

Agency 125

Kansas Agricultural Remediation Board

Articles

125-1. KANSAS AGRICULTURE REMEDIATION REIMBURSEMENT PROGRAM.

Article 1.—KANSAS AGRICULTURE REMEDATION REIMBURSEMENT PROGRAM

125-1-7. Eligible corrective action costs; exclusions. Eligible corrective action costs shall not include the following:

(a) Costs that are not eligible for reimbursement as specified in the board's regulations;

(b) indirect costs charged by a contractor, unless those costs are allocated in the contract according to a reasonable cost allocation formula that the contractor uses for other similar contracts;

(c) an eligible person's indirect costs;

(d) the cost for the time that the eligible person or any officer of the eligible person spends planning or implementing a corrective action. Reimbursement of normal employee wages, salaries, expenses, or fringe benefit allocation for time that any employee, other than officers, spends implementing a corrective action may be allowed by the board;

(e) costs to construct, repair, replace, improve, relocate, or demolish any building or fixture, unless the cost is required or approved by the secretary of health and environment and is a part of a corrective action;

(f) loss or decrease of property values;

(g) loss or decrease of revenue or income;

(h) attorney fees or other legal costs;

(i) costs for relocating residents or business operations;

(j) costs of aesthetic or other improvements that are not essential to a corrective action, except for restorative grading and filling costs;

(k) costs that are reimbursed from another source. If after being reimbursed by the board for any cost, an eligible person is reimbursed for the same cost from another source, the eligible person shall promptly notify the board and repay to the board any duplicative reimbursement;

(l) the cost of replacing the released agricultural chemicals;

(m) liability claims or judgments;

(n) costs incurred by any federal, state, or local governmental entity;

(o) costs for a contractor's services that exceed the contractor's bid price for those services, except for those costs that have increased due to services approved or required by the secretary of health and environment;

(p) costs not supported by a cancelled check or other conclusive proof of payment by the eligible person who is applying for reimbursement of those costs;

(q) costs to investigate or repair environmental contamination involving substances that are not agricultural chemicals. If a corrective action involving agricultural chemicals is combined with the investigation or repair of environmental contamination involving substances that are not agricultural chemicals, a portion of the combined project costs may be reimbursed by the board based on the information submitted to the board. If, for any combined project, an eligible person also submits a reimbursement claim to another governmental agency, the cost allocation shall reflect that submission so that this can be taken into account by the board when determining eligibility of the costs;

(r) costs to analyze environmental substances that are not agricultural chemicals, except that costs for the analysis of environmental parameters may be reimbursed by the board if that analysis is needed for the design or implementation of a corrective action;

(s) costs to analyze environmental samples for agricultural chemicals that are not reasonably suspected of having been released at the discharge site;

(t) costs to prepare an application for reimbursement, to contest a decision by the board, or to consult with the board or administrator regarding the application;

(u) expense charges for meals, lodging, travel, or other personal expenses incurred by the eligible person or officer of the eligible person;

(v) supplementary charges for expedited services, including expedited laboratory analysis, mail service, and parcel delivery service, unless required by the secretary of health and environment;

(w) contractor charges that are not based on services provided by the contractor and are not documented;

(x) interest expenses or other financing costs;

(y) costs for the rental or use of land on which the eligible person land spreads soil, water, or other material as approved by the secretary of agriculture or the secretary of health and environment;

(z) costs for subcontractor service charges or markups;

(aa) costs for environmental audits, assessments, evaluations, or appraisals, unless ordered

or requested by the secretary of health and environment;

(bb) any civil or criminal penalty assessed by a federal, state, county, or other governmental entity; and

(cc) any cost of a corrective action that causes the total amount of reimbursement for the site to exceed \$200,000. The maximum amount of reimbursement for any one site shall not exceed \$200,000, regardless of the period of time within which the reimbursement was received. However, if the property has been sold or leased and both the buyer and the seller, or both the lessee and the lessor, are responsible for remediation of an agricultural or specialty chemical released at the site, then the total amount of reimbursement for the costs of the corrective actions at the site shall not exceed \$400,000, regardless of the period of time within which the reimbursement was received. (Authorized by K.S.A. 2-3710; implementing K.S.A. 2013 Supp. 2-3708 and K.S.A. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002; amended Jan. 23, 2015.)