


<p align="center">Indiana Department of Environmental Management</p>	<p>Status Pending</p>	<p>Policy Number Waste-0078-NPD-R1</p>	
<p align="center">Agency Nonrule Policy Document</p> <p>Subject: Excess Liability Trust Fund Cost Guidance</p>	<p>Authorized Brian C. Rockensuess, Commissioner</p>		
	<p>Supersedes Waste-0078-NPD</p>	<p>Issuing Office(s) Office of Land Quality, Petroleum Branch, UST Operations Section</p>	
	<p>Originally Effective February 26, 2022</p>	<p>Renewed or Revised February 14, 2024</p>	

Disclaimer: This nonrule policy document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under IC 13-14-1-11.5. It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board and may be put into effect by IDEM 30 days afterward. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

1.0 PURPOSE

The purpose of this policy is to provide a process for streamlined review and payment for certain claims submitted to the Excess Liability Trust Fund (ELTF). This policy does not preclude claimants from seeking additional reimbursement or reimbursement at a higher rate than listed within this policy if adequate documentation is provided to support the claim and justify a higher reimbursement amount.

2.0 SCOPE

The ELTF is a state trust fund which provides reimbursement to owners and operators of underground storage tanks (USTs) and aboveground storage tanks (ASTs) who have incurred corrective action costs related to releases of petroleum from those tanks. The ELTF also provides reimbursement for 50% of eligible costs related to UST decommissioning and replacement. IDEM administers the ELTF in accordance with Indiana Code (IC) 13-23 and rules in Titles 328 and 329 of the Indiana Administrative Code (IAC), as applicable. IC 13-23-9-1.5 limits ELTF reimbursement to costs which are cost-effective and reasonable for work performed as listed under the statute. The standard is further defined by 328 IAC 1-1-8.3 for corrective action purposes as, in part, work which is appropriate and performed only as necessary to complete corrective action.

Claims submitted in accordance with this nonrule policy document (NPD) will carry the presumption of approval unless case-specific circumstances require additional information to confirm the claim. Once IDEM determines a claim is eligible, reimbursement will be provided at the rates specified in the cost guidance. Any additional reimbursement shall be provided upon a determination by IDEM showing that the work was reasonable and cost effective, based on the information provided by the claimant.

The cost tables presented in the cost guidance are based on the typical work required to satisfactorily complete the tasks specified. It is important to note this policy does not provide guidance on how to conduct assessment and remediation activities, nor limit the activities a consultant may choose to perform. Appropriate assessment and remediation activities related to releases from USTs or ASTs are to be conducted in consultation with the IDEM project manager (PM) for the site. If a consultant finds it necessary to propose additional time than that listed in a cost table, complete justification for the extra effort(s) must be provided. IDEM PMs and ELTF

Scope of Work (SOW) coordinators reserve the right to propose modified levels of effort based on his/her knowledge of the site and the site cleanup activities. All tasks must be performed pursuant to the requirements and standards stated in applicable portions of 329 IAC 9 and/or 40 CFR Part 280.

The total reimbursable cost listed for a given task in the cost guidance was reached using typical personnel and time necessary to satisfactorily perform the task. As long as a submitted claim requests at or below the total reimbursable cost specified by the cost guidance for that task, consultants may have utilized any combination of personnel and time to perform the given activity. However, if the requested reimbursement exceeds the total reimbursable cost set by the cost guidance for the given task, complete time and personnel records will be required and a justification or demonstration of the additional effort needed must be submitted along with the claim.

3.0 SUMMARY

This NPD provides a streamlined process for submittal, review, and reimbursement of certain specific tasks commonly performed at petroleum UST and AST corrective action sites. The Indiana Department of Environmental Management (IDEM) has reviewed thousands of claims to determine a range of what is considered reasonable in terms of the work required to complete tasks and the amount to reimburse for the tasks.

4.0 DEFINITIONS

The definitions in IC 13-11-2, 329 IAC 9-1, and 328 IAC 1-1 apply to this nonrule policy.

- 4.1. "Agency" – The Indiana Department of Environmental Management (IDEM).
- 4.2. "Applicant" – Entity eligible to receive payment from the ELTF for eligible costs and who submitted a claim to the ELTF for reimbursement.
- 4.3. "ELTF SOW coordinator" – Agency staff designated to review and issue determinations on requests for cost preapproval.
- 4.4. "Environmental restrictive covenant (ERC)" – Has the meaning set forth in IC 13-11-2-193.5.
- 4.5. "Project manager (PM)" – Agency staff designated as responsible to coordinate/implement activities associated with a site or project specific Quality Assurance Project Plan, especially with respect to collecting, using, and reporting environmental data.

5.0 ROLES

5.1. The applicant shall:

- A. Submit an ELTF claim to the agency for reimbursement consideration.
- B. Provide descriptions of each item requested for reimbursement and appropriate supporting documentation, as necessary.

5.2. The consultant shall (when engaged by the owner/operator (O/O) or responsible person (RP)):

- A. Represent the O/O or RP.
- B. Prepare work plans or other documents for a site on behalf of an O/O or RP.
- C. Coordinate activities with the IDEM project manager to achieve closure of a site.
- D. Submit plans, data, and documents as requested by the IDEM project manager.
- E. Perform investigatory and/or remediation work as described in work plans or other documents.

5.3. The ELTF SOW coordinator shall:

- A. Review requests for preapproval of costs based on reasonableness and cost effectiveness.
- B. Issue preapproval determinations.

5.4. The IDEM project manager (PM) shall:

- A. Coordinate and implement remediation activities with the O/O, property owner, or RP and the consultant.
- B. Receive, evaluate, and provide comments on documents associated with the investigation, remediation, and closure of a site.
- C. Prepare and send correspondence to the O/O, property owner, and/or RP and their consultant which communicates the status of the remediation project.
- D. Request technical staff review of remediation documents and incorporate the technical staff suggestions and comments into the correspondence to the O/O, RP, and the consultant.
- E. Conduct internal team meetings with technical staff to discuss the site.
- F. Conduct meetings with the O/O, RP, or the consultant to discuss approaches to the remediation or closure of a site.
- G. Make decisions on the appropriate use of technology or remediation techniques at the site.
- H. Conduct site visits as requested or necessary to view the nuances of the site.
- I. Evaluate different proposals on their merit.

6.0 POLICY

6.1 The cost guidance contains the following categories:

Task A: Site Characterization and CAP Development

Task B: Corrective Action Plan Implementation

Task C: Groundwater Monitoring/System Maintenance/Vapor Intrusion Sampling

Task D: Site Closure Activities

Task E: Tank Closure and Replacement

Task F: ELTF Claim Preparation

Task G: Miscellaneous Tasks

Appendices

6.2 For Assistance

Please contact the UST Operations section via email at ELTFQuestions@idem.IN.gov or by phone at (317) 234-0990 for more information or assistance.

7.0 REFERENCES

7.1 Federal Rules

- A. [40 CFR 280](#) Subpart F

7.2 Indiana Statutes:

- A. [IC 13-23](#) Environment, Underground Storage Tanks

- B. [IC 13-23-7-1](#) Environment, Underground Storage Tanks, Underground Petroleum Storage Tank Excess Liability Fund, Purposes of ELTF, Limit on Payment of Certain Expenses, Trust Fund
 - C. [IC 13-23-9-1.5](#) Environment, Underground Storage Tanks; Payment from Excess Liability Trust Fund, Costs for Which ELTF Claims May Be Paid
 - D. [IC 13-25-5-8.5](#) Environment; Hazardous Substances, Voluntary Remediation of Hazardous Substances and Petroleum, Voluntary Remediation Work Plan Objectives; Additional Action to Protect Human Health and the Environment Not Necessary Under Certain Circumstances; Risk Based Remediation Objectives and Proposals.
- 7.3 Indiana Administrative Codes:
- A. [328 IAC 1-1-8.3](#) Underground Storage Tank Financial Assistance Board, Excess Liability Trust Fund Corrective Action and ELTF Liability Indemnity Claim Payments, Definitions and References, Reasonable defined
 - B. [328 IAC 1-3-5](#) Underground Storage Tank Financial Assistance Board, Excess Liability Trust Fund Corrective Action and ELTF Liability Indemnity Claim Payments, Costs
 - C. [329 IAC 9-1-1](#) Solid Waste Management Division, Underground Storage Tanks, Applicability, Incorporation by Reference, and Definitions; Applicability, incorporation by reference, definitions
 - D. [329 IAC 9-6](#) Solid Waste Management Division, Underground Storage Tanks, Closure
- 7.4 Agency Forms:
- A. [LUST Further Site Investigation \(FSI\) Report Cover Sheet and Report Format SF 55441](#)
 - B. [LUST Initial Site Characterization \(ISC\) Checklist SF 55440](#)
 - C. [LUST Initial Site Characterization \(ISC\) Report Cover and Report Format 55439](#)
 - D. [LUST No Further Action Request Cover Sheet and Report Format SF 56088](#)
 - E. [LUST Quarterly Monitoring Report \(QMR\) Cover Sheet and Report Format SF 56087](#)
 - F. [ELTF Scope of Work for Leaking UST Sites SF 51955](#)
 - G. [Notification for Underground Storage Tank Systems SF 45223](#)
 - H. [Underground Storage Tank Systems Closure Report SF 56554](#)
- 7.5 Excess Liability Trust Fund Cost Guidance

8.0 SIGNATURES



Brian Rokenstess, Commissioner
Indiana Department of Environmental Management

2/14/24
Date



Peggy Dorsey, Assistant Commissioner
Office of Land Quality


2/13/24
Date



Nancy King, General Counsel
Indiana Department of Environmental Management

2/14/24
Date

This policy is consistent with agency requirements.



Quality Assurance Program
Office of Program Support
Indiana Department of Environmental Management

2/14/24
Date

PRELIMINARY