

401 KAR 42:300. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130(1)(c), (e), 224.60-140(2)(b), (17), 40 C.F.R. Part 280 Subpart H

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) requires the establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank owners and operators for compensating third parties for bodily injury and property damage, and requires the cabinet to establish, by administrative regulation, eligibility requirements for the account. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or nonsudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the Financial Responsibility Account.

(2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if:

(a) The owner or operator has been issued a Certificate of Registration and Reimbursement Eligibility or a Certificate of Eligibility;

(b) The cabinet has approved an Application for Assistance; and

(c) The owner or operator has maintained compliance with the eligibility requirements for participation in the Financial Responsibility Account in effect at the time the Application for Assistance was approved.

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the Financial Responsibility Account pursuant to 401 KAR 42:250, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new Application for Assistance, DEP 6063, incorporated by reference in 401 KAR 42:250, Section 2; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, to be reviewed and considered by the cabinet.

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual, documented, bodily injury or property damage caused by the release of petroleum.

(2) A claim for bodily injury or property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(3) The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000 per occurrence of a release.

(4)(a) Claim requests shall be submitted on Third-Party Claim Form, DEP 6078;

(b) The applicant shall retain a copy of the completed form for his or her records.

(5) The cabinet shall acquire by subrogation the right of the third party to recover, from the person responsible or liable for the release, the amount of damages paid to the third party.

(6) Reimbursement for third-party claims shall be made in accordance with 401 KAR 42:290, Section 2.

(7) Payment of the third-party claim shall be made after approval by the cabinet.

Section 4. Incorporation by Reference. (1) "Third-Party Claim Form", DEP 6078, November 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>. (19 Ky.R. 1485; eff. 3-12-1993; 21 Ky.R. 1183; eff. 1-9-1995; 23 Ky.R. 2232; eff. 4-9-1997; 25 Ky.R. 1112; 2865; eff. 6-9-1999; Recodified from 415 KAR 1:100, 2-17-2005; 32 Ky.R. 2134; 33 Ky.R. 752; eff. 9-13-2006; 37 Ky.R. 2729; 38 Ky.R. 543; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)