

**CHAPTER 1512**  
**DEPARTMENT OF AGRICULTURE**  
**AGRICULTURAL CHEMICAL RESPONSE**  
**COMPENSATION BOARD**

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**1512.0100 DEFINITIONS.**

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

**1512.0200 BOARD MEETINGS.**

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

**1512.0300 BOARD CHAIR AND VICE-CHAIR.**

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

**1512.0400 CONDUCT OF MEETINGS.**

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

#### **1512.0500 CONFLICT OF INTEREST.**

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

#### **1512.0600 REIMBURSEMENT OR PAYMENT OF COSTS.**

##### **Subpart 1. General.**

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

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

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

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

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

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

#### **1512.0700 ELIGIBLE COSTS.**

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

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

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

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

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

E. cleanup of incidents including, but not limited to, removal, treatment, or disposal of surface or subsurface contamination.

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

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

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

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

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

**1512.0800 INELIGIBLE COSTS.**

All costs associated with actions that do not minimize, eliminate, or clean up an incident are ineligible costs. Ineligible costs include, but are not limited to, costs related to the repair, replacement, or upgrading of agricultural chemical facility structures or equipment, cost of agricultural chemical product replacement, loss of income, attorney's fees, permanent relocation of residents, decreased property values, reimbursement for the eligible person's own time spent in planning and administering a corrective action design, costs for third party review of proposed investigative and corrective action or work plans, aesthetic improvements, or any work, except for emergency corrective actions, not in compliance with safety codes including, but not limited to, United States Occupational Safety and Health Administration requirements, well codes, fire codes, and costs for providing alternative sources of drinking water.

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

**1512.0900 APPLICATION PROCESS.**

**Subpart 1. Request for reimbursement.** A person who wishes to apply for reimbursement from the account shall complete, sign, and submit to the board

a written application. The application must be on a form prescribed by the board and must contain the following:

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

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

- A. name of person making the application;
- B. description of the site of the incident;
- C. completed and signed affidavit summarizing the financial condition of eligible persons, and demonstrating an inability to pay the corrective action cost;
- D. copies of federal and state income tax returns for the last two years (corporate, partnership, or individual);
- E. monthly, quarterly, and annual financial statements for the last two years, prepared according to generally accepted accounting principles, relating to the financial condition of the applicant applying for payment, including financial statements for any businesses owned or operated by the applicant;
- F. a summary of the corrective actions taken, as approved by the commissioner, or a description of emergency corrective action taken and evidence of the commissioner of agriculture's subsequent approval of that action;
- G. itemized list of all corrective actions taken; the eligible costs associated with those actions; and the name of the person, contractor, consultant, or engineer who performed the action;
- H. information detailing why corrective actions have not been completed or initiated; and
- I. evidence sufficient to prove applicant's payment of \$1,000 for corrective action costs already incurred.

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

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

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

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

**Subp. 4. Subsequent application.**

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

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

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

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

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

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

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

(2) Requests for reimbursement of additional costs incurred of \$5,000 or more may be considered by the board at every other regular board meeting. The board or the board's staff shall notify an eligible person requesting additional payments when the next regular board meeting is to be held at which requests will be considered.

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

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

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

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

**Subp. 6. Certification.**

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

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

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

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

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

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

#### **1512.1000 REVIEW AND DETERMINATION.**

**Subpart 1. Review.** The board's staff shall review all applications. If the staff determines that the application is incomplete or otherwise deficient, the staff shall promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency must be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner of agriculture constitutes the written record. Any supplemental information explaining the application that is presented orally or in writing to the board will also be part of the written record.

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

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

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

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*

#### **1512.1100 ENFORCEMENT.**

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

**Statutory Authority:** *MS s 18E.05*

**History:** *15 SR 1876*