



March 29, 2024
Nonrule Policy Document Waste-0078-NPD-R1 Ms.
Peggy Dorsey, Assistant Commissioner
Office of Land Quality
Attention: Chris Bowman
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204
cbowman@idem.in.gov

RE: Excess Liability Trust Fund Cost Guidance Comments and Request for Clarification
Nonrule Policy Document # Waste-0078-NP-R1

Dear Ms. Dorsey and Ms. Bowman,

Family Express currently operates 81 Convenience Stores with 291 underground storage tanks in Indiana. We currently have nine sites that utilize the Excess Liability Trust Fund (ELTF). Our environmental contractor submits reports on our behalf for reimbursement from the fund on a regular basis. We have reviewed the proposed Excess Liability Trust Fund Cost Guidance Nonrule policy. We appreciate the opportunity to provide input before this is finalized.

We realize that there needs to be time and rate guidelines for specific tasks for the contractors to follow to preserve the integrity of the fund and make sure that any money spent is justified and going toward clean-up of the environment. After all, the entire purpose of ELTF is to protect human health and the environment to the greatest extent possible.

As mentioned above, we are not opposed to time and rate guidelines. A major concern with the new cost guidance is that there is not enough overall time budget for a given task and that the allotted hour breakdowns for the various categories of labor, i.e., principle, senior project manager, etc., are not commensurate with the individual who actually performs the task. There appears to be very few hours allocated to the principal or senior project manager which results in costs being denied. This should be reexamined as their expert input and participation in the process is critical to overall effectiveness and success of the remediation being performed. Additionally, not all projects are the same. Some are more complex than others. At times, much more complex. There needs to be a level of flexibility in the cost structure to allow for unusual and unforeseen circumstances and a process to request and get approval to exceed the specified cost for a particular task when the situation warrants it.

Family Express Corporation – 213 S. State Rd 49– Valparaiso, IN 46383
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On a regular basis, our current reimbursement statements constantly deny reimbursement for a task because of the following reasons:

- “As noted in 328 IAC 1-3-5, personnel rates for work performed on or after November 16, 2001, are reimbursed based on the task performed by an employee rather than the qualifications of the employee.”
- “Only those costs directly related to corrective action or third party liability are eligible for reimbursement. The evidence submitted failed to show that the Preparation, Planning, and Follow-up Principal labor (2.0 hours) was necessary to perform the corrective action or to satisfy third party liability.”
- “As noted in the February 26, 2022, IDEM Nonrule Policy Document Waste-0078-NPD, all personnel time for the task 1Q2023 report writing is included in the rate of \$1894.50. Exceedances must be accompanied by documentation regarding the case-specific circumstances that support the higher amount. Please provide a reasonableness and cost effectiveness explanation for amounts exceeding the allowed rate.”
- “As noted in the February 26, 2022, IDEM Nonrule Policy Document Waste-0078-NPD, all personnel time for the task 2Q2023 claim preparation is included in the rate of \$532.50. Exceedances must be accompanied by documentation regarding the case-specific circumstances that support the higher amount. \$532.50 was reimbursed in claim 4. Please provide a reasonableness and cost effectiveness explanation for amounts exceeding the allowed rate.”

When reimbursement for these types of costs are denied, the difference is paid by the tank owner, increasing the overall cost of doing business.

In the cover letter under Scope, it states “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.” We strongly support this new guideline. If this is the case going forward, costs that were denied in the past for the reason stated above will be reimbursed accordingly regardless of what level of individual performs a given requirement of the task. This should also allow the consultant the ability to submit an invoice for a given task without detailing the specific labor hours. This will save administrative costs accordingly and would eliminate the need for resubmittal claims which will save both IDEM and the consultant money.

Concerning Task A.4.a Preparation and Recordation of an ERC, we believe the cost of preparing an ERC should be reimbursed whether or not an actual ERC is recorded. These are costs requested by IDEM even if eventually both parties agree, and ERC is not warranted, or another means was agreed upon to reach an NFA.

Again, we appreciate the opportunity to provide feedback on the new guidelines and for you to take the time to consider our comments.

Sincerely,

A handwritten signature in blue ink that reads "Keith Slater". The signature is written in a cursive style with a large initial "K".

Keith Slater
Chief Financial Officer