



## Ohio Revised Code

### Section 3737.92 Purpose of fund.

Effective: December 18, 1997

Legislation: Senate Bill 46 - 122nd General Assembly

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(A) The petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code shall use moneys in the petroleum underground storage tank financial assurance fund established in section 3737.91 of the Revised Code exclusively for the following purposes:

(1) Payment of the expenses of administering the fund;

(2) Payment of the administrative expenses of the board;

(3) Payment to or reimbursement of responsible persons for the necessary cost of corrective action for and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum in accordance with this section, provided that proceeds from the issuance of revenue bonds under sections 3737.90 to 3737.948 of the Revised Code may only be used for the payment to or reimbursement of responsible persons for the necessary costs of corrective action for improving property damaged by accidental releases of petroleum in accordance with this section;

(4) Deposit into any funds provided for in a resolution or resolutions of the board in connection with any revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code;

(5) Placement of petroleum underground storage tank linked deposits under sections 3737.95 to 3737.98 of the Revised Code.

(B) A responsible person seeking to obtain from the fund payment of or reimbursement for corrective action costs for an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets all of the following criteria:



(1) The responsible person is eligible under division (D) of this section to receive payment of or reimbursement for the corrective action costs from the fund;

(2) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;

(3) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions.

(C) A responsible person seeking to obtain from the fund payment of or reimbursement for compensation paid or to be paid to third parties for bodily injury or property damage caused by an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets both of the following criteria:

(1) The responsible person who submitted the claim is eligible under division (D) of this section to receive payment of or reimbursement for the third-party compensation from the fund;

(2) There is a legally enforceable judgment against the responsible person for bodily injury or property damage to one or more third parties resulting from the release in the amount stated in the claim, or, if there is a settlement with a third party as a result of the release, the amount of the settlement stated in the claim is reasonable.

(D) A responsible person is not eligible to receive payment or reimbursement from the fund under division (B) or (C) of this section unless all of the following conditions are met:

(1) At the time that the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage issued by the board under division (D) of section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;



(2) One of the following applies:

(a) The petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed;

(b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

(3) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;

(4) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release has occurred;

(5) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;

(6) The petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed.

(E) The director of the fund may make a determination to approve or disapprove a claim and to authorize a disbursement from the fund for payment of an approved claim administratively without a hearing. If the director of the fund makes a determination regarding a claim that is inconsistent with a recommendation or determination of the fire marshal for purposes of division (B)(2) or (3) or



(D)(2), (3), or (5) of this section, the director shall detail those inconsistencies in a written finding of fact before authorizing any disbursement from the fund for payment of the claim. Upon making a determination of a claim under this section, the director of the fund shall provide written notice of the determination and a copy of any written finding of fact accompanying the determination to the responsible person who submitted the claim and to the fire marshal.

(F) If the responsible person who submitted a claim under this section or the fire marshal objects to the determination of the claim made by the director of the fund and files an objection to the determination with the board within thirty days after the mailing of the notification of the determination and finding of fact, if any, the board shall appoint a referee to conduct an adjudication hearing on the determination. The adjudication hearing shall be conducted in accordance with section 119.09 of the Revised Code. For the purposes of adjudication hearings on determinations of the director of the fund, the term "agency" as used in that section includes the board.

If any party is aggrieved by an order of the board made after the adjudication hearing on the determination, the party may appeal the order in accordance with section 119.12 of the Revised Code. For the purposes of appeals of any such orders, the terms "fire marshal" and "building" as used in that section include the board and petroleum underground storage tank, respectively.

(G) Neither the state, the board, nor the director of the fund is liable to any responsible person to pay the cost of any corrective action or of third party compensation for a release of petroleum when the fund is depleted of moneys because the amount of the claims made on the fund exceeds the unobligated balance in the fund. However, upon assessing and collecting a supplemental fee under division (C) of section 3737.91 of the Revised Code, the board shall again consider the claim of a responsible person whose claim was not initially honored because of the insufficiency of unobligated balances in the fund to pay that person's claim.

The inability of a responsible person to obtain money from the fund does not in any manner limit the liability of a responsible person for a release of petroleum.

(H) Neither the right to apply for payment or reimbursement nor the receipt of payment or reimbursement under this section limits the liability of any responsible person to the state for the payment of any corrective action or enforcement costs under sections 3737.882 and 3737.89 of the



Revised Code, or to any third party for bodily injury or property damage, resulting from a release of petroleum from an underground storage tank system owned or operated by the responsible person. Neither the right to apply for payment or reimbursement under this section nor any delay by the board or director of the fund in acting upon any claim for any such payment or reimbursement limits or postpones the duty of any responsible person to comply with any order of the fire marshal issued under section 3737.88 or 3737.882 of the Revised Code.

(I) The board, upon payment to or reimbursement of a responsible person from the fund for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person. The attorney general, upon the request of the board, may bring a civil action to recover those costs in the court of common pleas of the county in which the release of petroleum occurred.

(J) Nothing in this section limits the right of the federal government to recover from the responsible person any federal money expended for any corrective or enforcement action as a result of a release of petroleum.

(K) If the responsible person described in division (D) of this section is a state agency, any payments or reimbursements received by the state agency under this section shall be deposited into the fund from which the expenditures for the corrective action or third party compensation originally were made.