



Maryland
Department of
the Environment

**STUDY OF THE OIL CONTAMINATED SITE
ENVIRONMENTAL CLEANUP FUND
– 2022 –**

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I. INTRODUCTION

As required by Chapter 690, Acts of 2021, the Maryland Department of the Environment (MDE or the Department) conducted a study on the Oil Contaminated Site Environmental Cleanup Fund (Reimbursement Fund). Specifically, Chapter 690, Acts of 2021, required MDE to study the following:

- (1) The number of reimbursement claims submitted for the replacement of residential heating oil tanks for 2021, and 2022;
- (2) The backlog of reimbursement claims submitted for the replacement of residential heating oil tanks in 2021, and 2022;
- (3) The average number of days to receive reimbursement after the filing of a reimbursement claim for the replacement of residential heating oil tanks for 2021, and 2022;
- (4) Recommendations for reducing the number of days for reimbursing claims for the replacement of residential heating oil tanks;
- (5) Recommendations regarding the continuation of the Reimbursement Fund; and
- (6) Recommendations to improve the state's response to aging residential heating oil tanks.

Additionally, MDE was asked to study efforts the State has made to replace aging residential heating oil tanks.

MDE is pleased to submit these findings and recommendations to the Governor and the presiding officers of the House and the Senate, in accordance with § 2-1257 of the State Government Article.

II. HISTORY OF THE REIMBURSEMENT FUND

The Maryland General Assembly enacted the Reimbursement Fund, effective July 1, 1993 (Chapter 465, Acts 1993). The Reimbursement Fund was used until July 2000 to reimburse only owners or operators of underground storage tanks (USTs) storing commercial motor fuels, used oil, or fuel for operating emergency generators for site remediation and cleanup costs incurred on or after October 1, 1993.

In 1996, the Reimbursement Fund was amended and reenacted as Chapter 532, Acts of 1996. The statute provided a limit of \$125,000 per occurrence subject to deductibles that range from \$7,500 to \$20,000.

At the end of Fiscal Year (FY) 1999, a funding shortfall of approximately \$3 million existed for applicants to the Reimbursement Fund. House Bill 457 (Chapter 604, Acts 2000) addressed the shortfall by providing additional resources for the Reimbursement Fund until July 1, 2005. Effective July 1, 2000, a fee of \$0.01 per barrel was applied to oil at the first point of transfer in

the state. MDE was authorized to use up to 8% of the revenue in the Reimbursement Fund during the FY for the administration of the Reimbursement Fund.

Chapter 604, Acts of 2000, also expanded the eligibility of the Reimbursement Fund to include owners of commercial USTs storing heating oil and to owners of residential heating oil tanks. Owners of residential heating oil tanks were eligible for reimbursement of up to \$10,000, less a \$1,000 deductible, for certain site rehabilitation costs incurred after October 1, 2000. A minimum of 25% of the \$0.01 per barrel fee collected per FY was used for reimbursement of residential heating oil tank site rehabilitation costs.

Chapter 177, Acts of 2005, altered the amount of the per barrel fee at the first point of transfer in the state, and credited the fee to the Maryland Oil Disaster, Containment, Cleanup and Contingency Fund (Oil Fund), and the Reimbursement Fund. The per barrel fee credited to the Oil Fund was \$0.04 per barrel, and the per barrel fee credited to the Reimbursement Fund was \$0.0175 beginning July 1, 2005, until July 1, 2010. The legislation also extended the termination date to December 31, 2007 for requests for reimbursement by owners or operators of commercial heating oil and other non-federally regulated USTs. The law extended reimbursement for owners of residential heating oil tanks until June 30, 2010, reduced the deductible to \$500, and raised the maximum amount to be reimbursed to \$20,000 per occurrence.

Chapter 377, Acts of 2010, extended the total per barrel fee of \$0.0575 until June 30, 2013, but reduced the per barrel fee credited to the Reimbursement Fund from \$0.0175 to \$0. The legislation also reduced the per barrel fee deposited into the Oil Fund to \$0.03 per barrel beginning July 1, 2013. In addition to the Oil Fund being used for discharges of oil, petroleum products, and their byproducts, Chapter 377 allowed the Oil Fund to be used by MDE for oil-related activities in water pollution control programs. Reimbursements were to continue using the balance of the Reimbursement Fund. An owner of a residential heating oil tank eligible under the program could apply no later than 6 months after rehabilitation completion until June 30, 2013, for eligible costs incurred.

Chapter 325, Acts of 2014, increased the total per barrel fee to \$0.08 per barrel, with \$0.0775 per barrel credited to the Oil Fund and \$0.0025 per barrel credited to the Reimbursement Fund. Since the legislation restarted funding to the Reimbursement Fund, the Residential Heating Oil Tank Site Cleanup Reimbursement Program began accepting applications July 1, 2014.

Chapter 390, Acts of 2017, maintained the same funding levels until July 1, 2019. With the adoption of the law, the Residential Heating Oil Tank Site Cleanup Reimbursement Program was authorized to continue to accept applications until June 30, 2019.

Chapter 772, Acts of 2019, maintained the same funding levels until July 1, 2021, and authorized the continued acceptance of applications for the Residential Heating Oil Tank Site Cleanup Reimbursement Program until June 30, 2021.

Chapter 690, Acts of 2021, maintained the same funding levels until July 1, 2024, and authorized the continued acceptance of applications for the Residential Heating Oil Tank Site Cleanup Reimbursement Program until June 30, 2024.

III. USES OF THE REIMBURSEMENT FUND

The study requested by Chapter 690 states that MDE is to provide certain statistics and efforts as they relate to reimbursement claims submitted “for the replacement of residential heating oil tanks.” Under § 4-705(g) of the Environment Article, the Reimbursement Fund is prohibited from being used for the “cost for replacement or retrofitting... heating oil tanks and associated piping...and the Department may not incur these costs or expend moneys from the Fund for these purposes.” Instead, the Reimbursement Fund is used in accordance with §§ 4-704. and 4-705 of the Environment Article as follows:

§ 4-704. Oil Contaminated Site Environmental Cleanup Fund; exemptions from subtitle

(b) Uses. -- Subject to subsection (c) of this section, the Fund shall be used to:

(1) Reimburse an owner or operator of:

(iii) A heating oil tank for site rehabilitation costs incurred on or after October 1, 2000 resulting from contamination caused by releases from a heating oil tank including piping connected to the tank; and

§ 4-705. Reimbursement from Fund

(b) Costs incurred for heating oil tank on or after October 1, 2000. --

(2) Until June 30, 2024, the residential owner of a heating oil tank eligible under § 4-704(b)(1)(iii) of this subtitle may apply to the Fund for reimbursement not later than 6 months after the completion of rehabilitation for usual, customary, and reasonable costs incurred on or after October 1, 2000, in performing the site rehabilitation.

Therefore, the results of this study are provided in context of MDE’s administration of the Reimbursement Fund within the constraints of § 4-701, *et seq.* and Code of Maryland Regulations (COMAR) 26.10.14.

IV. APPLICATIONS FOR REIMBURSEMENT

In FY21, there were 171 applications received and in FY22, there were 190 applications received. At the end of FY21, there were 650 applications remaining to be reviewed. At the end of FY22, there were 703 applications in the queue. The average number of days for an application to be reimbursed through the end of FY21 was approximately 1,095 days. The average number of days for an application to be reimbursed through the end of FY22 was approximately 1,399 days.

FY	Applications Received	Applications Reimbursed	Backlog of Applications at FY End	Average Reimbursement Time at FY End (days)
21	171	71	650	1,095
22	190	131	703	1,399

V. EFFORTS TAKEN RELATED TO RESIDENTIAL HEATING OIL TANKS

On June 13, 2022, significant revisions to COMAR 26.10 – Oil Pollution Control and Storage Tank Management took effect. As part of the new regulations, MDE included a specific regulation relating to residential heating oil tanks. The new regulation, COMAR 26.10.01.13, established certain minimum requirements for residential heating oil tanks related to the types of tanks that may be used, certain requirements for deliveries of oil to the tanks, and minimum requirements for taking the tanks out of service. MDE does not require residential heating oil tanks to be taken out of service due to age, however, if a residential heating oil tank is discharging oil to the environment and cannot be repaired, or is otherwise no longer in service (e.g., no longer used as a fuel supply), then the heating oil tank is required by law to be closed. This new regulation will help to make these minimum requirements clearer to companies that provide services to residential heating oil tank owners.

MDE also updated COMAR 26.10.14 – Residential Heating Oil Tank System Site Rehabilitation Reimbursement Program. This is the chapter that governs the application to the Reimbursement Fund and how MDE issues reimbursements. With the revisions to this chapter, MDE established certain limitations to reimbursements from the fund to make the limited funds available to more applicants. The following limits based upon the residential property value were established:

- If the property value is less than or equal to \$300,000, the reimbursement allocation is:
 - 100% of the eligible site rehabilitation costs; and
 - Up to a total of \$20,000, less the \$500 deductible;
- If the property value is greater than \$300,000 and less than or equal to \$600,000, the reimbursement allocation is:
 - 50% of the eligible site rehabilitation costs; and
 - Up to a total of \$10,000, less the \$500 deductible; or
- If the property value is greater than \$600,000, the reimbursement allocation is:
 - 25% of eligible site rehabilitation costs; and
 - Up to a total of \$5,000, less the \$500 deductible.

MDE expects that the reimbursement limitations will result in additional applications being reimbursed per year. MDE began enforcing the new limits effective October 1, 2022.

VI. DISCUSSION AND RECOMMENDATIONS

A. Discussion

In addition to the statistics provided in Section IV, and the efforts taken by the state related residential heating oil tanks, Chapter 690 required MDE to provide recommendations and report on the following:

- Reducing the number of days for issuing reimbursements;
- Continuation of the Reimbursement Fund; and
- Improving the state's response to aging residential heating oil tanks.

Currently, the average reimbursement amount per application is \$7,800. There were 703 applications awaiting reimbursement at the end of FY22, which would amount to \$5,483,400 based on the per application average. Over FY21 and FY22, the average number of applications received was 180.5 per year, which would amount to \$1,407,900 in reimbursements annually, again based on the per application average. In addition to funding the reimbursements themselves, 8% would need to be added for MDE to administer the reimbursement program, bringing the projected funding needed to \$5,922,072, and \$1,520,532 for the average annual reimbursements thereafter.

Current revenue to the Reimbursement Fund averaged \$202,415.51 over the past 2 years (\$193,893.19 in FY21, and \$210,937.82 in FY22). This leaves an annual deficit for the Reimbursement Fund of \$1,318,117. When comparing the current queue and the average number of applications received per year to the average revenue into the Reimbursement Fund, the reimbursement program is in need of review. The mismatch between annual revenue and value of reimbursement requests has led to the extended amount of time for an application to be reimbursed.

In FY21, MDE transferred \$2,250,000 into the Reimbursement Fund from the Oil Fund to address the queue. This amount was used in FY22 to reimburse as many applications as could be reimbursed with available appropriations. The remainder of the transferred funds (\$1,144,276) will be used to reimburse applicants in FY23. However, these transfers of funds will not be sufficient to clear the queue of applications currently awaiting reimbursement, nor does the Oil Fund have sufficient funding to support further transfers.

When funding is available, the current turnaround time for MDE's review of applications and issuance of reimbursement is approximately 90 days. If funding and appropriations were available to allow for continuous processing of reimbursements, MDE may benefit from additional resources to reduce or sustain this turnaround time.

B. Recommendations

MDE recommends that § 4-705(b)(2) of the Environment Article remain unchanged. The current law will not allow MDE to accept applications to the Reimbursement Fund after June 30, 2024, which will have the effect of ending the Reimbursement Program on that date. Section 4-411(c)(3) of the Environment Article should remain unchanged regarding the license fee amounts charged per barrel of oil, but should be revised in the 2024 legislative session to extend the relevant dates by no less than 3 years (i.e., until 2027). The remaining portions of Section 4-411 of the Environment Article that allow MDE to continue to use the Oil Fund to reimburse applicants, through June 30, 2029, should remain unchanged.

The net effect of these actions will end the program on June 30, 2024, provide continued funding into the Oil Fund, and allow MDE to use that funding to reimburse the current applications and any application received through June 30, 2024. MDE will be able to continue those reimbursements until June 30, 2029.

In the future, MDE could use the Reimbursement Fund to fund its own responses to residential heating oil tank spills, release, and discharges where the spill, release, or discharge is posing an actual or imminent threat to human health, the environment and/or where a responsible party is unknown or financially unable to take the necessary corrective actions. This would improve environmental protection by ensuring that the limited funds are used to pay for corrective actions in cases where those actions may not otherwise be performed timely.