



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Excess Liability Trust Fund

Frequently Asked Questions

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

(317) 234-6965 • (800) 451-6027

www.idem.IN.gov

100 N. Ave., Indianapolis, IN 46204

TRAVEL AND TRANSPORTATION

What are the current lodging and per diem reimbursements? [As of 5-1-2011; 328 IAC 1-3-5 (b) (2)]

Description	Revised rule	Old rule
Mileage (federal rate)	\$0.51/mile ¹	\$0.375/mile
Per Diem (state rate)	\$26.00/day ²	\$26.00/day
Hotel (state rate except Indy)	\$89/night ³	\$89/night

Clarifications:

¹ Mileage shall be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on January 1 of each year.

² IDEM pays per diem only with lodging receipts for an overnight stay. IDEM will pay for lodging/per diem only if the field activities took more than 1 day.

³ Both per diem and lodging are paid in accordance with IDOA's state travel policy and rates.

For per diem reimbursement (lodging receipts included), does IDEM want meal receipts submitted?

IDEM does not require the submittal of meal receipts, just the lodging receipts and a demonstrated need for overnight travel. The maximum per diem amount allowed is \$26.00 per day. If receipts are submitted and if they total less than \$26 per day, IDEM will pay the lesser of the two.

What is the payment policy for mileage, lodging and per diem in relation to a bid?

Mileage, lodging and per diem will always be paid according to 328 IAC 3-5(b) (2). These costs must be listed as separate line items on the invoice and pay request. They must reflect the IDOA's State Travel policy rates in effect at the time the work was done.

The transportation section of the rule lists a \$400 mob for equipment with trailer. Does this refer to the trucks also?

No. Support vehicles will continue to be reimbursed with the mileage allowance.

Trucking rates – does the \$85 per hour rate include costs from portal to portal or only from excavation site to landfill and back?

The hourly trucking rates do not include "portal to portal" regardless of the purpose; demolition, excavation, backfill, corrective action, etc. Mileage must be documented, not estimated.

I understand new mileage rate is 0.51/mile. What rate do I charge for the CDL driver for "windshield" time?

Driving time is not a reimbursable item when dealing with the mobilization of heavy equipment. Support vehicles will continue to be reimbursed with the mileage allowance. Labor for the drilling events, monitoring and sampling events has always been included in the set rates for this work.

We have a large dig and haul with a tank removal (as a part of an approved CAP). Four bids have been submitted. The lowest bid includes trucking costs which appear slightly higher than the guidance rate of \$85 per hour unit rate. Is this reimbursable, even if some of the unit rates are higher than the guidance amounts?

Although the bid must show a line item breakdown, IDEM reviews the bid as a whole. They can include rates “above” ELTF guidance unit rates, as long as the overall bid is the lowest. In being protective of the ELTF, IDEM will monitor the bids to insure that the bidding process is not abused, or manipulated.

For investigation derived waste (soil cuttings) disposal, would reimbursement be the least expensive combination of hauling costs and disposal costs? Also, since the cuttings would be less than 300 tons, then the \$1,200.00 per day or actual costs for transportation would apply. Would this task have to be bid out?

The part of the Rule you are referencing, the \$1,200.00 per day for handling less than 300 tons in a day, does not apply to the wastes derived during the drilling activities, but rather for transportation of waste material generated during excavation activities.

Costs for the disposal of this type of waste (drums, soil cuttings, decon fluids, etc.) are reimbursed based on the back-up documentation (receipts, manifests, etc.) provided with the claims for the actual costs incurred.

Bids are not required for investigative work.

BIDS

Can we use the bidding process for excavation activities instead of the rates Per 328 IAC 1-3-5(e), “Activities in accordance with an approved CAP will be considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates.” Does this language imply that if three (3) bids are given, that do not utilize ELTF unit rates, the lowest of the three bids will still be considered for reimbursement?

Yes. Although the bid responses to the request for proposal (RFP) must show a line item breakdown, IDEM reviews bids as a whole and is requesting that the bid be listed as a lump sum on the pay request. A bid can include rates “above” ELTF rates, as long as the lowest overall bid is accepted. For excavation and hauling, a company may choose between getting 3 bids and / or using the ELTF guidance rates. The Request for Bid and bid submittal will be required to show a line item breakdown of the tasks to be performed in order to verify that all tasks are eligible for reimbursement.

We have a large dig and haul with a tank removal (as a part of an approved CAP). Four bids have been submitted. The lowest bid includes trucking costs which appear slightly higher than the guidance rate of \$85 per hour unit rate. Is this reimbursable, even if some of the unit rates are higher than the guidance amounts? (Repeated from page 1)

Although the bid must show a line item breakdown, IDEM reviews the bid as a whole. They can include rates “above” ELTF guidance unit rates, as long as the overall bid is the lowest. In being protective of the ELTF, IDEM will monitor the bids to insure that the bidding process is not abused, or manipulated.

Is the subcontractor still required to provide monetary back-up documentation for lodging, per diem, backfill, etc., if they are the lowest bid?

Lodging, per diem and mileage should not be included as part of a bid. These costs will always be paid at guidance rates and are to be reported as separate line items on the invoice and pay request. Back-up documentation is required.

For items such as backfill, the administrator requires documentation of all costs. Per 328 IAC 1-5-1 (a), effective March 26, 2011: "Sec. 1. (a) Claim applications for reimbursement shall be submitted on forms adopted by the administrator. Applicants shall itemize all reimbursable costs as required by the application package. Documentation of reimbursable costs as required by the administrator must be submitted as part of the application. The administrator may request additional information and records to substantiate claims submitted"

What is the payment policy for mileage, lodging and per diem in relation to a bid?

Mileage, lodging and per diem will always be paid according to 328 IAC 1-3-5(b) (2) and should not be included as part of the bid process. These costs must be listed separately on the invoice and pay request.

How detailed are the bids to be?

Per 328-IAC 1-3-5(e), under "Corrective Action Technologies," each RFP and bid submittal will be required to show a line item breakdown of the tasks to be performed in order to verify that all tasks are eligible for reimbursement. However, when the claim is submitted, a lump sum number of the lowest bid should be entered on the pay request. With the RFP and itemized bid submitted as back-up, itemization is not necessary on the pay request.

If a CAP was approved PRIOR to the rule change and work is done AFTER the rule change, will the work be reimbursed by the CAP or by the new ELTF rule?

The work will be reimbursed according to the accepted bid. Related costs not included in the bid should be claimed under the version of the Rule in effect when the work was done.

When performing system installation activities, does the ELTF rule provide for progressive reimbursement on expensive equipment? Is it possible to be reimbursed for the equipment before it is completely installed?

IDEM has allowed for partial payments for equipment/system purchases when a large sum of money is required before the CAP Implementation report is approved. Always work with the IDEM project manager. Aware project managers can help claim reviewers understand the activities. Required documentation must include a purchase invoice and proof of delivery.

Are three bids required for ground water monitoring well abandonment?

No, backup documentation for specific line item costs for materials, time, and labor must be provided; the backup documentation must correspond to the copies of the Indiana Department of Natural Resources Well Abandonment logs, which must be provided.

If the lowest of three bids is not chosen for legitimate business reasons, will the invoice be denied to the lowest bid?

If the technical project manager has not approved the higher bid, it would be denied to the lowest bid. The only business reason for approving a higher bid would be if IDEM staff thought the lowest bid would not be effective in the remediation. Any other business reason would receive a "cost of business" denial.

PERSONNEL, LABOR RATES

If a contractor's staff assists a consultant's staff with well purging and development or redeveloping existing wells, what labor rate should be used?

IDEM considers the labor in developing the well as part of the installation, and that labor is factored into the well allowance rates. If existing wells are redeveloped, the expense must be specified as redevelopment. IDEM would pay for the pump (usually 2" submersible at current rate of \$140).

What are the new personnel rates that are effective on June 1, 2011?

The following are the new labor rates effective as of June 1, 2011. These rates will be good through May 31, 2012. The rates published in the revised ELTF Rule on March 26, 2011 should be used for work performed on March 26, 2011 through and including May 31, 2011. The new rates summarized below should be used for work performed on June 1, 2011 through and including May 31, 2012:

- Principal-\$138.00 per hour
- Senior Project Mgr-\$128.00 per hour
- Project Mgr-\$104.50 per hour
- Staff Project Person-\$88.50 per hour
- Field Tech-\$60.00 per hour
- Drafting Person-\$51.00 per hour
- Word Processor/Clerical-\$35.50 per hour
- Toxicologist-\$157.00 per hour

How and when are the new personnel reimbursement rates determined?

The revised ELTF Labor Rates are based on the Product Price Index Percentage of 0.20% determined in December of every year. IDEM rounded up to the nearest half dollar for ease of calculation and verification of dollar amounts.

APPLICATIONS AND OTHER FORMS

There are formatting issues with the recently revised ELTF Application, can the password to turn off the write-protect feature be provided?

No, the form must be locked so that the official Indiana State form cannot be changed. The following issues of the revised application have been corrected:

- Column formats affecting dates, currency and general numbers
- On the Affidavit, "State of Indiana" has been changed to "State of _____"
- The summation formula has been added where appropriate
- Boxes are now checkable
- Alignment within various cells has been adjusted

When can an owner/operator apply for eligibility of a release for ELTF funding?

As outlined at 328 IAC 1-3-1(a), tank owners and operators, persons assigned the right of reimbursement, or subsequent property owners can apply when all of the following have occurred:

- A fund qualifying occurrence
- An Initial Site Characterization report has been submitted to IDEM
- Documentation of reimbursable costs equal to the appropriate deductible
- A claim for the same costs has not been submitted to or paid by the fund

Who can apply to the ELTF for payment of reimbursable costs?

It clearly states in 328 IAC 1-3-1(a) that the following people can apply:

- Tank owners and operators
- Persons assigned the right of reimbursement
- Subsequent owners of the property upon which the tanks were located

The ELTF application for reimbursement requires the signature of the owner/operator, the Power of Attorney, or the assignee. The potential signatories are listed in that order on the new application. As

the responsible party, the owner/operator is expected to sign the application. If the owner/operator wants the consultant to take care of all the paper work, the owner/operator will sign a Power of Attorney assigning those powers and responsibilities. With a Power of Attorney granted by the owner/operator, the consultant may sign the application and related paperwork on behalf of the owner/operator. If the owner/operator and consultant agree that reimbursement checks should go directly to the consultant, the owner/operator must indicate that through an Assignment of Right to Reimbursement document. Both the Power of Attorney and the Assignment of Right to Reimbursement documents must be properly notarized.

Does IDEM have a specific Assignment of Rights form or Power of Attorney form?

No, an attorney should be able to assist in the development of these documents that would be relevant to specific sites / releases.

At this time, the application is in an Access program which fills in the location information for me and the Affidavit is similar but has blanks for us to type in the State of Ohio to have our notary sign and seal it. Are these still acceptable or should we be using the new forms?

Use the new application forms. IDEM has corrected this problem by using a blank line to be filled in.

Do we still need to break out Subcontractor costs on a separate Pay Request?

No, subcontractor is a line item on the Pay Request. An itemized subcontractor invoice should be provided as backup documentation.

The wording at the top of both types of Pay Requests differs from the ones I got off the IDEM web site. Could you take a look please and tell me if our forms are ok.

Please use the forms that are part of the new application.

Should I be using the cover sheet I found on the web site?

While it is not mandatory, using the cover sheet helps identify the document as an ELTF claim for the IDEM staff who open the mail. The claims get to the proper persons faster with the cover sheet. Please note that the cost review goes more quickly if all the supporting invoices and other documents are organized right behind each pay request in the order that items are listed on the pay request.

How should the Invoice Summary be filled out when submitting a resubmittal with a subsequent claim?

We like to see the resubs come before the subsequent claims in the application package, so it would make sense to list them first on the invoice summary and follow with the subsequent invoices.

When the claim is all put together, how should it be submitted to IDEM?

The claim should be submitted with clips or rubber bands. Binders and staples have to be removed and therefore slow the process down. Ideally, the claims should be submitted single-sided held together by a single binder clip or a rubber band. When we are finished with the claims, they go to our scanning department to be scanned into the Virtual File Cabinet, where completed claims can be viewed 24-7.

A significant time saver, and therefore a quicker review, is putting the claim in the following order:

For Subsequent Claims:
Application

Power of Attorney and / or Assignment of Rights (when needed)
Affidavit
Invoice Summary
First Pay Request
Invoices for First Pay Request
Proof of Payment Documentation
Project Labor and Burden Information
Subsequent Pay Requests, followed by backup documentation

For Subsequent with Resubmittals:

Application
Power of Attorney and / or Assignment of Rights (when needed)
Affidavit
Invoice Summary
Resubmittal Information

- Resubmittal pay requests-must include an explanation of the costs is being resubmitted. **Using “See cover letter” is not an adequate explanation.** The explanation should relate directly to the reason stated for the denial.
- IDEM letter with Cost Review Summary
- Resubmittal invoices
- Any pertinent information from Virtual File Cabinet

Subsequent Information:

- First pay request (same order as listed for subsequent claims).
- Additional pay requests following same order as for subsequent claims.

I’m not sure what the “Invoice Summary for Affidavit” document is. Is this something new that we need to start filling out and submitting? If so, do you have instructions?

We have removed this form from the application. However, an instruction tab for all the forms is included in the electronic data package located at <http://www.in.gov/idem/5063.htm>

Do we have to hold the resubmittal for a subsequent claim if the amount of the resubmittal is greater than the \$5,000.00 limit?

Yes, the resubmittal has to be submitted with a subsequent claim.

If the resubmittal larger than \$5,000.00 has to be submitted with a subsequent claim, does the amount of the subsequent claim have to be greater than the \$5,000.00 limit specified in 328 IAC 1-5-1 (d) and (e) before the combined claim can be submitted?

No, the combined total has to be larger than the \$5,000.00 limit. Exceptions are listed in part (e).

Why is it important to use the correct labor rates and personnel classifications?

Every wrong rate or wrong classification requires a hand-written correction on the pay request and a denial statement on the Cost Summary Review. The denials are taken very seriously by cost review staff. The verification of the backup documentation is time consuming.

How much information is needed when describing personnel tasks?

The task description should be as specific as possible to explain the work being done by the classification being claimed. The main thing to remember is that it is better to err on the side of too much detail about job descriptions. A cost reviewer who has a clear picture of what the employee is doing is much less likely to deny the cost for additional information.

How should we submit personnel time on the pay requests?

Combining like personnel time as one line item on the pay request (ie. the total number clerical hours, project manager hours, etc.) results in quicker review time as this results in less time to verify backup documentation and the different totals.

Can an assignment of rights document list all incidents of one owner/operator?

If an owner/operator has more than one incident which is ELTF eligible, they may attach a list of incidents to an affidavit so that the affidavit does not need to be changed for every incident. The correct incident number for each specific claim application must be clearly identifiable (yellow highlighter works well) when presented in the list format with other incident numbers.

Can an assignee of rights sign an application, or does it have to be a Power of Attorney form?

Either may sign. A copy of the Power of Attorney and/or the assignment must be included with each claim.

Can the Power of Attorney assign rights?

No, only the owner/operator may assign rights.

In the past, the owner/operator Tax ID was used and they received the 1099 at the beginning of the year. When an assignment of rights is utilized, the instructions now state that the “applicant” must use their Tax ID which will be the assignee in some cases. Is this correct?

Yes, the State Auditor's office has told IDEM that the 1099 form should go to whoever receives payment.

Which Tax ID is used when there is a separate Power of Attorney and assignee, or for two-party checks?

The Tax ID of the party, who receives the money, unless the owner/operator and the assignee have worked out something else in their agreement, should be used in both cases.

Does the assignee still have to sign the applications if they do not have Power of Attorney?

The signature block on the application reads, “Signature of the owner/operator, attorney-in-fact, or assignee”. Again, whoever is going to get the money should sign the application.

Under the “Type of Work Performed”, do we check all that apply?

Yes.

What form should be submitted (Vendor Information/W-9) for a second party claim?

The State Auditor's office will only accept the most recent version of the Vendor information Form. The W-9 is no longer being used or accepted by the Auditor's Office. Once a form has been entered into the State's database, the ELTF does not need a copy with each claim.

MISCELLANEOUS

When a reimbursement rate is not included in the Rule, how does IDEM reimburse for that item, for example, the cost of a drum?

Back up documentation must be provided with the claim for those items that do not have individual reimbursement rates. The documentation should include a receipt for the actual cost and an explanation for its purpose. However, this does not guarantee reimbursement if the item is not eligible according to IDEM's interpretation of the Rule.

Has the reimbursement rate changed for photocopies?

No, the rate of reimbursement has never been part of the Rule. The rate has been set by IDEM discretion with “cost effectiveness” in mind. The maximum amount reimbursed for copying is \$0.15 cents per page, for black and white or colored copies. There are no requirements that claimants submit colored or larger sized copies.

When is the deductible actually met when a release is not 100% eligible?

As outlined in 328 IAC 1-1-4 the percent ineligible deduction is applied to determine “reimbursable costs incurred” when computing the amount to apply to the deductible.

Does the 2011 ELTF Rule revision contain any deadlines for submitting claims?

Yes. 328 IAC 1-3-1(c) specifies the following deadlines:

c) All claims for payment of reimbursable costs must be submitted within nine (9) months after the fund qualifying occurrence is granted a status of no further action (NFA) by the administrator. All resubmittals associated with any disallowed cost must be received by the department within twelve (12) months after the denial of the claim.

(d) All occurrences with an existing status of NFA as of the effective date of the 2011 amendments to this article will have:

(1) nine (9) months from the effective date of the 2011 amendments to this article to submit any remaining costs; and

(2) an additional twelve (12) months to resubmit any denied costs.

Will the ELTF reimburse for the expense to have licensed surveyor generate mapping grade layout for the affected areas to be included in an ERC?

Only if approved by the IDEM Project Manager for special cases. By following IDEM's GIS guidelines, having a licensed surveyor generate mapping grade layout would not be required.

What is the new reimbursement rate for “hand tools”?

As outlined at 328 IAC 1-3-5(d), hand tools are not a reimbursable cost.

How do we go about making repairs to groundwater monitoring well covers?

Repairs must be made if the integrity of the information collected from that sampling point is in question. Provide a request explaining the need for the repairs. Provide documentation (photographs, plan view drawing, and Scope of Work form) to the IDEM Project Manager for approval.

We have noticed an increase in traffic cones being denied over multiple sites. Historically, these costs have never been denied. Is there a reason they are being denied now?

The cost of individual safety cones has always been one of the many items considered as part of the cost of doing business and / or considered as part of the incidental costs included in the drilling rates, sampling rates, etc. Individual safety cones, because of their life expectancy, re-usability, etc., were never intended to be a line item cost for reimbursement. That is one reason why they are being denied. This was brought to our attention when we started seeing submitted costs for safety cones ranging from \$5.00 to \$40.00 each and every claim, regardless of the activities associated with the claim.

Costs for traffic control when it is required to reroute traffic (which often requires a permit) or to provide a safety barrier between the work area and vehicular or pedestrian traffic are reimbursable with the adequate backup documentation showing the actual need and line item costs.

The seller of a property (being purchased through a land contract) has approached us about reviewing the site history, selecting a remediation technology, and current status although the purchaser is responsible for the cleanup and is currently receiving ELTF reimbursement. Would the costs for this work be reimbursable?

This type of work would not be eligible for reimbursement based on several reasons as outlined in 328 IAC 1-1-8.3; 328 IAC 1-3-1(b)(4); and 328 IAC 1-3-5(d) (10) and (15).

How do we verify the qualifications for staff performing the duties of the Senior Project Manager listed under 328 IAC 1-3-5(f) (2), especially when staff is not one of the licensed professionals listed?

Provide a list of names of all staff claiming this level of expertise with all claims. A summary of all relevant credentials (license held, license numbers, etc.) should be included. For staff that cannot be classified as a “licensed professional geologist or hydrogeologist (LPG), registered professional engineer (PE), certified hazardous materials manager (CHMM), professional soil scientist,” include a summary of the actual number of years of “professional remediation experience.” Resumes would be acceptable documentation as well, with the understanding that they would be redacted before being placed in the IDEM Virtual File Cabinet.

When performing a remediation system installation, is there any provision in the Rule that allows for progressive reimbursement because of the large sums of money that can be involved in the purchase of the equipment?

There is not a formal provision for progressive payment in the Rule. However, IDEM has in the past worked with the owner/operator and their consultant to make arrangements for partial payment for large expenditures for remediation equipment prior to the approval of the CAP Implementation report. Prior approval must be obtained from the ELTF Administrator, or representative. The system must be part of an approved CAP and the cost based on at least three relevant bids. Documentation must be submitted demonstrating the costs have been incurred and the system has been delivered to the facility involved.

What is the new reimbursement rate for cameras?

Because a camera can be reused and is readily available, the renting or purchasing of a camera is considered an incidental cost and is no longer considered a reimbursable item. In the latest version of the Rule, cameras were removed from the list of items with designated reimbursement rates.

We have noticed an increase in small single line items being denied over multiple sites. Historically, these costs have never been denied. Is there a reason they are being denied now?

These small single line items are incidental expenses that are purchased in bulk and used at many different sites. These costs have always been considered to be the “cost of doing business” and were originally included in the overall reimbursement rate for many of the specified tasks (sampling events, decontamination activities, clerical and administration duties, etc.) and the percent markup allowed as outlined in the Rule. Some examples include, but are not limited to: tape, compact discs, system or site signage, office supplies, light bulbs, Level D PPE, coolers when most laboratories provide them, bulk supplies that cannot be charged to a single site, etc.

Can you clarify if the 14-day reporting period for ELTF is based upon the date of discovery of a “suspected release” or from when a “confirmed release” is discovered?

In order to be in substantial compliance with the reporting requirements, Rule 328 IAC 1-1-9 provides the following definition of "Substantial compliance":

(Authority: IC 13-23; Affected: IC 13-23-8-4; IC 13-23-12)

Sec. 9. (a) "Substantial compliance" means that, at the time a release was first suspected by the owner, operator, or agent of the owner or operator:

(1) the owner or operator has met the requirements of IC 13-23-8-4(a), with the exception of minor violations of:

- (A) statutory deadlines;
- (B) regulatory deadlines; or
- (C) regulatory requirements;

that have not caused an imminent threat to harm human health or the environment; and

(2) a minimum of fifty percent (50%) of the registration fees have been paid as required under IC 13-23-12 and 328 IAC 1-3-3.

(b) An owner or operator is not in substantial compliance if the release has not been reported within fourteen (14) days of the date the release was required to be reported under the spill reporting rule in rules of the solid waste management board at 329 IAC 9-4-4.

(c) "Suspected", for purposes of this article, means that the owner, operator, or agent of the owner or operator, identified one or more of the following:

- (1) There is a loss of product.
- (2) Product odors.
- (3) Visual indicators of product.
- (4) UST system alarms are triggered.
- (5) Soil discoloration.

What documentation is required for the removal, transportation, and disposal of waste materials?

When documenting the transportation and disposal of waste, it does not matter what the documentation is called -- Bill of Lading, Waste Manifest, Manifest, Invoice, etc. The back-up for the ELTF application for reimbursement must include legible documentation that the waste was;

- generated at the ELTF eligible facility (name, address, and LUST Incident #; signature of generator employee, date)
- picked up from that facility, transported and delivered to a receiving facility (name, address of transporter; signature of person making the delivery, date), and
- accepted by the receiving facility (legible name, address and signature of receiver, date).

The documentation **must** have a complete description of what was transported and how (soil cuttings, waste water, combination of soil and waste water, debris etc.; in drums for example). Quantities, dates, and charges **must be included and match across all documentation** (Bill of Lading/Waste Manifest, invoices, receipts, disposal tickets, weigh tickets, etc.) used for reimbursement claims.