



Department of
**Environment &
Conservation**

Attorney Tank School Fund Training

Overview of the fund process and its intersection with Enforcement.

Fund Overview

- The fund allows responsible parties (RPs) access to 2 million dollars for reimbursable clean-up activities, etc.
- Responsible parties that can apply for the fund are defined in the rules, but include:
 - Tank owners
 - Tank operators
 - Petroleum site owners.
- Applications can either be approved with a sliding deductible or denied because the application was not submitted within 60 days of a confirmed release or within 90 days of a suspected release that is subsequently confirmed or because they have unregistered tanks.

Sliding Deductible Scale

- Applications can be approved with a minimum deductible of 5,000.00 if the facility is in compliance with all the rules listed in Rule 0400-18-01-.09(6).
 - Applicants can get up to a 50% reduction on this minimum deductible if they have pre 2007 install systems and have upgraded equipment.

Criterion for Potential Reduction: *	Yes	No	Unknown
Double wall tank(s) installed before July 24, 2007	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Secondary containment chase piping enclosing fiberglass primary piping or flexible plastic piping with containment sumps at piping joints installed before July 24, 2007	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Containment sumps at submersible turbine pumps installed before July 24, 2007	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Containment sumps under dispensers installed before July 24, 2007	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous in-tank leak detection system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Double wall spill bucket(s) with interstitial monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Must apply to all applicable USTs at the subject facility

Sliding Deductible Scale Cont.

- If facilities are not in compliance in regards to the rule requirements listed in .09(6), they can fall into 3 different deductible classes:
 - 10,000.00
 - 20,000.00
 - 30,000.00
- For a comprehensive list of the rule violations that impact the deductible, go to Rule 0400-18-09(6).
- Facilities with a minimum deductible receive a letter, facilities with an increased deductible or a denial receive an order.

Spreadsheet for Determinations:

Deductible Amount*	Rules	General Category	Summary
\$10,000	Rule 0400-18-01-.02(2)(b)2 and 5	Secondary containment	RD for piping requiring RD
\$10,000	Rule 0400-18-01-.02(3)(a)1, 3, and 4	Spill and overflow prevention	Spill and overflow prevention installed and tested/inspected periodically
\$10,000	Rule 0400-18-01-.02(3)(b)6	Spill and overflow prevention	Overflow prevention equipment in good working condition
\$10,000	Rule 0400-18-01-.02(3)(c)1 and 2	Spill and overflow prevention	Spill and overflow prevention tested/inspected periodically
\$10,000	Rule 0400-18-01-.02(4)(a)3(iii)	Corrosion protection	CP in place for lined tanks
\$10,000	Rule 0400-18-01-.02(4)(c)1 and 2(ii)	Corrosion protection	CP operating properly
\$10,000	Rule 0400-18-01-.02(8)	Walkthroughs	Periodic operation and maintenance walkthrough inspections
\$10,000	Rule 0400-18-01-.04(1)(a)2 through 5 regarding piping	Release detection	RD for piping requiring RD
\$10,000	Rule 0400-18-01-.04(2)(b)1(ii) and 2	Release detection	RD on pressurized and suction piping
\$10,000	Rule 0400-18-01-.04(3)(b)1 and 2	Release detection	TTT meeting 0.1 gph leak rate
\$10,000	Rule 0400-18-01-.04(4)	Release detection	Piping RD methods
\$10,000	Rule 0400-18-01-.04(5)(b)1 regarding piping and tank tightness test results	Release detection	TTT/LTT results kept for 1 year

\$20,000	Rule 0400-18-01-.02(1)(c) and (d)3	Secondary containment/RD	Secondary containment requirements and RD if UST holds product
\$20,000	Rule 0400-18-01-.02(2)(a)1, 2, and 5	Secondary containment	Tank secondary containment requirements
\$20,000	Rule 0400-18-01-.02(2)(b)1	Secondary containment	Piping secondary containment requirements
\$20,000	Rule 0400-18-01-.02(4)(a)1 through 3(i)	Corrosion protection	CP in place for tanks where required
\$20,000	Rule 0400-18-01-.02(4)(b) regarding piping, except flex connectors	Corrosion protection	CP in place for pipes where required
\$20,000	Rule 0400-18-01-.02(4)(c)6(ii)	Corrosion protection	Requirements if IC off for ≥12 months met
\$20,000	Rule 0400-18-01-.02(5)(a)	Corrosion protection	UST system compatible with product stored
\$20,000	Rule 0400-18-01-.02(6)(a) and (c)	Secondary containment/RD	Secondary containment and IM requirements met for replaced UST systems
\$20,000	Rule 0400-18-01-.04(1)(a)1, 2, 4, and 5 regarding tanks	Release detection	RD for tanks requiring RD
\$20,000	Rule 0400-18-01-.04(1)(c) and (d)	Release detection	Close UST if RD cannot be met or implement another RD method
\$20,000	Rule 0400-18-01-.04(2)(a)	Release detection	Approved RD method on tanks
\$20,000	Rule 0400-18-01-.04(2)(b)1(i)	Release detection	LLD on pressurized piping
\$20,000	Rule 0400-18-01-.04(3)(a)1 and 2	Release detection	Manual tank gauging
\$20,000	Rule 0400-18-01-.04(3)(c)1(i) and 2(i)	Release detection	Automatic tank gauging
\$20,000	Rule 0400-18-01-.04(3)(d)	Release detection	Interstitial monitoring
\$20,000	Rule 0400-18-01-.04(3)(e)1 and 2	Release detection	Statistical inventory reconciliation
\$20,000	Rule 0400-18-01-.04(3)(f)1 and 3	Release detection	Other RD methods
\$20,000	Rule 0400-18-01-.04(5)(b) for tanks	Release detection	Maintaining testing results as required
\$20,000	Rule 0400-18-01-.07(2)	Substandard USTs	Substandard USTs permanently closed correctly

Spreadsheet for Determinations Cont.

\$30,000	Rule 0400-18-01-.05(1)(c)	Recordkeeping	Submit compliance documents (RD, CP, spill and overfill, and secondary containment) to determine deductible within 30 days of Division request
\$30,000	Rules 0400-18-01-.04(1)(b), 0400-18-01-.04(3)(a)2(v), 0400-18-01-.04(3)(b)4, 0400-18-01-.04(3)(c)1(ii), 0400-18-01-.04(3)(c)2(ii), 0400-18-01-.04(3)(e)6, 0400-18-01-.04(4)(d)6, and 0400-18-01-.05(1)(a)	Release reporting	Suspected releases
\$30,000	Rules 0400-18-01-.02(3)(b)5 and 0400-18-01-.05(4)	Release reporting	Spills and overfills
\$30,000	Rule 0400-18-01-.06	Release reporting	Confirmed releases

* Reductions are not applicable; deductible itself can be appealed

Fund Cases with a Min Deductible or Less

- If a fund application is approved with a min deductible or less, the case will be approved with a fund letter.
 - This process is the same as it was during the pre June 15, 2021 rules.
- If an owner or operator owes a debt to the state, that will be found in the FE Worksheet as before.
- When FE cases are approved with a letter, the deductible is set upon issuance of the letter and claims can start being processed immediately.

Fund Cases Approved with an Order

- If an application is approved with a 10,000, 20,000 or 30,000 deductible, the applicant will receive an administrative order.
- Applicants receive an order so they have their right to appeal preserved through the legal process.
- In cases where the applicant receives an order, the deductible is not set until the order goes final.

The Process After a Decision is Made

- There are several steps to the process once a decision has been made in reimbursement for cases that will not receive the minimum deductible.
- First, an administrative order number will be created in gaslog. Orders for cases that will receive access to the fund have FDA as their identifier, the first two digits of the order number represent the fiscal year the case was created and the 4 digit number after indicates the case number in sequence. (Ex. FDA 23-0001)
- Once this is created, all supporting evidence will be uploaded to the case and the order will be drafted.
 - Fee reports and property assessor reports are uploaded with the FE Determination Worksheet.

Orders that are Appealed:

- If an order is appealed, the deductible is still not set. Respondents have the right to appeal the decision the Division has made and this process can take time.
- If a Respondent appeals their deductible decision, the Division's attorney will work with the Respondent and/or their legal representation to come to an agreement on the order. This can be handled in several ways, and some may even go to court to receive an ultimate decision.

Orders that Go Final:

- If an order goes final, the deductible is set and claims can begin to be processed and approved.
- These orders may go to court, or, more likely, they will receive Compromise and Settlements.

Civil Penalties and the Fund Process

- Deductibles are determined by the site's compliance history.
 - Compliance histories are determined by 09(6) inspections which are performed within 10 days of a reported or discovered release.
- If violations are discovered at this inspection, they may increase the deductible, but they may also result in civil penalties for the site.
- If violations are discovered at the inspection and are not corrected within 30 days, those violations are added to the fund order that sets their deductible.
- These penalties are debts to the state and when an order goes final, these debts are set and due to be paid.

Civil Penalties and the Fund Process Cont.

- If an order goes final, and the order has a civil penalty associated, the state is not allowed to make payments per statute until the debt is paid.
- If an order is appealed and has a civil penalty, that penalty is not considered a debt to the state until the appeal has been resolved. If an appeal receives an Agreed Order that sets an upfront penalty, that penalty is considered a debt to the state and must be paid before claims can be made.

Updates to the Process:

- Demand letters that are sent to the Respondent when orders go final will now have language that notifies the Responsible Parties that claims cannot be approved until all debts to the state are paid.
- Orders now name all known Responsible Parties (RP) as Respondents. This includes the tank owner who is generally the FE applicant and the property owner.
 - When there are known operators, the Division will also include these individuals or entities as Respondents on the order.
 - The Division names all Responsible Parties because the rules require RPs to clean up the site and allows RPs to appeal the decision.

Requirements from Fund Orders

- Ultimately what do fund orders encompass?
 1. They set the deductible for the facility, or inform the Responsible Party they have been denied access to the fund,
 2. Compliance with Rule .06 which requires Responsible Parties clean up their sites,
 3. They may include a requirement to perform operator retraining,
 4. They may include requirements to return to compliance from the inspection that was performed to determine the compliance history,
 5. They may include civil penalty assessments for violations discovered at the inspection.

Questions?

