

IC 13-23-8

Chapter 8. Use of Money in Excess Liability Fund

IC 13-23-8-1

Payment of claims and loan guaranties from fund

Sec. 1. The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

- (1) The payment of the costs allowed under IC 13-23-9-2, excluding:
 - (A) liabilities to third parties; and
 - (B) the costs of repairing or replacing an underground storage tank;
arising out of releases of petroleum.
- (2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:
 - (A) to third parties under IC 13-23-9-3; or
 - (B) for reasonable attorney's fees incurred in defense of a third party liability claim.

As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.13; P.L.14-2001, SEC.6.

IC 13-23-8-2

Payment of claims; maximum amount

Sec. 2. Except as provided in section 6 of this chapter, payments under section 1 of this chapter may not exceed two million dollars (\$2,000,000) per occurrence for which claims are made under this chapter.

As added by P.L.1-1996, SEC.13. Amended by P.L.14-2001, SEC.7.

IC 13-23-8-3

Payment of claims; amounts

Sec. 3. For the purposes of section 2 of this chapter, the following amounts shall be used:

- (1) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:
 - (A) is not in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements; and
 - (B) is in compliance on a date required under the requirements described under section 4 of this chapter at the time a release was discovered;
the amount is thirty-five thousand dollars (\$35,000).
- (2) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:
 - (A) is in compliance with rules adopted by the board

- concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;
- (B) is not a double walled underground petroleum storage tank; and
- (C) has piping that does not have secondary containment; the amount is thirty thousand dollars (\$30,000).
- (3) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:
- (A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;
- (B) is not a double walled underground petroleum storage tank; and
- (C) has piping that has secondary containment; the amount is twenty-five thousand dollars (\$25,000).
- (4) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:
- (A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;
- (B) is a double walled underground petroleum storage tank; and
- (C) has piping that does not have secondary containment; the amount is twenty-five thousand dollars (\$25,000).
- (5) If the underground petroleum storage tank that was involved in the occurrence for which claims are made:
- (A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;
- (B) is a double walled underground petroleum storage tank; and
- (C) has piping that has secondary containment; the amount is twenty thousand dollars (\$20,000).

As added by P.L.1-1996, SEC.13. Amended by P.L.14-2001, SEC.8; P.L.75-2007, SEC.2; P.L.221-2007, SEC.14; P.L.159-2011, SEC.37.

IC 13-23-8-4 Version a

Requirements to receive fund money

Note: This version of section effective until 7-1-2013. See also following version of this section, effective 7-1-2013.

Sec. 4. (a) Except as provided under subsection (b), and subject to section 4.5 of this chapter, an owner or operator may receive

money from the excess liability trust fund under section 1 of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

- (1) The owner or operator has complied with the following:
 - (A) This article or IC 13-7-20 (before its repeal).
 - (B) Rules adopted under this article or IC 13-7-20 (before its repeal).

A release from an underground petroleum storage tank may not prevent an owner or operator from establishing compliance with this subdivision to receive money from the excess liability fund.

- (2) The owner or operator has paid all registration fees that are required under rules adopted under IC 13-23-8-4.5.

- (3) The owner or operator has provided the commissioner with evidence of payment of the amount of liability the owner or operator is required to pay under section 2 of this chapter.

- (4) A corrective action plan is approved by the commissioner or deemed approved under this subdivision. The corrective action plan for sites with a release from an underground petroleum storage tank that impacts soil or groundwater, or both, is automatically deemed approved only as long as:

- (A) the plan conforms with:
 - (i) 329 IAC 9-4 and 329 IAC 9-5; and
 - (ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual, including the department's risk integrated system of closure standards; and
- (B) the soil and groundwater contamination is confined to the owner's or operator's property.

If the corrective action plan fails to satisfy any of the requirements of clause (A) or (B), the plan is automatically deemed disapproved. If a corrective action plan is disapproved, the claimant may supplement the plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the department's standards in clause (A), the department's standards control. For purposes of this subdivision, if there is a conflict between compliance with the corrective action plan and the board's rules, the board's rules control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

- (b) An owner, operator, or transferee of property under subsection (e) is eligible to receive money from the fund before the owner, operator, or transferee has a corrective action plan approved or deemed approved if:

- (1) the work for which payment is sought under IC 13-23-9-2 was an initial response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with 329 IAC 9-5; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;

whichever is later.

(c) The amount of money an owner, operator, or transferee of property under subsection (e) is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

(d) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that right to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if any of the following subdivisions apply:

(1) The transferor of the property was eligible to receive money under this section with respect to the property.

(2) All of the following conditions are met:

(A) The transferee acquired ownership or operation of an underground petroleum storage tank as a result of a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership.

(B) The transferor failed to pay fees due under IC 13-23-12-1.

(C) The department failed to record a lien against the property under IC 13-23-7-10.

(3) The transferee pays all applicable tank fees under IC 13-23-12-1, including past due fees and interest for each tank, not more than thirty (30) days after receiving notice of the indebtedness.

As added by P.L.1-1996, SEC.13. Amended by P.L.67-1996, SEC.7; P.L.9-1996, SEC.14; P.L.2-1997, SEC.48; P.L.131-1997, SEC.3; P.L.2-1998, SEC.54; P.L.14-2001, SEC.9; P.L.19-2012, SEC.2; P.L.13-2013, SEC.48.

IC 13-23-8-4 Version b

Requirements to receive fund money

Note: This version of section effective 7-1-2013. See also preceding version of this section, effective until 7-1-2013.

Sec. 4. (a) Except as provided under subsection (b), and subject to section 4.5 of this chapter, an owner or operator may receive money from the excess liability trust fund under section 1 of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

(1) The owner or operator has complied with the following:

(A) This article or IC 13-7-20 (before its repeal).

(B) Rules adopted under this article or IC 13-7-20 (before its

repeal).

A release from an underground petroleum storage tank may not prevent an owner or operator from establishing compliance with this subdivision to receive money from the excess liability fund.

(2) The owner or operator has paid all registration fees that are required under rules adopted under IC 13-23-8-4.5.

(3) The owner or operator has provided the commissioner with evidence of payment of the amount of liability the owner or operator is required to pay under section 2 of this chapter.

(4) A corrective action plan is approved by the commissioner or deemed approved under this subdivision. The corrective action plan for sites with a release from an underground petroleum storage tank that impacts soil or groundwater, or both, is automatically deemed approved only as long as:

(A) the plan conforms with:

(i) 329 IAC 9-4 and 329 IAC 9-5; and

(ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual, including the department's guidance on remediation and closure standards; and

(B) the soil and groundwater contamination is confined to the owner's or operator's property.

If the corrective action plan fails to satisfy any of the requirements of clause (A) or (B), the plan is automatically deemed disapproved. If a corrective action plan is disapproved, the claimant may supplement the plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the department's standards in clause (A), the department's standards control. For purposes of this subdivision, if there is a conflict between compliance with the corrective action plan and the board's rules, the board's rules control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

(b) An owner, operator, or transferee of property under subsection (e) is eligible to receive money from the fund before the owner, operator, or transferee has a corrective action plan approved or deemed approved if:

(1) the work for which payment is sought under IC 13-23-9-2 was an initial response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with 329 IAC 9-5; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;
whichever is later.

(c) The amount of money an owner, operator, or transferee of property under subsection (e) is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

(d) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that right to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if:

- (1) the transferor of the property was eligible to receive money under this section with respect to the property;
- (2) the transferee acquired ownership or operation of an underground petroleum storage tank as a result of a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership; and
- (3) the transferee pays all applicable tank fees under IC 13-23-12-1, including past due fees and interest for each tank, not more than thirty (30) days after receiving notice of the indebtedness.

For purposes of subdivision (3), past due fees include fees, interest, and penalties assessed by the department of revenue.

As added by P.L.1-1996, SEC.13. Amended by P.L.67-1996, SEC.7; P.L.9-1996, SEC.14; P.L.2-1997, SEC.48; P.L.131-1997, SEC.3; P.L.2-1998, SEC.54; P.L.14-2001, SEC.9; P.L.19-2012, SEC.2; P.L.13-2013, SEC.48; P.L.244-2013, SEC.2.

IC 13-23-8-4.5

Duty of board to adopt rules

Sec. 4.5. The financial assurance board shall adopt rules under IC 4-22-2 to do the following:

- (1) Establish standards, procedures, and penalties for submitting or resubmitting a claim under section 1 of this chapter when the owner or operator has failed to:
 - (A) register an underground petroleum storage tank from which a release has occurred; or
 - (B) pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due.
- (2) Determine eligibility for new owners or operators that acquire ownership or operation of the underground petroleum storage tank as a result of:
 - (A) a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership and control;
 - (B) a foreclosure or a deed transferred in lieu of a foreclosure;
 - (C) the exercise of the person's lien rights; or
 - (D) an inheritance.

As added by P.L.67-1996, SEC.8. Amended by P.L.14-2001, SEC.10.

IC 13-23-8-5**Priority of liability claims and loan guaranties**

Sec. 5. The financial assurance board shall adopt rules under IC 4-22-2 to define the manner in which the priority order of liability claims and loan guaranties is established. The rules must give priority to liability claims associated with releases from underground storage tanks that pose an immediate and significant threat to the environment.

As added by P.L.1-1996, SEC.13.

IC 13-23-8-6**Claims exceeding balance in fund; liability of department and development finance authority; notice**

Sec. 6. (a) If the balance in the excess liability trust fund is insufficient to pay:

- (1) claims under section 1 of this chapter;
- (2) necessary personnel and administrative expenses associated with the excess liability trust fund; and
- (3) the transfer repayment specified in IC 13-23-15-3 before its expiration and repeal;

the department shall cease paying claims.

(b) The department shall then notify each claimant that:

- (1) the department may not pay the claim; and
- (2) the claimant may not use the excess liability trust fund to satisfy any financial assurance requirements under federal law.

As added by P.L.1-1996, SEC.13. Amended by P.L.14-2001, SEC.11; P.L.1-2002, SEC.66.

IC 13-23-8-7**Discrimination; enforceable right**

Sec. 7. (a) The department, with respect to payment of claims under section 1 of this chapter, may not discriminate against any claimant. However, subject to this chapter, a claimant does not have an enforceable right to the payment of a claim under this chapter.

(b) This chapter does not create any obligation on the part of the state other than as specifically provided in this article.

As added by P.L.1-1996, SEC.13. Amended by P.L.14-2001, SEC.12.

IC 13-23-8-8**Receipt of funds; amounts; restrictions**

Sec. 8. (a) An owner or operator of:

- (1) not more than one hundred (100) underground petroleum storage tanks may not receive more than two million dollars (\$2,000,000) from the excess liability trust fund during a year; and
- (2) more than one hundred (100) underground storage tanks may not receive more than three million dollars (\$3,000,000) from the excess liability trust fund during a year.

(b) If the right to receive money from the fund under this chapter is assigned as described in section 4(d) of this chapter, the combined

amount of money received by the assignor and the assignee from the excess liability trust fund during a year may not exceed the limits established in subsection (a).

As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.15; P.L.14-2001, SEC.13.