

## **IC 13-23-9**

### **Chapter 9. Payment From Excess Liability Fund**

#### **IC 13-23-9-1**

##### **Repealed**

*(As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.21; P.L.14-2001, SEC.14. Repealed by P.L.96-2016, SEC.31.)*

#### **IC 13-23-9-1.3**

##### **Reductions in amount available from ELTF for an eligible release**

Sec. 1.3. (a) The total amount otherwise available from the ELTF in connection with an eligible release shall be reduced by:

- (1) a deductible amount of fifteen thousand dollars (\$15,000); and
- (2) if applicable, an additional amount under subsection (b).

(b) The additional amount referred to in subsection (a)(2) is the sum of:

- (1) all annual registration fees due under IC 13-23-12-1 for USTs located at the facility from which the release occurred that:
  - (A) were due in 1991 or a later year; and
  - (B) were not paid in the year the fees were originally due;plus
- (2) an additional amount of one thousand dollars (\$1,000) for each annual registration fee imposed by IC 13-23-12-1 on a UST located at the facility from which the release occurred that:
  - (A) was due in 1991 or a later year; and
  - (B) was not paid in the year the fee was originally due.

*As added by P.L.96-2016, SEC.32.*

#### **IC 13-23-9-1.5**

##### **Costs for which ELTF claims may be paid**

Sec. 1.5. (a) The administrator may pay ELTF claims only for costs that:

- (1) are reasonable and cost effective; and
- (2) result from the following:
  - (A) Work performed for site characterization.
  - (B) Development and implementation of a corrective action plan that:
    - (i) is approved by the commissioner under rules adopted by the environmental rules board; and
    - (ii) has not been suspended.
  - (C) Work performed as part of an emergency response necessary to abate an immediate threat of harm to human health, property, or the environment.
  - (D) Third party indemnification claims submitted in accordance with section 3 of this chapter.
  - (E) Reasonable attorney's fees incurred in defense of third

party claims.

(F) Releases that occurred on or after April 1, 1988.

(b) The administrator may also pay ELTF claims for costs not described in subsection (a) if allowed under rules adopted by the financial assurance board.

*As added by P.L.96-2016, SEC.33.*

### **IC 13-23-9-2**

#### **ELTF claims must comply with rules; explanation of reasons for denial; auditor of state payment**

Sec. 2. (a) ELTF claims must be submitted in accordance with rules adopted by the financial assurance board under IC 13-23-11-7(a)(1)(B).

(b) If the administrator denies an ELTF claim, the administrator shall provide the claimant with a written explanation of all reasons for the denial of reimbursement.

(c) The administrator shall forward a copy of a claim approved under this section to the auditor of state not more than seven (7) days after approving the claim.

(d) Not more than thirty (30) days after receiving a copy of an approved ELTF claim under subsection (c), the auditor of state shall pay the ELTF claim to the claimant from the ELTF.

*As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.22; P.L.14-2001, SEC.15; P.L.96-2016, SEC.34.*

### **IC 13-23-9-2.2**

#### **Approval or denial of corrective action plan**

Sec. 2.2. (a) The commissioner shall approve or deny a corrective action plan according to section 1.5(a)(2)(B) of this chapter not more than ninety (90) days after receiving the plan.

(b) If the commissioner does not approve or deny a corrective action plan within the period allowed under subsection (a), the administrator shall pay from the ELTF the costs incurred by the claimant in developing the corrective action plan.

(c) If:

(1) a corrective action plan is submitted under section 1.5(a)(2)(B) of this chapter;

(2) the commissioner denies the corrective action plan but allows the claimant to amend and resubmit the corrective action plan; and

(3) the commissioner then approves the corrective action plan because of the amendments;

the administrator shall pay from the ELTF the costs incurred by the claimant in amending and resubmitting the corrective action plan.

*As added by P.L.96-2016, SEC.35.*

### **IC 13-23-9-3**

#### **Requirements for payment of ELTF indemnity claim; attorney**

### **general approval; auditor of state payment**

Sec. 3. (a) To receive payment of an ELTF indemnity claim, a claimant must:

- (1) submit to the administrator a claim, consisting of a request for indemnification of a third party, containing any information required by the administrator; and
- (2) forward a copy of the claim to the attorney general for the attorney general's approval.

(b) The attorney general shall approve an ELTF indemnity claim forwarded under subsection (a)(2) if the attorney general determines that there is:

- (1) a legally enforceable and final judgment against the claimant caused by a release of petroleum that was not entered as a result of:
  - (A) fraud;
  - (B) negligence; or
  - (C) an inadequate defense on the part of the attorney of the claimant; or
- (2) a reasonable settlement between the claimant and the third party.

(c) If the attorney general approves an ELTF indemnity claim under subsection (b), the administrator shall pay the claim if the claimant is in compliance with the requirements of this article and the rules adopted under this article.

(d) The attorney general shall approve or deny an ELTF indemnity claim under subsection (b) not later than sixty (60) days after receiving the request.

(e) Not more than seven (7) days after approving an ELTF indemnity claim under this section, the attorney general shall forward a copy of the attorney general's notice of approval to the auditor of state.

(f) Not more than thirty (30) days after receiving a notice of approval under subsection (e), the auditor of state shall pay to the claimant the approved amount from money available in the ELTF.

(g) If the attorney general denies an ELTF indemnity claim under this section, the attorney general shall notify the claimant and the administrator of the denial not later than ten (10) days after denying the ELTF indemnity claim.

*As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.23; P.L.14-2001, SEC.16; P.L.96-2016, SEC.36.*

### **IC 13-23-9-4**

#### **Appeal of ELTF claim denial**

Sec. 4. If the administrator denies an ELTF claim under this chapter, the claimant may appeal the denial under IC 4-21.5 to the office of environmental adjudication under IC 4-21.5-7.

*As added by P.L.1-1996, SEC.13. Amended by P.L.25-1997, SEC.15; P.L.96-2016, SEC.37.*

**IC 13-23-9-5**

**Repealed**

*(As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.24. Repealed by P.L.96-2016, SEC.38.)*

**IC 13-23-9-6**

**Material misstatement with intent to defraud**

Sec. 6. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with a request for payment from the ELTF commits a Level 6 felony.

*As added by P.L.137-2007, SEC.26. Amended by P.L.158-2013, SEC.193; P.L.96-2016, SEC.39.*