

Texas Commission on Environmental Quality (TCEQ)

PAYMENT BOND GUIDANCE DOCUMENT

for

Contractors, Landowners, or other LPST Remediating Parties Who Hire Subcontractors or Incur Other Labor or Supplier Obligations in Performing Site Remediation Services in Connection with the Leaking Petroleum Storage Tank Reimbursement Program

Pursuant to Water Code § 26.3573, and agency rules located at 30 TAC §334.301– §334.322, the Petroleum Storage Tank Reimbursement Program provides State funds to reimburse the costs of cleaning up sites where there has been contamination from leaking petroleum storage tanks (LPST's). Although the agency does not take "State-lead," i.e. it does not hire contractors directly to perform cleanup under this program, it does have an interest in seeing that those who are reimbursed from the Reimbursement Fund do in fact pay their contractors, sub-contractors, other laborers, and suppliers.

Agency rule 30 Texas Administrative Code § 334.306(b)(7) conditions State reimbursement of a person's costs on a showing that subcontractors have been paid, or upon a showing that Principal has secured a payment bond of a licensed surety guaranteeing the payment of contractors, subcontractors, and suppliers providing labor, materials, and equipment at a Site.

Sureties should note that a qualifying bond under the above rules need only guarantee payment of Claimants in the event that Principal is reimbursed from the Fund (even if only partially) and then fails to pay amounts due Claimants under their contracts. Disputes over the amount TCEQ reimburses do not toll the requirement that Principal pay all sums due Claimants.

Items which are advised to be in a qualifying Payment Bond include: time period for Claimant to make a Claim; time period for Surety to pay a legitimate claim; terms addressing potential contractual dispute concerning amounts due under the contract between Claimant and Principal.

The TCEQ shall not be liable for payment of any costs or expenses of any Claimant under the Bond, and shall have under the Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under the Bond.