

Virginia Department of Environmental Quality Storage Tank Program

Fact Sheet: Assumption of Liability

("Stepping into the Shoes")

An interested person who is not the responsible person, but who has a legal interest in the property, may "step into the shoes" of the responsible person and become eligible for reimbursement from the Fund. An interested person must agree to assume liability for a petroleum clean-up in accordance with DEQ requirements to be eligible to request reimbursement from the Fund. If a person does not assume liability for the clean-up or is not the owner/operator, they are not eligible for reimbursement of clean-up costs. This procedure has no impact on any potential third party claims that may arise against the responsible person. **The responsible person retains third party liability after someone steps into the shoes for corrective action liability.**

- In some circumstances (usually, real property transfers), a party may wish to complete a petroleum cleanup that is the responsibility of another entity. Typically, the party wishing to complete the cleanup requests access to the Fund for reimbursement of cleanup costs. Two methods may be used to gain Fund access: (1) assignment of payment or (2) assumption of liability.
- Assignment of payment requires that assignment forms be submitted with each progress claim for the cleanup. Please see the VPSTF Reimbursement Guidance Manual for reimbursement procedures. **Assignments transfer only the right to payment and do not transfer cleanup liability.**
- Assumption of liability allows the party to "step into the shoes" of the responsible person (RP). A party that "steps into the shoes" of the RP assumes the RP's cleanup liability and obtains the RP's eligibility to request reimbursement from the Fund for eligible, pre-approved, verified, reasonable and necessary costs of cleanup, in excess of the RP's financial responsibility for the occurrence. Parties that assume liability must provide DEQ with the following signed statement before they begin the cleanup or request reimbursement.

[Name of person assuming liability] assumes all liability for the completion of corrective action from the petroleum/oil contamination associated with PC# _____ and agrees to perform the corrective action in accordance with Virginia DEQ requirements.

- In cases where there is an existing responsible person, the person assuming liability must provide the statement assuming liability described above and obtain the following signed statement from the responsible person:

[Responsible Person Name] is the responsible person for the cleanup of the petroleum/oil release from the [insert tank type] located at [insert street address, city/county] and identified as PC # _____. [Responsible Person Name] quitclaims, assigns and releases all of its rights to reimbursement for corrective action costs from the Virginia Petroleum Storage Tank Fund associated with PC # _____ to [Name of Person Assuming Liability] and [Responsible Person Name] represents and warrants that [Responsible Person Name] has the right to make such quitclaim, assignment and release. [Responsible Person name] acknowledges that if [Name of Person Assuming Liability] fails to complete the cleanup for any reason, DEQ may require [Responsible Person name] to resume cleanup activities. [Responsible Person name] acknowledges that neither this relinquishment nor the assumption of liability for cleanup relieves him/her of any potential liability arising from any third party claims or lawsuits.

- Persons assuming liability will be eligible for reimbursement as long as the cleanup is performed in accordance with instructions from DEQ Regional Office and the Reimbursement Program's reimbursement procedures. Persons assuming liability are expected to complete the entire cleanup. However, if the person assuming liability fails to complete the cleanup for any reason, DEQ may require the Responsible Person to resume cleanup activities. If the RP is required to re-commence cleanup, they will be eligible for reinstatement of Fund access.
- DEQ limits the class of entities eligible to assume liability to those who have a legal interest in the property, i.e., those who have a lawful and substantial economic interest in the safety or preservation of property from loss, destruction or damage. DEQ may allow other people or entities to assume liability in those cases where there is a demonstrable incentive to complete the cleanup other than access to the Fund. For example, an adjacent property owner who wishes to increase the value of his own property or keep the value of his property from further declining may be eligible to assume liability. Also, an entity with a legal interest in the responsible person, such as a parent corporation or a company who has purchased the assets of the responsible person, may be eligible to assume liability.