

## **November 2001 Mass Mailout**

### **Frequently Asked Questions (FAQs)**

Deadlines	Questions 1 - 15
Corrective Action	Questions 16 - 22
Reimbursement	Questions 23 - 29
State Lead	Questions 30 - 40
Financial Assurance	Questions 41 - 47

## **Deadlines**

1. **Q. “I thought I was done with this matter a long time ago.....Why am I getting this letter now?”**
  - A. According to our records, sufficient assessment and/or cleanup activities have not been performed and/or reported. Therefore, you need to hire a registered Corrective Action Specialist (CAS) / Corrective Action Project Manager (CAPM) to review all available site information. The CAS/CAPM can then determine and propose the next appropriate course of corrective action necessary for this site. A list of registered CASs and CAPMs can be obtained from the TNRCC web page at [http://www.tnrcc.state.tx.us/cgi-bin/enforcement/ust\\_ics#pms](http://www.tnrcc.state.tx.us/cgi-bin/enforcement/ust_ics#pms). The list can also be obtained in the mail by calling the TNRCC Central Records Office at 512/239-2920. Copy charges for the CAS and CAPM lists are currently \$8.87 and \$9.27 respectively.
  
2. **Q. Can I get a copy of the list of Responsible Parties/ LPST sites that received this letter?**
  - A. This list can be obtained by contacting Sally Paramo, Customer Service Center, Information Resources Division, at 512/239-0986. Electronic or paper copies are provided for a base charge of \$15, plus a nominal charge per page.
  
3. **Q. What are going to be the typical review times for the deadline documents?**
  - A. The PST Program has a 30 day review deadline for all Level 1 documents e.g. Risk-Based Assessment Reports, Corrective Action Plans, etc. All Level 2 documents e.g. Groundwater Monitoring Proposals and Reports have a review deadline of 60 days.
  
4. **Q. What if I submit something very close (w/in 2 weeks or less) to a deadline? How and when will I know if I passed or was rejected (thus no longer eligible for reimbursement)?**
  - A. All necessary reports and documentation for the various deadlines must be received by the agency no later than the stated dates. Upon receipt, agency staff will review all documents within the standard report review times. Because the staff may identify deficiencies in the course of their review, responsible parties (RPs), their agents and contractors are encouraged to submit all reports as far in advance of the applicable deadlines as possible. This will possibly give RPs an opportunity to correct those deficiencies in time to meet the applicable deadline.
  
5. **Q. Do I have to respond to the letter if I’m not applying for State Lead Remediation (SLR) and I am the correct point of contact?**

A. No. This letter is sent for informational purposes only. No actual response to the letter is necessary unless you believe that you have received this letter in error. However, you are responsible for adherence to these deadlines and for taking appropriate actions to ensure that these deadlines are met.

6. **Q. What if I have sold my tanks/facility/land?**

A. If the responsibility of future corrective action activities has been accepted by the new owner of the tanks/facility/land, a "Notice of Change in Point of Contact for Corrective Action" form (TNRCC-0491) should be submitted to the TNRCC so that we can update our records. The form should be signed by both the former and new points of contact. Please note that completion of this form does not relieve either the former or new point of contact from liability associated with this LPST site. Refer to the TNRCC Guidance Pamphlet "Buying or Selling a Leaking Storage Tank Site - Some Items to Consider (RG-46/PST)".

7. **Q. What are the 'exit criteria' mentioned in the guidance?**

A. As stated in Attachment 1, the "Exit Criteria" are discussed in two TNRCC Interoffice Memorandums (IOMs) dated February 10, 1997. These criteria are used to qualitatively eliminate incomplete exposure pathways and identify the necessary steps of corrective action at an LPST site.

8. **Q. Will on-site assessment/delineation of the groundwater plume be adequate to meet the September 1, 2002 deadline?**

A. Not necessarily. Full plume delineation, as required by the "Plume Delineation Criteria" outlined in the February 10, 1997 IOM and the November 1, 1999 IOM, should be achieved by the deadline. Please note that "access problems" will NOT constitute a valid reason for not meeting a deadline.

9. **Q. I have already completed a Plan A Site Assessment and a Plan B Risk Assessment at my site and met the earlier deadlines. Does that mean I meet the September 1, 2002 deadline?**

A. Satisfactory completion of the requirements for the earlier deadlines does not necessarily mean the requirements for the new deadlines will have been met. A review of all available site data should be conducted in accordance with applicable guidance to identify the next step of corrective action that may be necessary to meet the September 1, 2002 deadline.

10. **Q. For reasons beyond my control, should physical site conditions change just before the deadline, will I get an extension/exception to the deadline?**

A. In general, the TNRCC does not have any discretion to make exceptions to the statutory deadlines. Any extraordinary situations will be handled on a case-by-case basis.

11. **Q. What is the TNRCC going to do to help me with access?**

- A. Any access problems should be brought to the TNRCC's attention immediately. The RP and its consultant should document all their access efforts to date. They should also provide accurate contact information about the involved off-site landowner(s). The TNRCC will assist you in your access efforts through phone calls and by sending appropriate letter(s) to the off-site landowners.
12. **Q. I have been unable to gain access even with the TNRCC's help. Who is liable for the off-site contamination that I cannot remediate? Will my site be held up from being issued final closure?**
- A. If all efforts (including the TNRCC's efforts) fail to gain off-site access, the off-site landowner will be held liable for any contamination under his/her property. Remediation efforts on your site will be allowed to proceed until target cleanup goals are met on-site. Site closure for your LPST site will not be held up due to the off-site contamination.
13. **Q. My tank removal report was never acknowledged by the TNRCC; what should I do?**
- A. Whenever a report/document is submitted for an LPST site, the TNRCC expects the RP to submit a workplan/cost proposal for the next appropriate activity – whether it be a request for final closure or for additional corrective action. You should contact a CAS/CAPM and have them review any work previously performed at your site to determine the appropriate site-specific corrective action requirements. Your CAS/CAPM should then submit a workplan and cost proposal to you for the next appropriate step.
14. **Q. What will be an adequate demonstration that a CAP is not needed?**
- A. The following criteria need to be met to demonstrate that a CAP is not needed:
- ! The exit criteria evaluation did not identify any complete exposure pathways
  - ! Site Specific Target Levels (SSTLs) for soil and groundwater are not exceeded
  - ! If a NAPL plume exists, an engineered remediation system is not necessary for NAPL recovery.
15. **Q. Regarding successful implementation of a CAP, is there any flexibility in setting reduced CAP goals based on site-specific situations?**
- A. No. For successful CAP implementation, complete all CAP requirements as outlined in the November 2001 PST Corrective Action Deadlines guidance.

## **Corrective Action**

16. **Q. Who do I need to hire to perform the corrective action at my site?**
- A. All proposals and reports must be submitted through a TNRCC registered Corrective Action Specialist (CAS) and a Corrective Action Project Manager (CAPM). A list of registered CASs and CAPMs can

be obtained from the TNRCC web page at [http://www.tnrcc.state.tx.us/cgi-bin/enforcement/ust\\_ics#pms](http://www.tnrcc.state.tx.us/cgi-bin/enforcement/ust_ics#pms). The list can also be obtained in the mail by calling the TNRCC Central Records Office at 512/239-2920. Copy charges for the CAS and CAPM lists are \$ 8.87 and \$ 9.27 respectively. Per Title 30 Texas Administrative Code (TAC), §334.455, a *Notice of Corrective Action* form (TNRCC-0507) should be provided to you by your CAS, and a copy submitted to this Office. In addition, the registration numbers and signatures of your CAS and CAPM should be included on any proposal or report submitted to the TNRCC.

17. **Q. How do I know what is the next step of corrective action at my site?**

A. Your CAS/CAPM should review any work previously performed at your site to determine the appropriate site-specific corrective action requirements. A copy of the entire LPST case file can be obtained from the TNRCC Central Records office at 512/239-2920 (copy charges are 10 cents per page + \$15/hr labor charge). Your CAS/CAPM should then submit a workplan and cost proposal to you for the next appropriate step. Please note that if your site is eligible for reimbursement for these activities, we recommend that the work plan/cost proposal be submitted to this Office for preapproval, and should be received in this Office no later than thirty (30) days prior to the time the work is to be performed. Reimbursement claims for work which was not preapproved by the TNRCC will be processed only after all claims submitted for preapproved work are considered, processed, and paid.

18. **Q. How should my CAS format the workplans and cost proposals?**

A. All workplans and cost proposals should be formatted as shown in the pamphlet, *Pre-Approval for Corrective Action Activities*. Workplans should include sufficient information for the TNRCC coordinator to understand the proposed scope of work and should include a site map drawn to scale whenever appropriate.

19. **Q. How do I obtain the forms necessary for cost preapproval and corrective action reporting?**

A. Your CAS/CAPM should be familiar with all required cost preapproval forms and corrective action reporting requirements. Attachment 1 included in the guidance you received includes information regarding obtaining these forms. The preapproval forms can be downloaded from the Internet at <http://www.tnrcc.state.tx.us/permitting/remed/rpr/download.html>. Single copies of RG guidance documents can also be obtained free of charge from the TNRCC Publications Office at MC 195, P.O. Box 13087, Austin, TX 78711-3087 or phone (512) 239-0028. All guidance documents and forms can also be obtained by calling (512) 239-2200.

20. **Q. If I do not submit a workplan and cost proposal to the TNRCC for written approval, does this mean I won't be reimbursed?**

A. If the work was not preapproved, the reimbursement claim for that work is continually placed "at the back of the line" behind claims for work that were preapproved. We are unable to guarantee any time frames for reimbursement of work which was not preapproved.

21. **Q. After I submit a workplan and cost proposal prepared by a CAS, what happens next?**

A. At this point, a TNRCC coordinator will be assigned to your case to review the work plan/cost proposal and notify you via fax or mail on a *Corrective Action Response Form (CARF)* of approval or denial of the proposal, and any modifications which are necessary. The CARF will also indicate the total amount of the proposed costs which is reimbursable.

22. **Q. How do I know when my site is ready for closure?**

A. A request for closure should be submitted only when all site data (i.e. soil, groundwater, surface water, and vapor sampling data as applicable) confirms that the site target cleanup goals have been met and maintained. Once the target cleanup levels are met, a *Site Closure Request* form should be prepared by a registered CAS/CAPM and submitted to this Office. A proposal for any required closure activities, such as the plugging of existing monitoring wells, should accompany the *Site Closure Request*.

## **Reimbursement**

23. **Q. Am I eligible for reimbursement for any corrective action activities at my site?**

A. Certain eligibility requirements have to be met to qualify for reimbursement from the Petroleum Storage Tank Remediation (PSTR) fund. Eligibility information can be obtained from the TNRCC web page at <http://www.tnrcc.state.tx.us/permitting/re/reimb/index.html>.

24. **Q. How much of the work is reimbursable?**

A. If a site meets all the eligibility requirements for reimbursement, prior to any activity being performed, a proposal for the activity and costs should be submitted to the TNRCC for preapproval. The TNRCC will reimburse the applicant the actual costs for the proposed activity up to the preapproved amount, minus the applicable deductible amount. Depending on the number of tanks owned by the responsible party, a deductible amount is established per LPST site.

Failure to receive preapproval will not disqualify the activity from being eligible for reimbursement; it will be subject to the normal review. However, the review will be conducted only after all claims for preapproved corrective action activities are processed and paid.

25. **Q. If I am leading the corrective action, how and when do I apply for reimbursement?**

- A. To request reimbursement, an application for reimbursement needs to be completed and submitted along with all of the invoices and proof of payment. Applications should only be submitted at the end or completion of a phase of corrective action or at points during the corrective action process agreed to by both TNRCC and the applicant, such as annually (Refer to 30 TAC §§334.306 (c) & (f)). Reimbursement application forms and other related information can be obtained from the Internet at <http://www.tnrcc.state.tx.us/permitting/re/reimb/index.html>.
26. **Q. I applied for reimbursement for some work at my site several years ago, and I'm just now getting my money back. How long will it take to be reimbursed this time?**
- A. The TNRCC reviews **new** reimbursement claims within a legislatively mandated turnaround time of 90 days. The review of "protest" claims usually takes a longer time.
27. **Q. How will my deductible amount be determined if I qualify for State-Lead Remediation (SLR)?**
- A. The deductible amount will be determined both by the number of tanks you own and the date we received your written request for admission to the SLR program.
28. **Q. How will I pay my deductible?**
- A. Once the first invoice for work done at your property has been received, you will be sent a bill for the deductible amount.
29. **Q. What will happen if I cannot afford the deductible amount?**
- A. The amount you can afford to pay will be based upon a financial review of your records.

### **State-Lead Remediation (SLR)**

30. **Q. What is SLR?**
- A. When all corrective action performed at the site is coordinated, and the costs paid, by the responsible party, the actions are termed "RP-Lead." If an RP is determined to be financially unable, or is unwilling to perform the necessary corrective action at a site, the State will assume the responsibility for the work; this is termed "State-Lead." All LPST cases are considered RP-Lead for corrective action unless a determination is made by the State regarding the site's eligibility for State-Lead Remediation (SLR).
31. **Q. How can I apply for SLR?**
- A. Call the PST-RPR section at (512)239-2200 to request a SLR packet. Fill out paperwork completely and accurately and submit to the PST-RPR section at the following mailing address: PST-Responsible Party

RemediationSection, Remediation Division, P. O. Box 13087, Mail Code MC-137, Austin, Texas 78711-3087. The Financial Assurance section of the TNRCC will then conduct a financial review of all submitted paperwork and determine your eligibility into the SLR program.

32. **Q. What are the advantages of overseeing my own corrective action rather than being in SLR?**
- A. With RP-Lead, the RP can expedite the corrective action process because he/she has the ability to: select the consultant, schedule and review the work that is performed, and help reduce the time frame in which closure can be attained, regardless of the priority of the site. In SLR, the RP is unable to influence the scheduling of work or the type of corrective action work performed. "Unwilling" RPs in SLR are also subject to cost-recovery for corrective action expenditures at the site.
33. **Q. How and when will I be notified that I qualified for SLR?**
- A. You will be notified, in writing, of your admission to the SLR program upon TNRCC's completion of your financial review.
34. **Q. I qualify for SLR. My tanks are empty, but still in the ground. Will SLR pull them for me?**
- A. The choice to pull your tanks will be based solely upon the technical requirements for the site. If the tanks need to be removed, as part of the corrective action at the site, we will remove them.
35. **Q. How does "priority" make a difference in how my site will be handled in SLR?**
- A. The State Lead program has in place regional consulting contracts to perform the different phases of corrective action. The sites in each contracting region are handled in the order of environmental priority. Personal issues, such as property transactions and third-party liability, are not included in this prioritization.
36. **Q. How long will it take for the State to start corrective action if I qualify for the SLR Program?**
- A. The State will not guarantee any time frames for the initiation of corrective action at your site. As discussed in Question No. 35, sites in each contracting region are handled in the order of environmental priority.
37. **Q. How long will it take for the State to perform corrective action if I qualify for the SLR Program?**
- A. Once corrective action begins at a site, the time to completion is determined by conditions at that site. Each location is different. Time until site closure can range from several weeks to several years, depending upon the level and extent of contamination.
38. **Q. What is an access agreement? When do I need one?**

A. An access agreement is a legal document giving the State of Texas, and its agents, written permission to enter your property and perform corrective action. Signed access agreements from the property owner, tank system owner and tank system operator are required for admission into SLR.

39. **Q. What are the disadvantages of entering the SLR Program?**

A. There are two primary disadvantages to entering the SLR Program:

! The State will be in control of the remediation. The owner/operator will have no input in scheduling the work or the corrective action methods selected. This means that no consideration will be made to prioritize work based on the RP's personal needs, such as real estate transactions.

! Entering into the SLR Program does not alleviate the RP's third-party liabilities, if any.

40. **Q. I now qualify for SLR under my current financial conditions. Once the State reimburses me for outstanding reimbursement claims, will I have to undergo another review?**

A. The State reserves the right to review your financial status at any time while corrective action is taking place.

### **Financial Assurance for SLR Eligibility**

41. **Q: I am retired and on a fixed income, what do I need to do?**

A: Provide the financial information required for individuals. The net worth test will not be used for retirees on a fixed income. Financial information for retirees on fixed income will be reviewed on a case-by-case basis. Please clearly indicate your occupation as retired.

42. **Q: Do I need to have the information prepared by a CPA?**

A: Not necessarily. If you prepare your own tax return, you may submit a copy of the return you filed. You may also prepare your personal financial statement. For corporations, financial statements do not have to be audited by independent CPA's; however, the financial statements submitted must be prepared in accordance with generally accepted accounting principles. If audited statements have been prepared for your company, you may not provide unaudited statements.

43. **Q: How will the sale of my property affect my eligibility for State-Lead?**

A: The sale of your property may affect the net worth calculation depending on the net sale proceeds that you receive. Therefore, a sale may enable you to perform certain remedial phases of work. You are also

required to notify the TNRCC at any time your net worth improves by 10% or more above the amount reported on the "Affidavit of Financial Inability."

44. **Q: Can I alter the affidavit in any way and be eligible for State-Lead? Can I use a different personal financial statement form? What if I don't submit complete forms and tax return, have the affidavit notarized or if I don't sign and date the forms and tax return?**

A: No alterations are permitted on the affidavit. You must use the TNRCC financial statement form if you are required to provide personal financial information. The forms and tax returns must be complete, originally signed, and dated. Failure to follow these procedures will result in the return of your documentation without review, and the deadline in your letter to provide a complete State-Lead financial packet will not be extended.

45. **Q: I have expended funds that have not been reimbursed through the PSTR fund. Will my unreimbursed expenditures be subtracted from the amount that the "Affidavit" indicates I can pay?**

A: No. If you have properly accounted for your reimbursement receivable and expenses, then your current tangible net worth (CTNW) accounts for these amounts. Therefore, your CTNW indicates the additional amount that you can spend.

46. **Q: Is it ok to leave any sections of the financial statement blank if they don't apply to me?**

A: No. Indicate "NA" or "none" instead of leaving an item or section blank.

47. **Q: Should I list the face value of my life insurance policy as an asset under the "net cash value of ins. & annuities" section?**

A: Only the net cash value portion of the policy should be listed. Not all policies will have a cash value. Your insurance agent or carrier may be able to assist you in determining any net cash value of your policy.