

1 Department of Agriculture

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3 Adopted Permanent Rules Relating to Agricultural Chemical  
4 Response Compensation Board

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6 Rules as Adopted

7 AGRICULTURAL CHEMICAL RESPONSE COMPENSATION BOARD RULES

8 1512.0100 DEFINITIONS.

9 Subpart 1. **Scope.** The definitions in this part and  
10 Minnesota Statutes, chapter 18B, 18C, 18D, or 18E apply to parts  
11 1512.0100 to 1512.1100.

12 Subp. 2. **Corrective action design.** "Corrective action  
13 design" means a description of the actions necessary to  
14 investigate, minimize, or clean up an incident.

15 Subp. 3. **Eligible costs.** "Eligible costs" means costs  
16 that minimize, eliminate, or clean up an incident and are  
17 reasonable and necessary.

18 1512.0200 BOARD MEETINGS.

19 Subpart 1. **Regular meetings.** At least six regular  
20 meetings of the board must be scheduled a year. A scheduled  
21 meeting may be canceled if there is insufficient business.

22 Subp. 2. **Special meetings.** A special meeting of the board  
23 may be called by the chair or by written request of three board  
24 members.

25 1512.0300 BOARD CHAIR AND VICE-CHAIR.

26 A chair and vice-chair of the board must be elected by the  
27 board. Both positions must be elected at the first official  
28 meeting of the board on or after July 1, 1990. The chair shall  
29 preside at regular and special meetings, or the vice-chair in  
30 the absence of the chair, and the person chairing a meeting  
31 shall perform all duties assigned by the board.

32 The chair and vice-chair must be members of the board and  
33 may not be either the commissioner of agriculture or the  
34 commissioner of commerce.

1 The term of the chair and vice-chair is one year, beginning  
2 January 1, 1991.

3 1512.0400 CONDUCT OF MEETINGS.

4 Subpart 1. **Quorum.** A quorum consists of three board  
5 members.

6 Subp. 2. **Minutes.** Meetings must be tape recorded and  
7 minutes subsequently prepared by the board's staff.

8 Subp. 3. **Parliamentary procedure.** Except as specifically  
9 provided by statute or negotiation, Robert's Rules of Order  
10 govern questions that may arise at a meeting of the board.

11 1512.0500 CONFLICT OF INTEREST.

12 A member of the board who has a direct or indirect  
13 financial or employment interest relating to a matter before the  
14 board, which interest is reasonably likely to affect  
15 impartiality of judgment in the matter, shall make known the  
16 interest and shall refrain from participating in or voting upon  
17 the matter. The abstention of a board member or members does  
18 not prevent the remaining members from conducting a legal vote.

19 1512.0600 REIMBURSEMENT OR PAYMENT OF COSTS.

20 Subpart 1. **General.**

21 A. An eligible person who has taken corrective action  
22 and has incurred costs on or after July 1, 1989, may apply to  
23 the board for reimbursement or payment of eligible costs.

24 B. Reimbursement for eligible costs incurred is only  
25 for costs already paid by the eligible person. Reimbursement  
26 will not be made without proof that costs have been paid.

27 C. Payment of eligible costs incurred is only for  
28 costs that the eligible person is unable to pay.

29 Subp. 2. **Conditions.** A reimbursement or payment may not  
30 be made unless the board determines that the commissioner of  
31 agriculture has determined that the corrective action has  
32 adequately addressed, or will adequately address, the incident  
33 so as to eliminate unreasonable adverse effects on the  
34 environment.

1 An eligible person must seek and report to the board any  
2 and all other cost coverage or recovery when making an  
3 application for reimbursement or payment from the agricultural  
4 chemical response and reimbursement account.

5 A reimbursement may not be made before the applicant  
6 receives approval from the commissioner of agriculture for a  
7 corrective action design.

8 A payment may not be made before the applicant receives the  
9 commissioner's approval for additional necessary corrective  
10 actions.

11 Subp. 3. **Multiple eligible persons.** If more than one  
12 eligible person incurs eligible costs for a single incident or  
13 for a single corrective action, each eligible person must apply  
14 separately to the board. Not more than the maximum amounts  
15 under Minnesota Statutes, chapter 18E, may be reimbursed or paid  
16 for corrective action costs associated with a single incident  
17 site, regardless of the number of eligible persons.

18 1512.0700 ELIGIBLE COSTS.

19 Subpart 1. **Reimbursable or payable corrective actions.**  
20 Costs associated with the following corrective actions may be  
21 eligible for reimbursement or payment:

22 A. emergency responses to incidents including, but  
23 not limited to, costs incurred that are necessary to abate acute  
24 risks to human health, safety, and the environment;

25 B. incident site hazard control measures including,  
26 but not limited to, containment and stabilization of the  
27 incident and removal of released material;

28 C. investigation and source identification including,  
29 but not limited to, collecting and analyzing soil samples,  
30 testing the groundwater, testing site and adjacent drinking  
31 water supplies, structural testing, and engineering and  
32 consultant services;

33 D. development of corrective action design according  
34 to requirements of the commissioner of agriculture; and

35 E. cleanup of incidents including, but not limited

1 to, removal, treatment, or disposal of surface or subsurface  
2 contamination.

3 Cleanup must be performed according to a corrective action  
4 design, approved by the commissioner of agriculture, except in  
5 circumstances where an eligible person takes all reasonable  
6 emergency corrective action necessary to minimize and abate an  
7 incident and the action is subsequently approved by the  
8 commissioner of agriculture.

9 Subp. 2. Documentation of reasonableness. The applicant  
10 shall prove the reasonableness of all incurred eligible costs.  
11 Upon request of the board or the board's staff, the applicant  
12 shall document the reasonableness of any costs included on the  
13 reimbursement application, or on any request for payment, by  
14 providing one or more of the following:

15 A. evidence that the work was performed by a person  
16 or persons whose services were solicited through a competitive  
17 bidding selection procedure that considers qualifications and  
18 cost;

19 B. evidence that the cost is substantially equivalent  
20 to that charged by a comparable person or persons in the same  
21 geographical area for similar work performed;

22 C. evidence that only one party was reasonably  
23 available to perform the necessary work; or

24 D. evidence that only one party was reasonably  
25 qualified to perform the necessary work.

26 The board shall reimburse or pay only those costs it  
27 determines to be reasonable.

28 1512.0800 INELIGIBLE COSTS.

29 All costs associated with actions that do not minimize,  
30 eliminate, or clean up an incident are ineligible costs.  
31 Ineligible costs include, but are not limited to, costs related  
32 to the repair, replacement, or upgrading of agricultural  
33 chemical facility structures or equipment, cost of agricultural  
34 chemical product replacement, loss of income, attorney's fees,  
35 permanent relocation of residents, decreased property values,

1 reimbursement for the eligible person's own time spent in  
2 planning and administering a corrective action design, costs for  
3 third party review of proposed investigative and corrective  
4 action or work plans, aesthetic improvements, or any work,  
5 except for emergency corrective actions, not in compliance with  
6 safety codes including, but not limited to, United States  
7 Occupational Safety and Health Administration requirements, well  
8 codes, fire codes, and costs for providing alternative sources  
9 of drinking water.

10 Corrective action costs covered or payable under an  
11 insurance or other contract are ineligible costs. Corrective  
12 action costs covered or payable under an insurance or other  
13 contract are ineligible costs because they are not considered to  
14 be costs incurred by the eligible person. Costs incurred in  
15 response to requests or orders issued to a responsible person  
16 under authorities contained in Minnesota Statutes, chapter 115B,  
17 or federal CERCLA are ineligible costs.

18 1512.0900 APPLICATION PROCESS.

19 Subpart 1. Request for reimbursement. A person who wishes  
20 to apply for reimbursement from the account shall complete,  
21 sign, and submit to the board a written application. The  
22 application must be on a form prescribed by the board and must  
23 contain the following:

- 24 A. name of person making the application;
- 25 B. description of the site of the incident;
- 26 C. summary of the corrective action design and the  
27 commissioner of agriculture's approval of the design, or a  
28 description of emergency corrective action taken and evidence of  
29 the commissioner of agriculture's subsequent approval of that  
30 action; and
- 31 D. itemized list of all corrective actions taken; the  
32 eligible costs associated with those actions; and the name of  
33 the person, contractor, consultant, or engineer who performed  
34 the action; and
- 35 E. proof of payment.

1 Subp. 2. Request for payment. A person who wishes to  
2 apply for payment from the account shall complete, sign, and  
3 submit to the board a written application. The application must  
4 be on a form prescribed by the board and must contain the  
5 following:

6 A. name of person making the application;

7 B. description of the site of the incident;

8 C. completed and signed affidavit summarizing the  
9 financial condition of eligible persons, and demonstrating an  
10 inability to pay the corrective action cost;

11 D. copies of federal and state income tax returns for  
12 the last two years (corporate, partnership, or individual);

13 E. monthly, quarterly, and annual financial  
14 statements for the last two years, prepared according to  
15 generally accepted accounting principles, relating to the  
16 financial condition of the applicant applying for payment,  
17 including financial statements for any businesses owned or  
18 operated by the applicant;

19 F. a summary of the corrective actions taken, as  
20 approved by the commissioner, or a description of emergency  
21 corrective action taken and evidence of the commissioner of  
22 agriculture's subsequent approval of that action;

23 G. itemized list of all corrective actions taken; the  
24 eligible costs associated with those actions; and the name of  
25 the person, contractor, consultant, or engineer who performed  
26 the action;

27 H. information detailing why corrective actions have  
28 not been completed or initiated; and

29 I. evidence sufficient to prove applicant's payment  
30 of \$1,000 for corrective action costs already incurred.

31 The board may waive the requirement for submission of all  
32 or a portion of the above described financial information, if  
33 reasonable and appropriate, upon written request of the  
34 applicant.

35 Only complete applications may be accepted by the board and  
36 incomplete applications must be returned to the applicant.

1 Subp. 3. Time of application. The board shall hear  
2 initial requests for reimbursement and payment applications by  
3 eligible persons at every regular meeting.

4 The board shall establish a priority system for hearing  
5 requests for payment or reimbursement. The priority system must  
6 be based primarily on department incident response site  
7 priorities, taking into account the health and welfare of the  
8 public, the effects on the environment, and the commissioner of  
9 agriculture's incident response case load and staff resources.

10 Subp. 4. Subsequent application.

11 A. An eligible person who has already obtained  
12 partial reimbursement or payment from the board and who has  
13 incurred additional or continuing costs due to the same incident  
14 may reapply if:

15 (1) the amount of the person's original  
16 reimbursement or payment was less than the maximum allowed under  
17 Minnesota Statutes, section 18E.04;

18 (2) the eligible person offers adequate evidence  
19 that all payments have been properly applied towards costs of  
20 corrective action approved by the commissioner of agriculture;

21 (3) the eligible costs submitted on a subsequent  
22 application are not related to any new incidents at the site;  
23 and

24 (4) the total reimbursement and payments to all  
25 eligible persons for an incident must not exceed the maximum  
26 allowed under Minnesota Statutes, section 18E.04.

27 B. An eligible person may request reimbursement or  
28 payment of additional costs at the times indicated in subitems  
29 (1) ~~and (2)~~ to (3).

30 (1) Requests for reimbursement may be considered  
31 by the board no more than once every 12 months if the additional  
32 costs incurred are \$5,000 or less.

33 (2) Requests for reimbursement of additional  
34 costs incurred of \$5,000 or more may be considered by the board  
35 at every other regular board meeting. The board or the board's  
36 staff shall notify an eligible person requesting additional

1 payments when the next regular board meeting is to be held at  
2 which requests will be considered.

3 (3) Request for direct payment may be made at  
4 every other board meeting.

5 Subp. ~~6~~ 5. **Signatures.** An application must be signed as  
6 follows:

7 A. for a corporation, by a principal executive  
8 officer of at least the level of vice-president or the duly  
9 authorized representative or agent of the executive officer if  
10 the representative or agent is responsible for the overall  
11 operation of the facility or site that is the subject of the  
12 application or a person whom the board of directors designates  
13 by means of a corporate resolution; or

14 B. for a partnership, sole proprietorship, or  
15 individual by a general partner, the proprietor, or individual,  
16 respectively.

17 Subp. ~~7~~ 6. **Certification.**

18 A. A person who signs an application for  
19 reimbursement or payment shall make the following certification:

20 "I certify under penalty of law that this document and  
21 all attachments were prepared under my direction or  
22 supervision in accordance with a system designed to  
23 assure that qualified personnel properly gather and  
24 evaluate the information submitted. I certify that  
25 the commissioner of agriculture has approved the  
26 corrective actions taken, as described in the approved  
27 corrective action design, or as otherwise approved by  
28 the commissioner. Based on my inquiry of the person  
29 or persons who manage the system, or those persons  
30 directly responsible for gathering the information,  
31 the information submitted is, to the best of my  
32 knowledge, true, accurate, and complete. I further  
33 certify that I have the authority to submit this  
34 application on behalf of ....."

35 B. A person who signs an application for payment  
36 shall also make the following certification:



1 "I certify that if I have submitted invoices for costs  
2 that remain unpaid that I will pay those invoices  
3 within 30 days of receipt of payment from the board.  
4 I understand that if I fail to do so, the board may  
5 demand return of all or any portion of money paid to  
6 me."

7 C. A person who signs an application for subsequent  
8 payment or reimbursement shall also make the following  
9 certification:

10 "I certify that I have complied with the commissioner  
11 of agriculture approved corrective action design  
12 provisions and the corrective actions were taken as  
13 described in that design."

14 Subp. ~~8~~ 7. Report of commissioner of agriculture. Upon  
15 notification by the board's staff that a complete application  
16 has been received, the commissioner shall, in a timely manner,  
17 provide the board with a written report on the applicant's  
18 compliance or noncompliance with Minnesota Statutes, section  
19 18E.04.

20 In addition, the board may request additional information  
21 from the commissioner or may request participation of agency  
22 staff at a board meeting. All responses to requests for  
23 information must be delivered in a timely manner. The board may  
24 delegate these powers to its staff.

25 1512.1000 REVIEW AND DETERMINATION.

26 Subpart 1. Review. The board's staff shall review all  
27 applications. If the staff determines that the application is  
28 incomplete or otherwise deficient, the staff shall promptly  
29 advise the applicant of the incompleteness or deficiency.  
30 Further processing of the application affected by the deficiency  
31 must be suspended until the applicant has supplied the necessary  
32 information or otherwise corrected the deficiency. A complete  
33 application and the corresponding report of the commissioner of  
34 agriculture constitutes the written record. Any supplemental  
35 information explaining the application that is presented orally

1 or in writing to the board will also be part of the written  
2 record.

3 Subp. 2. **Staff recommendation.** After a reimbursement or  
4 payment application is complete and the commissioner has  
5 provided the information relevant to the application, the  
6 board's staff shall make a recommendation as to the eligibility  
7 of the applicant and the costs specified in the application.

8 Subp. 3. **Board determination.** The board shall determine  
9 the amount of the reimbursement or payment based on the costs it  
10 finds are eligible, actually incurred, and reasonable. The  
11 determination must be made on the basis of the written record.  
12 The board may also allow supplemental information explaining the  
13 application to be presented in writing or orally. The board may  
14 establish a fair and reasonable limit on the time for oral  
15 presentation.

16 The applicant must be notified in writing within 30 days of  
17 the board's decision. If the board rejects part of the request  
18 for reimbursement or payment, a statement of the reasons for  
19 rejection must be included with the notification.

20 Subp. 4. **Appeal.** If a reimbursement or payment is denied,  
21 the eligible person may appeal the decision as a contested case  
22 hearing under Minnesota Statutes, chapter 14.

23 1512.1100 ENFORCEMENT.

24 An application for reimbursement or payment containing  
25 false statements or misrepresentations voids the application.  
26 Reimbursements or payments that are made that later are found to  
27 have been based upon false or misleading information result in  
28 forfeiture of any reimbursement or payment made, and are wholly  
29 recoverable through actions under general criminal or civil  
30 enforcement authorities by the Office of the Attorney General.