

ABBREVIATED NOTICE OF INTENT TO ADOPT ADMINISTRATIVE RULES RELATING TO
ARTICAL 33.1-12, RELATING TO PETROLEUM TANK RELEASE COMPENSATION FUND

TAKE NOTICE that the North Dakota Department of Environmental Quality (“Department”) will hold a public hearing to address a proposed new article to N.D. Admin. Code Title 33.1 on February 2, 2022 at 2:00 pm CST at the Department’s office building located at 4201 Normandy Ave., Bismarck, ND. Meeting room 210V will be available to the public for this meeting.

A copy of the proposed rules may be obtained by visiting the Department’s public notice website link at deq.nd.gov/PublicNotice.aspx, writing to the Department at 4201 Normandy Avenue, PTRCF 3rd Floor, Bismarck, ND 58501-1324, sending an email to deqptrcf@nd.gov, or calling 701.328.5191. Also, written or oral comments on the proposed rules sent to the above address, email, or telephone number and received by February 16, 2022 will be fully considered. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department at the above phone number or address at least two days prior to the public hearing.

Dated this 21st day of December, 2021.

L. David Glatt, P.E. Director
North Dakota Department of Environmental Quality

ARTICLE 33.1-12
PETROLEUM TANK RELEASE COMPENSATION FUND
CHAPTER 33.1-12-01
GENERAL FUND PROVISIONS

Section

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33.1-12-01-01. Definitions

For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in North Dakota Century Code chapter 23.1-12:

1. "Annual base registration fee" means the portion of the total annual registration fee that is charged equally for all tanks based on the amount in the fund.
2. "Classification system matrix fee" means the portion of the total annual registration fee that is charged based on the department's matrix system with respect to the degree of hazard associated with the tank classification risk.
3. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements
4. "Leak detection" means a detection system that performs line leak testing for underground piping connected to aboveground storage tanks.
5. "Properly registered tanks" means tanks having the current registration fee paid with an up-to-date online electronic tank certification or a signed and dated tank data sheet on file with the department.
6. "PTRCF program" means Petroleum Tank Release Compensation Fund program
7. "Residential tank" means a tank located on property used primarily for residential purposes.
8. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.
9. "Testing" means the preliminary and ongoing environmental evaluation procedures performed and used to obtain information related to the extent and cleanup of the petroleum contamination caused by the release.
10. "Tank location" means a location where a tank is located, which may include other tanks.
11. "Total annual registration fee" means the annual base registration fee plus additional classification system matrix fees.

History: Effective Enter Date.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-05

33.1-12-01-02. Tank registration

Tank owners and operators must register their tanks with the fund on an annual basis (registration year runs August first through July thirty-first). The department will send, electronically or by mail, all known tank owners and operators a registration letter and billing notice. The letter will explain the function of the fund and the requirement to have all tanks owned or operated registered and all fees paid prior to a petroleum release in order to be eligible for reimbursement

History: Effective Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-17

33.1-12-01-03. Registration fee

1. For each aboveground or underground tank owned or operated by the tank owner or operator, the owner or operator shall pay a total annual registration fee. The total annual registration fee is due and payable on August 1. The total annual registration fee consists of both the annual base registration fee and the classification system matrix fee, as described in subsection 5.
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change.
3. For each aboveground or underground tank, the annual base registration fee is one hundred forty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual base registration fee of one hundred forty dollars will increase to one hundred fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is seven million dollars or more and the annual base registration fee has been increased to one hundred fifty dollars, the annual base registration fee will be reduced to one hundred forty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars the annual base registration fee will be reduced to one hundred dollars. The annual base registration fee will continue at one hundred dollars until the fund balance does not exceed nine million dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than nine million dollars, the annual base registration fee will return to one hundred forty dollars.
4. For each aboveground or underground tank, the classification system matrix fee shall be calculated based on the degree of hazard associated with the tank classification risk using the multiplier factors in Table 1 or Table 2.
5. The total annual fee is computed by the following equations:

$X = (Y)(a)$ - applies only to underground storage tanks

or
X = (Y)(b) - applies only to aboveground storage tanks

Where:

X = total annual fee applied to each tank

Y = annual base registration fee for each tank

a = rate multiplier assigned to the registered site with the type of underground storage tank(s) on location from Table 1

b = rate multiplier assigned to registered site with the type of aboveground storage tank(s) on location from Table 2

Table 1

These rate multipliers apply to underground storage tank(s) only

<u>Underground Storage Tank type at Registered Tank Location</u>	<u>Rate multiplier</u>
1 = Double wall piping & tank(s) - Underground 2009 and newer installation	1.00
2 = Double wall piping & tank(s) - Underground 2008 and older installation	1.25
3 = Single wall underground tank(s) with double wall piping	1.50
4 = Double wall underground tank(s) with single wall piping	1.75
5 = Single wall underground tank(s) with single wall piping	2.00

Table 2

These rate multipliers apply to aboveground storage tank(s) only

<u>Aboveground Storage Tank type at Registered Tank Location</u>	<u>Rate multiplier</u>
1 = Aboveground tank(s) feeding aboveground piping	1.00
2 = Aboveground tank(s) feeding underground piping with *leak detection	1.50
3 = Aboveground tank(s) feeding underground piping without *leak detection	2.00

*Note: See definition 4 in NDAC 33.1-12-01-01.Definitions

6. Additional fees may apply, as specified in North Dakota Century Code section 23.1-12-17.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-17

33.1-12-01-04. Notification of release procedures

Upon receiving notice of a release, the PTRCF program shall:

1. Verify that the tank and all other tanks owned or operated by the owner or operator are registered with the fund.
2. Record the release information in the registration file for the location.
3. Verify that the department has received proper notice of the release.
4. If the owner or operator has not registered all the tanks owned and operated by the owner or operator at the location of the release, the PTRCF program shall send a denial letter to the owner or operator. A copy will be sent to the department's division assigned to the cleanup.

5. Obtain verification from the owner or operator that the affected tank, equipment, components, material, and dispenser are in compliance with state and federal regulations for the petroleum product stored and dispensed. If the previously mentioned tank, equipment, components, material, and dispenser are non-compliant with state and federal regulations, send a denial letter to the owner or operator. A copy of the denial letter will be sent to the department's division assigned to the cleanup.
6. If all tanks are registered and the affected tank, piping, fitting, and dispenser are in compliance with state and federal regulations for the petroleum product stored and dispensed prior to the release, the PTRCF program shall send the registered owner or operator of the site an application packet and a letter outlining the procedure for filing a claim for reimbursement of corrective action.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-10, 23.1-12-19

33.1-12-01-05. Procedures for investigation of claims

In each release investigation, the PTRCF program shall:

1. Investigate the location and cause of the release.
2. Interview persons with knowledge of the release.
3. Examine records and documentation concerning the release, including documentation of the corrective action taken and expenses incurred.
4. Prepare a written report determining the validity of the claim and the eligible cleanup expenses.
5. Complete other claims related tasks as required.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18, 23.1-12-20

33.1-12-01-06. Reimbursement

1. The department will reimburse reasonable and necessary environmental consultant, contractor, and excavation expenses in consultation with the department's division assigned to the cleanup.
2. No payments for reimbursement will be made from the fund unless a completed claim application form has been received and approved by the PTRCF program.
3. Eligible expenses for corrective action include the following:
 - a. Labor.
 - b. Testing.
 - c. Use of machinery.
 - d. Materials and supplies.
 - e. Professional services.

- f. Remediation, monitoring, or cleanup expenses incurred with the oversight and direction of the department's division assigned to the cleanup.
 - g. Any other expenses the department and the board deem to be reasonable and necessary to remedy cleanup of the release.
 - h. Consultant fees if authorized by the department's division assigned to the cleanup.
4. The following will not be considered eligible expenses:
- a. The cost of replacement, repair, or maintenance of affected tanks, associated piping, or system.
 - b. Pumping out of any product, including water, from any tanks which need to be removed.
 - c. The cost of upgrading existing affected tanks, associated piping, or system.
 - d. The loss of income, profits, or petroleum product.
 - e. Decreases in property value.
 - f. Attorney's fees.
 - g. Costs associated with preparing, filing, and processing an application for reimbursement or assistance under this chapter.
 - h. The costs of making improvements to the facility beyond those that are required for corrective action, including replacing concrete, asphalt, equipment, or buildings.
 - i. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.
 - j. Consultant marked-up costs.
 - k. Costs in excess of those considered reasonable by the fund.
 - l. Fines or penalties imposed by order of federal, state, or local government.
 - m. Finance charges, interest charges, or late payment charges.
5. To determine what expenses are reasonable and necessary, the owner or operator must bid the excavation and consultant work. The owner or operator is required to obtain a minimum of three bids. The bid that meets the cost effectiveness, technical, and environmental requirements of the department will be deemed by the PTRCF program to be the reasonable cost for that project. The bid must be submitted according to the fund's excavation and consultant worksheets. Additional work over and above the original bid will be reimbursed according to unit costs on the original bid.
6. The PTRCF program may provide partial payments prior to the final determination of the amount of the loss, if it is determined that the cleanup is proceeding according to the department approved workplan of the department's division assigned to the site assessment. The payment may be made to the owner, operator, or that person's assigned representative if the appropriate assignment form is submitted to the PTRCF program with appropriate documentation verifying that the work has been completed by the assignee.
7. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund and must be submitted no later than one year after the work has been completed to be eligible.

8. Prior to payment for any loss, the owner, operator, or landowner shall subrogate to the PTRCF program all rights, claims, and interest which the owner, operator, or landowner has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner, operator, or landowner or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the PTRCF program.
9. Reimbursement will be considered when the owner, operator, or landowner has submitted complete excavation or consultant worksheets along with legible copies of all invoices and a description of the work performed.
10. The owner, operator, or landowner must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner, operator, or landowner or, if the owner, operator, or landowner has assigned the right to receive payment from the fund, that a contractor hired has expended time and materials for which payment must be made. This must include documentation that the work has been completed by the assignee.
11. Prior to payment, the department must be satisfied that the corrective action taken has met all state and federal regulations and that the corrective action has satisfied public health, welfare, and environmental concerns.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18, 23.1-12-20

33.1-12-01-07. Reimbursement disputes

If a reimbursement is denied or payment is reduced to a tank owner or operator, the tank owner or operator may request a review by the board by filing a written request and supporting documentation with both the department and the board within thirty days of receiving a 'sworn statement in proof of loss' regarding a denial of reimbursement or a payment reduction notification.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18

33.1-12-01-08. Third-party damages

No reimbursement may be made for damage to employees as defined by the Title 65 governing Workforce Safety and Insurance or agents of the owner or operator.

History: Enter Date

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-26, 23.1-12-27