

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 200 - Petroleum Release Remedial Action Reimbursement Fund

Chapter 1 - Definition of Terms

Effective Date of Last Revision: August 30, 2008

Unless the context otherwise requires:

001 "Department" means the Department of Environmental Quality.

002 "Designated representative" means a person to whom the responsible person assigns any right, title, or interest which the responsible person may have in and to the proceeds from a reimbursement for remedial action.

003 "Fund" means the Petroleum Release Remedial Action Cash Fund created by the Petroleum Release Remedial Action Act.

004 "NEPA" means the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§81-1501 to 81-1533.

005 "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

006 "Operator" means a person in control of or having responsibility for the daily operation of a tank.

006.01 Operator shall not include a person described in 007.03 of this chapter.

007 "Owner" means:

007.01 In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use or dispensing of petroleum; and

007.02 In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

007.03 Owner shall not include a person who, without participating in the management of a tank and who otherwise is not engaged in petroleum production, refining and marketing:

007.03A Holds indicia of ownership primarily to protect a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

007.03B Acquires ownership of a tank or the property on or within which a tank is or was located:

007.03B1 Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

007.03B2 If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

007.04 Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

008 “Person” means any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision, or public agency or any other legal entity.

009 “Petroleum” means:

009.01 For purposes of the fee provisions of Neb. Rev. Stat. §66-1521:

009.01A Motor vehicle fuel as defined in Neb. Rev. Stat. §66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in Neb. Rev. Stat. §66-1333; and

009.01B Diesel fuel as defined in Neb. Rev. Stat. §66-482, including kerosene which has been blended for use as a motor fuel; and

009.02 For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of Neb. Rev. Stat. §66-1521:

009.02A The fuels defined above in 009.01; and

009.02B A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.

010 “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.

011 “Remedial action” means any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal.

011.01 Remedial action shall include:

011.01A Tank testing, but only in conjunction with a release or a suspected release;

011.01B Site investigation, site assessment, cleanup, restoration, and mitigation; and

011.01C Any other action ordered by the department or the State Fire Marshal which is reasonable and necessary.

011.02 Remedial action shall not include:

011.02A Tank restoration, upgrading, replacement, or rehabilitation;

011.02B Actions which do not minimize, eliminate or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or

011.02C Aesthetic improvements.

012 “Remedial Action Act” means the Nebraska Petroleum Release Remedial Action Act, Neb. Rev. Stat. §§66-1501et seq.

013 “Responsible person” means a person who is an owner or an operator of a tank.

013.01 If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

013.01A A person in the chain of title of a tank or in the property on or within which a tank is or was located;

013.01B A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

013.01C A person who has acquired ownership of a tank or the property on or within which a tank is or was located:

013.01C1 Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or

013.01C2 If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

013.02 This voluntary action shall not be construed to render a person described in 013.01 of this chapter responsible or liable for remedial action or payment of the claim.

014 “Storage and Handling Act” means the Nebraska Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. §§81-15,117 to 81-15,127.

015 “Tank” means any one or a combination of stationary above-ground or underground containers and enclosures, including structures and appurtenances connected to them, that is or has been used to contain or dispense petroleum.

015.01 Tank shall not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. Chapter 29, as in effect January 1, 1988, or any lease production tank used in the production of crude oils.

016 “Third-party claim” means a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990, and within the period of time established by statute. A third-party claim does not include a claim made under the State Miscellaneous Claims Act according to the provisions of Chapter 6, 003 of these regulations.

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