

Procedure for Submission and Evaluation of Petroleum Cleanup Fund Reimbursement Eligibility Requests under 10 VSA § 1926(d)

TANKS MANAGEMENT PROGRAM WASTE MANAGEMENT AND PREVENTION DIVISION VT DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PURPOSE

This procedure clarifies how landowners can submit requests, and clarifies the criteria applicable to evaluating such requests, for a determination of eligibility for reimbursement for the reasonable costs of closing unused or abandoned underground storage tanks pursuant to 10 V.S.A. § 1926(d).

ELIGIBILITY FOR REIMBURSEMENT PURSUANT TO 10 V.S.A. § 1926(d)

- A. 10 V.S.A. § 1926 establishes requirements for the closure of unused or abandoned underground storage tanks (USTs). Section 1926(d) authorizes the Secretary to provide a landowner with reimbursement from the Petroleum Cleanup Fund (PCF) for the reasonable costs of tank closure if the landowner meets the following criteria:
- (1) the person owning the land can establish that after making a diligent and appropriate investigation he or she had no knowledge or reason to know of the existence of an underground storage tank; and*
 - (2) the person owning the land has given all reasonable assistance in the closing of the tank; and*
 - (3) the person owning the land is directed in writing by the secretary to close the tank, and does so.*
- B. The Secretary shall determine a landowner is eligible for reimbursement for the reasonable costs of a UST closure if the landowner:
1. submits a complete request for a determination of reimbursement eligibility under § 1926(d) using the form provided by the Secretary (see Appendix A) that:
 - a. includes documentation that demonstrates the landowner, within one year prior to the date the landowner acquired the property, completed a diligent and appropriate investigation that revealed no reason to know of the existence of a UST, as identified in Sections C and D; and
 - b. includes:
 1. for a category one, two, or three underground storage tank, a copy of the complete underground storage tank Closure Form; or
 2. for a category four underground storage tank, documentation demonstrating that the tank was closed in compliance with the Underground Storage Tank Rules;
 2. was directed in writing by the Secretary to close the tank; and
 3. has given all reasonable assistance to the Secretary in closing the UST. In determining whether the landowner has given all reasonable assistance, the Secretary shall consider whether the landowner failed to meet deadlines established by the Secretary, or failed to respond timely to the Secretary's requests for information, without good cause.

- C. For property with only a residential use immediately preceding the date the landowner acquired the property, documentation of a diligent and appropriate investigation that reveals no reason to know of the existence of a UST shall consist of:
1. a title opinion or other documentation of the information gathered during a title search that identifies the names of all individuals and entities who have owned the property for 40 or more years prior to the date of acquisition, and that:
 - a. does not reveal information indicating that the property was used for, or was part of a larger parcel used for, commercial or industrial purposes (for example, auto sales, auto service, gas stations, and business offices for an oil or gas company);
 - b. does not reveal information identifying the presence of a UST or UST infrastructure (for example, vent piping, fill ports, and dispenser islands); and
 - c. reveals no other information indicating the possible existence of a UST on the property; and
 2. a copy from a property inspection report or other documentation of the information gathered during an inspection of the property that reveals no information indicating the possible existence of a UST on the property.
- D. For property with one or more commercial or industrial uses immediately preceding the date the landowner acquired the property, documentation of a diligent and appropriate investigation that reveals no reason to know of the existence of a UST shall consist of one of the following:
1. a Phase I Environmental Site Assessment that conforms with standards established by the American Society of Testing and Materials (ASTM, and that reveals no information indicating the possible existence of a UST in the property;
 2. documentation satisfying the all appropriate inquiries standard identified in 40 C.F.R. Part 132 and that reveals no information indicating the possible existence of a UST in the property; or
 3. for property purchased before 1997, all of the documentation identified in Section C.
- E. To request a determination of eligibility for reimbursement for the reasonable costs of closing one or more USTs pursuant to § 1926(d), a landowner shall submit a request that conforms with the requirements in Section B.1 of this Procedure.
- F. Upon receipt of a request for a determination of reimbursement eligibility under § 1926(d), the Secretary shall:
1. review the request to determine whether it conforms with the requirements in Section B and the landowner is eligible for reimbursement; and
 2. issue a decision (see Appendix B for the decision form):
 - a. approving the request if the landowner is eligible for reimbursement; or
 - b. denying the request if the landowner is not eligible, identifying the basis for the denial.
- G. Appeals of a decision determining reimbursement eligibility under 10 V.S.A. § 1926(d) must be made in writing to the Director of the Waste Management Division within 30 days of the date of the decision. Appeals of a decision of the Director of the Waste Management Division must be filed with the clerk of the Vermont Environmental Division of the Vermont Superior Court within 30 days of the date of the Director's decision in accordance with the Vermont Rules for Environmental Court Proceedings.

H. Approval of a request for a determination of reimbursement eligibility provided pursuant to this Procedure does not constitute approval of specific costs for reimbursement from the PCF. A landowner who receives an approval of eligibility must submit individual invoices for review by the Secretary following the steps outlined in the Procedures for Reimbursement from the Petroleum Cleanup Fund. Only the reasonable costs of tank closure are reimbursable.

Emily Boedecker for
Emily Boedecker, Commissioner
Department of Environmental Conservation

Effective Date: 8/9/2018

Appendix A

Request for Determination of Reimbursement Eligibility Under 10 V.S.A. § 1926(d)

Provide the following information:

1. Name of landowner making request and date landowner acquired title to the property on which the UST(s) was or were located:
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2. SPAN and 911 address for property on which the UST(s) was or were located:
-

3. Immediately preceding the date landowner acquired title to the property on which the UST(s) was or were located, the property was used for (check one):
 - Only residential use
 - At least one commercial or industrial use

Check all those that are attached:

1. _____ Title opinion or equivalent documentation
2. _____ Property inspection report or equivalent documentation
3. _____ Phase I Environmental Site Assessment
4. _____ Documentation satisfying the all appropriate inquiries standard identified in 40 C.F.R. Part 132
5. _____ underground storage tank Closure Form
6. _____ for a category four underground storage tank, documentation demonstrating that the tank was closed in compliance with the Underground Storage Tank Rules

With my signature, I hereby certify that I am a landowner listed on the deed for the property this request concerns, or that I have the legal authority to sign on behalf of the landowner, and that the information submitted above and attached to this request is true and accurate to the best of my knowledge and belief.

Signature of landowner

Date

Appendix B

PCF Reimbursement Eligibility Decision under 10 V.S.A. § 1926(d)

_____'s request for reimbursement eligibility from the Petroleum Cleanup Fund for the reasonable cost of the closure of _____ underground storage tank/tanks located at _____ in _____, Vermont pursuant to 10 V.S.A. § 1926(d) **is approved** because the documentation provided demonstrates that criteria § 1926(d)(1) and (3) are met and the Secretary has determined that _____ has/have given all reasonable assistance to the Secretary in closing the underground storage tank/tanks.

This decision does not constitute approval of specific costs for reimbursement from the Petroleum Cleanup Fund. Invoices of the reasonable costs must be submitted to the Secretary to be individually reviewed pursuant to the Procedures for Reimbursement from the Petroleum Cleanup Fund.

_____'s request for reimbursement eligibility from the Petroleum Cleanup Fund for the reasonable cost of the closure of _____ underground storage tank/tanks located at _____ in _____, Vermont pursuant to 10 V.S.A. § 1926(d) **is denied for the following reasons:**

Any appeal of this decision must be made in writing to the Director of the Waste Management and Prevention Division within 30 days of the date of this decision.

Signature
Manager, UST Program

Date

