

3737-1-12.1      **Mandatory and voluntary pre-approval of corrective action costs.**

(A) For corrective actions to be performed in accordance with all versions of rule 1301:7-9-13 of the Administrative Code, the responsible person shall submit to the director an application for initial pre-approval of pending corrective action costs, as follows:

- (1) Simultaneously with the submission of an interim response action notification, where prior approval of the fire marshal must be obtained, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the interim response action notification;
- (2) Simultaneously with the submission of a remedial action plan to the fire marshal, the responsible person shall:
  - (a) Submit a copy of the remedial action plan with a brief description of the remedial action alternatives considered, including a discussion of the reliability, effectiveness, cost, and time needed for completion, and the rationale for the selected remedial alternative; and
  - (b) Submit an estimated cost and completion schedule for the remedial actions as set forth in the remedial action plan;
- (3) Simultaneously with the submission of a tier 3 evaluation plan to the fire marshal, the responsible person shall submit a copy of the tier 3 evaluation plan with a description of the tier 3 objective; the activities to be conducted; a discussion of the effectiveness, cost and rationale for selecting the tier 3 evaluation; and an implementation schedule and projected completion date;
- (4) Simultaneously with the submission to the fire marshal of a monitoring plan in conjunction with a tier evaluation report or a tier 3 evaluation report, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the monitoring plan.
- (5) If free product is present one year after initiating free product recovery activities, the responsible person shall assess the effectiveness of free product recovery techniques and shall submit a brief written evaluation of the reliability, effectiveness, cost, and time needed for free product removal in the upcoming year. Said written evaluation shall be submitted on a yearly basis for each year that recovery is ongoing.
  - (a) Where free product recovery has been in place for ~~more than a~~ one year

~~from the effective date of this rule, the first evaluation shall be submitted within ninety days of the anniversary date of free product recovery. Subsequent evaluations shall be submitted annually, unless otherwise determined by the director, due on or before July 1, 2005 and successive annual evaluations shall be submitted on or before the anniversary of that date.~~

~~(b) Where free product recovery has not been in place for more than a year from the effective date of this rule, the first evaluation shall be submitted within ninety days from the one year anniversary date of when free product recovery first began. Each successive annual evaluation shall be submitted within ninety days from the anniversary date of when free product recovery first began.~~

~~(e)(b) Where free product recovery is incorporated under in conjunction with a remedial action plan, the annual free product evaluation shall be submitted in conjunction with incorporated into the annual remedial action plan submissions required under paragraph (B) of by this rule.~~

(B) Where estimated costs and completion schedules have been pre-approved in accordance with paragraphs (A)(2), (A)(4), and (A)(5) of this rule, the responsible person shall submit pre-approval applications annually to the director, unless otherwise determined by the director, on a form ~~created~~ prescribed by the director.

(C) Upon receipt of a pre-approval application submitted pursuant to paragraphs (A) and ~~(B)~~ of this rule, the director shall evaluate the estimated costs and completion schedule. In determining the estimated costs and completion schedule to be pre-approved, the director shall consider what is usual, customary and reasonable for similar corrective action activities and under similar circumstances as determined from the fund's experience. At the director's discretion, other options including, but not limited to, pay-for-performance or risk sharing by the consultant and the responsible person may be considered for the corrective actions for which pre-approval is sought. The director shall notify the responsible person of the pre-approved costs and completion schedule. If the estimated costs or the completion schedule submitted for pre-approval pursuant to paragraphs (A) and ~~(B)~~ of this rule are later revised by the responsible person, or if during the implementation of the corrective actions for which pre-approval has been granted the pre-approved costs and/or completion schedule will be exceeded, the responsible person shall immediately notify the director and shall submit a revised cost estimate and a revised completion schedule for pre-approval.

(D) Corrective action costs and completion schedules not submitted for pre-approval in accordance with paragraphs (A), ~~(B)~~, and ~~(C)~~ of this rule shall be evaluated for reimbursement and subject to reductions in reimbursement in accordance with rule

3737-1-09 of the Administrative Code.

- (E) Where pre-approval is not required by ~~paragraph (A)~~ of this rule but is desired by the responsible person, the responsible person may submit to the director a description of the corrective actions to be performed and an estimated cost and completion schedule for them.
- (F) The pre-approval shall not accelerate fund payment for a release. Payment for pre-approved costs shall be contingent upon the proper submission of an application for reimbursement in accordance with rule 3737-1-12 of the Administrative Code, and a determination that a responsible person is eligible to receive reimbursement from the fund.

Effective:

R.C. 119.032 review dates: 09/18/2009

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 3737.90  
Rule Amplifies: 3737.92  
Prior Effective Dates: 07/01/94, 09/18/99, 07/01/03, 04/01/05