



Subject **Lender Eligibility**
Adopted **7/21/2006; 4/7/2000**

A. Scope

This policy addresses lender Petroleum Storage Tank Fund eligibility as a person bearing no responsibility for the release.

Note: This policy concerns the Petroleum Storage Tank Fund only. It does not address the status of lenders as petroleum storage tank owners or operators with respect to requirements of the Environmental Protection Agency and the Colorado Department of Labor & Employment's Division of Oil and Public Safety.

B. Definitions

1. **Lender:** As used in this policy, "lender" means a mortgagee or holder of an evidence of debt secured by a deed of trust, who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which a petroleum storage tank is located. "Lender," as used in this policy, includes persons who, at the time of foreclosure or receipt of a deed in lieu of foreclosure, hold a Certificate of Eligibility issued by the Division of Oil and Public Safety.
2. **Foreclosure:** As used in this policy, "foreclosure" means acquisition of property through foreclosure of the mortgage/deed of trust or receipt of a deed to the property in lieu of foreclosure.

C. Pre-Foreclosure Activities

Since the origination date of the mortgage or deed of trust and before the foreclosure, lender cannot have operated tanks on the subject property nor leased them to another to operate. If lender has so operated or leased the tanks, lender's eligibility status is as a tank owner/operator.

D. Post-Foreclosure Activities

1. If contamination is known prior to the foreclosure, post-foreclosure operation of the tanks by the lender, the existing lessee, or a new lessee will not jeopardize the lender's Fund eligibility as a person bearing no responsibility for the release, provided the operator is not the person on whom the lender foreclosed.
2. If contamination is not known prior to the foreclosure and the tanks are not being operated at the time of foreclosure, and if a post-foreclosure site assessment reveals petroleum contamination, the tanks may then be operated by the lender or a lessee, provided the lender provides documentation showing that the tank system is tight pursuant to the requirements of 7 C.C.R. 1101-14, 4-3(a). Such post-foreclosure operation of the tanks will not jeopardize the lender's Fund eligibility as a person bearing no responsibility for the release, provided the operator is not the person on whom the lender foreclosed.
3. If contamination is not known prior to the foreclosure, and if the lender begins operating the tanks itself post-foreclosure, leases the tanks to another for operation, or allows the current lessee to continue operating the tanks, and if contamination is later discovered, the lender's status as a Fund applicant will be as a tank owner/operator unless the lender provides release detection records showing that no release occurred after the foreclosure and before the contamination was discovered, and the tanks were not operated post-foreclosure by the person on whom the lender foreclosed.

