**74:32:06:04.  Exclusions from reimbursement for third-party claims.** In addition to the exclusion allowed in SDCL chapter 34A-13, the reimbursement for third-party claims authorized by this chapter does not apply to and may not be provided for the following:

 (1)  Bodily injury or property damage costs for which the covered party is obligated to pay because of the express assumption of liability in a written contract or agreement;

 (2)  A release which was expected or intended from the standpoint of the covered party except for such releases ordered by governmental regulatory entities or law enforcement agencies having jurisdiction to order such a release;

 (3)  Obligation of the covered party for workers' compensation benefits, disability benefits, or unemployment insurance benefits;

 (4)  Bodily injury to an employee of the covered party or to the spouse, child, parent, brother, or sister of that employee arising out of and in the course of the employee's employment by the covered party. This exclusion applies whether the covered party may be liable as an employer or in any other capacity and to any obligation of the covered party to share damages with or repay someone else who must pay damages because of the injury;

 (5)  Property damage to property a responsible person owns, borrows, rents, or occupies;

 (6)  Property damage to a waste facility;

 (7)  Property damage to personal property in the care, custody, or control of a responsible person;

 (8)  Loss of value to a third party claimant's property if, after corrective action, the property is in compliance with state environmental standards;

 (9)  A release at a waste facility;

 (10)  A release attributable to a covered party's willful or deliberate failure to comply with an applicable statute, regulation, ordinance, directive, or order relating to the protection of the environment and promulgated by a governmental body having jurisdiction over the release;

 (11)  Fines or penalties;

 (12)  A release if the responsible person was not in substantial compliance with state and federal regulations applicable to the tank or has failed to comply with any provisions of SDCL chapters 34A-13 and 34A-14 or rules promulgated under them;

 (13)  Bodily injury or property damage caused by a release from any of the following:

 (a)  A tank that meets any of the following conditions:

 (i) Situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the tank is situated upon or above the surface of the floor;

 (ii) Owned or operated by the state, its political subdivisions, or federal government entities whose debts and liabilities are the state's or the United States government's;

 (iii) Used in conjunction with electrical or hydraulic equipment;

 (iv) With a capacity of 110 gallons or less;

 (v) Used for storing heating oil for use on the premises where it is situated; or

 (vi) Used to store motor fuel for noncommercial purposes on a farm or residence and with a capacity of 1,100 gallons or less;

 (b)  A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

 (c)  An emergency spill or overfill containment system; or

 (d)  Any one or combination of containers, vessels, and enclosures, including structures and appurtenances to them, that is or has been used primarily or exclusively to contain or dispense petroleum if attached or designed to be attached to a motor vehicle.

 **Source:** 18 SDR 62, effective October 10, 1991.

 **General Authority:** SDCL 34A-13-16, 34A-13-40, 34A-13-42.

 **Law Implemented:** SDCL 34A-13-9, 34A-13-9.1, 34A-13-25, 34A-13-28, 34A-13-29, 34A-13-41, 34A-13-45, 34A-13-46.