

3737-1-22

**Subrogation.**

(A) A responsible person who ~~initiates~~ has any settlement discussions with, or mediation or litigation against another party(s) for causing and/or contributing to the accidental release of petroleum from an assured underground storage tank system for which an eligibility application has been submitted to or approved by the board, shall:

(1) Notify the board of the identity of all other parties against whom the responsible person has or may have a right of recovery;

~~(2)~~ (3) Provide reasonable advance notification to the board of any and all settlement meetings;

~~(2)~~(3) Notify the other party(s) that no settlement, compromise, judgment, award, or other recovery in any action or claim by the responsible person shall be binding on the board;

~~(3)~~(4) Notify the other party(s) of the board's right to subrogation under division (I) of section 3737.92 of the Revised Code and that the board may assert its right by written correspondence with the responsible person, the other party(s) or their legal representatives, or may institute and pursue legal proceedings against the other party(s) independently or in conjunction with the responsible person;

~~(4)~~(5) Notify the other party(s) that any settlement, compromise, judgment, award, or other recovery in favor of the responsible person shall not preclude the board from enforcing its subrogation rights against the other party(s); and

~~(5)~~(6) Notify the other party(s) that no attorney fees, court costs or other litigation costs shall be assessed against the board for enforcing its subrogation rights.

(B) The responsible person shall not in any manner do any act that will impair the board's subrogation rights. The responsible person shall:

(1) Notify the board in writing within thirty days of any action by another party causing and/or contributing to an accidental release of petroleum from an assured underground storage tank system or other sources; and

(2) Not enter into any settlement agreement without prior notice to and authorization by the board; ~~and~~.

~~(3) Where an eligibility application has been submitted to or approved by the board and previous notification has not been provided to the board, notify the board~~

~~in writing within ninety days from the effective date of this rule.~~

(C) The responsible person shall cooperate with the board in enforcement of its subrogation rights, including but not limited to, providing documents, testimony, and access to experts relating to the third party(s) causing or contributing to the accidental release of petroleum.

~~(D)~~(D) As used in this rule subrogation means the board's rights to recover costs of corrective actions and/or third-party claims that the board has paid or will pay to a responsible person or a third party from any other party(s) and/or the other party(s) insurer; and/or a responsible person's insurer.

~~(E)~~(E) If the responsible person fails to comply with this rule, the board shall reimburse corrective action costs and/or third-party claim costs that are the lesser of:

- (1) Fifty per cent of eligible corrective action and/or third-party claim costs, as determined by the board; or
- (2) The total of eligible corrective action and/or third-party claim costs, as determined by the board, minus the amount of the deductible and minus the amount paid by the other party to the responsible person.

~~(F)~~(F) Where the board has withheld reimbursement for the costs of corrective action and/or third-party claims pursuant to paragraph (D) of this rule, and the board initiates a claim to recover any monies under its subrogation rights, the board may reimburse the responsible person the amount withheld only if the amount recovered under the board's subrogation claim is greater than the amount withheld from the responsible person.

~~(G)~~(G) If the responsible person has received any monies from any other party(s) or the responsible person's insurance for reimbursement of corrective action costs and/or third-party claims, and the board has reimbursed the responsible person for all eligible corrective action costs and/or third-party claims, the responsible person shall indemnify the board the total cost paid by the board to the responsible person for eligible corrective action and/or third-party claims costs unless the responsible person and the board agree to a lesser amount in a written settlement agreement.

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CERTIFIED ELECTRONICALLY

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Certification

11/19/2009

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Date

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