

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-10-02
PETROLEUM TANK RELEASE COMPENSATION FUND
GENERAL PROVISIONS

Chapter 45-10-02 is amended as follows:

Section	
45-10-02-01	Definitions
45-10-02-02	Tank Registration
45-10-02-03	Registration Fee
45-10-02-04	Notification of Release Procedures
45-10-02-05	Procedures for Investigation of Claims
45-10-02-06	Reimbursement
45-10-02-06.1	Reimbursement Disputes
45-10-02-07	Third-Party Claims
45-10-02-08	Board
45-10-02-09	Report to Legislative Assembly and Governor <u>[Repealed]</u>

45-10-02-01. Definitions. For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in ~~section 2 of chapter 299 of the 1991 Session Laws~~ North Dakota Century Code chapter 23-37:

1. "Antifreeze" is not a petroleum product.
2. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements. A farm tank must be located on the farm property.
3. "Portable tank" means any storage tank, along with its piping and wiring, that is not stationary or affixed including, but not limited to, tanks which are on skids.
4. "Residential tank" means a tank located on property used primarily for dwelling purposes.
5. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.

6. Storage tanks used for collecting crude oil are considered flowthrough process tanks and are excluded from coverage.

History: Effective November 25, 1991; amended effective June 1, 1994; _____, 2013.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 23-37-05

Law Implemented: S.L. 1991, ch. 299 NDCC 23-37

45-10-02-02. Tank registration. On an annual basis (fiscal year July first through June thirtieth), the administrator will mail to all prior fund registrants and any other known petroleum tank owners and operators in North Dakota a registration letter and billing notice. The letter will explain the function of the fund and the requirement that the tank owner or operator must have all tanks owned or operated registered and all fees paid prior to a petroleum release in order to be eligible for reimbursement. In the event of a petroleum release, no payment will be made to an owner or operator of a registered tank unless the owner or operator has complied with all other state and federal regulations regarding petroleum tanks.

History: Effective November 25, 1991; amended effective June 1, 1994.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 23-37-05

Law Implemented: S.L. 1991, ch. 299, § 17 NDCC 23-37-17

45-10-02-03. Registration fee.

1. An annual registration fee is due and payable on July 1, 1991, and on July first of each successive year thereafter. ~~Registration fees must be paid from April 1991, or from the date a new tank was installed if it was after April 1991, to be in compliance with this section. The period of registration must run from July first to June thirtieth to coincide with the fiscal year of North Dakota.~~
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change. ~~However, a prorated registration fee is required for the installation of an additional tank within any registration year.~~
3. ~~In the event the legislative assembly may make any alterations or modifications of the registration fee, the administrator shall prorate the annual registration fee accordingly.~~

History: Effective November 25, 1991; amended effective June 1, 1994; January 1, 2000; _____, 2013.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 23-37-05

Law Implemented: S.L. 1991, ch. 299, § 17 NDCC 23-37-17

45-10-02-04. Notification of release procedures. Upon receiving notice of a release from the state department of health, the administrator shall:

1. Verify that the tank and all other tanks owned or operated by the operator are registered with the fund.
2. Record the release information in the ~~claim register~~ registration file for the location.
3. Verify that the state department of health has received notice of the release.
4. If the owner or operator has not registered all of the tanks owned or operated by the operator at the location of the release, send a letter of denial to the owner or operator with a carbon copy to the state department of health and close the file.
5. Obtain verification from the owner or operator that the affected tank, equipment, components, material or dispenser is compatible and meet state requirements for the petroleum product stored and dispensed. If not compatible, send letter of denial to the owner operator with a copy to the state department of health and close file.
4. 6. If all tanks are registered and the affected tank, piping, fitting or dispenser is compatible, notify the owner of the fund's claim filing procedures and send the tank owner or operator the fund's tank release guidelines with an application for reimbursement.

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000; _____, 2013.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 23-37-05

Law Implemented: S.L. 1991, ch. 299, §§ 10, 19 NDCC 23-37-10, 23-37-19

45-10-02-05. Procedures for investigation of claims. In each release investigation, the administrator shall:

1. ~~Examine~~ Investigate the location and cause of the release.
2. Interview persons with knowledge of the release.
3. Examine records and documentation concerning the release, including documentation of the corrective action taken and expenses incurred.

4. Prepare a written report determining the validity of the claim and the estimated eligible cleanup costs expenses.
5. Complete other tasks as required.

History: Effective November 25, 1991; amended effective August 1, 2000; _____, 2013.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 23-37-05

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23 NDCC 23-37-18, 23-37-20, 23-37-23

45-10-02-06. Reimbursement.

1. The fund will reimburse only reasonable and necessary eligible cleanup expenses as determined by the administrator in consultation with the state department of health and only if all tanks are properly registered prior to the discovery of the release.
2. No payment will be made from the fund unless a completed application form has been received by the administrator. ~~The application must contain at least the following information:~~
 - a. ~~Name and address of the owner, operator, or landowner.~~
 - b. ~~Street or highway description of the petroleum release location.~~
 - c. ~~The legal description of the release location.~~
 - d. ~~The substance released.~~
 - e. ~~The date the release was discovered.~~
 - f. ~~Name, address, and telephone number of the contact person.~~
 - g. ~~A narrative description of the release.~~
3. Eligible expenses for corrective action include the following:
 - a. Labor.
 - b. Testing.
 - c. Use of machinery.

- d. Materials and supplies.
 - e. Professional services.
 - f. Expenses incurred ~~by order~~ through direction of federal, state, or local government department of health.
 - g. Any other expenses the administrator and the board deem to be reasonable and necessary to remedy cleanup of the release and satisfy liability to any third party.
 - h. Consultant fees if authorized by the ~~North Dakota~~ state department of health or ~~other federal or state agency~~ approving the cleanup procedures.
4. The following will not be considered eligible expenses under this regulation:
- a. The cost of replacement, repair, and maintenance of affected tanks and associated piping.
 - b. Pumping out of any product, including water, from any tanks which need to be removed.
 - c. The cost of upgrading existing affected tanks and associated piping.
 - d. The loss of income, profits, or petroleum product.
 - e. Decreased property value.
 - f. Bodily injuries or property damages except for injuries or damages suffered by third parties.
 - g. Attorney's fees.
 - h. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this regulation.
 - i. The costs of making improvements to the facility beyond those that are required for corrective action, including replacing concrete, asphalt, equipment, or buildings.
 - j. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.

- k. Marked-up costs.
 - l. Costs in excess of those considered reasonable by the fund.
 - † m. Fines or penalties imposed by order of federal, state, or local government.
 - ‡ n. Finance charges, interest charges, or late payment charges.
5. To determine what expenses are reasonable and necessary, the owner, operator, or landowner must bid the excavation and consultant work. The lowest bid that meets the requirements of the state department of health will be deemed by the fund to be the reasonable cost for that project. The bid must be submitted according to the fund's excavation and consultant worksheets. Additional work over and above the original bid will be reimbursed according to unit costs on the original bid.
 6. The administrator may provide partial payments prior to the final determination of the amount of the loss, if it is determined that the cleanup is proceeding according to the proposed workplan of the state department of health for the site assessment. The payment may be made to the owner, operator, or landowner or that person's assigned representative if the appropriate assignment form is submitted to the administrator with appropriate documentation verifying that the work has been completed by the assignee.
 7. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund and must be submitted no later than one year after the work has been completed to be eligible.
 8. Prior to payment for any loss, the owner, operator, or landowner shall subrogate to the fund all rights, claims, and interest which the owner, operator, or landowner has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner, operator, or landowner or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the administrator.
 9. Reimbursement will be considered when the owner, operator, or landowner has submitted complete excavation or consultant worksheets along with legible copies of all invoices, ~~providing~~ and a description of:
 - a. ~~The~~ the work performed.
 - b. ~~The party who performed the work.~~

- c. ~~The location where the work was performed.~~
 - d. ~~The date the work was performed.~~
 - e. ~~The unit cost.~~
 - f. ~~The total.~~
10. The owner, operator, or landowner must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner, operator, or landowner or, if the owner, operator, or landowner has assigned the right to receive payment from the fund, that a contractor hired has expended time and materials for which payment must be made. This must include documentation that the work has been completed by the assignee.
 11. Prior to payment, the administrator must be satisfied that the corrective action taken has met all state, ~~federal, and local laws~~ or regulations and that the corrective action has satisfied public health, welfare, and environmental concerns.

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000; December 1, 2001; , 2013.

General Authority: NDCC 28-32-02; ~~S.L. 1991, ch. 299, § 5~~ NDCC 23-37-05

Law Implemented: ~~S.L. 1991, ch. 299, §§ 18, 20, 23, 24~~ NDCC 23-37-18, 23-37-20, 23-37-23, 23-37-24

45-10-02-06.1. Reimbursement disputes. If the fund administrator denies or reduces payment to a tank owner, operator, or landowner, the tank owner, operator, or landowner may request a review by the board by filing a written request and supporting documentation with both the administrator and the board within thirty days of receiving a proof of loss. The board shall issue a written decision concerning the issues in dispute within thirty days of receiving the written notice and supporting documentation. If after review by the board a dispute still exists, the claimant or the administrator may appeal the board decision to the commissioner. The decision of the commissioner may be appealed under North Dakota Century Code chapter 28-32.

History: Effective August 1, 2000; amended effective December 1, 2001.

General Authority: NDCC 28-32-02; ~~S.L. 1991, ch. 299, § 5~~ NDCC 23-37-05

Law Implemented: ~~S.L. 1991, ch. 299~~ NDCC 23-37

45-10-02-07. Third-party damages. No reimbursement may be made for damage to employees as defined by the North Dakota Workers' Compensation Act or agents of the owner or operator.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 NDCC 23-37-05

Law Implemented: S.L. 1991, ch. 299, §§ 26, 27 NDCC 23-37-26, 23-37-27

45-10-02-08. Board. The administrator shall advise the board of the fund's general operations and review claims either through written correspondence, telephone conference calls, or meetings. The board shall meet at least once each half of each calendar year.

History: Effective November 25, 1991; amended effective August 1, 2000; December 1, 2001.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5 NDCC 23-37-05

Law Implemented: S.L. 1991, ch. 299, § 3 NDCC 23-37-03

45-10-02-09. Report to legislative assembly and governor. This report, as required by section 29 of chapter 299 of the 1991 North Dakota Session Laws, must include, but is not limited to, the following information:

1. Total number of releases.
2. Total number of releases denied because of nonregistered tanks.
3. Total number of releases denied because of expenses not exceeding five thousand dollars.
4. Total number of releases investigated by the fund.
5. Total amount paid out for releases and the average payout per release.
6. Brief summary of the fund's operating expenses.
7. Recommended changes, if any, to 1991 House Bill No. 1439.
8. Recommendation to continue or terminate the program.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 29

Repealed effective _____, 2013.