

Title 11: Mississippi Department of Environmental Quality

Part 5: Underground Storage Tank Regulations

Part 5, Chapter 1: Mississippi Commission on Environmental Quality Mississippi Groundwater Protection Trust Fund Regulation (Adopted March 22, 1989; Last Amended December 10, 2009)

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Rule 1.1 General Intent.

The general intent and effect of the Mississippi Underground Storage Tank Act of 1988 (the Act) includes but is not limited to the following:

- A. to provide an incentive for owners of underground storage tanks to stay in substantial compliance according to applicable law and to promptly, and in accordance with applicable law, monitor, report, and respond to any release of motor fuel from an underground storage tank system;
- B. to provide a fund to reimburse owners who are in substantial compliance with the Act for reasonable and necessary costs incurred to determine the extent of and to clean up contamination resulting from releases of motor fuels from underground storage tanks where those releases pose a threat to the environment or a threat to the public health, safety or welfare;
- C. to provide an alternative source of financial responsibility for owners of underground storage tanks (USTs) containing motor fuels; and
- D. to provide a fund from which to pay for third party damages caused by releases of motor fuels when a final judgment has been obtained according to the Act.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.2 Legal Authority.

- A. These regulations are promulgated pursuant to the provisions of the Underground Storage Tank Act of 1988, Miss. Code Ann., Section 49-17-405, which created the Mississippi Groundwater Protection Trust Fund (the Trust Fund).
- B. Under the Act, the Executive Director of the Department of Environmental Quality (the Department) has the responsibility of administering the Trust Fund.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.3 Definitions.

All definitions found in Miss. Code Ann., Section 49-17-403, are incorporated in these regulations. The following definitions also apply to these regulations:

- A. "Environmental Response Action Contractor (ERAC)" means a person who has been approved by the Commission to carry out any response action, including a person retained or hired by such person to provide services relating to a response action.
- B. "Immediate Response Action" means a response action which the Department determines must be conducted on an immediate basis.
- C. "Immediate Response Action Contractor (IRAC)" is a person who has been approved by the Commission to carry out any immediate response action, including a person retained or hired by such person to provide services relating to a response action.
- D. "Response Action" means any activity, including evaluation, planning, design, engineering, geological investigation(s), construction and ancillary services, which is carried out in response to any discharge, release, or threatened release of motor fuels.
- E. "Subcontractor" means any individual or company that provides services, personnel, or supplies to an ERAC or IRAC in the course of a response action.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.4 Immediate Response Action Contractor (IRAC) Application Process.

- A. IRAC's shall be responsible for response actions on an immediate basis which may at a minimum include planning, designing, construction, and services related to any discharge, release, or threatened release of motor fuels. The Department shall determine when a release necessitates an immediate response from an IRAC.
- B. To be considered for listing as an IRAC, an applicant must submit a completed application to the Department's Underground Storage Tank Branch. The application must contain at a minimum, the following documentation:
 - (1) copy of a current certificate of responsibility issued by the State of Mississippi Board of Contractors;
 - (2) copy of a current certificate of insurance showing coverage of at least one million dollars (\$1,000,000.00) under the contractor's general liability insurance;
 - (3) copy of a current certification from the Department for a full-time (40 hours per week) employee of the company to permanently close UST systems;

- (4) copies of certificates of applicable Occupational Safety and Health Administration (OSHA) training for all personnel who will be on site during UST related work;
- (5) evidence that the applicant has successfully completed at least three (3) jobs within one year prior to application submittal. Such jobs must have involved remediation of soils or water at UST sites;
- (6) signed certification affidavit that the applicant can meet and maintain the requirements of Rule 1.5 and 1.6 of these regulations; and
- (7) other appropriate documentation as required by the Department.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.5 IRAC Submittal of Documentation Requested by the Department.

- A. To remain on the list of approved IRAC'S, and IRAC must annually submit an updated application. The application must be submitted no later than one year after approval of the IRAC.
- B. An IRAC shall notify the Department, in writing, within ten (10) days of changes to information submitted under Rule 1.4.B of these regulations.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.6 IRAC Application Review.

Applicants meeting the requirements of Rule 1.4 of these regulations must be capable, at a minimum, of performing the following services in a satisfactory manner:

- A. excavating, transporting, and properly disposing of soil and/or groundwater contaminated with motor fuels;
- B. installing, operating, and maintaining groundwater and product recovery wells;
- C. effectively recovering and properly disposing of free phase petroleum hydrocarbons and contaminated groundwater;
- D. properly collecting and analyzing soil and groundwater samples;
- E. responding to any site within 24 hours after notification to proceed, or within any other time as specified by the Department, and having on hand basic and necessary equipment such as excavators, dump trucks, traffic barricades, containers, sorbents, pumps, skimmer

systems, fire extinguishers, and first aid supplies; and

F. other services deemed necessary by the Department.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.7 IRAC Performance Standards.

Approved IRAC's must, at a minimum, perform satisfactorily in the following areas:

- A. assigning proper supervisory personnel to the work site to ensure efficient and effective site management, use of personnel, and coordination of subcontractors;
- B. submitting true and accurate invoices on a form required by the Department to any party contracting for services;
- C. paying all subcontractors within a reasonable time or as agreed to between the subcontractor and the IRAC;
- D. responding to the work site within 24 hours after notification to proceed, or within any other time as specified by the Department, and with proper equipment including but not limited to equipment listed in Rule 1.6.E;
- E. handling all aspects of the immediate response action in an efficient, effective, and workman-like manner;
- F. having personnel on site with the appropriate OSHA training; and
- G. fulfilling other requirements established by the Department.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.8 Denial of IRAC Applications

- A. The Commission may deny an IRAC application if the Commission has reason to believe that the applicant cannot satisfy the requirements of Rule 1.6 of these regulations or the performance standards in Rule 1.7 of these regulations.
- B. Causes which may result in denial of an IRAC application include any of those listed in Rule 1.9.B of these regulations.
- C. The Commission may deny an IRAC application for other good cause.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.9 Removal From The Approved List of IRAC's.

- A. IRAC's may be removed for cause from the approved list of contractors at any time by the Commission according to the procedures established in Miss. Code Ann., Section 49-17-427. A contractor who is removed from the approved list of IRAC's shall not be reconsidered for approval for a length of time specified by the Commission.
- B. Causes which may result in nonrenewal, removal, and/or penalties include but are not limited to:
 - (1) fraud and/or lack of integrity;
 - (2) bankruptcy;
 - (3) failure to pay subcontractors within a reasonable time or within the time agreed to by the subcontractor and the IRAC;
 - (4) failure to exercise good safety practices;
 - (5) failure to maintain the skills and satisfy the requirements on which approval was originally based;
 - (6) failure to meet any of the performance standards in Rule 1.7 of these regulations;
or
 - (7) other good cause deemed appropriate by the Commission.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.10 Environmental Response Action Contractor (ERAC) Application Process.

- A. ERAC's shall be responsible for the engineering and/or geologic portion of response actions related to any discharge, release, or threatened release of motor fuels. The Department shall determine when a release necessitates a response from an ERAC.

A Registered Professional Engineer (PE) that is listed as an ERAC is limited to the work identified in Miss. Code Ann. Sections 73-13-1, et seq., related to the practice of engineering. A Registered Professional Geologist (PG) that is listed as an ERAC is limited to the work identified in Miss. Code Ann. Sections 73-63-1, et seq., related to the practice of geology. ERACs shall be identified on the approved list maintained by the Department by their professional designation(s) of PE, PG, or PE and PG for dual designations.

- B. To be considered for listing as an ERAC, an applicant must submit a completed application to the Department's Underground Storage Tank Branch. The application must contain, at a minimum, the following documentation:
- (1) demonstration that the applicant is a Professional Engineer or Registered Professional Geologist or, in the case of a firm or business, employs at least one full time (40 hours per week) Professional Engineer or Registered Professional Geologist licensed to practice in Mississippi;
 - (2) a Quality Assurance/Quality Control (QA/QC) Plan developed in accordance with the requirements of the Department;
 - (3) a current certificate of insurance proving that the applicant holds professional liability insurance in an amount not less than one million dollars (\$1,000,000); and,
 - (4) evidence of the successful completion of three (3) assessments and the successful implementation of two (2) remediation activities. Such work must have been performed within five (5) years preceding the date of application.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.11 ERAC Submittal of Documentation Requested by the Department.

- A. To remain on the list of approved ERAC's, an ERAC must annually submit an updated application. The updated application must be submitted no later than one year after approval of the ERAC.
- B. To remain on the list of approved ERAC's, an ERAC must submit a revised QA/QC Plan as requested by the Department.
- C. An ERAC shall notify the Department, in writing, within ten (10) days of any changes to information submitted under Rule 1.10.B of these regulations.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 1.12 ERAC Performance Standards.

Approved ERAC's must at a minimum perform satisfactorily, as determined by the Department, in the following areas:

- A. having the necessary equipment on site to effectively and efficiently perform the response action;

- B. assigning proper supervisory personnel to the work site to ensure efficient and effective site management, use of personnel, and coordination of subcontractors;
- C. responding in a timely manner to work sites and having sufficient personnel and/or equipment available to complete projects in an effective and efficient manner;
- D. having personnel on site with the appropriate OSHA training;
- E. completing a project in a timely manner;
- F. submitting true and accurate invoices on a form required by the Department to any party contracting for services;
- G. managing the project to reasonably control costs;
- H. satisfying just debts incurred through the employment of subcontractors or the purchase of other goods and services necessary to respond to a motor fuel release;
- I. following the ERAC's Department-approved QA/QC Plan;
- J. following the Department-approved scope of work;
- K. ensuring that bid and contract documents are followed, if the Department has requested bids to be submitted on a project;
- L. submitting complete and accurate reports; and
- M. submitting reports by the date required by the Department.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.13 Removal From The Approved List of ERAC's.

- A. An ERAC or applicant may have its approval revoked or application for renewal denied for a length of time as specified by the Commission for cause according to the procedures established in Miss. Code Ann., Section 49-17-427.
- B. Causes which may result in nonrenewal, revocation, and/or penalties include but are not limited to:
 - (1) fraud or lack of integrity;
 - (2) failure to submit a revised QA/QC Plan when requested by the Department;

- (3) failure to submit an updated application;
- (4) failure to maintain the requirements on which approval was originally based;
- (5) failure to meet any of the performance standards in Rule 1.12 of these regulations;
or
- (6) other good cause deemed appropriate by the Commission.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.14 Denial of ERAC Applications.

- A. The Commission may deny an ERAC application if the Commission has reason to believe that the applicant cannot satisfy the performance standards in Rule 1.12 of these regulations.
- B. Causes which may result in denial of an ERAC application include any of those listed in Rule 1.13.B of these regulations.
- C. The Commission may deny an ERAC application for other good cause.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.15 Eligibility for Reimbursement from The Mississippi Groundwater Protection Trust Fund.

To be eligible for reimbursement of costs incurred during any response action the following minimum conditions must be met:

- A. the release must have been confirmed and reported to the Department after July 1, 1988;
- B. the release must be from an active UST containing motor fuels; and
- C. the owner or operator must be in substantial compliance with the underground storage tank law, rules and regulations.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.16 Reimbursable Costs.

- A. The Trust Fund may be used at eligible sites for costs incurred in conducting site investigations, assessments, and remediation, in replacing potable water supplies, and in

paying third party claims in accordance with Rule 1.18 of these regulations. Owner's and/or operator's reimbursement may be reduced by \$100/day for documents submitted after a written deadline date established by the Department.

- B. The Trust Fund may be used to reimburse costs at eligible sites for the following activities:
- (1) recovery and disposal of released motor fuels;
 - (2) recovery and disposal of contaminated soils;
 - (3) installation and operation of monitoring and/or recovery wells;
 - (4) soil borings, soil, and water sampling, and laboratory analyses;
 - (5) removal, treatment, and disposal of motor fuel contaminated wastes of any kind;
 - (6) replacement of contaminated public or private water supplies; and
 - (7) other costs determined by the Department to be reasonable and necessary for assessment and remediation.
- C. Only costs determined by the Department to be fair and reasonable will be reimbursed. The Department may require competitive bidding in order to establish fair and reasonable cost.
- D. The Trust Fund may not be used to reimburse costs for the following activities:
- (1) repairing, permanently closing, or replacing underground storage tank systems;
 - (2) lost revenue;
 - (3) confirmation of a release;
 - (4) rental of temporary motor fuel storage tanks;
 - (5) loss of any real or personal property not directly associated with the investigation, assessment, or remediation;
 - (6) loss of motor fuel;
 - (7) legal fees; or
 - (8) other costs determined by the Department not to be reasonable and necessary for

assessment and remediation.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.17 Funds Disbursement.

Payments from the Trust Fund may be made to underground storage tank owners, and response action contractors, for their eligible costs incurred up to \$1,500,000 for investigation, assessment, and/or remediation for each confirmed release, provided the following minimum conditions are met:

- A. a representative of the Department has approved any activity and costs prior to the initiation of such activity;
- B. the UST tank owner and/or response action contractor has first submitted a certification affidavit on a form furnished by the Department certifying that the costs incurred were necessary, fair, and reasonable; and
- C. the UST owner and/or response action contractor has submitted to the Department any other documentation or information concerning the costs incurred which the Department deems necessary to ensure costs are eligible, reasonable, and necessary and to ensure fiscal integrity of the Trust Fund.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.18 Third Party Claims.

Payments of up to \$1,000,000 per site per release occurrence may be made to any third party who brings a third party claim against any owner of an underground storage tank and the Commission as trustee of the Mississippi Groundwater Protection Trust Fund and who obtains a final judgment in such action which is valid and enforceable in this state against such parties. Payments shall be paid to the third party upon such party's filing an application with the Department attaching the original or a certified copy of the final judgment.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.19 Denial of Claims.

The Department may deny any reimbursement request of an eligible party if the costs incurred were unreasonable, unnecessary, or were not incurred in accordance with these regulations, the UST technical regulations, or the procedures developed for managing the Mississippi Groundwater Protection Trust Fund. Any owner of an underground storage tank who is denied reimbursement in whole or in part shall have the right to a hearing before the Commission on

Environmental Quality according to Mississippi Code Ann., Sections 49-17-31 through 49-17-35.

Source: Miss. Code Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 1.20 Enforcement Actions.

Hearings may be requested regarding any of these provisions of these rules. A person who violates any provision of these regulations or of state law is subject to any actions and remedies allowed under state law. Enforcement and appeals shall be accordance with the Mississippi Underground Storage Tank Act of 1988, 49-17-401, *et seq.*, and the Mississippi Air and Water Pollution Control Law 49-17-1 *et seq.*

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-17-31 through 49-17-41, 49-2-1, *et seq.*, 49-17-1, *et seq.* and 17-17-1, *et seq.*

Rule 1.21 Property Rights.

These regulations do not convey any property rights in either real or personal property, or any exclusive privileges, invasion of personal rights or any infringement of federal, state, or local law.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-17-31 through 49-17-41, 49-2-1, *et seq.* and 49-17-1, *et seq.*