

**North Carolina  
Department of Environment and Natural Resources**

**Division of Waste Management**

Beverly Eaves Perdue, Governor  
Dee Freeman, Secretary  
Dexter R. Matthews, Director



February 23, 2009

Memorandum

To: Environmental Service Providers and Other Interested Parties

From: George C. Matthis, Jr. *George C. Matthis, Jr.*  
Head, Trust Fund Branch

Subject: Revisions to Two State Cleanup Fund Processes

North Carolina General Assembly Session 2007, House Bill 2498, Section 2 establishes statutes of limitation when requesting determinations of Cleanup Fund eligibility and when requesting Cleanup Fund reimbursements. Please refer to my memorandum of November 19, 2008 for details of the new requirements. The purpose of the amended statute is to ensure all valid, un-requested reimbursement claims against the Cleanup Funds are filed within the coming year and that all future reimbursement claims are filed in a timely manner so that the Department and General Assembly can continually account for all obligations against the Cleanup Funds.

For tasks completed after January 1, 2009, the amended statute allows owners, operators, or landowners one year after task completions to request eligibility determinations from the Department. It further allows owners, operators, or landowners one additional year after task completions or eligibility determinations (whichever comes later) to request reimbursements from the Cleanup Funds. The amended statute also calls in all un-requested reimbursement claims by requiring that owners, operators, or landowners request reimbursements for tasks completed prior to January 1, 2009 by January 1, 2010. There is some concern that this last requirement may slow down the eligibility determination process to the point that, in a limited number of cases, owners, operators, or landowners would have insufficient time after eligibility determinations to request reimbursements before the January 1, 2010 deadline. Should this happen, some owners, operators, or landowners may be inadvertently disqualified from Cleanup Funds reimbursements. Inadvertent reimbursement disqualification is clearly not the intent of the law and to address this concern the UST Section is modifying two internal review processes policy to make it easier for tank owners, operators and landowners to meet the deadlines described in the law. Nevertheless, it is very important that owners, operators, or landowners request all eligibility determinations and all valid reimbursements for tasks completed prior to January 1, 2009 before January 1, 2010. The law is quite specific that failure to do so will result in denials of reimbursement requests.

**Eligibility Review Process**

**Current Process:** Applications for Cleanup Fund eligibility received by the UST Section – Trust Fund Branch are initially reviewed for completeness. When required forms or supporting documentation is missing, applications may be returned unprocessed or, in cases where missing information may be easily obtained, UST Section staff may contact tank owners, operators, landowners or their consultants for missing information. Multiple attempts to obtain the information may be made until all reasonable efforts have been exhausted. If other questions arise during the final review of the application, such as

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the discovery of additional USTs or ASTs not reported on the application, additional information may again be requested from owners, operators, landowners or consultants prior to completing reviews and making eligibility determinations.

Revised Process – Effective April 1, 2009: During initial reviews of applications for Cleanup Fund eligibility, only one attempt per application will be made to obtain missing information, either by contacting owners, operators, landowners or consultants or by returning those applications missing substantial information that cannot easily be obtained. Those applications remaining incomplete 30 calendar days after owners, operators, or landowners are notified of missing information will be considered closed and, if still in the possession of the Trust Fund Branch, will be returned unprocessed. Eligibility applications are reviewed in the order in which they are received and resubmitted completed applications will be reviewed in order of the new dates of receipts. Applications found to be complete after the initial review will proceed through the eligibility determination process and eligibility determinations will be based solely on application submittals and on other information available in UST Section files. During the eligibility determination process, no attempts will be made to resolve questions. Tank owners, operators or landowners not satisfied with eligibility determinations may request determinations be reconsidered and furnish supporting documentation.

#### **Eligibility Application and Claim Submittal Policy**

Current Process: Requests for determinations of Cleanup Fund eligibility must be made and written decisions provided to tank owners, operators or landowners prior to the submission of requests for reimbursements.

Revised Process - Effective July 1, 2009: Owners, operators and landowners may request determinations of eligibility and submit initial requests for reimbursements at the same time. This temporary change will expire on December 31, 2009.

If there are any questions regarding these revisions, please contact me at (919) 733-1332 or email [George.Matthis@ncmail.net](mailto:George.Matthis@ncmail.net).

cc: Grover Nicholson  
STF Staff