzle and the point of attachment of the hose-retrieval mechanism to the hose;

(v) 2704.2.2.4 Secondary containment for outdoor storage areas shall be designed to contain a spill from the largest vessel. If the area is open to rainfall, secondary containment shall be designed to include the volume of a 24-hour rainfall as determined by a 25-year storm and provisions shall be made to drain accumulations of groundwater and rain water. (In Montana the volume of a 24-hour rainfall as determined by a 25-year storm does not exceed 4.6 inches of freeboard.); and

(vi) 3404.2.9.7.6 Aboveground storage tanks shall not be filled in excess of 95 percent their capacity. No later than December 31, 2013, tanks must comply with one of the following requirements:

(A) an overfill prevention system shall be provided for each tank. During tank-filling operations, the system shall provide an independent means of notifying the person filling the tank that the fluid level has reached 90 percent of tank capacity or by providing an audible or visual alarm signal, or providing a tank level gauge marked at 90 percent of tank capacity; or

(B) an impermeable secondary containment shall be provided for each tank. The tank shall have secondary containment, designed in accordance with 2704.2.2.4 of International Fire Code that is impermeable to petroleum;

(b) the following provisions of the National Fire Protection Association Uniform Fire Code, Flammable and Combustible Liquids Code (NFPA 30) (2008) are applicable to aboveground storage tanks. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online at www.nfpa.org:

(i) 21.3.1 Tanks shall be permitted to be of any shape, size, or type consistent with recognized engineering standards. Metal tanks shall be welded, riveted and caulked, bolted, or constructed using a combination of these methods;

(ii) 22.5.2.1 Tanks shall rest on the ground or on foundations made of concrete, masonry, piling, or steel;

(iii) 22.5.2.2 Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation;

(iv) 27.3.2 Piping systems shall be maintained liquidtight. A piping system that has leaks that constitute a hazard shall be emptied of liquid or repaired in a manner acceptable to the authority having jurisdiction;

(v) 27.5.1.1 Joints shall be made liquidtight and shall be welded, flanged, threaded, or mechanically attached;

(vi) 27.5.1.3 Threaded joints shall be made with a suitable thread sealant or lubricant; and

(vii) 27.6.4 Aboveground piping systems that are subject to external corrosion shall be suitably protected;

(c) the following provisions of the National Fire Protection Association Uniform Fire code, Code for Motor Fuel Dispensing Facilities and Repair Garages (NFPA 30A) (2008) are applicable to aboveground storage tanks. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online with cost at www.nfpa.org:

(i) 4.3.8 Any portion of a tank or its piping that is in contact with the soil shall have properly engineered, installed, and maintained corrosion protection that meets the requirements of 21.4.5 of NFPA 30;

(ii) 5.2.3 Any portion of a piping system that is in contact with the soil shall be protected from corrosion in accordance with good engineering practice; and

(iii) 6.3.4 Dispensing devices shall be mounted on a concrete island or shall otherwise be protected against collision damage by means acceptable to the authority having jurisdiction. Dispensing devices shall be securely bolted in place. Dispensing devices shall be installed in accordance with the manufacturers' instructions;

(d) the following provisions of the National Fire Protection Association Uniform Fire Code, Standard for the Installation of Oil-burning Equipment (NFPA 31) (2006) are applicable to aboveground storage tanks attached to burners. A copy of the Code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online at www.nfpa.org:

(i) 7.2.7.1 Metal tanks shall be welded or brazed or constructed using a combination of these methods;

(ii) 7.3.1 Tanks shall rest on the ground or on foundations made of concrete, masonry, piling, or steel;

(iii) 7.3.2 Tank foundations shall be designed to minimize the possibility of uneven settling and to minimize corrosion in any part of the tank resting on the foundation;

(iv) 7.3.3.1 Single wood timber supports (not cribbing), laid horizontally, shall be permitted to be used for outside aboveground tanks if the supports are less than 12 inches high at their lowest point;

(v) 7.9.4 Outside aboveground tanks and their appurtenances and supports shall be protected from external corrosion;

(vi) 7.9.7 Each oil burner supply line connected to the gravity feed connection of the supply tank shall be provided with a shutoff valve at the tank;

(vii) 7.12.5 Each tank shall be maintained liquidtight;

(viii) 7.13.1 If an oil storage tank is permanently removed from service, for whatever reason, it shall be emptied of all contents;

(ix) 7.13.2 If an oil storage tank is temporarily removed from service, for whatever reason, it shall be emptied of all contents;

(x) 8.2.9 Piping shall meet the following criteria:

(A) Piping shall be substantially supported and protected against physical damage; and

(B) Piping shall be protected against corrosion; and

(xi) 8.2.12 Piping shall be maintained liquidtight;

(e) 40 CFR Section 112.3, to the extent that this regulation requires an owner or operator to prepare and implement a Spill Prevention, Control, and Countermeasure Plan, is applicable to all petroleum storage tanks; and

(f) the following requirements in ARM Title 17, chapter 56 are applicable to underground storage tanks:

(i) the installation and design standards for underground storage systems contained in subchapters 1 and 2;

(ii) the spill and overfill prevention and corrosion protection requirements for underground storage tanks contained in subchapter 3;

(iii) the release prevention and detection requirements for underground storage tanks and piping contained in subchapter 4;

(iv) the testing, monitoring, and recordkeeping requirements contained in subchapter 3 and subchapter 4;

(v) the release reporting, initial response, and corrective action requirements contained in subchapters 5 and 6; and

(vi) for inactive and permanently closed underground storage tanks, ARM 17.56.701 and 17.56.702, to the extent that those rules require emptying of such tanks. (History: 75-11-318, 75-11-319, MCA; IMP, 75-11-308, MCA; NEW, 1998 MAR p. 479, Eff. 2/13/98; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2002 MAR p. 2904, Eff. 10/18/02; AMD, 2004 MAR p. 3018, Eff. 12/17/04; AMD, 2006 MAR p. 1734, Eff. 7/7/06; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

Rules 17.58.327 through 17.58.330 reserved

17.58.331 ASSENT TO AUDIT (1) Each contractor, subcontractor or vendor employed to carry out a corrective action plan in whole or in part shall assent to an audit of the documentation supporting their invoices if they charge at an hourly labor rate.

(2) The owner or operator shall submit the assent on a form provided by the board. The form must be executed by the contractor, consultant, subcontractor, or vendor before the board approves reimbursement. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1998 MAR p. 3112, Eff. 11/20/98; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.332 INSURANCE COVERAGE; THIRD-PARTY LIABILITY; INVESTIGATION; DISCLOSURE; SUBROGATION; COORDINATION OF BENEFITS (1) Prior to receiving payment for any claim for reimbursement, an owner or operator who is determined to be eligible under 75-11-308, MCA, shall thoroughly investigate the existence of any policy of insurance or other similar instrument or document that may indicate insurance coverage for some or all of the eligible costs arising from a release. At a minimum, this investigation must include:

(a) complete review of the present owner's and operator's records;

(b) the insurance records of the owner or operator in the possession of the insurance company or its agents or brokers;

(c) where available, the records of prior owners or operators and others who may have information concerning insurance coverage, including insurance policies; and

(d) any insurance records, including policies, in the possession or control of the owner or operator that belong to third parties identified pursuant to (2).

(2) An owner or operator who has been determined to be eligible under 75-11-308, MCA shall investigate and provide the board with the identity of and basis for liability of any third party who through its acts or omissions is known or suspected by the owner or operator to be liable for the eligible costs arising from a release.

(3) If the board determines to aid in the investigation of available coverage, owners or operators must allow the board reasonable access to their records and, where possible, arrange access for the board to the records of others that may contain relevant insurance or third party liability information.

(4) Owners or operators seeking reimbursement for eligible costs shall disclose to the board, on a form provided by the board, the results of the owner's or operator's investigations undertaken pursuant to (1) and (2). Together with the completed form, the owner or operator may be requested to provide copies of any policy of insurance, or any other evidence that may indicate insurance coverage for some or all of the eligible costs, including any documents identified or discovered as a result of the investigations undertaken pursuant to (1) and (2). Such evidence of insurance includes, but is not limited to, cancelled checks from or to insurance companies, letters to and from insurance companies or their agents or brokers, or policies or declaration sheets indicating extent of coverage. Narrative information from previous owners or operators concerning possible coverage must be submitted in writing along with the form. The disclosure must contain current information as of the date of the release as well as all available historic insurance information from the date of the facility's first use of petroleum storage tanks. Where applicable, this disclosure must also contain the identity of any third party who may be liable for the eligible costs sought to be reimbursed together with an explanation of the basis of liability and any supporting documentation indicating insurance coverage that third parties may have.

(5) To the extent the board may reimburse or has reimbursed owners or operators for eligible costs, the board has a subrogation claim against insurance carriers whose policies cover the reimbursed costs and against other third parties whose acts or omissions render them otherwise liable for the reimbursed costs. An owner or operator who accepts reimbursement for costs subrogates his rights to the board as against such insurance carriers and other third parties to the extent of the accepted reimbursed costs. An owner or operator, prior to receiving any reimbursement of eligible costs, must agree on a form provided by the board, to subrogate its claims to the board to the extent of the accepted reimbursed costs.

(6) The board's obligation to reimburse eligible owners or operators does not include eligible costs owners or operators recover pursuant to contractual or tort-based obligations of insurers or other third parties. For the purposes of providing reimbursement or obtaining subrogation, the board is not an insurer.

(7) Reimbursement of claims by the board may be delayed by the board pending submission of any form or information referenced in this rule. If it appears to the board that a party has previously reimbursed an owner or operator for eligible costs, the board may withhold reimbursement of claims from that owner or operator pending a determination by the board of what eligible costs, if any, remain to be reimbursed. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2001 MAR p. 660, Eff. 4/27/01; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.333 DESIGNATION OF REPRESENTATIVE (1) Owners or operators desiring to designate another person to receive reimbursement in their stead under the Act may do so by submitting the appropriate form provided by the board. (History: 75-11-318, MCA; IMP, 75-11-307, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1997 MAR p. 403, Eff. 2/25/97; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.334 CLAIM FOR REIMBURSEMENT (1) Upon completion of any task or subtask identified in a corrective action plan, the owner or operator, or a remediation contractor acting on behalf of the owner or operator, may submit the claim to the board on a form provided by the board.

(2) The claim must include all the information required by the board's claim form, and a certification verified by a notary public that the individual signing the claim form is the owner or operator or is authorized to represent the owner or operator and that the statements in the claim form are true to the best of the signer's knowledge.

(3) Applications may be submitted in a piecemeal manner on the cleanup of a single release in situations where the cleanup would require a considerable period of time.

(4) The individual that signed the claim can request in writing that any incomplete or insufficiently documented costs be withdrawn from the claim. Withdrawn costs may be submitted at a later date on a new claim form. Costs that are withdrawn and later submitted will be processed as a new claim.

(5) The minimum claim value may not be less than $500 except:

(a) when a claim includes only utility bills or laboratory invoices, the minimum is reduced to $100;

(b) when the five-year limitation period set forth in 75-11-307(2)(i), MCA, will expire before a total of $500 in cleanup costs will be accrued;

(c) when the claim is the final claim for a resolved release; and

(d) when specific circumstances warrant, additional exceptions may be permitted.

(6) When submitting an invoice to be divided among multiple releases, the invoice must be equal to or in excess of $500. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.335 APPLICATION FOR GUARANTEE OF REIMBURSEMENT OF FUTURE OR UNAPPROVED EXPENDITURES (1) Whenever an owner or operator requests the board to guarantee reimbursement for eligible costs not yet approved by the board, including estimated costs not yet incurred, the board may issue the requested guarantee, if it is able to make the necessary findings under (2).

(2) The board must find, before guaranteeing reimbursement, that the owner or operator is eligible for reimbursement pursuant to 75-11-308(1), MCA, and that any estimated eligible cost not yet incurred is one that is reasonably certain to occur.

(3) In guaranteeing reimbursement of an estimated eligible cost not yet incurred, the board shall include a provision within the guarantee that the reimbursement is subject to adjustment in conformity with 75-11-309(3), MCA, after the cost has been incurred.

(4) Application forms for guarantee of reimbursement are available upon request from the board. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) The board may not approve a claim for reimbursement unless the owner or operator has submitted a completed application for eligibility and the board has determined that the owner or operator is eligible in accordance with 75-11-308, MCA.

(2) Upon receipt of a claim for reimbursement for corrective action costs the board staff shall determine if the claim form is complete. The board staff shall promptly advise the owner or operator, or a remediation contractor acting on behalf of an owner or operator, of any incompleteness or deficiency that appears on the claim form. The final review may be suspended pending the submission of additional information by the owner or operator, or a remediation contractor acting on behalf of an owner or operator.

(3) Claim forms that have been reviewed as complete at least 60 days prior to a scheduled board meeting will normally be considered by the board at that meeting. The reimbursement of claims for which authority to reimburse has been delegated under (4), is not subject to this procedure. The agenda for consideration of claims at board meetings must follow the order in which claim forms were reviewed as complete and that are not reimbursed under (4).

(4) The board may delegate to the director of the Department of Environmental Quality authority to process and order reimbursement of specified categories of claims upon receipt and review. The director of the Department of Environmental Quality shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(5) The recommendations of the board staff must be mailed to each board member at least seven days before the date of the board meeting at which the claim is scheduled to be considered.

(6) The owner or operator may appear before the board and make a statement regarding the claim and the board staff's recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter consider the claim and, upon making the determinations required by 75-11-309(3), MCA, may grant it in whole, in such part as may to the board seem proper, or may deny the claim. Reasons for partial or total denials or disallowed expenses must be stated in the claim reimbursement summary contained in the file. The minutes of a board meeting must reflect the sequence of actions taken on claims.

(7) Claims subject to the provisions of 75-11-309(2) or (3)(b)(ii), MCA, must be reimbursed according to the following:

(a) Except as provided in (7)(e), such claims must be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

(b) For claims subject to the provisions of 75-11-309(2), MCA, the period of noncompliance must begin on the date upon which the department issues an administrative order to the owner or operator. The period of noncompliance must end on the date upon which the owner or operator has satisfied the administrative order, as determined by the department in writing.

(c) For claims subject to the provisions of 75-11-309(3)(b)(ii), MCA, the period of noncompliance must begin on the date upon which the board determines that the owner or operator has not complied with 75-11-309, MCA, or rules adopted pursuant to 75-11-309, MCA. The period of noncompliance must end on the date upon which the board determines that the owner or operator has returned to compliance.

(d) Reimbursement of claims filed during the period of noncompliance must be suspended by the board. If the owner or operator returns to compliance as provided in (7)(b) or (c), the board may allow reimbursement of the suspended and future claims as provided in (7)(a). Any such reimbursement is subject to the requirements of 75-11-309(3)(a), MCA.

(e) The percentages of reimbursement set forth in (7)(a) may be adjusted by the board according to the procedures in (6) upon a substantial showing by the owner or operator that one or more of the following factors applies and would entitle the owner or operator to an adjustment:

(i) the noncompliance has not presented a significant increased threat to public health or the environment;

(ii) there has been no significant additional cost to the fund;

(iii) the delay in compliance was caused by circumstances outside of the control of the owner or operator;

(iv) there was an error in the issuance of the administrative order or an error in the determination of the date an administrative order was satisfied; or

(v) any other factor that would render use of the reimbursement schedule in (7)(a) demonstrably unjust.

(8) With the exception of the timeframes set forth in (7)(a), any other time periods specified in this rule may be extended by agreement between the board and the owner or operator. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2001 MAR p. 2024, Eff. 10/12/01; AMD, 2006 MAR p. 1734, Eff. 7/7/06; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

17.58.337 THIRD-PARTY DAMAGES: PARTICIPATION IN ACTIONS AND REVIEW OF SETTLEMENTS (1) Any owner or operator who is sued for damages resulting from a release shall notify the board of the suit in writing within 15 days of being served with a summons and complaint. Within 45 days of being served by the summons and complaint, the owner or operator shall also:

(a) advise the board in writing if any insurer is defending the owner or operator, and if so the name of such insurer;

(b) provide the board with a complete copy of any insurance policy covering any part of the release or the damages resulting from the release, including all addendums, riders, and endorsements; and

(c) provide the board with a copy of the summons, complaint, and any answer or answers to the complaint.

(2) Any owner or operator who, prior to litigation, is advised of a claim by a third party, or enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the board of such claim, demand, or negotiations within 30 days, and at that time shall provide the board with a copy of any such claim, demand, or negotiations that have been reduced to writing.

(3) In addition to the notice requirements of (1) and (2), the owner or operator shall provide the board with status reports once every three months after the notice is given, setting forth the status of investigation, discovery, motion practice, and negotiations for settlement.

(4) The board may review the conduct of any such lawsuit or claim, and any negotiation to settle the lawsuit or claim, and may review any pleadings, discovery, investigation, and papers documenting settlement, or negotiations for settlement, of the suit. The owner or operator shall provide copies of any record or document requested by the board to assist the board in its review pursuant to this section. The board will not assume any legal costs incurred by the owner or operator, but may appear and participate in discovery or trial proceedings or settlement negotiations that bear on the determination of a third party's claim for plaintiff's damages caused by the release. If the parties wish to employ a judge pro tempore under the provisions of 3-5-113, MCA, or a settlement mediator, and consult with the board in the selection process, the board may participate in the compensation of the judge pro tempore or settlement mediator.

(5) Unless the board has been provided with a judgment or an executed settlement agreement that has finally determined an owner or operator's liability to a third party for payment of damages caused by a release, the board may require that a third party claiming such injury to property or person obtain at their own expense and provide to the board in writing a property appraisal or report of medical examination. Such appraisals or examinations are more likely to be required if the owner or operator has not kept the board apprised of the course of litigation or settlement negotiations as required under this rule. If the owner or operator does not keep the board apprised of the course of litigation or settlement negotiations as required by this rule, the board may refuse to reimburse any portion of a settlement or judgment pursuant to this section, and the board may deduct from any reimbursement owed its costs for hiring an independent physician, property appraiser, or claims adjuster under this rule.

(6) The board may review any settlement papers or negotiations, including confidential settlement mediations or conferences, for the purpose of determining the dollar amount of bodily injury or property damages actually, necessarily, and reasonably incurred by third parties which, if required to be paid by the owner or operator, would be considered eligible costs caused by a release, provided that the board shall comply with any confidentiality requirements imposed by the court or the mediator, unless there is a compelling state interest to do otherwise.

(7) "Property damage," as defined in 75-11-302, MCA, will be measured by the board in terms of diminution of market value, unless the costs of repairing damage are less than the diminution of market value.

(8) Failure to comply with any provision of this rule shall be considered noncompliance subject to 75-11-309(3)(b)(ii), MCA. (History: 75-11-318, MCA; IMP, 75-11-309(1)(g), MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.338 REVIEW OF CORRECTIVE ACTION PLAN (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1991 MAR p. 2036, Eff. 11/1/91; AMD, 1995 MAR p. 118, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 3125; REP, 1999 MAR p. 2279, Eff. 10/8/99.)

17.58.339 CORRECTIVE ACTION EXPENDITURES: DOCUMENTATION (REPEALED) (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; AMD, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; REP, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.340 THIRD-PARTY DAMAGES: REIMBURSEMENT DOCUMENTATION (1) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages pursuant to a judgment entered in a court shall include copies of the notice of entry of judgment, abstract of costs, and a declaration:

(a) that the case has been concluded, including appeal, if any; and

(b) of the fees paid by the owner or operator to each attorney who appeared in the proceeding.

(2) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages made by agreement in settlement of litigation or a claim shall include copies of the fully executed settlement agreement and such supporting documents as may be required under ARM 17.58.337.

(3) The board shall require a listing of amounts attributed to compensation for property damage, bodily injury, fees, costs, and any other aspect of damage paid to a third party pursuant to a settlement or judgment described in (1) or (2). (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11; AMD, 2011 MAR p. 1370, Eff. 7/29/11.)

17.58.341 REIMBURSABLE COSTS (1) Claims by an owner or operator for services provided by a consultant/contractor, or subcontractor, including services of its employees, must be categorized into standard codes according to the list of codes maintained by the board. This requirement does not apply to any service provided by an individual or remediation activity that does not closely approximate one of the standard categories in the board's list of codes.

(2) A consultant/contractor/subcontractor may file with the board, and amend, not more than once a year (unless further amendment is approved by the board staff), the labor and equipment hourly rates and remediation supply costs it bills clients in Montana for the remediation services reimbursed from the fund. The rate schedules and amendments must be maintained in confidence by and accessible only to the board staff, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure.

(3) The board staff shall calculate the industry standard once a year after receipt of labor, equipment, and material schedules from companies whose invoices the board frequently reviews and that have been filed in a number sufficient for a meaningful statistical analysis. In calculating the industry standard, the board staff shall compute a range of allowable rates for each code listed in the board's consultant/contractor code list, which will be the mean rate for each code plus the standard deviation, not to exceed 10% of that mean. The board staff shall then notify each filing firm whether its rates exceed the range of allowable rates, and if so, by how much. The amount by which a consultant's rate for a particular code exceeds the range of allowable rates will be presumed unreasonable.

(4) Board staff may request a detailed explanation of rate structures when a submitted rate appears to vary significantly from those submitted by other consultants/contractors/subcontractors for the same code. Board staff may refuse to use rates that significantly vary from similar rates submitted by others, rates from persons who have not submitted claims for reimbursement, rates from persons who have not submitted proper documentation for claim reimbursement, and other rates not deemed acceptable by the board.

(5) A consultant/contractor/subcontractor who has not filed its schedule of rates must submit its invoices for services formatted in accordance with (1). Any rates which exceed the range of allowable rates will be presumed unreasonable.

(6) Any presumption in this rule may be overcome by presenting clear and convincing evidence to the board that the presumption should not apply, in accordance with the procedure set forth in ARM 17.58.336(6).

(7) Copies of the list, which establishes categories and codes of consultant/contractor/subcontractor services, may be obtained from the board. The list must explain the typical duties to be performed. The consultant/contractor/subcontractor must be reimbursed labor costs billed on a time basis, and hourly labor costs for personnel time may not be for more than the minimum appropriate level of skill needed to perform a particular task.

(8) The board staff shall calculate the reasonable cost for department standard plans and standard reports and board standard remediation tasks once a year from requested costs received from companies in a quantity sufficient for a meaningful statistical analysis. The calculation must use the requested costs from the prior five years. In calculating the reasonable costs, the board staff shall compute a range of allowable costs for each standard document in the department's standard corrective action plans and reports lists and board tasks, which will be the mean rate for each standard plus the standard deviation, not to exceed 10% of that mean. The board staff shall then publish the reasonable cost reimbursement for the standard plans and reports on the board web site. The amount by which a consultant claim for a particular standard document exceeds the range of allowable rates will be presumed unreasonable. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED (1) The following costs incurred in implementing a corrective action plan are presumed to be reasonably incurred:

(a) long distance telephone charges specific to the project;

(b) computer usage for generating graphics, maps, well logs, etc., that are necessary for reports;

(c) supplies and materials directly associated with the project (e.g., equipment purchased or withdrawn from inventory specifically for the corrective action, laboratory analysis, or well supplies);

(d) copies and facsimiles, not to exceed the preapproved rate, unless documentation supports a higher charge paid to an outside entity;

(e) mileage, at a rate equal to $0.05 per mile above the high rate for mileage reimbursement prescribed in the Montana Operation Manual (MOM), Volume I, Chapter 1-0300, Policy No. 1-0310.10 (August 13, 2002);

(f) lodging at actual cost unless excessive. Documentation supporting the cost (lodging invoice) is required. If no lodging invoice is provided, the reimbursement shall be at the rate of non-receiptable lodging facilities in accordance with 2-18-501(5), MCA;

(g) meals at the rates set forth in 2-18-501, MCA, for state employees traveling within Montana. Computation of time for purposes of determining meal allowances must be made according to 2-18-502, MCA. Exceptions for higher actual costs may be made by showing that seasonal or other factors make meals available at the above listed rates in certain limited areas (receipts will be required);

(h) vendor charges at cost;

(i) subcontractor charges at cost, unless a markup is allowed under (3)(c);

(j) sampling fees at $10 per sample, which includes ice, cooler, packing, and office-related handling charges.

(2) The following list indicates, by way of example and not limitation, types of charges that are presumed not to be reasonably incurred:

(a) miscellaneous office postage, such as mailing of application, reports, and correspondence;

(b) preparation of billing information and invoices;

(c) computer charges for writing reports;

(d) administrative charges for handling payments;

(e) standard office supplies;

(f) markups, add-ons, or profit added to vendor or subcontractor invoices, except as allowed under (3)(c);

(g) charges for basic telephone service;

(h) interest;

(i) multi-tiered markups;

(j) markups by a person who serves the sole function of providing funding for a corrective action;

(k) charges incurred prior to release discovery date;

(l) charges for preparation of board forms;

(m) charges for preparation of department 30-day release report;

(n) removal and disposal of petroleum, petroleum sludge, and other liquids from tanks;

(o) removal of petroleum storage tanks required by underground storage tank rules or the International Fire Code; and

(p) state permit fees for tank removal or system modifications.

(3) The following costs for implementing a corrective action plan are presumed to be reasonably incurred, only if approved by the board staff prior to claim submission:

(a) rates for labor categories not listed in the board's fee schedule list;

(b) access or trespass fees;

(c) markups, not to exceed 7%, on subcontractor invoices when the subcontractor is furnishing labor (and incidental goods or supplies) on a project as part of the cleanup. Proof of payment by the contractor to the subcontractor must be submitted prior to board approval or director approval, authorized under ARM 17.58.336(3). The subcontractor markup may be reimbursable when the subcontractor's invoice and the evidence of subcontractor payment is on the same claim form as the markup. Subcontractor markup is allowed only when the subcontracted work was preapproved in a corrective action plan; and

(d) shipping of samples and equipment.

(4) Any presumption in this rule may be overcome by presenting clear and convincing evidence to the board that the presumption should not apply, in accordance with the procedure set forth in ARM 17.58.336(6). (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 1993 MAR p. 2678, Eff. 11/11/93; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1997 MAR p. 2198, Eff. 12/2/97; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2003 MAR p. 11, Eff. 1/17/03; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.343 REVIEW AND DETERMINATION OF THIRD-PARTY DAMAGE COSTS (1) All claims for reimbursement of third party damages must be filed with the board. Upon receipt of the claim, the board shall determine if the claim is complete. The board shall advise the owner or operator of any incompleteness or deficiency which appears on the claim. The final review may be suspended pending the submission of additional information by the owner or operator.

(2) The board may delegate to the director of the Department of Environmental Quality authority to process and order reimbursement of specified categories of claims upon receipt and review. The director of the Department of Environmental Quality shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(3) The recommendations of the board staff must be mailed to each board member and to the owner or operator at least seven days prior to the board meeting that is scheduled to consider the claim.

(4) The owner or operator may appear before the board and make a statement on the claim and on the recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter proceed to consider the claim and may grant it in whole, in such part as may seem proper, or may deny the claim. Reasons for partial or total denial of disallowed expenses must be mailed to the owner or operator within ten days of the board's decision. The minutes of the board meeting shall reflect the sequence of actions taken on claims.

(5) Any time periods specified in this rule may be extended by agreement between the board or its staff and the owner or operator. (History: 75-11-318, MCA; IMP, 75-11-309, MCA; NEW, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 1512, Eff. 7/2/99; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.)

17.58.344 REVIEW OF CORRECTIVE ACTION PLAN (1) The board staff shall review each corrective action plan and establish the allowable reimbursement for each corrective action in a corrective action plan budget.

(2) Owners or operators or their representatives shall solicit at least three competitive bids for subcontractor corrective action work costing over $2500. The owner or operator shall submit documentation showing that at least three bids were solicited for the corrective action. Owners and operators must be reimbursed a reasonable amount for the time to prepare, solicit, and evaluate bids.

(3) Corrective action plans that require the removal of petroleum storage tanks, dispensers, or product piping must be shown to be the most cost effective corrective action and the costs must be approved by the board in writing before the action is performed.

(4) Corrective action plans that require the removal, repair, or replacement of building(s), sign(s), or canopies must be shown to be the most cost effective corrective action and the costs must be approved by the board in writing before the action is performed.

(5) Owners or operators are responsible for determining whether it is more cost effective to purchase or lease remediation equipment necessary to remediate a petroleum release. Board staff may assist owners or operators in this evaluation.

(6) Purchased remediation equipment, when no longer required to remediate the release, may be:

(a) used on another site that the owner or operator owns, or for the owner's or operator's own purpose;

(b) donated to the state of Montana. The state will then sell the equipment as surplus property. The proceeds of the sale will return to the fund; or

(c) sold with the owner or operator retaining 50% of the sale price and 50% returning to the fund. (History: 75-11-318, MCA; IMP, 75-11-318, MCA; NEW, 2011 MAR p. 377, Eff. 3/25/11.)