TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #08-684

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE UNDERGROUND STORAGE TANK EXCESS LIABILITY TRUST FUND (ELTF)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 328 IAC concerning the underground storage tank (UST) ELTF. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 328 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: September 10, 2008, Indiana Register (DIN: 20080910-IR-328080684FNA).

CITATIONS AFFECTED: 328 IAC 1.

AUTHORITY: IC 13-14-9; IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

As it has been four years since Title 328 was amended, IDEM has determined that UST system owners and operators would benefit from an adjustment for investigation and remediation costs reimbursable from the ELTF. This proposed amendment also allows for the annual adjustment of labor rates. It proposes the addition and modification of several definitions to clarify the rule. There are other proposed changes that will expedite payment from the fund.

Basic Purpose and Background

The ELTF was established under IC 13-23-7 to provide financial responsibility and a source of corrective action funds for owners and operators of USTs. In addition to the reimbursable cost adjustments, the draft rule would also amend certain definitions including "substantial compliance" as it relates to the ELTF and a "fund qualifying occurrence". It would clarify and amend actions and activities for which reimbursement may be sought from the fund. It would establish time limits for the submission of claims once a site has achieved a no further action (NFA) status and further define UST "system" and UST "closure" as it relates to the ELTF. Finally, this draft rule clarifies and amends personnel classification activity descriptions and tasks and rates for which attorneys may seek reimbursement.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

This rule does not impose any regulatory requirements on the UST owner or operator but rather places restrictions on what remediation costs qualify for payment from ELTF to the owner or operator and what the payment will be.

Potential Fiscal Impact

This rule may impact the amount of reimbursement allowed for a specific cost that may be more or less than current reimbursement, depending on the site-specific conditions. The draft rule also will amend eligibility and fund access requirements.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross-section of stakeholders. The workgroup is made up of consultants, owners, and operators of USTs, interest groups, and trade organizations.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Lynn West, Rules Development Branch, Office of Legal Counsel at (317) 232-3593 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 10, 2008, through October 10, 2008, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for

specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#08-468(FAB) (ELTF Change Rule)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue MC 65-46
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor east reception desk, Office of Legal Counsel, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 28, 2009.

Additional information regarding this action may be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 328 IAC 1-1-2.2 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-2.2 "Closure" or "closed" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 2.2. "Closure" or "closed" means any of the three (3) options under rules of the solid waste management board at 329 IAC 9-6-1 that renders the tank inoperable and does not include temporary closure under 329 IAC 9-6-5.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2.2)

SECTION 2. 328 IAC 1-1-2.6 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-2.6 "Confirmed occurrence" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 2.6. "Confirmed occurrence" means an incident that is the result of a release of petroleum from a registered UST system and is not a surface spill or overfill. This occurrence must:

(1) be directly attributable to a failure in the UST system; and
(2) have been assigned an IDEM incident number.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2.6)

SECTION 3. 328 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-4 "Deductible amount" defined

Authority: IC 13-23
Affected: IC 13-23-8-3

Sec. 4. "Deductible amount" means the amount specified in IC 13-23-8-3 applicable to each incident number assigned by the department. A person applying to the fund under 328 IAC 1-3-1 must provide evidence of payment of **costs incurred equal to** the deductible amount ~~under IC 13-23-8-4(a)(3).~~ **prior to receiving any**

reimbursement from the ELTF.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA)

SECTION 4. 328 IAC 1-1-6.5 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-6.5 "Fund qualifying occurrence" defined

Authority: IC 13-23
Affected: IC 13-23-7-1; IC 13-23-8

Sec. 6.5. "Fund qualifying occurrence" means an incident that is the result of a release of petroleum from a registered UST system and is not a surface spill or overfill. This confirmed occurrence must:
(1) be directly attributable to a failure in the UST system; and
(2) have been assigned an IDEM incident number;
and the owner or operator must have submitted an initial site characterization (ISC) to the department.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-6.5)

SECTION 5. 328 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-7 "Occurrence" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 7. "Occurrence" means an incident that results in a release of petroleum, including a continuous or repeated release of petroleum, from an ~~underground storage tank~~ **UST** system. **To be eligible to be paid from the fund, the occurrence must be a fund qualifying occurrence.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA)

SECTION 6. 328 IAC 1-1-7.5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-7.5 "Off-site" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 7.5. "Off-site" means property other than the following:
(1) The parcel of real estate that contains the underground storage tank that is the ~~cause~~ **source** of the release.
(2) Other parcels owned by a person described in 328 IAC 1-3-1(a).

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7.5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA)

SECTION 7. 328 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-9 "Substantial compliance" defined

Authority: IC 13-23
Affected: IC 13-23-8-4; IC 13-23-12-1

Sec. 9. (a) "Substantial compliance" means that, at the time a release was first ~~discovered or confirmed:~~ **suspected:**

(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 do not cause harm or threaten to harm human health or the environment; and

(2) registration fees have been paid as required under IC 13-23-12 and 328 IAC 1-3-3. **Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are:**

(A) operable; or

(B) in temporary closure.

(b) An owner or operator is not in substantial compliance if the release, **as follows:**

(1) Has not been reported within ~~seven (7)~~ **fourteen (14)** days of the date the release was required to be reported under the spill reporting rule **at 329 IAC 9-4-4,** in effect at the time of the release.

(2) Harms public health or the environment. ~~and was not timely reported under the spill reporting rule applicable at the time of the release.~~

(c) When site access is granted by the owner or operator to a third party for the purposes of an environmental investigation, the owner or operator is not in substantial compliance if the owner or operator:

(1) within forty-five (45) days from the date the third party accessed the site, did not request, in a letter sent by certified mail, the results of the investigation that identified a potential release on that site; or

(2) did not report any spill or release, as required.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA)

SECTION 8. 328 IAC 1-1-12 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-12 "UST system" or "tank system" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 12. (a) "UST system" or "tank system" means the following:

(1) An underground storage tank.

(2) Connected underground piping.

(3) Underground ancillary equipment.

(4) A containment system, if any.

(b) The term does not include a dispensing system dispensing components above the surface of the ground.

(Underground Storage Tank Financial Assurance Board; 329 IAC 1-1-12)

SECTION 9. 328 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-1 Fund access

Authority: IC 13-23
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1. (a) The following persons may apply to the fund for payment of reimbursable costs or for third party liability claims:

(1) Tank owners and operators, including a person as described in section 3(d) of this rule.

(2) Persons assigned the right of reimbursement by any person described in subdivision (1).

(3) Subsequent owners of the property upon which tanks were located, if the tanks were closed by a previous property owner, tank owner, or operator who is eligible, as specified in IC 13-23-8-4(e).

(b) Any or all persons listed under subsection (a) may apply to the fund for payment of reimbursable costs or third party liability claims if the following have occurred:

(1) ~~The~~ **Evidence of** payment ~~for~~ **of costs incurred equal to** the ~~applicable~~ deductible amount **must be provided prior to receiving any reimbursement from the ELTF** for the ~~release has been made.~~ **fund qualifying occurrence.**

(2) A claim for the same costs has not been submitted to or paid by the fund. A claim for the same costs will not be paid more than once by the fund.

(3) All claims must be submitted within nine (9) months after the incident is granted a status of no further action (NFA). All resubmittals associated with any claim must be received by the department within fifteen (15) months after the status of NFA was granted.

(4) All incidents with an existing status of NFA will have:

(A) six (6) months from the effective date of the 2009 amendments to this rule to submit any remaining costs; and

(B) an additional six (6) months to resubmit any denied costs.

(5) Initial eligibility applications will not be considered without an initial site characterization (ISC) approval from an IDEM project manager.

(c) The department may determine the identity of the tank owner or tank operator based on the notification submitted under 329 IAC 9-2-2. The department may require an affirmation that an applicant is a person, as described in section 3(d) of this rule, or a subsequent owner of the property, as specified in subsection (a)(3).

(d) A person who owns property with a tank is considered a tank owner.

(e) The fund will not pay for any of the following actions or activities:

(1) Creating a release or occurrence.

(2) Making the contamination at the site worse.

(3) Misusing equipment at the site that results in worse contamination.

(4) Failing to monitor equipment properly by the certified operator at the time of filling.

(f) Preapproval of eligibility under 328 IAC 1-5-2(c) is not an application for reimbursable costs, and preapproval may only be requested by the owner or operator or responsible parties.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; filed Aug 30, 2004, 9:40 a.m.: 28 IR 126)

SECTION 10. 328 IAC 1-3-1.2 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.2 Electronic submittal of claim

Authority: IC 13-23
Affected: IC 13-23

Sec. 1.2. Electronic submission of information that is required by this article may be requested by the commissioner. The format and submittal mechanism will be prescribed by the commissioner. Any information submitted on electronic media must also be submitted as a paper copy or copies, unless the commissioner makes a determination that only an electronic copy is needed.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.2)

SECTION 11. 328 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-3 Eligibility requirements

Authority: IC 13-23
Affected: IC 6-8.1-1-1; IC 6-8.1-10-1; IC 13-23

Sec. 3. (a) A person listed in section 1 of this rule shall comply with the following for a claim for reimbursable costs or a third party liability claim to be considered for reimbursement from the fund by the administrator:

(1) Demonstrate that the requirements in IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4) have been met. **Demonstrate that the initial site characterization (ISC) as required by rules of the solid waste management board at 329 IAC 9-5-5.1 has been completed and submitted to the department within sixty (60) days of reporting a release to the department. If this requirement is not met, the ELTF eligibility percentage will be reduced by five percent (5%). An additional five percent (5%) will then be deducted for every six (6) months that pass prior to the ISC report being submitted to the department.** The CAP as required by IC 13-23-8-4(a)(4) **and 329 IAC 9-5-7** must be submitted with projected costs that describe in detail the costs for work to be completed under the CAP. The projected costs must be in a form or format approved by the administrator.

(2) Demonstrate that the tank owner or operator was in substantial compliance with the spill reporting rule or law applicable at the time the release is ~~discovered.~~ **suspected. When site access is granted by the owner or operator to a third party for the purposes of an environmental investigation, the owner or operator is not in substantial compliance if, within forty-five (45) days from the date the third party accessed the site, the owner or operator did not request, in a letter sent by certified mail, the results of the investigation that identified a potential release on that site and reported any spill or release, as required. If this requirement is not met, five percent (5%) will be deducted from the ELTF eligibility percentage. An additional five percent (5%) will then be deducted for every six (6) months that pass prior to the release incident being reported to the department.**

(3) Pay all:

(A) past and currently due fees under IC 13-23-12-1; and ~~all~~

(B) interest and penalties that are due under subsections (e) and (f).

Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are operable or that are in temporary closure.

(4) For a person who acquires ownership in accordance with subsection (d), make timely payment of all past due tank fees, interest, and penalties in accordance with subsection (f) to make a claim for reimbursable costs for any site characterization or corrective action related to a release that is first suspected, discovered, or confirmed after the payment of all past and currently due fees, interest, and penalties. **Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are:**

(A) operable; or

(B) in temporary closure.

(5) Register the tank or tanks within thirty (30) days of the time the tank or tanks were first put into use, even if a release is discovered or confirmed before the tank or tanks were registered. Tanks are considered in use when the tank:

(A) contains or has ever contained a regulated substance; and

(B) has not been closed under 329 IAC 9-6.

(6) Comply with the requirements of IC 13-23, 329 IAC 9, and this title.

(b) Persons listed in section 1 of this rule shall be eligible to apply to the fund for reimbursement from the fund according to the following formula:

(1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred:

(A) beginning with the date that the fees for each tank first became due under IC 13-23-12; and

(B) continuing until the date on which the release occurred.

Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are operable or that are in temporary closure.

(2) Determine the number of payments actually made under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred:

(A) beginning with the date each tank became regulated under IC 13-23; and

(B) continuing until the date on which the release occurred.

Divide the number of payments actually made by the number of payments due as determined in subdivision (1).

(3) Determine the additional percentage deduction related to either release reporting or ISC submittal.

~~(3)~~ **(4)** Determine the amount of money the person would have received from the fund if all payments due on the date the release occurred had been paid when due and multiply the amount by

~~(A)~~ the percentage determined in ~~subdivision~~ **subdivisions** (2) ~~if the percentage is fifty percent (50%) or more; or~~

~~(B) zero (0), if the percentage determined in subdivision (2) is less than fifty percent (50%).~~ **and (3).**

(c) Payments that were made or could have been paid four (4) times per year under IC 13-23-12-3 count as one (1) payment for purposes of this section.

(d) A person who acquires ownership or operation of an underground petroleum storage tank under IC 13-23-8-4.5(2) may not become eligible for reimbursement from the fund for any releases reported after the date that the commissioner receives the "Intent to Acquire UST and Reinstate Eligibility" form **(Form)** unless the person does the following:

(1) ~~Submit an "Intent to Acquire UST and Reinstate Eligibility" form~~ **Submits a** Form as prescribed by the commissioner at least sixty (60) days prior to acquiring ownership or operation of an underground petroleum storage tank. This form will be kept confidential up to the earlier of the following:

(A) The date of the transfer of the property.

(B) The administrator's receipt of the monies as owed under subsection (e).

(C) Ninety (90) days after the administrator receives the Form.

The administrator will provide a listing of environmental penalties, interest due to the fund, and fees due to the prospective purchaser and the property owner within forty-five (45) days of receipt of the Form.

(2) ~~Pay~~ **Pays** all applicable tank fees, including past due fees, interest, and penalties, for each tank not more than thirty (30) days after the transaction whereby the person acquires ownership or operation of each tank. **Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are:**

(A) operable; or

(B) in temporary closure.

(3) The seller of the underground petroleum storage tank site is liable for any and all unpaid tank fees, interest, and penalties that are assessed by the administrator in accordance with subsection (e). The purchaser is to:

(A) collect all past due tank fees, interest, and penalties from the noncompliant seller; and

(B) remit to the administrator the full amount of the assessment for the subject underground petroleum storage tank provided by the administrator in accordance with subsection (e) prior to a release.

The timely remittance of these monies is a condition of fund eligibility for the purchaser. **Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are operable or that are in temporary closure.**

(e) Persons listed in section 1 of this rule who fail to pay tank fees when due are subject to payment of interest and penalties on those fees in order to become eligible for the fund. Interest and penalties due include the following:

(1) Penalties and interest due the department of state revenue.

(2) All past due underground storage tank fees under IC 13-23-12. **Tank fees under IC 13-23-12-1(a) must be paid on any tanks that are:**

(A) operable; or

(B) in temporary closure.

(3) An environmental penalty as specified in subsection (f)(2). This penalty will be distributed into the fund and into the petroleum trust fund in accordance with IC 13-23-12-7(b).

(4) Interest will be charged for the missed fee or fees at the percent per year based on subsection (f) and IC 6-8.1-10-1 until all fees due have been paid in full for each tank. This interest will be deposited into the fund.

Payment of all fees, interest, and penalties due within thirty (30) days of the date of transfer of the subject property is a requirement for fund eligibility for the purchaser.

(f) In addition to all past due fees owed, the amount of interest and penalties owed by a particular owner or operator is to be determined by the following formula:

(1) Interest, under IC 6-8.1-1-1 and IC 6-8.1-10-1, as follows:

Number of delinquent days × daily interest rate = interest due

Interest will be calculated according to IC 6-8.1-10-1.

(2) Penalty as follows:

(A) For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars ($2,000) under IC 13-23-12-7(a) per petroleum underground storage tank per year that passes after each year's fee is due. ~~The~~

~~table (as an example) or the following formula (to calculate any length of time) may be used to calculate the penalty per tank:~~ **The penalty will be calculated by multiplying the total number of years that have passed since the fee was due by the total number of tanks and multiplying the result by two thousand dollars ($2,000).**

~~Where:~~ ~~n~~ ~~=~~ ~~Total number of years late.~~

~~$Y_{i,j}$~~ ~~=~~ ~~Each year with an unpaid fee or a fee that was paid at least one (1) year late.~~

~~Yo~~ ~~=~~ ~~First year a fee was unpaid or paid at least one (1) year late.~~

~~m~~ ~~=~~ ~~Most recent year where tank fees were unpaid or paid at least one (1) year late.~~

$$\cancel{(2000)\left(\sum_{j=Yo}^{m}\left(\sum_{i=1}^{n} Y_{i,j}\right)\right) = \text{penalty}}$$

~~Year due~~	~~1 year past year due~~	~~2 years past year due~~	~~3 years past year due~~	~~4 years past year due~~
~~Year 1~~	~~2,000~~	~~2,000~~	~~2,000~~	~~2,000~~
~~Year 2~~		~~2,000~~	~~2,000~~	~~2,000~~
~~Year 3~~			~~2,000~~	~~2,000~~
~~Year 4~~				~~2,000~~
~~Total per tank~~	~~2,000~~	~~6,000~~	~~12,000~~	~~20,000~~

(B) For sites with tanks that are registered but not all fees have been completely paid, the penalty will be calculated at one thousand dollars ($1,000) per petroleum underground storage tank for each missed fee payment. If a quarterly fee payment is missed, the penalty is applied at one-fourth (1/4) the amount listed in the table. ~~The following table is an example of how penalties must be paid per tank:~~ **The penalty will be calculated by multiplying the total number of years that have passed since the fee was due by the total number of tanks and multiplying the result by one thousand dollars ($1,000).**

~~Year due~~	~~1 year past year due~~	~~2 years past year due~~	~~3 years past year due~~	~~4 years past year due~~
~~Year 1~~	~~1,000~~	~~1,000~~	~~1,000~~	~~1,000~~
~~Year 2~~		~~1,000~~	~~1,000~~	~~1,000~~
~~Year 3~~			~~1,000~~	~~1,000~~
~~Year 4~~				~~1,000~~
~~Total per tank~~	~~1,000~~	~~2,000~~	~~3,000~~	~~4,000~~

(C) The penalty is incurred:

(i) nine (9) months after the fee is due; or

(ii) three (3) months after the final quarterly installment is due.

~~Subsequent penalties are calculated yearly and are cumulative as specified in clause (A).~~

(D) Penalties will not be collected for fees due before December 1, 2001.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1104; errata, 20 IR 1593; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2254; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608)

SECTION 12. 328 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-4 Amount of coverage

Authority: IC 13-23
Affected: IC 13-23-8-8

Sec. 4. (a) ~~After~~ **When evidence of** payment of **costs incurred equal to** the ~~applicable~~ deductible amount **has been provided for the fund qualifying occurrence,** the fund may pay for reimbursable costs incurred by persons listed in section 1 of this rule and third party liability claims as specified in IC 13-23-8-1.

(b) ~~No~~ **Not** more than two million dollars ($2,000,000) may be reimbursed for the costs, including third party

liability claims, associated with a single occurrence.

(c) An owner or operator may not receive payment for more than the allowable limits as specified in IC 13-23-8-8.

(d) For purposes of this section, "year" means a calendar year even if more than the maximum reimbursement is received in any three hundred sixty-five (365) day period.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; filed Aug 30, 2004, 9:40 a.m.: 28 IR 129)

SECTION 13. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-5 Costs

Authority: IC 13-23
Affected: IC 13-12-3-4; IC 13-23-3-2; IC 13-23-8-4

Sec. 5. (a) Reimbursable costs, excluding third party liability claims, are actual monetary amounts paid or incurred for work performed **as follows:**

(1) Consistent with an approved or deemed approved CAP or under one (1) or more of the provisions of IC 13-23-8-4(b). ~~and~~

(2) Subject to each of the following conditions:

(A) Credits, rebates, refunds, or other similar payments made to the owner or operator or received by the owner, operator, or applicant must be subtracted from the costs submitted for reimbursement.

(B) The work performed was consistent with:

(i) site characterization;

(ii) an approved CAP; or

(iii) emergency measures, as defined in 328 IAC 1-1-5.1.

(C) The work performed under the CAP has been determined to be cost effective under section 1.3 of this rule.

(D) The work performed has been determined to be reasonable under 328 IAC 1-1-8.3.

(E) The work:

(i) was performed as described in subsection (b) or (e), or both; and

(ii) is not described in subsection (d).

(b) Persons listed in section 1 of this rule may employ a certified contractor under IC 13-23-3-2 or may use the owner's or operator's personnel to perform all or part of a corrective action and may seek payment from the fund for the following reimbursable costs of the type described as follows:

(1) Site characterization costs, which include:

(A) research;

(B) field time;

(C) report writing; and

(D) clerical support;

but only after the site characterization has been approved by the administrator.

(2) Lodging and per diem costs in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures. Mileage shall be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on ~~December 15, 2003.~~ **January 1 of each year.** Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

(3) Soil and water sampling for petroleum and petroleum constituents only as necessary to achieve closure under rules of the solid waste management board at 329 IAC 9.

(4) Costs for machinery and equipment if prorated based on the:

(A) normal expected life of the item; and ~~the~~

(B) length of time the item was used for a single corrective action.

In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges that can be made to the fund are disposable

bailers and sample bottles.
(5) Costs for materials and supplies, such as **the following:**
(A) Disposable protective equipment.
(B) Building materials, such as **the following:**
(i) Piping. ~~and~~
(ii) Cement. ~~and~~
(C) Preservatives.
(6) Governmental administrative fees for local, state, or federal permits necessary for corrective action.
(7) Provision of alternate water supply. This cost must have been previously approved by the administrator.
(8) Any other reimbursable costs the administrator finds to be necessary.
(9) Costs associated with transitioning a site to RISC if these costs would be less than the costs to complete the remediation under rules of the solid waste management board at 329 IAC 9.
(10) Only one (1) markup may be taken on any item. Markup of ~~no~~ **not** more than ten percent (10%) of the unit rate or the lowest bid will be reimbursed except for the following:
(A) Travel costs, including mileage, per diem, and lodging.
(B) Personnel costs, not including labor rates for subcontractors.
(C) Utilities for temporary facilities.
(D) Governmental administrative fees for local, state, or federal permits.
(E) Equipment and supplies:
(i) not purchased or rented specifically for use at a facility; or
(ii) that are not part of the approved remedial technology.
(11) The fair market value of the cost to obtain access to off-site property if necessary for site characterization or corrective action **as reviewed and approved by office of the attorney general.**
(12) Costs for emergency measures including the following as determined to be appropriate by the administrator:
(A) Evacuation and relocation of a building resident or residents.
(B) Ventilation of a building or utility conduit.
(C) Installation and maintenance of an alternate water or treatment system for contaminated drinking water.
(D) Recovery of free product as necessary to eliminate a release to a utility conduit.
(E) Installation of a system to mitigate free product migration, actual or potential drinking water impacts, or vapor intrusion into a building or a utility conduit.
(F) Other emergency measures required by the department.

(c) The approval of the site characterization and the ~~corrective action plan~~ **CAP** under rules of the solid waste management board at 329 IAC 9 is not a determination that the actual costs incurred under the site characterization or the CAP are reimbursable costs under this rule.

(d) The following costs are not reimbursable from the fund:
(1) Costs from releases that occurred before April 1, 1988.
(2) Costs incurred more than twenty-four (24) hours prior to the date and time the release has been reported under the spill reporting rule in effect at the time of the release.
(3) Costs of:
(A) the maintenance of;
(B) the repair **of;**
(C) upgrading;
(D) removing; or
(E) the replacement of;
an underground petroleum storage tank or its associated equipment.
(4) Costs of environmental investigation and remediation not directly related to a ~~release from a qualifying underground storage tank.~~ **fund qualifying occurrence.** Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.
(5) Costs that exceed reimbursable costs even if incurred pursuant to an approved CAP.
(6) The cost of equipment purchases other than those costs routinely required to implement a ~~corrective action plan~~. **CAP.** Examples of ~~these not reimbursable~~ **nonreimbursable** purchases include **the following:**
(A) Drilling rigs.
(B) Earth moving equipment.
(C) Photoionization detectors.
(D) Explosimeters. ~~and~~
(E) Hand tools.

(7) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.
(8) Lost income or reduced property values unless part of a third party liability claim.
(9) Interest or finance charges.
(10) Contractor costs **or subcontractor costs,** not directly related to corrective action activities, such as **the following:**
(A) Preparing cost estimates.
(B) Reviewing environmental work or documents.
(C) Budgeting.
(D) Changing contractors.
(11) Fines or penalties imposed by local, state, or federal governmental agencies.
(12) Punitive or exemplary damages.
(13) Any costs for remediation of contamination not shown to be at concentrations exceeding the risk integrated system of closure **(RISC)** as described in IC 13-23-8-4(a)(4)(A)(ii) ~~(RISC)~~ industrial cleanup standards with the following exceptions:
(A) Ground water contamination affecting a public or private drinking water well on-site or off-site.
(B) Off-site contamination at concentrations exceeding RISC residential cleanup standards, not including:
(i) roadways;
(ii) railroads; or
(iii) other property not currently used as residential property.
(14) Any costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of soil unless:
(A) alternative remediation techniques have been considered;
(B) excavation and disposal was shown to be the most cost-effective remediation option; and
(C) the soil removal is part of a CAP approved or deemed approved by the administrator.
(15) Any other cost not directly related to site characterization, corrective action, or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review, **such as costs associated with a Phase 1 or Phase 2 environmental assessment.**
(16) If:
(A) a release has occurred before the tank or tanks were registered; and
(B) the tank or tanks were not registered within thirty (30) days from the time the tank or tanks were first put into use;
a claim is not reimbursable from the fund by the administrator. Tanks are considered in use when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.
(17) Any costs to purchase equipment, which was previously purchased and the cost was previously reimbursed from the fund.
(18) Any costs incurred after receipt of notice by the administrator under section 1.3(d) of this rule that the approved CAP is not successfully remediating the site, except the following costs necessary, until such time as the modified CAP is approved, to:
(A) Develop the modified CAP, including pilot studies or additional investigation.
(B) Demobilize the corrective action system currently at the site.
(C) Abandon monitoring, extraction, or other wells associated with the CAP.
(D) Maintain compliance with applicable regulations and permits, including quarterly ground water monitoring.
(E) Maintain, but not operate, the corrective action system.

(e) Costs that may be paid from the fund are set forth in the following:

Activity	Cost Range or Maximum Amount
SITE CHARACTERIZATION	
Direct push technology (other costs pertaining to direct push technology are included in the per foot allowance.) ~~specified.~~	~~$1,200 (between >100 and ≤ 200 feet)~~ **$600 per day** ~~$750 (up to 100 feet)~~
In addition to the day rate, costs for boring advancement may be invoiced at the following per foot rates:	**$6 per foot**
~~Rate allowed for drilling greater than 200 feet using direct push technology in a single day~~	~~$6 per foot~~
Mobilization and demobilization. This includes the cost of moving general contractor owned equipment, setup, and removing equipment.	~~$300~~ **$400**
Soil borings, for purposes of soil or ground water sampling or	

monitoring well installation when using a hollow stem auger.	
Number of feet in incremental amounts	
4.25 inch inside diameter	
For the first 15 feet	~~$20~~ **$24** per foot
16 through 25 feet	~~$25~~ **$30** per foot
26 feet or more	~~$30~~ **$35** per foot
6.25 inch inside diameter	
For the first 15 feet	**$27 per foot**
16 through 25 feet	**$33 per foot**
26 feet or more	**$38 per foot**
8.25 inch inside diameter	
For the first 15 feet	**$30 per foot**
16 through 25 feet	**$36 per foot**
26 feet or more	**$41 per foot**
Rock drilling beyond auger refusal will be reimbursed at the above rates with an additional $15 per foot.	
These amounts may only be charged **one** (1) time per borehole.	
Sample collection is part of well installation. Direct push technology must be used when it is most appropriate to the site and cost effective. **The diameter of the boring must be appropriate for the size of the well being installed.**	
Blind drilling using a hollow stem auger when well borings have already been logged within **five** (5) feet.	
4.25 inch inside diameter	
For the first 50 feet	~~$6.50 per foot~~ **$10 per foot**
51 feet or more	~~$8.50 per foot~~ **$12 per foot**
6.25 inch inside diameter	
For the first 50 feet	**$13 per foot**
51 feet or more	**$15 per foot**
8.25 inch inside diameter	
For the first 50 feet	**$15 per foot**
51 feet or more	**$18 per foot**
Decontamination and equipment cleaning	~~$10~~ **$12** per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	~~$90~~ **$110** per hole
Materials	
Well casing and screen (including riser) filter pack, annular, and surface seal:	
< 2 inch well	**Applicable boring rate plus materials**
2 inch well	~~$7~~ **$9** per foot
4 inch well	~~$12~~ **$15** per foot
6 inch well	~~$22~~ **$27** per foot
Flush-grade well covers	~~$75~~ **$125** per cover
Laboratory services, including containers, packaging, and postage.	
Soil analysis methods	
TPH-8015 GRO	~~$60~~ **$50** per sample
TPH-8015 DRO	~~$60~~ **$50** per sample
TPH-8015 ERO	~~$60~~ **$50** per sample
~~TPH-418.1~~	~~$95 per sample~~
TRPH-HEM-1664/9071B	$60 per sample
VOC-8260	~~$150~~ **$130** per sample
SVOC-8270	~~$250~~ **$225** per sample
PAH-8270SIM	~~$110~~ **$130** per sample
PAH-8310	$150 per sample
PCB-8082	$110 per sample
Metals-7 barium, cadmium, chromium, lead, mercury, nickel, zinc	$100 per sample
(Individual metals)	**$10 per sample**

BTEX/MTBE-8021	$60 per sample
BTEX/MTBE-8260	~~$100~~ **$80** per sample
Ignitability	$30 per sample
Fraction of organic carbon	$70 per sample
Water analysis methods	
TPH-8015 GRO	~~$60~~ **$50** per sample
TPH-8015 DRO	~~$60~~ **$50** per sample
TPH-8015 ERO	~~$60~~ **$50** per sample
TPH-8015 Methane	~~$60~~ **$80** per sample
TRPH-HEM-1664	~~$60~~ **$50** per sample
VOC-8260	~~$100~~ **$135** per sample
BTEX/MTBE-8021	~~$60~~ **$50** per sample
BTEX/MTBE-8260	~~$100~~ **$80** per sample
SVOC-8270	~~$250~~ **$225** per sample
PAH-8270 SIM	~~$130~~ **$135** per sample
PAH-8310	~~$140~~ **$150** per sample
Metals-7 barium, cadmium, chromium, lead, mercury, nickel, zinc	~~$80~~ **$100** per sample
(Individual metals)	**$10 per sample**
Metal-soluble iron	$25 per sample
Nitrates	$25 per sample
Sulfate	$25 per sample
Sulfide	$25 per sample
COD	$20 per sample
BOD_5	$40 per sample
Total suspended solids	~~$12~~ **$20** per sample
Air analysis methods	
VOC-TO-15	$400 per sample
Other Methods	
TCLP-lead	~~$110~~ **$100** per sample
If the commissioner requires all quality assurance/quality control (QA/QC), including raw data and internal chain of custody necessary to validate analytical results.	20% markup allowed per sample
PERSONNEL	
When submitting a claim for reimbursement, the applicant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection (f) for task descriptions for personnel classifications. **These labor rates will be adjusted annually on June 1 of each year, after the effective date of the 2009 amendments to this rule, in accordance with the product price index (PPI) percentage listed for December of the previous year. NAICS Code for Environmental Consulting Services is 541620 and is described at: http://www.naics.com/censusfiles/ND541620.HTM**	
The PPI Industry data tables are available through the Bureau of Labor and Statistics (BLS) at: http://www.bls.gov/ppi/home.htm	
Principal	~~$110~~ **$122** per hour
Senior project manager	~~$102~~ **$114** per hour
Project manager	~~$83~~ **$94** per hour
Staff project person	~~$70~~ **$81** per hour
~~Senior technician~~	~~$55 per hour~~
Field technician	~~$38~~ **$56** per hour
Drafting person	~~$35~~ **$48** per hour
Word processor/clerical	~~$28~~ **$33** per hour
Toxicologist	~~$125~~ **$142** per hour
INITIAL ABATEMENT AND FREE PRODUCT REMOVAL	
Except where provided in this rule, approval of costs will be on a case-by-case basis.	
SITE SET-UP PREPARATION	

Trailer rental	~~$300~~ **$360** per month (~~$10~~ **($12** per day)
Portable toilet	~~$150~~ **$180** per month (~~$5~~ **($6** per day)
Utility check, the date and time of the utility check must be documented. **Utility check includes air knifing and hand augering.**	~~$600~~ **$800**
Utilities for temporary facilities	
Temporary power	~~$500~~ **$600** per month (~~$16.67~~ **($20** per day)
Temporary water	~~$150~~ **$180** per month (~~$5~~ **($6** per day)
Temporary phone	~~$200~~ **$240** per month (~~$6.67~~ **($8** per day)

DEMOLITION

Demolition of structures in accordance with an approved CAP must submit three (3) bids for reimbursement consideration as defined under CORRECTIVE ACTION TECHNOLOGIES.

~~Mobilization~~	~~$300 per trailer~~
~~Concrete and asphalt removal~~	

~~Saw concrete, prices are per linear foot~~

	~~4 inch concrete~~	~~6 inch concrete~~
~~Under 200 feet~~	~~$1.60 per foot~~	~~$2 per foot~~
~~200 through 400 feet~~	~~$1.40 per foot~~	~~$1.81 per foot~~
~~400 through 600 feet~~	~~$1.33 per foot~~	~~$1.70 per foot~~
~~600 through 1,000 feet~~	~~$1.20 per foot~~	~~$1.66 per foot~~
~~Over 1,000 feet~~	~~$1.08 per foot~~	~~$1.60 per foot~~

~~Saw asphalt, prices are per linear foot~~

	~~3 inch asphalt~~	~~4 inch asphalt~~	~~6 inch asphalt~~
~~Under 450 feet~~	~~$1.75 per foot~~	~~$1.90 per foot~~	~~$3 per foot~~
~~450 through 600 feet~~	~~$1.50 per foot~~	~~$1.75 per foot~~	~~$2.75 per foot~~
~~600 through 1,000 feet~~	~~$1.35 per foot~~	~~$1.50 per foot~~	~~$2.25 per foot~~
~~Over 1,000 feet~~	~~$1.25 per foot~~	~~$1.35 per foot~~	~~$2 per foot~~
~~Hauling~~	~~$70 per hour per truck~~		

EXCAVATION

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:

Equipment costs and labor	~~$2.22~~ **$2.70** per ton
Mobilization **(includes vehicle mileage)**	~~$300~~ **$400** per trailer
~~Supplies, for example, plastic sheeting~~	
Stockpiling soil on-site	~~$1.34~~ **$1.65** per ton

Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless ~~necessary~~ **approved** as part of corrective action.

~~Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement~~

Under 1,000 gallons	~~$1,000~~ **$1,200** per tank
1,000 through ~~4,999~~ **5,999** gallons	~~$1,500~~ **$1,800** per tank
~~5,000~~ **6,000** through 10,000 gallons	~~$2,000~~ **$2,400** per tank
Above 10,000 gallons	~~$2,500~~ **$3,000** per tank

Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement.

Demolition of structures in accordance with an approved CAP must submit three (3) bids for reimbursement consideration as defined under CORRECTIVE ACTION TECHNOLOGIES.

Mobilization (includes vehicle mileage)	**$400 per trailer**
Concrete and asphalt removal	

Saw concrete, prices are per linear foot

	4 inch concrete	6 inch concrete
Under 200 feet	**$1.60 per foot**	**$2.40 per foot**
200 through 400 feet	**$1.70 per foot**	**$2.20 per foot**
400 through 600 feet	**$1.60 per foot**	**$2.10 per foot**
600 through 1,000 feet	**$1.45 per foot**	**$2 per foot**
Over 1,000 feet	**$1.30 per foot**	**$1.80 per foot**

Saw asphalt, prices are per linear foot

	3 inch asphalt	4 inch asphalt	6 inch asphalt
Under 450 feet	**$2.20 per foot**	**$2.30 per foot**	**$3.60 per foot**
450 through 600 feet	**$1.80 per foot**	**$2.20 per foot**	**$2.50 per foot**
600 through 1,000 feet	**$1.60 per foot**	**$1.80 per foot**	**$2.20 per foot**
Over 1,000 feet	**$1.50 per foot**	**$1.60 per foot**	**$1.80 per foot**

Hauling	**$85 per hour per truck**

The administrator will also approve hauling costs based on three (3) bids.

TRANSPORTATION

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:

Loading	~~$1.34~~ **$1.65** per ton
Mobilization **(includes vehicle mileage)**	~~$300~~ **$400** per trailer
Hauling ~~mileage must be documented~~	~~$70~~ **$85** per hour per truck
For excavation, stockpiling, and loading of less than 300 tons in a single day.	~~$1,000~~ **$1,200** per day or the actual cost

DISPOSAL OF SOIL, GROUND WATER, AND TRASH

Landfill fees

Sampling required by landfill. Must include receipts and analytical results from local municipality.

Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.

Contaminated or disposable equipment and decontamination fluids.

Landfill reimbursement will not exceed the least expensive combination of documented hauling costs and documented disposal costs at a permitted landfill. Applicant must submit a cost justification if the applicant does not use the nearest land disposal facility permitted and willing to accept the applicant's waste.

CORRECTIVE ACTION TECHNOLOGIES

The maximum costs for the work done for corrective action ~~except excavation,~~ will be allowed on the basis of the lowest of three (3) comparable, competitive bids for the work specified in the ~~corrective action plan.~~ **approved CAP.** Bids for the work specified in the CAP must include bids for installation and labor; however, separate bids may be obtained for cost of installation and labor. Copies of the request for proposal (RFP) for implementation of CAP that was sent to each vendor must be submitted. **Each RFP and bid submittal will be required to show a line item breakdown of the tasks to be performed. In addition, the administrator has the right to evaluate costs per bid line item for reimbursement.** The administrator can approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical.

Lease or rental on equipment will not be reimbursed above the purchase price.

SITE RESTORATION

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:

Backfill hauling	~~$70~~ **$85** per hour per truck
Backfill material	~~$13~~ **$18** per ton of stone
	~~$6.50~~ **$9** per ton of soil
Backfill placement, compaction, and density verification	~~$4~~ **$6** per ton
Resurfacing	

4 inch concrete	~~$3.25~~ **$5** per square foot
For each additional inch of concrete	Add ~~$0.40~~ **$0.75** per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	~~$2.15~~ **$2.75** per square foot
Asphalt curb and gutter	~~$4.75~~ **$6** per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers	~~$725~~ **$900** each
4 feet by 16 feet with 2 foot bumpers	~~$1,100~~ **$1,400** each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, and detergent	~~$10~~ **$15**
Power auger	~~$50~~ **$60**
Hand auger sampling kit (hand auger/brass sleeves)	~~$35~~ **$42**
Slide hammer core sampler	~~$35~~ **$42**
Photoionization detector	~~$75~~ **$90**
Flame ionization detector	~~$95~~ **$135**
LED/O2 meter	~~$50~~ **$60**
pH and conductivity meter	~~$20~~ **$24**
Dissolved oxygen meter	~~$30~~ **$36**
Oxidation/reduction meter (REDOX)	~~$35~~ **$50**
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	~~$50~~ **$60**
Ferrous iron field test	~~$6~~ **$8** per sample
Hydrogen sulfite field test	~~$6~~ **$8** per sample
~~Digital camera~~	~~$10~~
Geographic positioning system (GPS) unit for site mapping to 1 foot accuracy	~~$95~~ **$120**
2 inch submersible pump	~~$115~~ **$140**
4 inch submersible pump	~~$95~~ **$115**
Steam cleaner/pressure washer	~~$75~~ **$90**
Water level indicator	~~$12~~ **$15**
Oil/water interface probe	~~$55~~ **$70**
Bailer rental	~~$15~~ **$20**
Anemometer	~~$35~~ **$42**
Carbon dioxide meter	~~$25~~ **$30**
Portable generator, generator ≤ 5kW	~~$50~~ **$60**
Portable generator, generator ≤ 10kW	~~$100~~ **$120**
Portable generator, generator > 10kW	~~$125~~ **$150**

(f) The following categories describe the personnel classification activity descriptions:

(1) **The** principal will do the following:

~~(A) Supervise professional staff.~~

~~(B)~~ **(A)** Serve as technical expert on sites.

~~(C) Provide final review of project documents.~~

~~(D) Limit~~ **(B) Limited** site visits on projects.

~~(E) Handle legal matters.~~

~~(F)~~ **(C)** Coordinate **legal matters** with attorneys.

(2) **The** senior project manager ~~(includes~~ **(limited to licensed** professional geologist **(LPG), registered professional** engineer ~~and hydrogeologist)~~ **(PE), certified hazardous materials manager (CHMM), or professional soil scientist)** will provide the following:

(A) Project ~~management/oversight.~~ **planning/oversight.**

(B) ~~Technical document preparation~~ **Final** review **of project documents.**

(C) ~~Coordination~~ **Acquisition of and negotiation** with ~~the department, client, and contractors.~~ **subcontractors.**

(D) Hydrogeologic and contaminant modeling.

~~(E) Supervision of investigation/remediation activities.~~

~~(F) Site access/permitting.~~

(E) Remediation system design.

(F) RISC Evaluation.

(3) **The** project manager will provide the following:

(A) Remediation work plan **and technical document** preparation (CAP, ISC, FSI, pilot study).

(B) Site work preparation and planning.

(C) Supervision of **investigation and** remediation activities.

(D) Oversight of waste characterization, transportation, and disposal.

(E) RISC statistics and equations.

(F) Coordination of subcontractor work (drillers, plumbers, and electricians).

(G) Coordination of heavy equipment mobilization.

(H) Coordination with the department and the client.

(I) Site access/permitting.

(4) **The** staff project person will do the following:

(A) Implement remediation system installation, operation, and maintenance.

(B) Conduct site mapping.

~~(C) Assist with waste characterization, transportation, and disposal.~~

~~(D)~~ **(C)** Oversee installation of soil borings and monitoring wells.

~~(E)~~ **(D)** Provide on-site supervision or perform site characterization and remediation activities, or both.

~~(F)~~ **(E)** Oversee well water records searches.

~~(G)~~ **(F)** Define how site utilities are marked.

~~(H)~~ **(G)** Survey wells.

~~(I)~~ **(H)** Oversee free product removal.

~~(J) Conduct~~ **(I) Oversee** quarterly sampling.

~~(K) Provide drilling/sampling support.~~

~~(5) Senior technician will oversee the following:~~

~~(A) Activities associated with operation and maintenance of remediation system.~~

~~(B) Equipment installation.~~

~~(6)~~ **(5) The** field technician will ~~oversee~~ **perform** the following:

(A) Well purging and development.

(B) Sample collection, **preparation, and delivery.**

~~(C) Drum labeling/disposal.~~

~~(D)~~ **(C)** Decontamination/site cleanup tasks.

~~(E) Sample preparation and delivery.~~

(D) Assist with waste characterization, transportation, and disposal, including drum labeling/disposal.

(E) Activities associated with the operation and maintenance of remediation systems.

~~(7)~~ **(6) The** drafting person will do the following:

(A) Provide CADD work.

(B) Generate **the following:**

(i) Drawings.

(ii) Maps and plans.

(iii) Boring logs. ~~and~~

(iv) Monitoring well installation logs.

(C) Revise drawings and maps and plans.

~~(8)~~ **(7) The** word processor/clerical will provide the following:

(A) Word processing/data input.

(B) General clerical duties.

(C) Documentation reproduction, report binding, and filing.

(D) Proofreading/editing.

~~(9)~~ **(8) The** toxicologist will provide guidance for nondefault risk-based closures utilizing nondefault toxicological parameters.

(g) Attorney costs as follows:

(1) Attorney costs will be reimbursed under the following circumstances:

(A) An attorney acting as a principal, senior project manager, or project manager on a site directing field investigations or preparing the technical reports related to investigative or remediation activities. In this instance, the attorney must have the appropriate technical credentials required for an individual performing these tasks, such as PE, LPG, CHMM, or soil scientist.

(B) An attorney communicating to the department regarding remediation actions, preparing restrictive covenants, or access negotiations.

(C) Fees charged that do not exceed one thousand dollars ($1,000) for either environmental

restrictive covenant preparation or access negotiation.

(2) An attorney will not be paid for the following:

(A) Reviewing consultant reports.

(B) Charging fees in excess of the principal, senior project manager, or project manager as defined in this rule for the same personnel activities. Fees charged must also appropriately correspond to tasks performed.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1105; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2255; filed Aug 30, 2004, 9:40 a.m.: 28 IR 129)

SECTION 14. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1 General procedure for prioritization

Authority: IC 13-23
Affected: IC 13-23-9-4

Sec. 1. (a) The following shall apply in the event the unencumbered balance, less the unpaid, approved claims for reimbursable costs and third party liability claims, in the fund falls below:

(1) Twenty-five million dollars ($25,000,000), the releases will be categorized according to this section.

(2) Five million dollars ($5,000,000), the prioritized claims, based on the categorized releases, will be paid according to section 4 of this rule.

The administrator may invoke these procedures prior to the unencumbered fund balance, less the unpaid, approved claims for reimbursable costs and third party liability, falling below the amounts specified in ~~subsection (a)(1) or (a)(2).~~ **subdivision (1) or (2).**

(b) All claims or parts of claims submitted to the administrator for an emergency measure, as defined under 328 IAC 1-1-5.1, will be paid first. If the claim or part of the claim is for work performed that has not been determined to be an emergency measure as defined under 328 IAC 1-1-5.1, the claim or part of the claim for that work will be paid according to the category of the ~~release~~ **fund qualifying occurrence** as determined in subsection (c).

(c) After the initial site characterization, further site investigation, or a corrective action progress report is completed, the ~~release~~ **fund qualifying occurrence** will be placed in the lowest numbered category for which it qualifies as follows, and all claims for reimbursement of costs and third party liability shall be paid in numerical order of the ~~release~~ **fund qualifying occurrence** category subject to the ~~release~~ recategorization provisions under section 3 of this rule:

(1) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and it is attributable to the ~~release,~~ **fund qualifying occurrence,** then the ~~release~~ **fund qualifying occurrence** is considered a category 1 ~~release~~ **fund qualifying occurrence** and claims for that ~~release~~ **fund qualifying occurrence** shall be paid after all approved claims for emergency measures are paid as provided in subsection (b):

(A) Petroleum or petroleum constituents are detected in a structure or a utility conduit, such as a:

(i) storm sewer;

(ii) sanitary sewer; or

(iii) utility conduit;

that exceed ten percent (10%) lower explosive limit (LEL).

(B) Vapors for petroleum or petroleum constituents are detected in an inhabitable building in levels greater than long-term, risk-based exposure for contaminants of concern.

(C) Petroleum or petroleum constituents are detected in a drinking water well at or above maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives at the point of compliance or at the tap.

(2) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the ~~release,~~ **fund qualifying occurrence,** then the ~~release~~ **fund qualifying occurrence** is considered a category 2 ~~release~~ **fund qualifying occurrence** and claims for that ~~release~~ **fund qualifying occurrence** shall be paid after all approved claims for category 1 ~~releases~~ **fund qualifying occurrences** are paid as provided in subdivision (1):

(A) Petroleum or petroleum constituents are detected in free phase in a thickness of at least one (1) foot in any one (1) well, or at least one (1) inch in two (2) or more wells where the wells are at least twenty (20) feet apart, provided that the wells are not screened in the underground storage tank cavity backfill.

(B) Petroleum or petroleum constituents are detected in surface water above water quality standards under rules of the water pollution control board at 327 IAC 2.

(3) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the ~~release,~~ **fund qualifying occurrence,** then the ~~release~~ **fund qualifying occurrence** is considered a category 3 ~~release~~ **fund qualifying occurrence** and claims for that ~~release~~ **fund qualifying occurrence** shall be paid after all approved claims for category 2 ~~releases~~ **fund qualifying occurrences** are paid as provided in subdivision (2):

(A) Petroleum or petroleum constituents are detected off-site in ground water at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(B) Petroleum or petroleum constituents are detected off-site in soil at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(C) Petroleum or petroleum constituents are present in free phase in a thickness of at least one-sixteenth (1/16) inch in any well.

(D) Petroleum or petroleum constituents, attributable to a gasoline release, are detected in the ground water at concentrations exceeding RISC cleanup standards for the appropriate land use. For ~~the~~ purposes of this clause, gasoline has the meaning set forth in 45 IAC 12-1-7.

(4) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the ~~release,~~ **fund qualifying occurrence,** then the ~~release~~ **fund qualifying occurrence** is considered a category 4 ~~release~~ **fund qualifying occurrence** and claims for that ~~release~~ **fund qualifying occurrence** shall be paid after all approved claims for category 3 ~~releases~~ **fund qualifying occurrences** are paid as provided in subdivision (3):

(A) Petroleum or petroleum constituents are detected in on-site ground water at concentrations exceeding RISC industrial cleanup standards in two (2) or more wells, where the wells are at least twenty (20) feet apart, where neither well is screened in the underground storage tank cavity backfill.

(B) Petroleum or petroleum constituents are detected in on-site soil at concentrations exceeding RISC industrial cleanup standards in at least two (2) boring holes at least twenty (20) feet apart.

(5) A ~~release~~ **fund qualifying occurrence** that does not qualify as a category 1, 2, 3, or 4 category will be considered a category 5 ~~release.~~ **fund qualifying occurrence.**

(6) Claims in the same category will be paid in chronological order according to the date and time received by the administrator as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(d) ~~Releases~~ **Fund qualifying occurrences** shall be initially categorized according to those conditions that existed at the time the first claim was submitted after prioritization was initiated.

(e) Claims determined to be unreimburseable may be revised and resubmitted to the fund. The date and time of the revised claim for the purposes of **subsection** (c)(6) shall be based on the date and time that the fund administrator receives the revised claim as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(f) An applicant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.

(g) Categorization of a ~~release~~ **fund qualifying occurrence** or placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799; filed Aug 30, 2004, 9:40 a.m.: 28 IR 137; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608)

SECTION 15. 328 IAC 1-4-1.5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1.5 Transition to the prioritization procedure under this rule

Authority: IC 13-23
Affected: IC 13-23-9-4

Sec. 1.5. All ~~releases~~ **fund qualifying occurrences** with unpaid claims submitted to the department on or after the date this section becomes effective will be categorized or recategorized under this rule, as amended in 2004.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1.5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 140)

SECTION 16. 328 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-3 Recategorization of fund qualifying occurrences

Authority: IC 13-14-8
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 3. (a) To assure the efficient administration of the fund, the administrator may recategorize a ~~release~~ **fund qualifying occurrence** at any time that it is determined a ~~release~~ **fund qualifying occurrence** has been incorrectly categorized:
(1) The administrator will notify the applicant by mail of the new category.
(2) The applicant may petition the administrator to be put in a lower number category, with category 1 being the lowest, based on new information.
(3) If the administrator approves placement in a lower number category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement in the new category.
(4) If the administrator approves placement in a higher number category with 5 being the highest category, the applicant has fifteen (15) days after the date of the notification to submit current costs under the new category.

(b) ~~Releases~~ **Fund qualifying occurrences** may be recategorized based on:
(1) the current environmental conditions;
(2) information indicating the elimination or abatement of the condition or conditions that led to the placement of a ~~release~~ **fund qualifying occurrence** in a category;
(3) other information available to the administrator demonstrates that recategorization is appropriate; or
(4) the discovery of the event that led to the placement in a lower category with category 1 being the lowest.

(c) Except as provided in ~~section~~ **sections** 1.5 and 3(a) of this rule, the priority of a claim is determined by the category of the ~~release~~ **fund qualifying occurrence** at the time the claim is approved by the administrator and by section 1(c)(6) of this rule.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608)

SECTION 17. 328 IAC 1-4-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-5 Discontinuation of prioritization

Authority: IC 13-23
Affected: IC 13-23-9-4

Sec. 5. (a) At any time after the administrator has invoked prioritization procedures, the administrator may discontinue the categorization of ~~releases~~ **fund qualifying occurrences** and the prioritization of claims if the administrator determines that the unencumbered balance, less the unpaid, approved claims for reimbursable costs and third party liability is greater than twenty-five million dollars ($25,000,000).

(b) In the event that monies are deposited in or appropriated to the fund in an amount exceeding twenty-five million dollars ($25,000,000) in any calendar month, the administrator shall first apply ~~such~~ **the** monies to restore the balance of the fund to an unencumbered balance, less the unpaid, approved claims for reimbursable costs

and third party liability, of twenty-five million dollars ($25,000,000). In that event, the administrator shall discontinue the prioritization procedures.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141)

SECTION 18. 328 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-1 Applications for payment of reimbursable costs

Authority: IC 13-23
Affected: IC 13-23

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 including the following:

(1) A copy of original employee time sheets.
(2) Invoices relating to purchase or other acquisition of equipment and supplies used for corrective action.
(3) Copies of requests for bids for work specified in the CAP.

(b) The application shall contain the following statement, which shall be signed and attested by the person applying to the fund: "I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the reimbursable costs actually incurred in the performance of site characterization or corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of site characterization or corrective action.". If the person applying has been assigned the right to reimbursement under this rule, the person who assigned that right shall also sign and attest the application.

(c) ~~Two (2) copies~~ **One (1) copy** of all documents required by the administrator shall be submitted by the person applying to the fund to support the application. Original documents must be kept by the person applying to the fund for a minimum of four (4) years after the date the application for payment was submitted or four (4) years after completion of corrective action, whichever is later.

(d) Claims that had costs disallowed must be resubmitted with subsequent claims. The portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim. The same disallowed cost may only be submitted to the department for consideration three (3) times, including the initial claim submittal.

~~(d)~~ **(e)** A single claim application may not be submitted to the fund for reimbursement in an amount less than five thousand dollars ($5,000) unless the claim is one (1) of the following:

(1) The final application for that incident and the claim is identified as such.
(2) A claim for costs incurred over six (6) months from the date of the last claim.
(3) A claim made within fifteen (15) days of a ~~release~~ **fund qualifying occurrence** being categorized to a lower category, with one (1) being the highest category, under 328 IAC 1-4.
(4) Zero dollars ($0)/eligibility preapproval claims.

~~(e) Claims that had costs disallowed may be resubmitted with subsequent claims; however, the portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim.~~

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142)

SECTION 19. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-2 Fund payment procedures; eligibility preapproval

Authority: IC 13-23
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 2. (a) Contingent on the availability of monies as determined by 328 IAC 1-2-3, the administrator shall authorize payment upon determining that the requirements of IC 13-23-9-2 have been met. Payment will be made as follows:

(1) When a person applying to the fund submits an application under section 1 of this rule, which includes reimbursable costs for which that person has not made payment, then payment shall be made by check jointly to the person applying to the fund and the contractor involved.

(2) When a person applying to the fund submits documentation verifying that the person has incurred reimbursable costs, payment shall be made by check directly to that person.

(b) A determination under this rule is appealable under IC 13-23-9-4.

(c) ~~A person who may apply to the fund under 328 IAC 1-3-1~~ **Only the owner, operator, or responsible party** may seek preapproval of eligibility to have reimbursable costs or third party liability claims paid from the fund.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142)

SECTION 20. 328 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-1 Applications for payment of third party liability claims

Authority: IC 13-23
Affected: IC 13-23-8-3

Sec. 1. (a) Applications for reimbursement of third party liability claims against owners or operators shall be submitted on approved forms established by the administrator. The applicant must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must ~~submit proof~~ **provide evidence** of payment of **costs incurred equal to** the **applicable** deductible amount under IC 13-23-8-3.

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general.

(d) The minimum single claim amount contained in 328 IAC 1-5-1(d)(1) does not apply to third party liability claims.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143)

SECTION 21. 328 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-2 Fund payment procedures for third party liability

Authority: IC 13-23
Affected: IC 13-11-2-193.5; IC 13-23-9-3

Sec. 2. (a) If the attorney general determines that the requirements under IC 13-23-9-3 have been met, the attorney general shall approve a request for payment of a third party liability claim not later than sixty (60) days after receiving the request. The administrator shall thereafter pay the approved third party liability claim in accordance with this rule:

(1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;

(2) based upon the category of the ~~release~~ **fund qualifying occurrence** and ranking of the claim under 328 IAC 1-4 if applicable; and

(3) if the administrator determines that the owner or operator is in compliance with the requirements of IC 13-23 and rules adopted thereunder.

(b) When a third party liability claim is approved by the attorney general but the claim has not already been paid by the owner or operator, then payment shall be made jointly by check to the eligible owner or operator and the third party.

(c) When a third party liability claim is approved by the attorney general and the owner or operator submits to the administrator documentation verifying that the owner or operator has paid the third party liability claim, payment shall be made directly to the eligible owner or operator.

(d) Third party liability claims subject to approval by the attorney general shall include the reasonable fees or compensation paid for any of the following:

(1) Access to properties not controlled by the applicant, if not submitted as a reimbursable cost under 328 IAC 1-3-5.

(2) Institutional and engineered controls for off-site properties, including, but not limited to, restrictive covenants as defined under IC 13-11-2-193.5.

(3) Attorney's fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars ($30,000), whichever is less, shall only be payable if incurred by the owner or operator in defense of a third party liability claim.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143)

Notice of Public Hearing

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