

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

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

Section

- 2.01: Purpose and Scope
- 2.02: Definitions
- 2.03: General Provisions
- 2.06: Seeking Reimbursement
- 2.07: Applying for a Certificate of Compliance/Compliance with Laws and Regulations
- 2.08: Eligible Claimants
- 2.09: Application for Eligibility
- 2.10: Applying for Reimbursement
- 2.11: Response Actions, Costs, Expenses and Obligations Allowable for Reimbursement
- 2.12 : Bodily Injury and Property Damage to Third Parties: Costs, Expenses, and Obligations Allowable for Reimbursement
- 2.13: Gross Negligence or Willful or Reckless Conduct
- 2.14: Joint Payments
- 2.15: Advance Payments and Contract Guarantees
- 2.16: Limitation on Reimbursements and Deductible Amounts
- 2.17: Percentage of Reimbursements to Be Paid by the Fund
- 2.18: Appeals
- 2.19: Audits; Fraudulent Claims
- 2.20: Right of Offset
- 2.21: Enforcement
- 2.22: Civil Court Action
- 2.23: Grants
- 2.24: Public Meetings of the Board
- 2.25: Reimbursement for Former Dispensing Facilities
- 2.26: Severability

2.01: Purpose and Scope.

- (1) 503 CMR 2.00 governs the administration of Reimbursement from the Underground Storage Tank (UST) Petroleum Cleanup Fund Administrative Review Board created by St. 1990, c. 524, which constitutes M.G.L. c. 21J.
- (2) 503 CMR 2.00 provides 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) 503 CMR 2.00 enables 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 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) 503 CMR 2.00 ensures the continuing financial soundness of the Fund by providing 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) 503 CMR 2.00 simplifies 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.

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

2.01: continued

(6) All applications must be submitted electronically or in a form required by the Board. For electronic submission requirements, see the DOR UST Program website.

(7) All references to particular forms, documents or electronic processes in this regulation are current as of the date of promulgation and are deemed to include any replacement or successor form, document or electronic process as may be directed by the UST Board or UST Program.

2.02: Definitions

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

All Necessary Information. Includes without limitation, copies of the following documents: all UST Registration documentation required by MassDEP, the most recent Third Party Inspection report, a Marine Fueling Permit if applicable and, any information related to the construction, operation, and maintenance of the UST System, including the latest tank and 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 503 CMR 4.00: *Implementation of Underground Storage Tank Cleanup Fees for each Underground Storage Tank*, including all late fees and penalties.

Applicant. A Person who files an Application for a Certificate of Compliance, an Application for Renewal of a Certificate of Compliance, an Application for Eligibility, or an Application for Reimbursement.

Application for Certificate of Compliance. An application filed by an Applicant pursuant to 503 CMR 2.07, in a format specified by the Board.

Application for Eligibility. An application filed by an Applicant pursuant to 503 CMR 2.09 for a specific Site, in a format specified by the Board.

Application for Reimbursement. An application filed by a Claimant pursuant to 503 CMR 2.10, in a format specified by the Board.

Board. The Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board, as defined in M.G.L. c. 21J, § 8.

Board Acceptable Site Assessment. A Site Assessment showing the Dispensing Facility does not have any contaminant levels or Conditions that require notification to MassDEP and a Response Action, excluding MassDEP-defined Limited Removal Actions (LRAs). The Site Assessment report shall provide the level of diligence that 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 watercraft.

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 at the time of issuance, and in accordance with 503 CMR 2.07.

Certification. To make a written statement, as set forth in 503 CMR 2.03(5), signed by Applicant or potential Applicant attesting to the accuracy and completeness of the facts contained in a submission to the Board or the Department of Revenue.

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

2.02: continued

Claim. A request for Reimbursement for a specific Facility filed pursuant to 503 CMR 2.10 made in a format specified by the Board.

Claim for Reimbursement. A Claim that 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 Reimbursement is sought, unless otherwise specified in 503 CMR 2.00.

Closure or Closed. The removal or permanent closure in-place of all the Underground Storage Tank Systems at a Facility without replacement of any tanks in accordance with 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code* and 310 CMR 80.00: *Underground Storage Tank (UST) Systems*.

Conference. A scheduled appeal hearing pursuant to 503 CMR 2.18 between an Applicant and/or Applicant's 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 Application or if extenuating circumstances warrant further review and consideration.

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.

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

Decision(s) of the Three-member Panel, or Decision. The recommendation(s) of the Three-member Panel to the UST Board made after the Three-member Panel reviews a request by an Applicant or its representative at a Conference.

Deductible Limit. The amount to be deducted from an amount otherwise available for Reimbursement 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: *Delivery Fee*, including all late fees and penalties.

Department of Environmental Protection or MassDEP. The Massachusetts Department of Environmental Protection.

Department of Fire Services or DFS. The Massachusetts Department of Fire Services.

Department of Revenue. The Department or DOR, the Massachusetts Department of Revenue, UST Program, or the UST Fund Staff, including the Board's representative at DOR.

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 and registered with the MassDEP are used to store Petroleum Products and from which Petroleum Products are dispensed directly to a Motor Vehicle or boat as motor fuel; except an Underground Storage Tank that is 1,100 gallons or less capacity and is located on a farm or a residence and is used for storing Petroleum Product for non-commercial purposes; or is an Underground Storage Tank that is owned by the Federal government or the Commonwealth or any of its Political Subdivisions.

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.

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

2.02: continued

Eligible Release. A Release that is eligible for Reimbursement based on the approval of the Application for Eligibility in accordance with 503 CMR 2.09(6).

Executive Director. The individual employed by the Department of Revenue and responsible for the oversight of the UST Program and Staff.

Facility. Describes a Dispensing Facility or Former Dispensing Facility.

Final Judgment. The entry of an order or other action by a court of competent jurisdiction, including, without limitation, litigation ended by a court-approved settlement by the parties, with all rights of appeal being exhausted or waived or expired, except as arising under Rule 60 of the Massachusetts Rules of Civil Procedure or other similar provisions of Federal laws or the laws of any other state.

Former Dispensing Facility. A facility known by its real property address in the Commonwealth of Massachusetts that was required to register a UST System, 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; except an Underground Storage Tank that is 1,100 gallons or less capacity and is located on a farm or a residence and is used for storing Petroleum Product for non-commercial purposes; or is an Underground Storage Tank that is owned by the Federal government or the Commonwealth or any of its Political Subdivisions.

Full Compliance or Compliance. Compliance with 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*, 310 CMR 80.00: *Underground Storage Tank (UST) Systems*, or similar then applicable regulations of MassDEP, 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.

Fund. The Underground Storage Tank Petroleum Product Cleanup Fund Program, or Underground Storage Tank Program established pursuant to M.G.L. c. 21J.

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.

Hardship. The reason(s) that were the basis for a denial of an Application.

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

Motor Vehicle. Any on- or off-road motorized wheeled or tracked vehicle that is capable of self-propulsion, does not run on rails, and is not considered aircraft.

Occurrence. An event that results in a Release regardless of the date of discovery. A Release caused by several sources or an unidentified source that requires a 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.

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

2.02: continued

Petroleum Product. A product, or fraction of 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 or Boat and was delivered to the Facility for such purpose. Petroleum Product includes fuels of which a portion may be petroleum-based, which may be blended with ethanol, biofuels, and similar products that are used as a motor fuel for the propulsion of a Motor Vehicle or Boat. Petroleum Product does not include naphtha-type jet fuel, kerosene-type jet fuel, a product destined for use in chemical manufacturing or feedstock of that manufacturing, waste oil, fuel oil, or any fuel used for heating purposes.

Political Subdivision. A city, town, district, county, 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.

Proof of Payment. Proof of payment by a Person of eligible costs incurred as the result of an Eligible Release from a UST system. Proof of Payment shall include canceled checks (copies of the front and back of the check), bank records or other documentation acceptable to the Board.

Property Damage. Damage to real or personal property that is eligible for reimbursement under the provisions of 503 CMR 2.12 and that is the subject of a Final Judgment. Diminution of property value is not considered Property Damage for purposes of 503 CMR 2.00.

Registration of UST System. Notification to MassDEP of the existence of a UST, regardless of whether the UST is Closed. The notification shall be as specified by MassDEP.

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

Reimbursement Fee Schedule. The published rates for specific Response Actions, which include not-to-exceed rates for labor, equipment, and materials and a guidance workbook section to provide additional information on how these rates can be applied.

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 a UST System, excluding emissions from the exhaust of an engine, which has been reported to MassDEP and assigned a MassDEP release tracking number. A Release also includes a spill or overfill 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.

Removal. 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.

Renewal Application or Application for Renewal or a Certificate of Compliance. An application filed by an Applicant pursuant to 503 CMR 2.07(2)(d).

Request for Reconsideration. An appeal request filed pursuant to 503 CMR 2.18.

Response Action. A cost-effective, reasonable and necessary action performed after the Release notification was made to the MassDEP pursuant to M.G.L. c. 21E § 7, and 310 CMR 40.0000: *Massachusetts Contingency Plan* with regard to the existence or extent of contamination of groundwater, surface water, indoor air, sediment, or soils on or from a Site by Petroleum Products, including: Site Assessment, including investigations, monitoring, testing, and other information-gathering activities to identify the source, nature, and extent of a Release; the extent of danger to the health, safety, public welfare, and the environment; and studies, services, and investigations to plan, manage, and direct Response Actions; and containment, including

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

2.02: continued

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. Response Action shall also include necessary and required security measures, including the building of fences for the purpose of limiting and restricting access to a location where there has been a Release, and Removal.

RTN. Release Tracking Number issued by MassDEP.

Site. A Facility at which there has been a Release.

Site Assessment. Those activities described in 503 CMR 2.02: Response Action.

Substantially Completed. A Permanent Solution or a Permanent Solution with Conditions as defined in 310 CMR 40.0000: *Massachusetts Contingency Plan*, or as otherwise determined by the Board.

Third Party Claim. Any Claim filed by an Owner or Operator of a 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.

Third Party Inspection. This term shall have the same meaning as defined in 310 CMR 80.0000: *Underground Storage Tank (UST) Systems*.

Three-member Panel. Three members of the UST Board selected to review a matter presented by an Applicant and/or Applicant's representative at a Conference.

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. Underground Storage Tank or UST shall not include a freestanding container within a building. For the purposes of 503 CMR 2.00, Underground Storage Tank or UST includes an Underground Storage Tank System.

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, a UST System does not include a fueling system that is designed for or is otherwise used primarily to fuel aircraft.

UST Fund Staff, UST Staff, Staff of the Board, or Staff. Employees of the Department of Revenue that execute the responsibilities of the UST Program.

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) 503 CMR 2.00 should be read together with M.G.L. c. 21J, which has important substantive requirements not repeated in 503 CMR 2.00.

(2) 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 that initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed.

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

2.03: continued

(3) 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 that the 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) Unless otherwise determined by the Board, any application, record, report, plan, or statement required by the Board or DOR shall be submitted electronically and within the timeframes specified. To obtain information on electronic submissions and general information on the M.G.L. c. 21J program, *see* the Underground Storage Tank Program.

(4) Accurate and Complete Recordkeeping; Assignment of Claims.

(a) A Claimant shall keep all records relating to any Claim for a minimum of four years from the later of: the date on which the Claim submittal was reimbursed; or, the date that all rights of appeal pertaining to a final action of the Board have been exhausted. Upon the written request of the Board or DOR, these records shall be made available to the Board or DOR, at a location in the Commonwealth designated by the Board or DOR. The Board or DOR is permitted to investigate submissions based on available records beyond the four-year limitation period.

(b) No Person shall make any false or misleading statement in any record, report, plan, file, log, or register that the 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 that 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) A Person shall report to the Board with the Application for Eligibility, or subsequent to the Application for Eligibility within 60 days of discovery, or within 21 days of a request by the Board or DOR, any potential source of reimbursement related to a Release, including, without limitation, insurance coverage. Failure to submit the information may subject a Person to the sanctions set forth in M.G.L. c. 21J, § 13 and 503 CMR 2.00.

(d) The Fund shall not reimburse those amounts reimbursed by any other source. 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 within 60 days of filing its claim and provide any documentation requested by the Board relating to such other possible reimbursement. The Board may require a Claimant to assign its claim for reimbursement from another source or its rights to file a claim for reimbursement from another source, including insurance, to the Fund. This assignment may, in the Board's discretion and depending on the facts and circumstances, constitute a requirement that the Claimant turn over all or a portion of any funds it receives as reimbursement related to the Release from a source other than the Fund. It may also constitute a requirement that the insurer reimburse the Fund directly for all payments related to the Release. A Claimant may also assign such claims to the Fund on its own initiative. If the Claimant receives reimbursement for a Claim from another source for any cost, expense or obligation previously reimbursed by the Fund, the Claimant shall return to the Fund the amount reimbursed by the Fund within 30 days of receipt of the other reimbursement. If a Claimant receives reimbursement from another source that does not specifically identify a Claim that was reimbursed by the Fund, the Claimant shall return to the fund the portion of the reimbursement that is attributable to a Response Actions up to the amount previously reimbursed by the Fund. The Claimant must fully document and provide to the Board any *pro rata* calculation it makes in determining the correct portion of the unallocated reimbursement it receives that is attributable to such Response Action.

(5) Certification.

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

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

2.03: continued

"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. 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 or DOR 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. 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 or DOR that an erroneous payment was made."

(b) The certification required by 503 CMR 2.03(5) 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 a limited liability company (LLC), by a manager, member, or other individual designated in the Articles of Organization (as updated) or an individual designated by Power of Attorney to act on behalf of the LLC for purposes of 503 CMR 2.00.

(6) Conflict of Interest.

A Board member who complies with the provisions of M.G.L. c. 268A pertaining to conduct of public officials and employees shall be deemed to be in compliance with the provisions of the UST statute at M.G.L. c. 21J, § 8 related to qualifications and limitations by Board Members in their participation on Board matters.

(7) Reproduction of Forms.

All forms may be reproduced or computer-generated provided that copies are reproduced identically or as close to identical as feasible. In no case shall language substitutions be acceptable.

2.06: Seeking Reimbursement

(1) To obtain reimbursement for Response Action Costs and Third Party Claims, a Person must demonstrate to the Board or DOR that under M.G.L. c. 21J, and under 503 CMR 2.00: 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 such requirements include Board-approved exceptions to the extent allowed under M.G.L. c. 21J and 503 CMR 2.00

(2) Applying for reimbursement requires satisfying three steps within the filing deadlines established by 503 CMR 2.00 and 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 proper administration of the Fund, 503 CMR 2.00 imposes various filing deadlines, including 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* 503 CMR 2.10), *Requests for Reconsideration* (*see* 503 CMR 2.18), *Requests for Conferences* (*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

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

2.07: continued

System including, without limitation, 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code* and 310 CMR 80.00: *Underground Storage Tank (UST) Systems*, 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 that had an Occurrence before July 1, 1994, at the time an Application for Certificate of Compliance was filed if filed on or before April 1, 1995, or as otherwise described in 503 CMR 2.07.

(2) Full Compliance shall be demonstrated in the following ways:

(a) For a UST System operating at a Dispensing Facility, the Owner or Operator shall submit to the Board an Application for a Certificate of Compliance, including All Necessary Information as set forth in 503 CMR 2.07(2)(b) and (c).

(b) In addition to the requirements of 503 CMR 2.07(2)(a), a Board Acceptable Site Assessment (BASA) shall be performed, unless not required by the Board. The Applicant shall submit:

1. The original BASA together with an Application for Certificate of Compliance to the Board for approval.

2. The Board shall approve or deny a BASA as part of the Certificate of Compliance Application 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 in a format specified by the Board.

2. The Board shall:

a. approve the application and issue the Applicant a Certificate of Compliance if the application complies with these provisions;

b. disapprove 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.

3. The Board shall approve or disapprove an Application for Certificate of Compliance upon 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 in a format specified by the Board including All Necessary Information;

2. The Board shall:

a. approve the application and renew the Applicant's Certificate of Compliance if the application complies with 503 CMR 2.00;

b. disapprove 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.

3. The Board shall approve or disapprove an Application for Renewal of Certificate of Compliance upon receipt of All Necessary Information.

4. If the Board does not approve the Application for Renewal of a Certificate of Compliance, and the Applicant fails to correct the reasons for disapproval, the Board shall Revoke the Certificate of Compliance pursuant to 503 CMR 2.07(5).

(e) For a Former Dispensing Facility, Full Compliance shall be demonstrated by complying with the terms of 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)(a) 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

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

2.07: continued

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) Validity of Certificates of Compliance.
- (a) All Certificates of Compliance shall expire 30 days after the term established by the Board.
 - (b) If all USTs and appurtenances have been Closed and not replaced after July 1, 1994, and an Application for Eligibility has been approved for the Dispensing Facility, a Certificate of Compliance shall be valid without expiration until the Eligible Release has been remediated with a permanent solution in compliance with 310 CMR 40.0000: *Massachusetts Contingency Plan* and all Eligible Claims arising therefrom have been reimbursed from the Fund. The Claimant shall submit the form required for registration of a UST System and other UST documentation requirements of MassDEP to evidence Closure of the UST System. If an Application for Eligibility is not filed within 365 days of the date of Closure without replacement of all the UST systems at a Facility, the Certificate of Compliance shall terminate immediately. If a new UST System(s) is installed after 365 days from closure, removal, or abandonment, the Owner may apply for a new Certificate of Compliance in accordance with 503 CMR 2.07(2).
- (4) Certificate of Compliance Enforcement.
- (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 Owner. The Board may revoke the Certificate of Compliance until the UST System is restored to Full Compliance and may, at its discretion, 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 Board shall note the date of the non-compliance. Within seven days of notification that the noncompliance has been corrected, the Board shall reinstate the Certificate of Compliance and may authorize approval or payment of any Claims or shall notify the Owner that the UST System is not in compliance.
 - (b) If the Certificate of Compliance is revoked, terminated, or expires, the Facility is not in Full Compliance and, at the discretion of the Board, any Claims arising from the Facility may or may not be reimbursed for those costs, expenses and obligations that are incurred, become due or were paid within the time period after revocation, termination or expiration.
 - (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 Program.
- (5) Revocation of a Certificate of Compliance: Failure to Renew.
- (a) A Certificate of Compliance shall be revoked for failure to renew. Before revoking the Certificate of Compliance, the Board shall notify the Owner of the pending revocation, by issuing a first notice, and 30 days later, a second notice. Each of these two notices will be sent to the owner's email address registered with MassDEP for the Registration of UST or an alternate email address provided by the Owner to DOR. The first notice will be sent 60 days prior to the stated date of revocation. The second notice will be sent 30 days prior to the stated date of revocation. Failure to submit a renewal application within 60 days of the date of issuance of the first notice shall result in revocation of the Certificate of Compliance.
 - (b) If a Certificate of Compliance has been revoked for Failure to Renew, the Owner or Operator may re-apply for a Certificate of Compliance according to 503 CMR 2.07(2).
- (6) Revocation of a Certificate of Compliance: Other Circumstances.
- (a) In addition to the Revocation of a Certificate of Compliance for failure to renew, as set forth in 503 CMR 2.07(5), a Certificate of Compliance may also be revoked by the Board for the following reasons:

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

2.07: continued

1. Failure to pay Annual Tank Fees and late penalties;
 2. Failure to pay Delivery Fees and late penalties;
 3. Failure to be in Full Compliance; or
 4. The facility is no longer a Dispensing Facility.
- (b) The Board shall notify the Owner to the owner's email address registered with MassDEP for the Registration of UST or an alternate email address provided by the Owner to DOR of the reason(s) for and the effective date of the revocation. Before revoking the Certificate of Compliance, the Board shall notify the Owner of the pending revocation, by issuing a first notice, and 30 days later, a second notice. The Owner shall have 60 days from the date of the first notice to correct the reason(s) for revocation. Failure to correct the reason(s) for revocation within 60 days of issuance of the first notice shall result in a revocation of the Certificate of Compliance. The Board may 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. At the discretion of the Board, any Claims arising from the Facility may or may not be reimbursed for those costs, expenses, and obligations that are incurred within the time period after revocation.
- (c) The Board shall reinstate the Certificate of Compliance and may authorize the approval or payment of additional Claims within seven days of notification to the Board that the reason for revocation is corrected; otherwise, the Board shall notify 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 or Conference, as applicable.

2.08: Eligible Claimants

- (1) To be eligible for Reimbursement from the Fund, a Claimant must be:
 - (a) A Person who has incurred or will incur allowable costs, expenses, and obligations as a result of:
 1. taking a Response Action; or
 2. paying a Final Judgment for Bodily Injury or Property Damage to a third party or Damage to Natural Resources; or
 3. otherwise incurring allowable expenses, costs, and obligations as a result of an Eligible Release; and
- (2) Such Person must be 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. paid all Annual Tank Fees, Delivery Fees, and late penalties;
 2. demonstrates Full Compliance pursuant to 503 CMR 2.07; and
 3. is not an agency or Political Subdivision of the Federal Government, the Commonwealth or any other state or foreign nation.
 - (b) 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(2)(d) pursuant to a contract who takes a Response Action.
 - (c) An Owner or Operator who files a Third Party Claim that satisfies the requirements of 503 CMR 2.12.
 - (d) A successor owner of the property where the Dispensing Facility had previously been located.
- (3) For purposes of Claims filed by a Person other than the Owner of a UST System, such Person shall obtain and submit to the Department authorization from the Owner, from a court of competent jurisdiction, or from the Board, allowing such Person to file Claims with the Board.

2.09: Application for Eligibility

- (1) An Application for Eligibility is used solely to determine eligibility for Reimbursement. An Application for Eligibility must be filed within 365 days of receiving an RTN, and if applicable, not later than 365 days after Closure.

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

2.09: continued

- (2) After filing an Application for Eligibility, the Applicant shall furnish the Board with such additional information as the Board deems necessary within 30 days of the request to determine that the Release and the Applicant meet the requirements set forth in 503 CMR 2.00 and M.G.L. c. 21J.
- (3) An Application for Eligibility shall not be accompanied by Claims, receipted bills or other indicia of amounts paid.
- (4) An Application for Eligibility shall be considered complete upon its receipt and review by the Board.
- (5) No Claim shall be submitted to the Board until the Board makes a favorable determination on the Application for Eligibility.
- (6) For an application of Eligibility to be approved by the Board, the following additional criteria must be met:
 - (a) Delivery and Annual Tank Fees have been paid in full,
 - (b) Facility must meet the requirements of a Dispensing Facility
 - (c) Facility must be in Full Compliance at the time of the Release
 - (d) The release must have originated from the UST System. 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.

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 the Application for Reimbursement. Such Claims shall include all required documents. For electronic submission permission and requirements, see the DOR UST Program website. All Claims shall be accompanied by Proof of Payment, copies of all invoices and all backup documentation necessary to support the invoices.
 - (b) A Claimant may file multiple Claims for Reimbursement in connection with a Response Action after the Board approves the Application for Eligibility. Claims may be filed while a Response Action is occurring. Claims are subject to the following requirements:
 - 1. All Claims must be submitted no later than 365 days from the date of payment. In the case of retainer payments, all claims must be submitted within 365 days from the date of service.
 - 2. The Board shall determine the minimum claimed amount that can be submitted per claim per month.
 - 3. No more than one Claim per month may be submitted regardless of amount;
 - 4. When submitting a Claim, submit all expenditures to date not previously submitted.
 - 5. The Board shall not approve a Claim to the extent it includes costs, expenses and obligations paid more than 365 days before the submission of the Application for Eligibility.
 - (c) Within 45 days of presenting a Claim for Reimbursement to the Board or within 45 days of presenting supplemental information requested by the Board, DOR shall notify the Claimant in writing of the Board's determination as to the Claim for Reimbursement. For purposes of administering the program, a Claim shall be considered received upon its submission to DOR, its review by DOR, and presentation to the Board.
- (2) Supplementing Claims.
 - (a) Before presenting a Claim to the Board for a vote, the DOR shall forward to the Claimant a claim review worksheet. The claim review worksheet shall list the DOR's recommendation for payment. The Claimant shall have 21 days to respond to DOR's recommendation and submit supplemental information as needed to substantiate the Claim.
 - (b) If DOR receives supplemental information within 21 days, DOR shall review the Claim. The recommendation for payment may be adjusted upon receipt of such supplemental information.

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

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).
- (2) To be eligible for Reimbursement, all costs, expenses or obligations must be:
 - (a) Incurred by or on behalf of an Eligible Claimant;
 - (b) In excess of the Deductible Limit;
 - (c) In compliance with 503 CMR 2.16;
 - (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.
- (3) Allowable Costs.
 - (a) The costs of the following activities are allowable for Reimbursement from the Fund as a part of a Response Action:
 1. Rental, lease or purchase of any remediation equipment in accordance with Reimbursement Fee Schedule in the amount of \$5,000 or more, subject to the following conditions:
 - a. 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;
 - b. The Claimant shall maintain adequate property casualty insurance equal to the full replacement value of the remediation equipment, not including deductibles or it must provide notice to and demonstrate to the Board its capacity to self-insure the remediation equipment. Upon request, the Claimant shall furnish a copy of the insurance declarations page or other acceptable documentation to the Board attesting to insurance coverage. Title to the equipment remains with Claimant and Claimant agrees that upon conclusion of its use the Claimant shall notify the Board of its intention for final disposition of the equipment. If the equipment is sold or exchanged for services or other products or materials, the proceeds of the sale or the equivalent value of the exchange shall be reimbursed to the Fund.
 - c. If directed by the Board, Claimant agrees to convey and dispose of the equipment as directed by the Board at the conclusion of its use. The Claimant shall possess and/or operate any rented, leased or purchased equipment solely at its own risk.
 2. Installation of test borings, monitoring wells, recovery wells and/or injection or extraction wells.
 3. Removal, treatment, transport, reuse, recycling and/or disposal of Petroleum Products and Petroleum Product contaminated media and debris, including sludge, outside the UST System.
 4. Provide for a temporary, permanent, or alternative potable drinking water supply to replace a potable drinking water supply that was contaminated by Petroleum Products.
 5. Development of assessment and remediation plans, including pilot testing and treatability tests.
 6. Treatment, transport, reuse, recycling and/or disposal of Petroleum Product contaminated ground water and/or soil.
 7. Sampling and analysis of air, groundwater, and/or soil.
 8. Replacement or repair of bituminous pavement or concrete directly related to the Response Action, but not arising from tank removal or repair.
 9. Hydrogeologic/aquifer tests.
 - (b) Costs that are not allowable for Reimbursement include, without limitation, 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;
 - (d) Expenses incurred initially to confirm a Release before receiving a MassDEP release tracking number (e.g., UST tightness tests, UST Closure and Limited Removal Actions (LRA)).

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

2.11: continued

- (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. [503 CMR 2.11(4)(g) does not apply to necessary transportation costs incurred using the Massachusetts Steamship Authority in order to access Nantucket, Martha's Vineyard, and neighboring islands].
 - (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.
 - (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 that 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 310 CMR 80.00: *Underground Storage Tank (UST) Systems*.
 - (o) Replacement or repair of bituminous pavement 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 in the Reimbursement Fee Schedule.
 - (r) Preparation and/or filing of Claims and appeals.
 - (s) Replacement, closure and/or abandonment of water supply systems or wells not directly affected by the Release.
 - (t) Costs incurred prior to the receipt of a MassDEP release tracking number.
 - (u) Ordinary business expenses or expenses for 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 incurred 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.
 - (y) Costs attributable to the time and expense of an Owner, Operator, or principal or employee of the Owner or Operator in connections with the Response Action.
- (5) The Board shall determine whether any costs not listed in 503 CMR 2.11(4) shall be reimbursed.
- (6) Reasonable and appropriate Reimbursements shall be determined by the following:
- (a) The Reimbursement Fee Schedule that sets forth the Reimbursements that the Board has determined to be reasonable and appropriate for certain costs, expenses or obligations of Response Actions.
 - (b) For response activities not covered by the Reimbursement Fee Schedule, reasonable and appropriate Reimbursements shall be determined as provided in 503 CMR 2.11(6).
 - 1. Before undertaking activities, the Claimant shall obtain bids in accordance with the requirements set forth in the Reimbursement Fee Schedule or in another manner approved by the Board.
 - 2. If emergency response actions are required and the time required to obtain bids would endanger the environment, the health and safety of the public, a Claimant may proceed with activities not covered by the Reimbursement Fee Schedule without obtaining bids.

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

2.11: continued

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 a competitive Bidding form or in a format specified by the Board, unless the Claimant can satisfactorily demonstrate to the Board that there is a more cost-effective activity or activities.
- (c) The Board reserves the right to determine allowable Reimbursements for reasonable and appropriate costs, expenses and obligations.

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.
- (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 legal 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;
 - (d) connected with costs incurred or damages sustained by the third-party after April 1, 1991;
 - (e) reasonable and appropriate as described in 503 CMR 2.11; and
 - (f) unrelated to any material business relationship between the third-party and the Claimant.
- (4) Final Judgments based on the following specific types of damages are eligible for Reimbursement:
 - (a) Temporary and/or permanent relocation costs;
 - (b) Provision for temporary and/or permanent replacement or alternative potable drinking water supply if the existing water supply has been contaminated by Petroleum Products;
 - (c) Damages related to a cost-effective and necessary method of assessment, cleanup and/or disposal of contaminated soils and debris, consistent with 310 CMR 40.0000: *Massachusetts Contingency Plan*;
 - (d) Response Action necessary to mitigate the effects of Property Damage;
 - (e) Medical expenses;
 - (f) Loss of wages or business income; and/or
 - (g) Damages to Natural Resources not to exceed \$500,000 provided that there was a full adversarial trial.
- (5) Other Requirements Related to a Final Judgment.
 - (a) If the Final Judgment against an Eligible Claimant results from a full adversarial trial, the Board shall 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 the Eligible Claimant is otherwise in compliance with 503 CMR 2.00.
 - (b) 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 on which 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.
 - (c) Assessments in Final Judgments based on the following will not be reimbursed:

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

2.12: continued

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 venture 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 that is unrelated or incidental to the Claimant's relationship to the Site.
4. Any liability assumed by the Claimant under any contract or agreement if the liability would not exist without a contract or agreement.
5. Compensation to the third-party for expenses related to one of the specific types of costs designated in 503 CMR 2.12(4):
 - 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.
- (d) Eligible Reimbursements for Final Judgments shall be governed by the following:
 1. The Reimbursement Fee Schedule that sets forth charges representing the maximum amounts the Board will regard as reasonable and appropriate for certain costs.
 2. For activities not covered by the Reimbursement Fee Schedule, reasonable and appropriate amounts for the different types of damages shall be determined by the Board.
- (6) Other requirements Related to Claims Arising from Civil Court Action.
 - (a) Other requirements related to claims arising from civil court action. 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.
 - (b) Any Claim arising from a Final Judgment shall be filed as prescribed by the Board, and shall include a copy of the Final Judgment, including information to satisfy the requirements of 503 CMR 2.12.
 - (c) 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.
 - (d) 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 DOR, the Board shall notify the Claimant in writing of its determination on the Claim for Reimbursement. For the purposes of administering the program, a Claim shall be considered complete upon its receipt, review by DOR, and presentation to the Board.

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 or Owner/Operator shall be eligible for Reimbursement from the Fund.

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

2.14: Joint Payments

Board shall make payments only to an eligible Claimant who filed an Application for Reimbursement that was approved by the Board. However, upon request from a Claimant, or on the Board's own initiative, the Board may make all or a portion of a payment payable jointly to such Person and another party, or individually to another party including eligible third parties identified in 503 CMR 2.12.

2.15: Advance Payments and Contract Guarantees

- (1) The Board shall not issue a Reimbursement for a Response Action 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 all reimbursements pursuant to M.G.L. c. 21J, § 4(a)(1) and 503 CMR 2.10 (a Response Action cost) of 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 all reimbursements pursuant to M.G.L. c. 21J, § 4(a)(2) and 503 CMR 2.25 (Former Dispensing Facility) and an Owner or Operator of a Dispensing Facility who does not qualify under 503 CMR 2.16(1)(a).
 - (c) \$1.0 million for all reimbursements pursuant to M.G.L. c. 21J, § 4(a)(2) and 503 CMR 2.12 (Damages to Third Parties) of an Owner or Operator of a Dispensing Facility or Former Dispensing Facility.
 - (d) For purposes of 503 CMR 2.16(1)(a), (1)(b), and (1)(c), reimbursements amounts are calculated as follows:
 1. All Reimbursements pursuant to M.G.L. c. 21J, § 4(a)(2) and 503 CMR 2.11 (Response Actions: Costs, Expenses, and Obligations Allowable for Reimbursement); minus
 2. The Deductible Limit specified in M.G.L. c. 21J, § 5(b), 503 CMR 2.02 and 503 CMR 2.16(2).
 - (e) For purposes of 503 CMR 2.16(1)(c), reimbursement amounts are calculated as follows:
 1. All Reimbursements pursuant to M.G.L. c. 21J, § 4(a)(2) and 503 CMR 2.12 (Damages to Third Parties); minus
 2. The Deductible Limit specified in M.G.L. c. 21J, § 5(b), 503 CMR 2.02 and 503 CMR 2.16(2).
- (2) The following amounts shall be the Deductible Limits per Occurrence and will be determined at the time the Application for Eligibility is approved by the Board:
 - (a) If the Owner or Operator owns three or more Facilities, \$10,000.
 - (b) If the Owner or Operator owns two Facilities, \$7,500.
 - (c) If the Owner or Operator owns only 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 the Reimbursement Fee Schedule and 503 CMR 2.00, except as provided otherwise in 503 CMR 2.09.
- (2) Payment will be made to the extent that funds are available. If Board-approved Claim payments exceed the available funding, the Board shall reimburse the Claims consistent with a payment prioritization as determined by the Board.

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

2.18: Appeals

- (1) Any Claimant aggrieved by the denial of a 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, file a Request for Reconsideration with the Board. A Request for Reconsideration shall be, in a manner required by the Board, 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 under M.G.L. c. 21J, or to the legal effectiveness of 503 CMR 2.00. Such challenges may be brought 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 review the matter for which the Claimant is seeking Reconsideration and on the basis of such review reconsider the matter and take action as it deems appropriate under 503 CMR 2.00.
- (6) The Board shall notify the Claimant in writing of the Board's determination. Such action shall constitute final action of the Board in response to the Request for Reconsideration for purposes of 503 CMR 2.12. A final action of the Board in response to a Request for Reconsideration is not eligible except as a Conference pursuant to 503 CMR 2.18(7).
- (7) Conference with a Three-member Panel.
 - (a) An Applicant 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 application. The Three-member Panel, in its discretion, may review an Applicant's request for Conference 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 2.02.
 - (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 action 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, except if the Claim, or a portion of the Claim, was denied based on failing to meet procedural filing deadlines, in which case the Claimant may waive its rights to a Reconsideration and immediately request a Conference.

2.18: continued

3. Applicants who have filed an Application for Eligibility, an Application for a Certificate of Compliance, or Application for Renewal of a Certificate of Compliance and were aggrieved by the Board's initial decision regarding the Application may request a Conference by filing a request within 30 calendar days of the electronic notification or mailing of the Board's written determination. Timely receipt of a request for a Conference is determined by the provisions of 503 CMR 2.03(3).
4. A request for a Conference must be filed within thirty calendar days of the date 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(3).
5. A Claimant who has filed an action in either the Supreme Judicial Court or the Superior Court may not request a Conference with respect to the same matter.
6. The Executive Director may schedule a Conference with a Three-member Panel and shall notify the Three-member Panel of the date, time and location of the Conference. The UST Board shall review all denials of Requests for a Conference.
7. The chairperson of the UST Board shall appoint 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.
8. The Applicant and/or Applicant's representative may attend the Conference. An Applicant who is not present and is represented by another person shall provide DOR UST Program with prior written authorization appointing that individual his or her representative at the Conference. At the Board's discretion, the Board may revoke the Applicant's right to Conference if the Applicant fails to attend the scheduled Conference hearing.
9. 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.
10. The designated chairperson of the Three-member Panel or the UST Fund Staff shall summarize the contested issues, allow the Applicant or its representative to present the Applicant'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 Applicant or representative to present the Applicant's position.
11. 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.
12. The Three-member Panel may choose not to make a Decision. If the Three-member Panel does not make a Decision, the Executive Director, or his or her designee, will consult with each member and determine the opinion of each member regarding the issue(s).
13. The Executive Director or his or her designee shall 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.
14. The Executive Director or his or her designee shall 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 Applicant.
15. 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.
16. The UST Board or Three-member Panel may make a Conference Determination that refers the matter to the UST Fund Staff for further review. Any further review shall conform to the procedural and substantive requirements of M.G.L. c. 21J and 503 CMR 2.00.
17. Only a Claimant aggrieved by the Conference Determination of the UST Board may seek relief pursuant to 503 CMR 2.22.

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

2.18: continued

(d) The following provisions apply to requests by an Applicant 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 an Applicant a request for Conference if the request is based, in whole or in part, on the Applicant'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. Any Applicant may request a Conference based on hardship if the denial of an application, Claim, or a portion of a Claim, was based on an untimely filing pursuant to 503 CMR 2.10.

2.19: Audits; Fraudulent Claims

The Board may conduct an audit of any Person reimbursed from or seeking reimbursement from the Fund. If the Board discovers, as a result of the audit or by any other means, that a Claim or any portion of a Claim was improperly made, the Board may pursue such remedies as it deems appropriate, including:

- (1) the offset of any money owed to the Fund including, without limitation, fines and penalties, against future reimbursements to the Claimant; or
- (2) denial of the Person's acceptance as an Eligible Claimant.

2.20: Right of Offset

If the Board or DOR determines that a Claimant is indebted to the Fund, DOR shall request the Board, or the Board may direct DOR on its own initiative, 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, 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 commence 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.

(2) For purposes of 503 CMR 2.22:

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

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

2.22: continued

subject of the Request for Reconsideration shall be deemed a partial Reimbursement pending resolution of the Request for Reconsideration.

(c) A Claimant's right 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.

2.23: 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 pursuant to M.G.L. c. 21J, § 4(b).

2.24: Public Meetings of the Board

The Board shall hold public meetings at least once every six months or at other times as it may determine, or on petitions from the public for changes to 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 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), 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 an 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.

(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)(b) and \$1,000,000 for the Reimbursements described in 503 CMR 2.16(1)(c).

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

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

2.26: Severability

The provisions of 503 CMR 2.00 are severable, and if any provision is held invalid, such a determination shall not affect other provisions.

REGULATORY AUTHORITY

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

(PAGE 27 AND 28 ARE RESERVED FOR FUTURE USE.)