



ADMINISTRATIVE RULES OF MONTANA

17.58.332 INSURANCE COVERAGE; THIRD-PARTY LIABILITY; INVESTIGATION; DISCLOSURE; SUBROGATION; COORDINATION OF BENEFITS

- (1) Prior to receiving payment for any claim for reimbursement, an owner or operator who is determined to be eligible under 75-11-308, MCA, shall thoroughly investigate the existence of any policy of insurance or other similar instrument or document that may indicate insurance coverage for some or all of the eligible costs arising from a release. At a minimum, this investigation must include:
 - (a) complete review of the present owner's and operator's records;
 - (b) the insurance records of the owner or operator in the possession of the insurance company or its agents or brokers;
 - (c) where available, the records of prior owners or operators and others who may have information concerning insurance coverage, including insurance policies; and
 - (d) any insurance records, including policies, in the possession or control of the owner or operator that belong to third parties identified pursuant to (2).
- (2) An owner or operator who has been determined to be eligible under 75-11-308, MCA shall investigate and provide the board with the identity of and basis for liability of any third party who through its acts or omissions is known or suspected by the owner or operator to be liable for the eligible costs arising from a release.
- (3) If the board determines to aid in the investigation of available coverage, owners or operators must allow the board reasonable access to their records and, where possible, arrange access for the board to the records of others that may contain relevant insurance or third party liability information.
- (4) Owners or operators seeking reimbursement for eligible costs shall disclose to the board, on a form provided by the board, the results of the owner's or operator's investigations undertaken pursuant to (1) and (2). Together with the completed form, the owner or operator may be requested to provide copies of any policy of insurance, or any other evidence that may indicate insurance coverage for some or all of the eligible costs, including any documents identified or discovered as a result of the investigations undertaken pursuant to (1) and (2). Such evidence of insurance includes, but is not limited to, cancelled checks from or to insurance companies, letters to and from insurance companies or their agents or brokers, or policies or declaration sheets indicating extent of coverage. Narrative information from previous owners or operators concerning possible coverage must be submitted in writing along with the form. The disclosure must contain current information as of the date of the release as well as all available historic insurance information from the date of the facility's first use of petroleum storage tanks. Where

applicable, this disclosure must also contain the identity of any third party who may be liable for the eligible costs sought to be reimbursed together with an explanation of the basis of liability and any supporting documentation indicating insurance coverage that third parties may have.

- (5) To the extent the board may reimburse or has reimbursed owners or operators for eligible costs, the board has a subrogation claim against insurance carriers whose policies cover the reimbursed costs and against other third parties whose acts or omissions render them otherwise liable for the reimbursed costs. An owner or operator who accepts reimbursement for costs subrogates his rights to the board as against such insurance carriers and other third parties to the extent of the accepted reimbursed costs. An owner or operator, prior to receiving any reimbursement of eligible costs, must agree on a form provided by the board, to subrogate its claims to the board to the extent of the accepted reimbursed costs.
- (6) The board's obligation to reimburse eligible owners or operators does not include eligible costs owners or operators recover pursuant to contractual or tort-based obligations of insurers or other third parties. For the purposes of providing reimbursement or obtaining subrogation, the board is not an insurer.
- (7) Reimbursement of claims by the board may be delayed by the board pending submission of any form or information referenced in this rule. If it appears to the board that a party has previously reimbursed an owner or operator for eligible costs, the board may withhold reimbursement of claims from that owner or operator pending a determination by the board of what eligible costs, if any, remain to be reimbursed.

Authorizing statute(s): 75-11-318, MCA

Implementing statute(s): 75-11-309, MCA

History: NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, and AMD, 1996 MAR p. 3125, Eff. 12/6/96; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2001 MAR p. 660, Eff. 4/27/01; AMD, 2011 MAR p. 377, Eff. 3/25/11.