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William Francis Galvin, Secretary of the Commonwealth
State Publications and Regulations

REGULATION FILING AND PUBLICATION

1. Regulation Chapter, Number & Heading: **503 CMR**

2. Name of Agency: **UNDERGROUND STORAGE TANKS PETROLEUM CLEAN UP
FUND ADMINISTRATIVE REVIEW BOARD**

3. This document is reprinted from the Code of Massachusetts Regulations and contains the following:

- 503 CMR 1.00 RESERVED**
- 2.00 UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEAN UP
FUND REGULATIONS IMPLEMENTING M.G.L. c.21J**
- 3.00 GRANT PROGRAM FOR CITIES AND TOWNS UNDER M.G.L. c. 21J AND c.
148, s. 37A**
- 4.00 IMPLEMENTATION OF UNDERGROUND STORAGE TANK CLEAN UP FEES**

Under the Provisions of Massachusetts General Laws, Chapter 30A, § 6, and Chapter 233, § 75,
this document may be used as evidence of the original documents on file with the Secretary of the Commonwealth.

Compiled as in full force and effect:

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A true copy attest:

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

503 CMR: UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEANUP
FUND ADMINISTRATIVE REVIEW BOARD

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NON-TEXT PAGE

503 CMR: UNDERGROUND STORAGE TANK PETROLEUM CLEANUP FUND
ADMINISTRATIVE REVIEW BOARD

(503 CMR 1.00: RESERVED)

503 CMR: UNDERGROUND STORAGE TANK PETROLEUM CLEANUP FUND
ADMINISTRATIVE REVIEW BOARD

NON-TEXT PAGE

503 CMR: UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEANUP
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503 CMR 2.00: UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEANUP
FUND REGULATIONS IMPLEMENTING M.G.L. c. 21J

Section

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2.01: Purpose and Scope

(1) 503 CMR 2.00 governs the administration of Reimbursement from the Underground Storage Tank Petroleum Cleanup Fund Administrative Review Board created by St. 1990, c. 524, which constitutes M.G.L. c. 21J.

(2) The purpose of 503 CMR 2.00 is to provide Reimbursement to Eligible Claimants for allowable costs, expenses and obligations incurred by taking Response Actions, paying Third Party Claims, or otherwise incurring expenses, as a result of Releases.

(3) The purpose of 503 CMR 2.00 also is to enable Owners and Operators of UST Systems to demonstrate the availability of an assurance mechanism that satisfies in whole or in part Federal and State financial responsibility mandates for such UST Systems. The Fund, however, is not intended to be considered as insurance and 503 CMR 2.00 does not replace or supersede the obligations of insurance carriers to their insureds under insurance policies or contracts.

(4) To ensure the continuing financial soundness of the Fund, 503 CMR 2.00 will provide Reimbursement only for allowable costs, expenses and obligations incurred by Eligible Claimants and as a result of:

- (a) Taking Response Actions pursuant to 503 CMR 2.11; and
- (b) Paying Final Judgments resulting from civil court action by third parties for Bodily Injury, Property Damage and Damage to Natural Resources pursuant to 503 CMR 2.12.

(5) In order to simplify the administration of the Fund and to ensure the Fund's financial soundness, 503 CMR 2.00 distinguishes between and treats differently Dispensing Facilities and Former Dispensing Facilities.

2.02: Definitions

For the purposes of 503 CMR 2.00, the following terms shall have the following meanings assigned to them:

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2.02: continued

All Necessary Information, includes but is not limited to copies of the following documents: the license to store flammables and combustibles (FP- 2), a Registration (FP-5), an F.P. 290, a UST Registration Permit (FP-290) part 3, a Marine Fueling Permit (FP-294) if applicable and, latest tank and or piping tightness test and cathodic protection system test results if applicable.

Annual Tank Fee, all annual tank fees required by M.G.L. c. 21J, § 2 and 502 CMR 4.00 for each Underground Storage Tank payable after April 2, 1991, including all late fees and penalties.

Appendix or Appendices, the forms, applications, schedules and charts filed pursuant to 503 CMR 2.00 are available at the State Bookstore, Rm. 116, Statehouse, Boston MA 02133.

Application for Eligibility, an application filed by a Claimant pursuant to 503 CMR 2.09(1) for a specific Site.

Board, the Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board.

Board Acceptable Site Assessment, a Site Assessment showing the Dispensing Facility does not have any contaminant levels or conditions which require notification to DEP, and which require a Response Action, excluding Limited Removal Actions (LRAs). The Site Assessment report shall provide the level of diligence which is necessary to ensure that the quantity and quality of information is adequate to assess the presence of contaminants including the area of the UST System and shall be prepared in compliance with the Board's "Board Acceptable Site Assessment Policy."

Boat, any motorized water craft.

Bodily Injury, physical injury, sickness, disease, or death of any person proximately caused by a Release from an Underground Storage Tank System.

Certificate of Compliance, a certificate issued by the Board, attesting to the Full Compliance of the UST System in accordance with 503 CMR 2.07.

Certification, to make a written statement, as set forth in 503 CMR 2.03(7), signed by a Claimant or potential Claimant attesting to the accuracy and completeness of the facts contained in a submission to the Board or the Department of Revenue.

Claim, a request for Reimbursement for a specific Facility filed pursuant to 503 CMR 2.10.

Claim for Reimbursement, a Claim which is complete, has been received and reviewed by the staff of the Board, and has been presented to the Board.

Claimant, a Person who files a Claim. A Claimant does not include the recipients or potential recipients of grants under 503 CMR 2.23 pursuant to M.G.L. c. 21J, §§ 4(c) and (d). For purposes of 503 CMR 2.00, if a Claimant is the Owner or Operator of more than one Facility, the term shall apply to a specific Facility for which an Application For Eligibility has been filed and for which Reimbursement is sought, unless otherwise specified in 503 CMR 2.00.

Closure or Closed, the permanent removal or abandonment in place of all the Underground Storage Tank Systems at a Facility without replacement of any tanks in accordance with 527 CMR 9.07.

Contractor/Vendor Certification, a written statement made under the pains and penalties of perjury on contractor/vendor letterhead by an agent of the contractor/vendor certifying the receipt of payment for work/services performed. The Contractor/Vendor certification shall, at a minimum, provide the month, year and amount of payment.

Damage to Natural Resources, damage to natural resources arising from a Release and included within a Final Judgment.

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2.02: continued

Deductible Limit, the amount to be deducted from an amount otherwise available for Reimbursement hereunder before any Reimbursement from the Fund and set out in 503 CMR 2.16(2).

Delivery Fee, the fee required by M.G.L. c. 21J, § 2 and 502 CMR 4.03, including all late fees and penalties.

Department of Environmental Protection or DEP, the Department of Environmental Protection.

Department of Fire Services or DFS, the Department of Fire Services.

Department of Revenue, the Department or DOR, the Department of Revenue.

Dispensing Facility, any Facility qualified to do business in the Commonwealth under the provisions of M.G.L. chs. 64A, 64E, and 64F, and dispensing Petroleum Products after April 2, 1991, at which Underground Storage Tanks located in Massachusetts are used to store gasoline or other fractions of Petroleum Products and from which gasoline or other fractions of Petroleum Products are dispensed directly to a motor vehicle or Boat as motor fuel; provided, that a Facility at which gasoline or any fractions of Petroleum Products are stored in an Underground Storage Tank that is a farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for commercial purposes or is owed by the Federal government, Commonwealth or any of its Political Subdivisions shall not constitute a Facility.

Eligible Claimant, a Claimant who satisfies the requirements of 503 CMR 2.08 as determined by the Board and who is not the recipient or intended recipient of grants pursuant to 503 CMR 2.23.

Eligible Release, to be eligible for Reimbursement, the costs, expenses or obligations must be incurred in connection with an Occurrence at a Facility; all Delivery and Annual Tank Fees must be paid in full before the filing of the Application for Eligibility and; the Release must have been assigned a DEP tracking number. If the source of the Release is unknown, the Petroleum Product shall be presumed to have been released from the existing or last UST System.

Proof of Payment, proof of payment by a Person of eligible costs incurred as the result of a Eligible Release from a UST system. Proof of Payment shall include canceled checks (copies of the front and back of the check) or a Contractor/Vendor Certification certifying that the contractor/vendor has received payment.

E.P. 290, the DFS registration of an UST System revised 10/90 or as amended.

E.P. 292, a DFS UST permit for removal and transportation to an approved tank yard.

Facility, Dispensing Facility or Former Dispensing Facility.

Final Judgment, the entry of an order or other action by a court of competent jurisdiction ending litigation on the merits, including without limitation, litigation ended by a court-approved settlement by the parties, with all rights of appeal being exhausted, waived or expired, except as arising under Rule 60 of the Massachusetts Rules of Civil Procedure or other similar provisions of Federal or other State law. The filing or entry of orders or other actions by a court pursuant to the following rules of the Massachusetts Rules of Civil Procedure (or similar provisions of Federal or other State law) shall constitute the ending of litigation on the merits: Rule 41(a), Rule 49(a), Rule 49(b), Rule 50(b), Rule 52(a), Rule 52(b), Rule 54(b), Rule 56 and Rule 58.

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2.02: continued

Former Dispensing Facility, a facility known by its real property address in the Commonwealth of Massachusetts which was required to maintain a Registration of a UST System on form F.P. 290 that was operating on or after April 2, 1991 and at which the UST System was Closed and not replaced before July 1, 1994 and was properly registered; provided, that a facility at which gasoline or any fractions of Petroleum Products are stored in an Underground Storage Tank that is a farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes or is owned by the Federal government, Commonwealth or any of its Political Subdivisions shall not constitute a Facility.

Full Compliance, compliance with those regulations contained in 527 CMR 5.00, 527 CMR 9.00 and 527 CMR 15.00 or similar then applicable regulations of DFS and the Board, imposed upon the Owner or Operator, as the case may be, of an Underground Storage Tank System, which requirements relate to the registration, construction, installation, maintenance, and operation, of an Underground Storage Tank System. Where the term compliance is used it shall mean Full Compliance.

Fund, the Underground Storage Tank Petroleum Product Cleanup Fund, established pursuant to M.G.L. c. 29, § 2S.

Gross Negligence, any act or failure to act by the Owner or Operator, in reckless disregard of the consequences, which causes or allows a Release to occur or to continue.

Marinas, any sheltered water area provided with docks, moorings, floats or buoys for Boats and with an UST System for fueling Boats.

Occurrence, an event which results in a Release regardless of the date of discovery. A Release caused by several sources or an unidentified source which require only a single Response Action shall be considered as one Occurrence. A subsequent Release from a new or different source at the same Facility where the Response Action has not been substantially completed shall not be a separate Occurrence.

Operator, any person in control of, or having responsibility for, the daily operations of the UST System.

Owner, any person having legal ownership of the UST System.

Person, any agency or Political Subdivision of the Federal government or the Commonwealth, any state, public or private corporation or authority, any interstate body, foreign nation, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons or a natural person, but shall not include any insurance carrier providing environmental impairment insurance to the Facility or insuring the risk arising from the UST System.

Petroleum Product, a product that is obtained from distilling and processing crude oil and that is capable of being used as a motor fuel for the propulsion of a motor vehicle, Boat or aircraft and was delivered to the Facility for such purpose. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, a Petroleum Product destined for use in chemical manufacturing or feedstock of that manufacturing, waste oil, fuel oil or any fuel used for heating purposes.

Political Subdivisions, cities, towns, districts, counties, commission including bodies politic and corporate. For the purposes of 503 CMR 2.00 Boards and Authorities of the Federal Government and the Commonwealth of Massachusetts shall be considered Political Subdivisions.

Property Damage, damage to real or personal property which is eligible to be reimbursed under the provisions of 503 CMR 2.12 and included within a Final Judgment.

Registration of UST System, notification to the DFS of the existence of an UST, regardless of whether or not the UST previously was Closed. The notification shall be made on a form F.P. 290 as amended.

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Reimbursement, reimbursement to a Claimant or payment to a third party on behalf of a Claimant of an amount approved by the Board.

Release, any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposal into the environment of a Petroleum Product from any part of an UST System, excluding emissions from the exhaust of an engine, which has been reported to DEP and assigned a DEP tracking number. A Release also includes a spill or overflow of Petroleum Product that occurs while being delivered into or removed from an UST System, provided that the transferring equipment was connected to the UST System and the Petroleum Product released made contact with a component of the UST System before the Release occurred.

Request for Reconsideration, a request filed under 503 CMR 2.18.

Response Action, a cost-effective, reasonable and necessary action performed after the Release notification made to the DEP pursuant to M.G.L. c. 21E § 7, and 310 CMR 40.0000 with regard to the existence or extent of contamination of groundwater, surface water or soils on or from a Site by Petroleum Products, including:

- (a) Site Assessment, including investigations, monitoring, testing, and other information-gathering activities to identify;
 - 1. The source, nature, and extent of a Release;
 - 2. The extent of danger to the health, safety, public welfare, and the environment; and
 - 3. Studies, services, and investigations to plan, manage, and direct Response Actions;and
- (b) Containment, including actions taken in response to a Release to prevent or minimize such Release so that it does not migrate or otherwise cause or threaten substantial danger to present or future health, safety, public welfare, or the environment. The term shall also include necessary and required security measures, including, without limitation, the building of fences for the purpose of limiting and restricting access to a location where there has been a Release; and
- (c) Removal, including the cleanup or removal of Released Petroleum Product from the environment, the disposal of removed Petroleum Product, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the health, safety, public welfare, or environment, which may result from the Release, provided, however, that a response shall not include removal or replacement of the UST System.

Site, an operating Dispensing Facility known by its real property address in the Commonwealth of Massachusetts which was required to maintain a Registration of an UST System on form F.P. 290 on or after April 2, 1991 and at which there has been a Release.

Site Assessment, those activities described in 503 CMR 2.02: Response Action(a).

Third Party Claim, any Claim filed by an Owner or Operator of an UST System for monetary damages based on a Final Judgment against such Owner or Operator, establishing that another person has sustained Bodily Injury, Property Damage, or Damage to Natural Resources proximately caused by the Release.

Underground Storage Tank or UST, any one or combination of tanks, including underground pipes connected thereto, at a Facility, used to contain an accumulation of Petroleum Product and the volume of which, including the volume of underground pipes connected thereto, is 10% or more beneath the surface of the ground. For the purposes of 503 CMR 2.00, the terms Underground Storage Tank and Underground Storage Tank System shall have the same meaning.

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Underground Storage Tank System or UST System, an Underground Storage Tank and its associated ancillary equipment and containment system at a Facility. Associated ancillary equipment includes all piping and equipment connected to the UST or its containment system, including, without limitation nozzles, hoses, pumps, piping, vents, transport fittings at the point of connection and vapor recovery piping and equipment. For the purposes of 503 CMR 2.00, the terms Underground Storage Tank and Underground Storage Tank Systems shall have the same meaning. In addition, for the purposes of 503 CMR 2.00, an UST System does not include a fueling system that is designed for or is otherwise used primarily to fuel aircraft.

Willful or Reckless Conduct, any act or failure to act by the Owner or Operator in intentional disregard of the consequences, which causes or allows a Release to occur or to continue.

2.03: General Provisions

(1) Authority. 503 CMR 2.00 is promulgated by the Board pursuant to the authority granted by M.G.L. c. 21J, as amended. 503 CMR 2.00 should be read together with M.G.L. c. 21J, as amended, which has important substantive requirements not repeated in 503 CMR 2.00. The provisions of 503 CMR and its appendices shall apply equally to new and existing regulations.

(2) Severability. The provisions of 503 CMR 2.00 are severable, and if any provision or the application to any Person or circumstance is held invalid, such a determination shall not affect other provisions or applications of those provisions which can be given effect without the invalid provision or application.

(3) Effective Date. 503 CMR 2.00 shall take effect on February 6, 1998.

(4) Computation of Time. For the purpose of administering 503 CMR 2.00, any time period prescribed or referred to in 503 CMR 2.00 or in any determination issued pursuant to 503 CMR 2.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day in which the offices of the Board are closed, the deadline shall run until the end of the next business day. If the time period prescribed or referred to is less than seven days, only days when the offices of the Board are open shall be included in the computation.

(5) Accurate and Timely Submittals.

(a) No Person shall make any false, inaccurate, or misleading oral or written statement in any application, record, report, plan, or statement which that Person submits, or is required to submit, to the DOR or the Board pursuant to 503 CMR 2.00 or to any order issued by the Board or the DOR.

(b) Any application, record, report, plan, or statement which any Person is required to submit to the Board or the DOR shall be submitted within the time period prescribed in M.G.L. c. 21J, 503 CMR 2.00, or any order issued by the Board, unless otherwise specified by the Board.

(c) Timely receipt of documents shall be evidenced by a date stamp of the Board. The date evidenced by the date stamp shall control unless the Claimant contests the date by presenting proof of filing or submission by a receipt from Registered or Certified postage prepaid United States mail, properly addressed, or by a receipt from a regionally-recognized overnight carrier. Filings or submissions may also be personally delivered to the addressee with an additional, return copy to be date stamped for proof of filing or submission.

(d) Any application, record, report, plan, or statement which any Person is required to submit to the Board or the DOR shall be sent to the addressee designated by the Board. To receive information on designated addressees and general information on the M.G.L. c. 21J program, contact:

The Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review
Board (UST Board)
Department of Revenue
One Ashburton Place, Room 1310
Boston, MA 02108

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(6) Accurate and Complete Record Keeping.

(a) A Claimant shall keep all records relating to any Claim for at least four years from the date on which the Claim was reimbursed or otherwise disposed of by the Board. Upon the written request of the Board or the DOR, these records will be made available to the Board or the DOR, at any reasonable place within the Commonwealth designated by the Board or the DOR.

(b) No Person shall make any false or misleading statement in any record, report, plan, file, log, or register which that Person keeps, or is required to keep, pursuant to 503 CMR 2.00 or to any order of the Board. Any record, report, plan, file, log, or register which any Person is required to keep shall be filled out completely and otherwise kept in compliance with 503 CMR 2.00 and/or with any order issued by the Board.

(c) Any source of reimbursement related to a Release, including but not limited to insurance coverage, shall be reported to the Board with the Application for Eligibility or within 21 days of a request by the Board or the DOR. Failure to submit the information may subject a Person to the sanctions set forth in M.G.L. c. 21J, § 12 and 503 CMR 2.00.

(d) The Fund will reimburse those amounts unreimbursed by any other source of payment. If a Claimant has sought reimbursement from another source, including insurance, for any cost, expense, or obligation for which a Claim is filed hereunder, the Claimant must inform the Board and provide any documentation relating to such other possible reimbursement requested by the Board. A Claimant may, on its own initiative or shall, at the request of the Board, assign, in whole or in part, its claim for reimbursements from another source, including insurance, to the Fund. If the Claimant receives reimbursement for a Claim from other source(s) for any specific costs, expenses or obligations previously reimbursed by the Fund, the Claimant shall return to the Fund the amount reimbursed by the Fund.

(7) Certification.

(a) Any Person submitting an Application for Eligibility or an Application for Reimbursement pursuant to 503 CMR 2.00, or otherwise specifically required by the Board, shall make the following Certification in conjunction therewith:

"I certify under the penalty of perjury that to the best of my knowledge and belief the statements made and information given herein are true as of the date hereof. I further certify that this submission is in compliance with M.G.L. c 21J and 503 CMR 2.00. I hereby consent to all audits of payment and necessary inspections made to verify the accuracy of any submission to the Board and made pursuant to law and incidental to the issuance of licenses, registrations, permits, certificates and the operation of an UST System. I am aware that there are significant penalties for submitting false information, including possible fines, civil penalties and imprisonment. I further certify that I am authorized to execute this form." Further, on the Application For Reimbursement, the following shall be added to the above:

"I agree to return any erroneous payment to the Fund within ten days of either the receipt of the erroneous payment or the receipt of a written notice from the Board that an erroneous payment was made."

(b) The certification required by 503 CMR 2.03(7) must be made by one of the following:

1. If a corporation, by an officer of the corporation or an individual designated by a Power of Attorney to act on behalf of the corporation for purposes of 503 CMR 2.00;
2. If a partnership, a sole proprietorship, or trust, by a general partner, the sole proprietor, or a trustee, respectively; or
3. If any other entity, by a principal or an individual designated by a Power of Attorney to act on behalf of the principal for purposes of 503 CMR 2.00.

(8) Conflicts of Interest. A Board member who complies with the provisions of M.G.L. c. 268A shall be deemed to be in compliance with the limitation set forth in the last sentence of the first paragraph of M.G. L. c 21J, § 8.

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(9) Effective Date for Dispensing Facilities for Boats at Marinas. References in 503 CMR 2.00 to the dates of April 1, 1991 or April 2, 1991 shall in the case of Marinas which dispensed Petroleum Product as of July 1, 1992, be references to the dates July 1, 1992 or July 2, 1992, respectively.

(10) Reproduction of Forms.

(a) All applications and other forms may be reproduced or computer generated provided that copies are reproduced identically or as close to identical as feasible.

(b) An Application for Reimbursement - Listing may be presented in a computer spreadsheet format provided it is in the same format and is otherwise clearly legible.

2.06: Seeking Reimbursement

(1) To obtain reimbursement for Response Action Costs and Third Party Claims or both: a Person must demonstrate to the Board that a Certificate of Compliance is in force for the Site, the Release is an Eligible Release, the Person is an Eligible Claimant and that the costs, expenses and obligations incurred are eligible for Reimbursement all according to M. G. L. c. 21J, 503 CMR 2.00 and Appendix 3.

(2) Applying for reimbursement requires satisfying three steps within the filing deadlines established by 503 CMR 2.00 and from time to time by the Board:

(a) Applying for a Certificate of Compliance (See, 503 CMR 2.07);

(b) Applying for Eligibility (See, 503 CMR 2.09) and;

(c) Applying for Reimbursement (See 503 CMR 2.10).

(3) Deadlines. To ensure the continuing financial soundness of the Fund and the proper administration of the Fund, 503 CMR 2.00 imposes filing deadlines including but not limited to deadlines for Certificates of Compliance, (See 503 CMR 2.07) the Board Acceptable Site Assessment, (See 503 CMR 2.07) Applications for Eligibility, (See 503 CMR 2.09) Claims for Reimbursement, (See 2.10) Requests for Reconsideration (See 503 CMR 2.18) and civil court actions (See 503 CMR 2.22)

2.07: Applying for a Certificate of Compliance/Compliance with Laws and Regulations

NOTE: Possession of a Certificate of Compliance does not eliminate the Owner or Operator's obligation to continue to comply with the day to day requirements of the law applicable to the operation and maintenance of the Underground Storage Tank or Underground Storage Tank System, including but not limited to 527 CMR 9.00, 527 CMR 5.00 and 527 CMR 15.00, or any other applicable requirement of law.

(1) A Claimant must demonstrate that the Owner or Operator of the UST System from which the Release occurred was in Full Compliance at the time of the Occurrence or for Dispensing Facilities which had an Occurrence before July 1, 1994, at the time an Application for Certificate of Compliance is filed if filed on or before April 1, 1995, or as otherwise described in section 2.07.

(2) Full Compliance described in 503 CMR 2.07(1) shall be demonstrated in the following ways:

(a) For a UST System operating on a Dispensing Facility on or before April 1, 1995, the Owner or Operator shall submit to the Board an Application for a Certificate of Compliance, as set forth in 503 CMR 2.07(2)(c), on or before April 1, 1995 [NOTE: 503 CMR 2.09 and 503 CMR 2.25 imposes earlier deadlines];

(b) For a Dispensing Facility with a UST System which did not submit an Application for a Certificate of Compliance on or before April 1, 1995 or pursuant to section 2.07(2)(f). In addition to the requirements of 503 CMR 2.07(2)(c), a Board Acceptable Site Assessment (BASA) shall be performed.

The Applicant shall submit:

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1. The original BASA together with an Application for Certificate of Compliance to the Board for approval.
 2. The Board will approve or deny a BASA within 30 days of receipt or seek further information consistent with the provisions of 503 CMR 2.00 as the Board deems necessary.
- (c) An Applicant for a Certificate of Compliance shall submit to the Board:
1. An Application for Certificate of Compliance using the form set out in Appendix 1, as amended; and
 2. The Application for Certificate of Compliance shall be certified by a Professional Engineer (P.E.) currently registered with the Commonwealth of Massachusetts and familiar with UST Systems.
 3. The Board shall:
 - a. approve the application and issue the applicant a Certificate of Compliance if the application complies with these provisions; or
 - b. deny the application if the application fails to comply with these provisions; or
 - c. seek further information consistent with the provisions of 503 CMR 2.00 as the Board deems necessary.
 4. The Board will approve or deny an Application for Certificate of Compliance within 30 days of receipt of All Necessary Information.
- (d) An Applicant for Renewal of a Certificate of Compliance shall submit to the Board:
1. Application for Renewal of a Certificate of Compliance using Appendix 1R, as amended; and
 2. If any substantial modification has occurred since the issuance of the current Certificate of Compliance, the application shall be certified by a Professional Engineer (P.E.) currently registered with the Commonwealth of Massachusetts and familiar with UST Systems. For purposes of 503 CMR 2.07(2), a "substantial modification" shall include the addition or removal of an underground storage tank or its associated piping, which significantly affects the physical integrity of a UST System or its monitoring system.
 3. The Board shall:
 - a. approve the application and renew the applicant's Certificate of Compliance if the application complies with 503 CMR 2.00; or
 - b. deny the application if the application fails to comply with 503 CMR 2.00; or
 - c. seek further information consistent with the provisions of 503 CMR 2.00 as the Board deems necessary.
 4. The Board will approve or deny an Application for Renewal of Certificate of Compliance within 30 days of receipt of All Necessary Information.
- (e) For a Former Dispensing Facility Full Compliance shall be demonstrated as provided in 503 CMR 2.25.
- (f) An applicant may submit an Application for a Certificate of Compliance without a BASA between February 1, 1998 and June 2, 1998, subject to the provisions of 503 CMR 2.07(2)(c) and 2.17(1) for a Facility that:
1. was a Dispensing Facility on April 1, 1995;
 2. as of April 1, 1995 had not been the subject of an Application for a Certificate of Compliance (or had applied for a Certificate of Compliance and been rejected); and
 3. has remained in continuous operation and not ceased dispensing Petroleum Product for more than six consecutive months after April 1, 1995.
- (g) An Applicant may submit an Application for a Certificate of Compliance at any time together with a BASA (as required by 503 CMR 2.07(2)(b)). The application shall be subject to the provisions of 503 CMR 2.07(2)(c) and 2.17(1).
- (3) If the Board has not approved or denied an Application for Certificate of Compliance or an Application for Renewal of a Certificate of Compliance within 30 days of receipt of All Necessary Information, a Claimant may submit to the Board, in support of an Application For Eligibility, a copy of the Application for Certificate of Compliance or Application for Renewal of Certificate of Compliance along with proof showing that the 30 day time period has expired. The Claimant must then subsequently supplement the Application for Eligibility upon receipt of the approved Certificate of Compliance.

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(4) If a BASA approval by the Board is required in connection with an Application for Certificate of Compliance and the Board has not approved or disapproved a BASA within 30 days of receipt an Applicant may submit to the Board, in support of an Application for Certificate of Compliance a copy of the BASA as previously submitted to the Board, along with proof showing the 30 day time period has expired. The Applicant must then subsequently supplement the Application for Certificate of Compliance upon receipt of a Board approved BASA.

(5) No Claim shall be approved for reimbursement until the Board has received a current Certificate of Compliance for the relevant UST System. At the time a Claimant files an Application for Eligibility pursuant to 503 CMR 2.09, the Claimant shall submit to the Board a current Certificate of Compliance except as otherwise provided in 503 CMR 2.07(3).

(6) Certificates of Compliance shall be valid for the following time periods.

(a) All Certificates of Compliance shall expire on December 22, 1998. This deadline shall apply regardless of when the Certificate of Compliance was issued, unless a revised Appendix 1 or 1R is submitted with an certification attached certifying "I certify under penalty of perjury that to the best of my knowledge and belief the UST System is in Full Compliance with state and federal UST regulations for December 22, 1998.

(b) If all USTs and appurtenances have been Closed, removed or abandoned and not replaced after July 1, 1994, a Certificate of Compliance shall be valid without expiration until the Site has been remediated in compliance with 310 CMR 40.0000 and all Eligible Claims arising therefrom have been reimbursed from the Fund. The Claimant shall submit F.P. 290 and F.P. 292 forms to evidence Closure of the UST System. If however, an Application for Eligibility has not been filed within 365 days of the date of either Closure, removal without replacement or abandonment of all the UST's systems at a Facility the Certificate of Compliance shall terminate immediately. The Owner shall receive written confirmation of the termination of the Certificate of Compliance .

(7) (a) If, at any time after the approval of an Application for Certificate of Compliance the Board obtains information or discovers that the UST System is not or was not in Full Compliance, the Board shall notify the certificate holder in writing. The Board may revoke the Certificate of Compliance until the UST System is restored to Full Compliance and may postpone approval and payment or deny approval and payment for any Claims relating to a Response Action at the applicable Site listed on the Certificate of Compliance until the UST System is restored to Full Compliance. The date of the non-compliance will be noted by the Board. Within seven days of notification that the non-compliance has been corrected the Board will reinstate the Certificate of Compliance and may authorize approval or payment of any Claims or will notify the certificate holder that the UST System is not in compliance.

(b) If a Permit (F.P. 290, Part 3) to maintain an UST System is revoked or expires (pursuant to 527 CMR 9.00) or the Certificate of Compliance is revoked, terminated or expires, the Facility shall not be in Full Compliance and any Claims arising from the Facility shall not be reimbursed for those costs, expenses and obligations that are incurred, become due or have been paid within the time period after revocation, termination or expiration. If a Certificate of Compliance expires the Certificate of Compliance will automatically terminate 30 days from the expiration date without the need for further notice pursuant to 503 CMR 2.07(9).

(c) A Certificate of Compliance shall not expire on the expiration date if a Renewal of Certificate of Compliance for Dispensing Facilities is pending in the office of the:

Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review
Board (UST Board)
Department of Revenue
One Ashburton Place, Room 1310
Boston, MA 02108

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(9) Failure to Renew a Certificate of Compliance.

- (a) A Certificate of Compliance shall be revoked for failure to renew. Before revoking the Certificate of Compliance the Board shall notify the Owner in writing at the address listed on the latest F.P. 290. The Board shall forward two notices of revocation. The first notice shall be by U.S. Mail. The second notification shall be sent U.S. Certified Mail, return receipt requested, after the expiration date. The Owner will have 30 days from the date of receipt to submit a renewal application to the Board. Failure to submit a renewal within 30 days of receipt of the second notice will result in revocation of the Certificate of Compliance.
- (b) If a Certificate of Compliance is revoked the Owner or Operator may re-apply for a Certificate of Compliance according to 503 CMR 2.07(2)(b) or 503 CMR 2.07(2)(f).

(10) Revocation of a Certificate of Compliance.

- (a) Certificate of Compliance may be revoked if the Board determines any of the following:
1. a failure to pay Annual Tank Fees or;
 2. a failure to pay Delivery Fees or;
 3. a failure to provide leak and corrosion prevention test results within 21 days of a written request from the Board or;
 4. a failure to maintain any state mandated leak prevention/detection and corrosion prevention equipment and documentation for the relevant UST System.
- (b) The Board will notify the Owner in writing of the reason(s) for and the effective date of the revocation. The Board shall deny approval and payment of any Claims relating to a Response Action at the Site listed on the Certificate of Compliance until the reason for revocation is corrected. Any Claims arising from the Facility shall not be reimbursed for those costs, expenses and obligations that are incurred, become due or have been paid within the time period after revocation.
- (c) The Board will reinstate the Certificate of Compliance and may authorize the approval or payment of additional Claims within seven days of notification to the Board that reason for revocation is corrected or will notify the Owner that the Certificate of Compliance remains revoked. Revocation of a Certificate of Compliance is a final action of the Board for the purposes of Reconsideration.

2.08: Eligible Claimants

To Be eligible for Reimbursement from the Fund, a Claimant must be:

- (1) A Person who has incurred or will incur allowable costs, expenses, and obligations as a result of:
- (a) Taking a Response Action; or
 - (b) paying a Final Judgment for Bodily Injury or Property Damage to a third party or Damage to Natural Resources; or
 - (c) Otherwise incurring allowable expenses, costs, and obligations as a result of an Eligible Release; and
- (2) One of the following:
- (a) An Owner or Operator of the current UST System or an Owner or Operator of the last UST System at a Former Dispensing Facility who
 1. Has paid all Annual Tank Fees and Delivery Fees.
 2. Demonstrates Full Compliance pursuant to 503 CMR 2.07.
 3. For the purposes of 503 CMR 2.08(2), an Owner or Operator shall not include any agency or Political Subdivision of the Federal Government, the Commonwealth or any other state or foreign nation.
 - (b) A successor in ownership of the UST System described in 503 CMR 2.08(3) until such time as a new Certificate of Compliance is issued; or
 - (c) A Person acting on behalf of an Owner or operator described in 503 CMR 2.08(3) or on behalf of a successor in ownership described in 503 CMR 2.08(3) pursuant to a contract who takes a Response Action.
 - (d) An Owner or operator who files a Third Party Claim which satisfies the requirements of 503 CMR 2.12.

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(3) For the purposes of Claims filed by a Person other than the Owner of a UST System, such Person shall obtain and submit to the Department written authorization from the Owner or from a court of competent jurisdiction to file Claims with the Board.

2.09: Application for Eligibility

(1) An Application for Eligibility is solely to determine eligibility for Reimbursement. An Application for Eligibility (Appendix 2) must be filed within the following time periods:

(a) within 365 days of reporting a Release to the DEP and receiving a DEP tracking number; or

(b) within 365 days after Closure of the UST System, whichever is later, unless one of the following applies:

1. If a report of an Occurrence has been made to DEP after July 1, 1994 and before receiving the Certificate of Compliance, then an Application for Eligibility shall be filed with the Application for Certificate of Compliance between February 1, 1998 and June 1, 1998. Claims for Reimbursement submitted prior to July 23, 2007 shall be subject to a 20% reduction from the allowable costs, obligations and expenses for that Occurrence. Claims for Reimbursement filed on or after July 23, 2007 shall be subject to a 5% reduction from the allowable costs, obligations and expenses for that Occurrence. These Claims shall be for eligible costs, expenses and obligations paid within 180 days of the receipt of the Application for Eligibility by the Board.

2. For those Owners who received a Certificate of Compliance pursuant to 503 CMR 2.07(2)(f), an Application for Eligibility shall be filed pursuant to 503 CMR 2.09(1)(a), or (b). Claims for Reimbursement submitted prior to July 23, 2007 shall be subject to a 20% reduction from the allowable costs, obligations and expenses for that Occurrence. Claims for Reimbursement filed on or after July 23, 2007 shall be subject to a 5% reduction from the allowable costs, obligations and expenses for that Occurrence. These Claims shall be for eligible costs, expenses and obligations paid within 180 days of the receipt of the Application for Eligibility by the Board.

3. Any reductions set forth in 503 CMR 2.09(1)(b) may be modified by the Board subject to the Conference process specified in 503 CMR 2.18(7).

(2) The Claimant will thereafter furnish the Board with such additional information as the Board deems necessary to determine that the Release and the Claimant meet the requirements set forth in 503 CMR 2.00 and in M.G.L. c. 21J.

(3) An Application for Eligibility shall not be accompanied by Claims, receipted bills or other indicia of amounts paid, except if it is for a Final Judgment after April, 1, 1991, and before July 1, 1994 provided it is submitted within 180 days of entry of the Final Judgment.

(4) An Application for Eligibility will be considered complete upon its receipt, and review by the Board. The Board will confirm the status of the Application for Eligibility in writing.

(5) No Claim shall be submitted to the Board until the Board has made a favorable determination on the Application for Eligibility. If, at any time after a Claimant's Application for Eligibility has been approved, the Board obtains information or discovers that the UST System is not or was not in Full Compliance, the Board shall notify the Claimant in writing. The Board may revoke the Certificate of Compliance until the UST System is restored to Full Compliance and may postpone approval and payment or deny approval and payment for any Claims relating to a Response Action at the applicable Site until the UST System is restored to Full Compliance. The date of the non-compliance will be noted by the Board. Within seven days of notification that the non-compliance has been corrected the Board will reinstate the Certificate of Compliance and may authorize approval or payment of any Claims or will notify the certificate holder that the UST System is not in compliance.

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2.10: Applying for Reimbursement

(1) Form of Claims for Response Action.

(a) Any Claims for Response Actions after July 1, 1994 shall be made on Appendix 4. The Claims shall be accompanied by Proof of Payment, copies of all invoices and all backup documentation to the invoices.

(b) A Claimant may file multiple Claims for Reimbursement after July 1, 1994, in connection with a Response Action after the Board approves the Application for Eligibility. These Claims may be filed while the Response Action is occurring, but subject to the following conditions:

1. All Claims must be submitted no later than 365 days from the date of payment.
2. Claims for less than \$7500.00 may be submitted once every 90 days.
3. Claims greater than \$7500.00 may be submitted once a month.
4. No more than one Claim per month may be submitted regardless of amount;
5. When submitting a Claim, all expenditures to date not previously submitted should be submitted.
6. No Claim shall be approved by the Board to the extent it includes costs, expenses and obligations paid more than 180 days before the submission of the Application for Eligibility, except in the case of Claims subject to 503 CMR 2.09(1)(c)1. and 2.
7. Regardless of the amount, any Claimant who seeks Reimbursement for costs, expenses and obligations before they receive an eligibility determination must submit those costs, expenses and obligations within 90 days after receiving the eligibility determination.

(c) For the purposes of administering the program, a Claim for Reimbursement will be considered complete upon presentation to the Board for a vote. Within 45 days of presentation to the Board of a Claim for Reimbursement or, if later, within 45 days of presentation to the Board of any supplemental information requested by the Board or the DOR, the DOR will notify the Claimant in writing of the Board's determination as to the Claim for Reimbursement.

(2) Supplementing Claims.

(a) Before presenting a Claim to the Board for a vote the Board shall forward to the Claimant a claim review worksheet. The claim review worksheet shall list the DOR's recommendation for payment to the Board. The Claimant shall have 21 days to respond to the DOR's recommendation. Any supplemental information to substantiate the Claim shall include Proof of Payment and backup documentation.

(b) If the DOR receives supplemental information within 21 days the DOR shall review the Claim. The recommendation for payment may be adjusted upon receipt of supplemental information or audit.

2.11: Response Actions: Costs, Expenses and Obligations Allowable for Reimbursement

(1) 503 CMR 2.11 governs Reimbursements to Eligible Claimants for reasonable and appropriate costs, expenses and obligations for Response Actions pursuant to M.G.L. c. 21J, § 4(a)(1).

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- (2) To be eligible for Reimbursement, costs, expenses or obligations must be:
 - (a) Incurred by or on behalf of an Eligible Claimant, as defined in 503 CMR 2.08;
 - (b) In excess of the Deductible Limit;
 - (c) Subject to 503 CMR 2.16: Limitation on Reimbursements and Deductible Amounts.
 - (d) Incurred for Response Actions performed after April 1, 1991;
 - (e) Reasonable and appropriate as described in 503 CMR 2.11(3); and
 - (f) Incurred as a part of a Response Action to an Eligible Release
 1. The costs of the following activities are allowable for Reimbursement from the Fund as a part of a Response Action:
 - a. Rental, lease or purchase of any remediation equipment; provided that when the purchase price of the equipment listed in Appendix 3 under Tasks 21 and 22 is \$5,000 or greater:
 - i. The Claimant shall determine whether purchase is more cost-effective than a lease and the Claimant shall, upon request of the Board, furnish supporting documentation to the Board of its determination;
 - ii. The Claimant shall furnish documentation to the Board, if requested, that it is maintaining adequate casualty insurance on or can demonstrate to the Board its capacity to self-insure the remediation equipment;
 - iii. Title to the equipment remains with Claimant and Claimant agrees, if directed by the Board, to convey and dispose of the equipment as directed by the Board at the conclusion of its use; and
 - iv. Any rented, leased or purchased equipment shall be possessed and operated by the Claimant solely at its own risk.
 - b. Installation of test borings, monitoring wells, recovery wells and/or gaseous injection or extraction wells;
 - c. Removal, treatment, transport, reuse, recycling and/or disposal of Petroleum Products and Petroleum Product contaminated media and debris, including sludge, outside the UST System;
 - d. Provide for temporary and/or permanent replacement or alternative potable drinking water supply contaminated by Petroleum Products;
 - e. Development of assessment and remediation plans, including pilot testing and treatability tests;
 - f. Treatment, transport, reuse, recycling and/or disposal of Petroleum Product contaminated ground water and/or soil;
 - g. Sampling and analysis of released Petroleum Product, air, groundwater and/or soil;
 - h. Replacement or repair of blacktop or concrete directly related to the Response Action but not arising from tank removal or repair; and
 - i. hydrogeologic/aquifer tests.
 2. Costs that are not allowable for Reimbursement, include but are not limited to the following:
 - a. Retrofitting, relining or replacing UST Systems;
 - b. Loss of revenue because of shutdown due to a Release or the Response Action;
 - c. Rental of temporary virgin Petroleum Product storage tanks other than as part of the Response Action;
 - d. Expenses incurred initially to confirm a Release before receiving a DEP tracking number (e.g., UST tightness tests, UST Closure and Limited Removal Actions (LRA));
 - e. Landscaping expenses, including loss and replacement of trees, shrubs, or signs;
 - f. Cost of lost Petroleum Product;
 - g. All governmental, Federal, State and local oversight fees, permit fees, charges, cost of paid police details and necessary and required security details, compliance and permit fees;
 - h. Attorneys' fees, expert witness fees, court costs and other legal or litigation costs;
 - i. Interest payments or any finance charges;
 - j. Soil density tests not conducted as a part of the Response Action;
 - k. Environmental audits or pre-purchase site assessments unless performed as part of the Response Action;

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- l. Non-Petroleum Product hydrocarbon contamination testing not associated with the Response Action;
 - m. Expenses related to replace or treat a water supply system or well which are not directly caused or related to the Release or the Response Action;
 - n. Closure or removal of components of the UST System pursuant to 527 CMR 9.07(H) or 9.07(I);
 - o. Replacement or repair of blacktop or concrete not directly related to the Response Action;
 - p. Demolition or repair of buildings, unless it can be demonstrated to the Board that the demolition or repair was more cost effective than performing the cleanup without the demolition or repair;
 - q. Small tools except as required for the Response Action and listed on Appendix 3;
 - r. Preparation and/or filing of Claims and appeals;
 - s. Replacement, closure and/or abandonment of water supply systems or well not directly affected by the Release;
 - t. Costs incurred prior to notification to the DEP of the Release and the receipt of a DEP tracking number;
 - u. Ordinary business expenses or capital improvements, including expenses that would have been incurred in the course of ordinary tank management and replacement;
 - v. Punitive damages, civil or administrative penalties, or criminal fines;
 - w. Any other costs (including any UST compliance costs) not directly related to the Response Action;
 - x. Costs arising in connection with conveyance of real and personal property, unless it is demonstrated to the Board that such conveyance was more cost effective than another clean-up approach and pre-approved by the Board; and
 - y. Costs attributable to the time and expense of an Owner, Operator, or principal or employee of the Owner or Operator in connection with the Response Action; and
 - z. Costs that are not directly related to the Response Action.
3. The Board will determine whether any costs not listed in 503 CMR 2.11(2) shall be reimbursed.

- (3) Reasonable and appropriate Reimbursements shall be determined by the following:
- (a) Appendix 3 to 503 CMR 2.00 contains a Reimbursement Fee Schedule that sets forth the Reimbursements the Board has determined to be reasonable and appropriate for certain costs, expenses or obligations of Response Actions incurred after July 1, 1994.
 - (b) For activities undertaken after July 1, 1994 and not covered by the Reimbursement Fee Schedule in Appendix 3, reasonable and appropriate Reimbursements shall be determined as provided in 503 CMR 2.11(3).
 1. Before undertaking activities, the Claimant shall obtain bids, for identical services from at least three independent contractors or in another manner approved by the Board.
 2. Whenever the time required to obtain Bids would endanger the environment, the health and safety of the public, prevent or delay the use of innovative technologies or otherwise halt the Response Action a Claimant may proceed with activitie(s) not covered by the Reimbursement Fee Schedule without obtaining bids.
 3. In the case of bidding, the Board shall reimburse at the rate of the lowest bid and all bids shall be obtained and reported to the Board on the form(s) included in Appendix 5, unless, the Claimant can demonstrate a more cost effective activity(ies).
 - (c) The Board reserves the right to determine allowable Reimbursements for reasonable and appropriate costs, expenses and obligations incurred after July 1, 1994 and such allowable Claims shall be reimbursed at a rate of 100% over a time period(s) determined by the Board.

2.12: Bodily Injury and Property Damage to Third Parties: Costs, Expenses and Obligations Allowable for Reimbursement

- (1) 503 CMR 2.12 governs payments to reimburse Owners or Operators for Third Party Claims.

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- (2) The Owner or Operator shall send the Board a copy of any Final Judgment and shall file an application for Reimbursement within 180 days of the entry of the Final Judgment.
- (3) To be eligible for Reimbursement, a Final Judgment must be:
 - (a) Against an Eligible Claimant, and arising from an Eligible Release;
 - (b) In excess of the Deductible Limit;
 - (c) Unreimbursed by any other source of payment, including insurance. If the Claimant receives Reimbursement from any other source for costs, expenses or obligations reimbursed by the Fund, the Claimant must return to the Fund the amount reimbursed by the other source; and
- (4) To be eligible for Reimbursement, a Final Judgment must be:
 - (a) in connection with costs incurred or damages sustained by the third party after April 1, 1991.
 - (b) Reasonable and appropriate as described in 503 CMR 2.12
 - (c) Unrelated to any material business relationship between the third party and the Claimant.
 1. Final Judgments based on the following specific types of damages are eligible for Reimbursement:
 - a. Temporary and/or permanent relocation costs;
 - b. Provide for temporary and/or permanent replacement or alternative potable drinking water supply contaminated by Petroleum Products.
 - c. A cost-effective method of assessment, cleanup and/or disposal of contaminated soils and debris necessary and consistent with 310 CMR 40.0000 (formerly cited as 310 CMR 40.000);
 - d. Response Action necessary to mitigate the effects of Property Damage;
 - e. Medical expenses;
 - f. Loss of wages or business income; or
 - g. Damages to Natural Resources not to exceed \$500,000, provided that there was a full adversarial trial.
 - (d) 1. If the Final Judgment against an Eligible Claimant results from a full adversarial trial, the Board will regard the existence of the Final Judgment as establishing that the Bodily Injury, Property Damage, or Damage to Natural Resources was proximately caused by an Eligible Release if otherwise in compliance with 503 CMR 2.00.
 2. If the Final Judgment against an Eligible Claimant results from less than a full adversarial trial, then the Board may require further information or verification regarding the relationship of the Bodily Injury, Property Damage, or Damage to Natural Resources to an Eligible Release, and may make an independent determination whether the injury or damages was proximately caused by an Eligible Release. If any settlement or judgment subject to 503 CMR 2.12 does not include findings of fact or the like, then the Board may require the Claimant to submit a letter from an attorney or other professional (acceptable to the Board) on behalf of the Claimant, setting forth a sufficient basis to enable the Board to determine that the Bodily Injury, Property Damage or Damage to Natural Resources was proximately caused by an Eligible Release. The letter and any statements made in connection with the letter shall be deemed a document in connection with compromise of a dispute.
 - (e) Assessments in Final Judgments based on the following will not be reimbursed:
 1. Any obligation for which the Claimant can be held liable under Workers Compensation, unemployment compensation, disability benefits, or similar law protecting employees of the Claimant;
 2. Any damages to an employee or independent contractor of the Claimant connected to the employment or contracting relationship;
 3. Any damages to any business associate of the Claimant (or to a related enterprise), including without limitation a partner, shareholder (except one owning or controlling less than 5% of a publicly traded company), or joint venturer of the Claimant or of a related enterprise, or by any business entity or individual (or the Owners, agents or employees thereof) that owns, leases, operates, or manages the Site, except to the extent arising from a business relationship with the Claimant which is unrelated or incidental to the Claimant's relationship to the Site.

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4. Any liability assumed by the Claimant under any contract or agreement if the liability would not exist without a contract or agreement.
- (f) Imposed to compensate the third-party for expenses related to one of the specific types of costs designated in 503 CMR 2.12(4)(c)1.
 1. Final Judgments based on 503 CMR 2.12 are not eligible for Reimbursement. This exclusion encompasses, without limitation, assessments based on:
 - a. Pain and suffering;
 - b. Loss of consortium;
 - c. Fear of future harm or disease;
 - d. Medical monitoring in the absence of present harm or disease;
 - e. Punitive damages, civil penalties or criminal fines;
 - f. Damages in excess of the actual and verifiable costs incurred by the third-party for one of the types of damage listed in 503 CMR 2.12;
 - g. Emotional distress;
 - h. Diminution of property value;
 - i. Attorneys fees, expert witness fees and other similar costs associated with litigation or court-ordered arbitration; or
 - j. Any off-site rents for the placement and/or operation of remediation equipment or recovery wells.
 2. Eligible Reimbursements for Final Judgments shall be governed by the following:
 - a. Appendix 3 contains a Reimbursement Fee Schedule that sets forth charges representing the maximum amounts the Board will regard as reasonable and appropriate for certain costs.
 - b. For activities not covered by the Reimbursement Fee Schedule in Appendix 3, reasonable and appropriate amounts for the different types of damages shall be determined by the Board on a usual and customary standard.

(4) Claims arising from civil court action.

- (a) A Claim under 503 CMR 2.12 shall be submitted within 180 days after the entry of a Final Judgment against the Owner or Operator.
- (b) Only one Claim may be filed for each Final Judgment except as set out below. If a Final Judgment requires payment over time, a Claimant may file Claims and the Board may schedule Reimbursements according to the Final Judgment. If the Final Judgment benefits multiple persons, the Board may treat each person independently or as a group as the Board determines.
- (c) Any Claim arising from a Final Judgment shall be filed as set forth in Appendix 6, and shall include a copy of the Final Judgment, including information to satisfy the requirements of 503 CMR 2.12.
- (d) The application shall list and be accompanied by documentation of amounts paid by the Claimant to the third party, and shall specify the purpose of the payments.
- (e) Upon request, the Claimant shall furnish the DOR with any additional information the DOR deems necessary to process the Claim.
- (f) For the purposes of administering the program, a Claim shall be considered complete upon its receipt, and review by the DOR and presentation to the Board. Within 45 days of submission to the Board of a Claim for Reimbursement or, if later, within 45 days of submission to the Board of any supplemental information requested by the Board, the Board will notify the Claimant in writing of the its determination on the Claim for Reimbursement.

2.13: Gross Negligence or Willful or Reckless Conduct

Notwithstanding any other provision of 503 CMR 2.00, no Reimbursement for any cost, expense, obligation, or Claim for Bodily Injury or Property Damage or Damage to Natural Resources that was proximately caused from Gross Negligence or Willful or Reckless Conduct on the part of the principal(s) of the Claimant or an employee(s) or agent(s) working under the specific direction of the principal(s) of the Claimant shall be eligible for Reimbursement from the Fund.

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2.14: Joint Payments

The Board shall make payments only to a Claimant who filed an Application for Eligibility that was approved by the Board. However, upon request from a Claimant, or on the Board's own initiative, the Board may make any or all of a payment in the form of a check payable jointly to such Person and another party.

2.15: Advance Payments and Contract Guarantees

- (1) No Reimbursement for a Response Action shall be made until the work has been performed.
- (2) Approval of an Application For Eligibility or an Application For Reimbursement, pursuant to 503 CMR 2.00, shall not be a guarantee or promise to pay by the Board on behalf of a Claimant to any third party.

2.16: Limitation on Reimbursements and Deductible Amounts

- (1) The total of all Reimbursements made by the Fund as the result of an Occurrence at a Dispensing Facility shall not exceed the total of:
 - (a) \$1.5 million for an Owner or Operator of a Dispensing Facility from which Petroleum Product is sold or transferred to other Dispensing Facilities or to the public or the Owner or Operator of a Dispensing Facility that handles an average of more than 10,000 gallons of Petroleum Product per month based on annual throughput for the calendar year previous to filing an Application for Eligibility; or
 - (b) \$500,000 for an Owner or Operator of a Dispensing Facility who does not qualify under 503 CMR 2.15(1)(a).
 - (c) For purposes of 503 CMR 2.16(1)(a) and (1)(b):
 1. All Reimbursements pursuant to M.G.L. c. 21J, § 4(a)(1) and 503 CMR 2.10 (Response Action); plus
 2. All Reimbursements pursuant to M.G.L. c. 21J, § 4(a)(2) and 503 CMR 2.11 (Damages to Third Parties); minus
 3. The Deductible Limit specified in M.G.L. c. 21J, § 5(b), 503 CMR 2.02 and 503 CMR 2.15(2).
- (2) The following amounts shall be the Deductible Limits per Occurrence:
 - (a) If the Owner or Operator owns one or more UST Systems at three or more Facilities, \$10,000.
 - (b) If the Owner or Operator owns one or more UST Systems at two Facilities, \$7,500.
 - (c) If the Owner or Operator owns one or more UST Systems at one Facility, \$5,000.

2.17: Percentage of Reimbursements to be Paid by the Fund

- (1) Reimbursements for the benefit of Eligible Claimants shall be 100% of allowable amounts pursuant to Appendix 3 and 503 CMR 2.00 after July 1, 1994, except as provided otherwise in 503 CMR 2.09.
- (2) Payment will be made to the extent that funds are available to do so. If Claims for Reimbursements exceed the limits established by M.G.L. c. 21J and 503 CMR 2.00, the Board shall reimburse the Claims for Reimbursement consistently with the purposes of M.G.L. c. 21J and in accordance with 503 CMR 2.00. The Board reserves the right to determine allowable Reimbursements for reasonable and appropriate costs, expenses and obligations incurred prior to July 1, 1994 and such allowable Claims shall be reimbursed at a rate of 100% over a time period(s) determined by the Board.

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2.18: Reconsideration

- (1) Any Claimant aggrieved by the denial of Claim or by any other action of the Board in connection with a Claim may within 60 days of the final determination or other final action of the Board, except a final action of the Board in response to a Request for Reconsideration, file a Request for Reconsideration with the Board. The filing of a Request for Reconsideration shall not be a pre-requisite to filing in court under M.G.L. c. 21J, § 11 and 503 CMR 2.00. A Request for Reconsideration shall be filed with the Board by submitting a clear and concise written statement of the matter as to which the Claimant seeks the Board to reconsider its final determination or other final action, and the reason the Board should make a favorable determination on such Request for Reconsideration. Such statement shall set forth either new evidence that was not reasonably available at the time of initial consideration, or the reason or reasons why the Board's initial decision was inconsistent with 503 CMR 2.00.
- (2) Upon receipt of a Request for Reconsideration, the Board shall determine whether the Request for Reconsideration has been filed in compliance with 503 CMR 2.00.
- (3) A Request for Reconsideration shall be found to be filed in compliance with 503 CMR 2.00 if it:
 - (a) was filed within the time limits and in the manner provided by 503 CMR 2.00; and
 - (b) requests the Board to reconsider a denial of a Claim or other final action in connection with a Claim, but does not include a challenge to the authority of the Board under 503 CMR 2.00 or any appendices hereto or under M.G.L. c. 21J, or to the legal effectiveness of 503 CMR 2.00 (such challenges may be pursued pursuant to 503 CMR 2.22 and M.G.L. c. 21J and as otherwise provided by law).
- (4) If the Board determines that a Request for Reconsideration has not been filed in compliance with 503 CMR 2.00, the Board shall deny the Request for Reconsideration in writing. The written notice of the Board denying the Request for Reconsideration shall constitute final action by the Board for purposes of 503 CMR 2.22.
- (5) If the Board determines that a Request for Reconsideration is filed in compliance with 503 CMR 2.00, the Board shall:
 - (a) review the matter for which the Claimant is seeking Reconsideration and on the basis of such review:
 - (b) reconsider the matter as to which the Request for Reconsideration was filed and take such action as it deems appropriate under 503 CMR 2.00
- (6) The Board shall notify the Claimant in writing of the Board's determination pursuant to 503 CMR 2.16(4)(e) and such action shall constitute final action of the Board in response to the Request for Reconsideration for purposes of 503 CMR 2.22.
- (7) Conference with a Three-member Panel
 - (a) A Claimant may request a Conference with a Three-member Panel of the UST Board. The Three-member Panel determines if the UST Fund Staff properly interpreted the provisions of M.G.L. c. 21J and 503 CMR 2.00 with respect to a particular Claim. The Three-member Panel, in its discretion, may review a Claimant's request for Reconsideration based on the Hardship provisions contained in 503 CMR 2.18(7)(d).
 - (b) All terms in 503 CMR 2.18(7) shall have the same meaning as the same terms described in M.G.L. c. 21J and 503 CMR 2.00. The following additional terms shall apply to 503 CMR 2.18(7):
 1. Conference. A scheduled meeting between a Claimant and/or representative and a Three-member Panel of the UST Board to discuss and to determine if the UST Fund Staff properly interpreted the provisions of M.G.L. c. 21J and 503 CMR 2.00 with respect to a particular Claim.
 2. Conference Determination(s) of the UST Board. The action(s) taken by the UST Board after receipt of the Decision(s) of the Three-member Panel.
 3. Decision(s) of the Three-member Panel. The recommendation(s) of the Three-member Panel to the UST Board based upon a review of the facts and circumstances presented by a Claimant and/or representative at a Conference or furnished by the Claimant and/or representative to the Three-member Panel after the Conference.

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4. Executive Director. The individual employed by the Department of Revenue and responsible for the oversight of the UST Fund.
 5. Hardship. The reason(s) described in 503 CMR 2.18(7)(d) that were the basis for the denial of a Claimant's Claim.
 6. Third Party Administrator Staff. The employees of the entity contracted by the Department of Revenue and responsible for the review of Claims.
 7. Three-member Panel. Three Members of the UST Board selected to review a matter presented by a Claimant and/or representative at a Conference.
 8. UST Fund Staff. The staff employed by the Department of Revenue that reports to the Executive Director and executes the responsibilities of the UST Fund.
- (c) The following administrative provisions shall apply to Conferences with a Three-member Panel of the UST Board:
1. A Conference with a Three-member Panel of the UST Board is available for any Request for Reconsideration decided by the UST Board after July 1, 2004.
 2. Only Claimants who filed a Claim and a Request for Reconsideration and were aggrieved at both the Claim and the Request for Reconsideration stages may request a Conference.
 3. A written request for a Conference must be filed within thirty calendar days of the mailing of the Board's written determination regarding the Claimant's Request for Reconsideration. Timely receipt of a request for a Conference is determined by the provisions of 503 CMR 2.03(5).
 4. A Claimant who filed an action in the nature of certiorari in either the supreme judicial court of the superior court may not request a Conference.
 5. The Executive Director may schedule a Conference with a Three-member Panel and shall notify the Claimant of the date, time and location of the Conference. The UST Board shall review all denials of Requests for a Conference.
 6. The chairperson of the UST Board shall appoint, at least seven days prior to the scheduled Conference, three Board members who will serve on the Three-member Panel. The chairperson of the UST Board shall designate one Board member to serve as the chairperson of the Three-member Panel.
 7. Conferences are held at the offices of the UST Program located at 200 Arlington Street, Chelsea, Massachusetts. A Claimant may request another location for the Conference. The Three-member Panel decides the location of the Conference.
 8. The Three-member Panel is responsible for conducting the Conference.
 9. The Claimant and/or representative may attend the Conference. A Claimant who is not present and is represented by another person shall execute a Power of Attorney appointing that individual his/her representative. Any member of the UST Program and the staff of the Third Party Administrator may attend.
 10. Conferences are informal and the rules of evidence do not apply. Testimony under oath is not required. A transcript or formal record of the proceeding is not made. The Three-member Panel may request that any matter(s) asserted as fact be sworn to under the pains and penalties of perjury.
 11. The designated chairperson of the Three-member Panel or the Executive Director will summarize the contested issues, allow the Claimant or representative to present the Claimant's position and allow a member of the UST Fund Staff to provide any additional information. The Three-member Panel may ask questions. The Chairperson of the Three-member Panel may limit the amount of time allowed the Claimant or representative to present the Claimant's position.
 12. The Three-member Panel may request additional information and shall establish a date for its submission. The UST Fund Staff shall have the opportunity to review and to comment on the additional information.
 13. The Three-member Panel may choose to not make a Decision. If the Three-member Panel does not make a decision, the Executive Director will consult with each member and determine the opinion of each member regarding the issue(s).
 14. The Executive Director will present the Decision of the Three-member Panel to the UST Board no later than the second scheduled UST Board meeting following the Conference or the receipt of the additional information.

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15. The Executive Director will present to the full UST Board the relevant facts, the contested issues and the Decision of the Three-member Panel. The UST Board shall issue a written Conference Determination and the written Conference Determination of the UST Board will be forwarded to the Claimant.

16. Conference Determinations of the UST Board may not be relied upon as precedent in subsequent or other matters within the jurisdiction of the UST Board.

17. The UST Board may make a Conference Determination that refers the request for reconsideration to the UST Fund Staff for further review. Any further review will conform to the procedural and substantive requirements of M.G.L. c. 21J and 503 CMR 2.00.

18. A Claimant aggrieved by the Conference Determination of the UST Board may seek relief pursuant to 503 CMR 2.22.

(d) The following provisions apply to requests by a Claimant for a Conference based on Hardship:

1. The Board may, in accordance with the purpose of M.G.L. c. 21J and 503 CMR 2.00, grant a Claimant a request for Conference if the request is based, in whole or in part, on the Claimant's presentation of a Hardship.

2. Only a Claimant who filed a Claim and a Request for Reconsideration and was aggrieved at both the Claim and the Request for Reconsideration stages can request a Conference based on Hardship.

3. A Claimant may request a Conference based on Hardship if the denial of a Claim, or a portion of a Claim, was based on an untimely filing pursuant to 503 CMR 2.10(1)(b)1., 503 CMR 2.10(1)(b)6., 503 CMR 2.10(1)(b)7. or 503 CMR 2.10(2).

2.19: Audits: Fraudulent Claims

The Board may conduct an audit of any Person reimbursed from or seeking reimbursement from the Fund. If the result of the audit indicates a Claim or any portion of a Claim made by a Claimant was improperly made or if the Board discovers in any other manner and at any time that a Claim or any portion of the Claim made by a Claimant was improperly made, the Board shall pursue such remedies as it deems appropriate, including:

- (a) offset of any monies owed to the Fund including, but not limited to, fines and penalties against future reimbursements to the Claimant; or
- (b) denial of acceptance as an Eligible Claimant.

2.20: Right of Offset

If the DOR determines that a Claimant is indebted to the Fund, the DOR shall request the Board to offset any indebtedness against any Reimbursement owed the Claimant for any Facility.

2.21: Enforcement

Any Person who violates any provision of M.G.L. c. 21J, or 503 CMR 2.00, shall be subject to the penalties provided under M.G.L. c. 21J, § 13, including fines, imprisonment or both, and may be barred from participation in any current or future Claim.

2.22: Civil Court Action

(1) Claims submitted to the Board pursuant to M.G.L. c. 21J, and procedures for acting on such Claims, including the provisions of 503 CMR 2.00, shall not be adjudicatory proceedings and shall not be subject to those provisions of M.G.L. c. 30A, or any other law, governing adjudicatory proceedings, except the provisions of 503 CMR 2.00 and the policies and practices of the Board. Any Claimant, pursuant to 503 CMR 2.08(2)(c), aggrieved by the denial of a Claim or by any other action of the Board in connection with a Claim may bring a civil action in the nature of certiorari pursuant to M.G.L. c. 249 §4. Any such civil action shall be commenced within 30 days of the date of the final determination or other final action of the Board. No legal action may be brought pursuant to M.G.L. c. 21J, 503 CMR 2.00 or any other law where the denial of a Claim or any other action on a Claim was based solely on insufficient available funds.

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(2) For purposes of 503 CMR 2.22:

(a) If no Request for Reconsideration is received by the Board pursuant to the provisions of 503 CMR 2.18(4), then a final action of the Board finding an applicant ineligible to receive Reimbursement from the Fund or denying or limiting Reimbursement from the Fund for a Claim shall take place 30 days after the day on which final written notice of the action is sent to the Claimant.

(b) If a Request for Reconsideration is received by the Board pursuant to the provisions of 503 CMR 2.18(4), then an action of the Board finding a Claimant ineligible to receive Reimbursement from the Fund or denying or limiting Reimbursement from the Fund for a Claim shall take place on the day on which final written notice of the Board's action in response to the Request for Reconsideration is sent to the Claimant. Any Reimbursement to the Claimant based on the Board's final action or on the Claim which is the subject of the Request for Reconsideration shall be deemed a partial Reimbursement pending resolution of the Request for Reconsideration.

(c) A Claimant's rights to certiorari appeal to the Superior Court under M.G.L. c. 21J, § 11 shall arise only on the date on which final action by the Board is taken or is deemed to have been taken pursuant to 503 CMR 2.22(2)(a) or (b).

2.23: Grants

M.G.L. c. 21J, §§ 4(c) and (d) establishes grant programs pursuant to which the Board shall dispense funds to cities, towns, districts and other bodies politic, not to include agencies or authorities of the Commonwealth and to the Department of Environmental Protection, respectively, subject to appropriation. These funds shall be dispensed by the Board separately, from the funds dispensed by the Board to reimburse Eligible Claimants and separately from funds made available to DEP pursuant to M.G.L. c. 21J, § 4(b).

2.24: Public Meetings of the Board

The Board shall hold public meetings on the second Thursday in May and October in each year or at other times as it may determine, on petitions from the public for changes in its rules and regulations. If after any such meeting, the Board deems it advisable to make changes to the regulations, the Board shall appoint a day for a public hearing pursuant to M.G.L. c. 30A. The Board on its own initiative may initiate changes to its regulations at any time, in Compliance with the provisions of M.G.L. c. 30A.

2.25: Reimbursement for Former Dispensing Facilities

(1) Former Dispensing Facilities must have filed for a Certificate of Compliance by January 31, 1995 and submitted an Application for Eligibility along with the Claim by January 31, 1995 for costs, expenses or obligations for:

- (a) Work performed after April 1, 1991, and before July 1, 1994; or
- (b) Payment of a Final Judgment on a Third party Claim entered before July 1, 1994 for damages incurred after April 1, 1991, and before July 1, 1994.

(2) At the time of filing an Application for Eligibility pursuant to 503 CMR 2.09(1)(c), the individual shall submit to the Board documentation that the Former Dispensing Facility was operating as a Dispensing Facility on or after April 2, 1991. The documentation shall include but not be limited to delivery receipts, sales information, licensing information, and advertisements. The Owner or Operator shall certify under the penalties of perjury that the Former Dispensing Facility was operating on or after April, 2, 1991 and all Annual Tank Fees and Delivery Fees pursuant to 503 CMR 2.02 have been paid.

(3) A Claim filed in connection with a Former Dispensing Facility shall be subject to all other requirements of 503 CMR 2.00 that are not in conflict with 503 CMR 2.25.

(4) The total of all Reimbursements made by the Fund as the result of an Occurrence of a Release at a Former Dispensing Facility shall not exceed the total of \$500,000 for the Reimbursements described in 503 CMR 2.16(1)(c).

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(5) Claims for Response Actions or civil court actions shall be submitted in compliance with 503 CMR 2.11 and 2.12.

List of Appendices:

- Appendix 1: Application for Certificate of Compliance for Dispensing Facilities
- Appendix 1A: Application for Certificate of Compliance for Former Dispensing Facilities
- Appendix 1R: Renewal Application for Certificate of Compliance for Dispensing Facilities
- Appendix 2: Application for Eligibility
- Appendix 3: Reimbursement Fee Schedule
- Appendix 4: Application for Reimbursement
- Appendix 5: Competitive Bidding, categories of activities
- Appendix 6: Third Party Claims Arising from a Civil Court Action

REGULATORY AUTHORITY

503 CMR 2.00: M.G.L. c. 21J.

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