

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

DRAFT RULE

LSA Document #26-13

DIGEST

Adds and amends 328 IAC 1 and 328 IAC 3 concerning the petroleum storage tank excess liability trust fund (ELTF). Effective 30 days after filing with the Publisher

HISTORY

First Notice of Comment Period: January 28, 2026, Indiana Register (DIN: 20260128-IR-328260013FNA).

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Date of First Hearing: March 26, 2026

DRAFT RULE

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

328 IAC 1-1-3 "Corrective action" defined

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 3. "Corrective action" ~~has the meaning set forth at 329 IAC 9-1-14.5~~ means **action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including emergency measures taken as part of an initial response to the release.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3; 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 787; filed Aug 30, 2004, 9:40 a.m.: 28 IR 123; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 2. 328 IAC 1-1-3.1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-3.1 "Corrective action plan" or "CAP" defined

Authority: IC 13-23-11-7

Affected: IC 13-23-7; IC 13-23-9.2.2

Sec. 3.1. "Corrective action plan" or "CAP" ~~has the meaning set forth at 329 IAC 9-1-14.7~~ means the corrective action plan described under 40 CFR 280.66* relative to USTs or its equivalent to petroleum ASTs.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 3. 328 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-5.1 "Emergency measures" defined

Authority: IC 13-23-11-7

Affected: IC 13-12-3-2; IC 13-23-9-1.5

Sec. 5.1. "Emergency measures" means any work described under IC 13-23-9-1.5(a)(2)(C). The term only includes the necessary work performed to directly abate the following conditions related to a release:

(1) Petroleum or petroleum constituents are detected in indoor air in a building at concentrations exceeding the appropriate screening levels, as specified by the department, in accordance with the remediation standards determined under IC 13-12-3-2 for the contaminants of concern.

(2) Petroleum or petroleum constituents, greater than ten percent (10%) of the measured lower explosive limits, are detected anywhere in utility conduits, such as sewers.

(3) Petroleum or petroleum constituents are detected as free product or sheen in utility conduits or surface water.

~~(4) Petroleum or petroleum constituents are detected as free product off-site, not including easements or rights-of-way.~~

~~(5)~~ (4) Petroleum or petroleum constituents are detected at or above the appropriate screening levels for groundwater, as specified by the department, in accordance with the remediation standards determined under IC 13-12-3-2(a):

(A) in a drinking water well, as measured at the point of compliance or at the tap;
or

(B) within one (1) year time of travel from a public drinking water well, and the petroleum or petroleum constituents are in imminent danger of impacting drinking water.

~~(6)~~ (5) Any other condition requiring direct abatement, as specified by the commissioner, based on the potential threat to human health, **property**, or the environment.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5.1; 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; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-

328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 4. 328 IAC 1-1-7.5 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 13-23-11-7

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~~ **UST or AST** that is the 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; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; readopted filed May 12, 2023, 1:07 p.m.: 20230607-IR-328230081BFA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 5. 328 IAC 1-1-8.3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-8.3 "Reasonable" defined

Authority: IC 13-23-11-7

Affected: IC 13-23; IC 13-25-5-8.5

Sec. 8.3. "Reasonable" means that the site characterization and corrective action are:

(1) appropriate and performed only as necessary to **determine the nature and extent of the contamination** and meet the ~~cleanup~~ **risk-based remediation and closure** objectives for the site; and

(2) consistent with the requirements of:

(A) IC 13-25-5-8.5(b) through IC 13-25-5-8.5(g);

~~(A)~~ **(B) 329 IAC 9;**

~~(B)~~ **(C) 328 IAC 1-3-5(b) through 328 IAC 1-3-5(e); and**

~~(C)~~ **(D) other applicable state and federal laws and regulations.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.3; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 6. 328 IAC 1-1-8.5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-8.5 "Site characterization" defined

Authority: IC 13-23-11-7

Affected: IC 13-23-13-1

Sec. 8.5. "Site characterization" means the work performed under the initial site characterization (ISC) described at ~~329 IAC 9-5-5.1~~ **IC 13-23-13-1(c) and 40 CFR 280.63*** or ~~further site investigations described in 329 IAC 9-5-6 and~~ **40 CFR 280.65*, or any alternative procedure proposed by the owner or operator and approved by the commissioner under IC 13-23-13-1(c).** This work may include, as necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.5; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 7. 328 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-1 Applicability

Authority: IC 13-23-11-7

Affected: IC 13-11-2-62.5; IC 13-23

Sec. 1. ~~Persons listed in 328 IAC 1-3-1~~ **An eligible party, as defined at IC 13-11-2-62.5,** may apply to the ~~fund~~ **ELTF** for payment of reimbursable costs and ELTF indemnity claims, in accordance with the following:

(1) **The applicable** eligibility requirements, deductible amounts, maximum reimbursement per eligible release, and maximum reimbursement per eligible party are determined by the requirements and limits in effect on

~~(A) the date the of application submittal. release occurs; or~~

~~(B) if the date that the release occurs cannot be determined, the date the release was discovered.~~

(2) The applicable cost range or amount of the reimbursable cost, as set forth in 328 IAC 1-3-5, is determined ~~under the section in effect on the date of the invoice for the work and the costs incurred. If the work is performed by the owner, operator, or applicant, the applicable cost range or amount of the reimbursable cost is determined by the date the work was completed.~~

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; 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; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 8. 328 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-2 Fund management

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 2. The administrator of the ~~fund~~ **ELTF** shall prepare an annual report to the financial assurance board by September 1 ~~of~~ each year. The report must include the following:

(1) A financial statement detailing information for the management and oversight of the ~~fund~~, **ELTF**, including:

- (A) facts concerning the amount of money currently in the ~~fund~~, **ELTF**;
- (B) the amount of money obligated for corrective actions and ELTF indemnity claims; and
- (C) estimates of future revenue for and demands on the ~~fund~~, **ELTF**.

(2) An overview of the ~~fund~~ **ELTF** claims process.

(3) A report of the number of claims made against the ~~fund~~ **ELTF** that were approved and denied during the reporting year.

(4) A report of expenditures and claims specifically for UST decommissioning or replacement.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

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

328 IAC 1-3-1 ELTF access for the purposes of corrective action and ELTF indemnity claim payments

Authority: IC 13-23

Affected: IC 13-23-7; IC 13-23-8-4; IC 13-23-9-1.3

Sec. 1. (a) ~~Fund~~ **ELTF** access is limited to:

- (1) eligible parties; and or;**
- (2) those assigned the right of fund access by an eligible party.**

~~(b) Any or all persons listed under subsection (a)~~ **(b) An eligible party** may apply to the ~~fund~~ **ELTF** for payment of reimbursable costs or ELTF indemnity claims if:

- (1) the release is an eligible release;
- (2) the applicant provides documentation of reimbursable costs incurred equal to:
 - (A) the appropriate deductible amount in accordance with IC 13-23-9-1.3(a); and
 - (B) any additional amount calculated in accordance with IC 13-23-9-1.3(b); and
- (3) a claim for the same costs:
 - (A) has not been submitted to or paid by the ~~fund~~ **ELTF**; and
 - (B) ~~will~~ **shall** not be paid more than once by the ~~fund~~ **ELTF**.

(c) The administrator may not reimburse costs related to duplicative acts performed by multiple eligible parties. If more than one (1) eligible party submits a claim for reimbursement of costs, the administrator shall determine the appropriate reimbursement based on the:

- (1) applicable remediation objectives; and
- (2) reasonableness and cost effectiveness of the claims.

(d) The department may:

- (1) determine the identity of the tank owner or operator based on the notification **form** submitted under 329 IAC 9-2-2; and
- (2) require an affirmation that an applicant is an eligible party or assignee thereof.

(e) ~~Only an owner, operator, or authorized agent may request the status of their tank fee payments and resulting potential percentage of fund~~ **A complete ELTF eligibility if applicable. application must be submitted on a form approved by the Indiana archives and records administration for use by the department. The form must include the following information:**

(1) Applicant information, including the following:

- (A) Applicant's or eligible party's name, title, and contact information.**
- (B) Claim preparer contact person's name, company name, and company contact information.**

(2) Site information, including the following:

- (A) Facility name and identification number.**
- (B) Date the incident was reported to the department.**
- (C) Incident number.**
- (D) Department project manager.**
- (E) Facility location.**

(3) Certification of the UST or AST owner, operator, property owner, or attorney-in-fact.

(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; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 10. 328 IAC 1-3-1.3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-1.3 Cost effectiveness of CAP

Authority: IC 13-23-11-7

Affected: IC 13-23-7; IC 13-23-9-1; IC 13-25-5-8.5

Sec. 1.3. (a) The administrator shall determine if the work to be performed or the work already performed, or a portion thereof, under the approved CAP is cost effective after the

~~person described in section 1 of this rule~~ **eligible party** has done the following:

- (1) Completed the site characterization for the release at the site.
- (2) Submitted the information in clauses (A) through ~~(C)~~ **(D)** to the administrator ~~in a form or format approved by the administrator~~ as follows:
 - (A) For each of the **reasonable** remediation alternatives, ~~as required by 329 IAC 9-5-6~~ details of the work to be performed and the projected costs **on a form described in section 1.6(g) of this rule.**
 - (B) The CAP approval letter from the department.
 - (C) If appropriate, a demonstration that the selected remediation alternative will substantially reduce or eliminate ELTF indemnity claims.
 - (D) Any additional information requested by the department to help determine the cost effectiveness of the work to be performed, the work already performed, or a portion thereof.**

(b) The administrator may review information concerning cost effectiveness while reviewing a CAP submitted for approval; however, the administrator shall not make a determination on cost effectiveness before a CAP is approved.

~~(b)~~ **(c)** The administrator shall determine cost effectiveness based on the information in subsection (a) and the following criteria:

- (1) The projected costs of the selected remediation alternative compared to the other remediation alternatives.
- (2) The likelihood that the remediation approach will achieve the cleanup objectives as set forth in the approved CAP.
- (3) The appropriateness of the length of time projected to achieve the cleanup objectives, based on the selected remediation alternative considering actual impacts to human health and the environment.
- (4) The cost projections under subsection (a)(2)(A) for the remediation alternatives and the work to be performed do not exceed the reimbursable costs allowed under section 5(a), 5(b), and 5(e) of this rule.
- (5) The remediation objectives as set forth in the approved CAP are sufficient, but no more stringent than necessary, for the current land use for the site.
- (6) The remediation objectives are consistent with the requirements of IC 13-25-5-8.5.**
- ~~(6)~~ **(7)** A demonstration that the selected remediation alternative will substantially reduce or eliminate ELTF indemnity claims.

~~(c)~~ **(d)** The applicant shall provide additional information to substantiate the projected work and ~~projected~~ costs upon request by the administrator.

~~(d)~~ ~~At any time~~ **(e) The administrator may determine that the work performed, or the work to be performed, under the approved CAP is no longer cost effective** if the administrator finds that the approved CAP will not achieve or is not achieving the cleanup objectives. ~~the administrator may determine that the work to be performed under the approved CAP is no longer cost effective.~~ The administrator shall give notice to the applicant of this

determination.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.3; filed Aug 30, 2004, 9:40 a.m.: 28 IR 126; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 11. 328 IAC 1-3-1.6 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-1.6 Preapproval of work

Authority: IC 13-23-11-7

Affected: IC 13-23-7; IC 13-23-9-2.2; IC 13-23-13-1

Sec. 1.6. (a) ~~Persons described in section 1 of this rule may~~ **If costs for a specified task are projected to exceed the maximum reimbursement rates listed in this article, an eligible party may** submit to the administrator a request for a preapproval of **costs** for projected work to be performed for site characterization in accordance with 328 IAC 1-1-8.5 and under the approved CAP **except as described in subsection (e).**

~~(b) The request~~ **submission** and any additional information **necessary to evaluate the proposed work** requested by the administrator must be ~~in a form or format approved by the administrator~~ **on a form described in subsection (g).**

~~(c) The administrator shall base preapproval of a request on a determination of the following:~~

(1) An approved work plan for investigation and characterization of the release under IC 13-23-13-1(c) or 40 CFR 280.65*.

~~(1)~~ **(2) Cost effectiveness of an approved CAP under section 1.3 of this rule.**

(3) Cost guidance under this article.

~~(2) That~~ **(4) The costs are reasonable.**

~~(b)~~ **(d) The administrator may ask for additional information to substantiate the projected work and projected costs.**

(e) Preapproval is not available for the following:

(1) Initial response and abatement under 40 CFR 280.61* and 40 CFR 280.62* relative to USTs or similar activities relative to ASTs.

(2) Initial site characterization under IC 13-23-13-1(c) or 40 CFR 280.63*.

~~(e)~~ **(f) The administrator shall issue a preapproval letter stating how much of the work is preapproved as reasonable and cost effective. This preapproval is not a determination on eligibility under section 3 of this rule.**

(g) A request for preapproval must be submitted on a form approved by the Indiana archives and records administration for use by the department. The form must include the

following information:

- (1) Eligible party name, title, and contact information.
- (2) If applicable, consultant or authorized agent name and contact information.
- (3) Site information, including the following:
 - (A) Facility name and identification number.
 - (B) Incident number.
 - (C) Site investigation submittal date.
 - (D) CAP submittal date.
- (4) Certification of UST or AST owner, operator, property owner, or attorney-in-fact, including the current copy of power of attorney, if applicable.
- (5) The following information must be submitted, as applicable:
 - (A) Site characterization and CAP development information and costs.
 - (B) CAP implementation information and costs.
 - (C) Monitoring or remediation system operation and maintenance information and costs.
 - (D) Closure information and costs.
 - (E) Claim preparation costs.
 - (F) Grand total cost.
 - (G) Eligible costs after “no further action” designation under section 5.2 of this rule.
 - (H) Remediation expenses information and costs under section 5.3 of this rule.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.6; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

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

328 IAC 1-3-3 Requirements for reimbursements

Authority: IC 13-23-11-7

Affected: IC 13-11-2-62.7; IC 13-23-9-1.3; IC 13-23-12; IC 13-23-13-1

Sec. 3. (a) ~~A person listed in section 1 of this rule~~ **A party eligible for ELTF access for the purposes of corrective action and ELTF indemnity claim payments** shall comply with the following requirements for a claim for reimbursable costs or an ELTF indemnity claim to be considered for reimbursement from the ~~fund~~ **ELTF** by the administrator:

- (1) Demonstrate that the release is an eligible release **as defined by IC 13-11-2-62.7.**
- (2) ~~For eligible releases that occur on or after July 1, 2016, or, if the date of occurrence cannot be determined, that are discovered on or after July 1, 2016, an eligible party shall Submit~~

all:

- (A) claims for payment of reimbursable costs related to the ISC conducted under ~~329 IAC 9-5-5.1~~ **IC 13-23-13-1(c) or 40 CFR 280.63***, and any reports required to determine release eligibility under **IC 13-11-2-62.7**, within three hundred sixty-five (365) days after ~~submittal of all reports required under 329 IAC 9~~ **approval of the eligibility application under section 1 of this rule;**
- (B) claims for payment of reimbursable costs incurred before the effective date of this rule, other than those specified in subsection (a)(2)(A), within three hundred sixty-five (365) days after the effective date of this rule;**
- ~~(B)~~ **(C) remaining claims for payment of reimbursable costs within three hundred sixty-five (365) days after the date those costs were incurred; and**
- ~~(C)~~ **(D) resubmittals associated with any disallowed cost within three hundred sixty-five (365) days after the denial of the claim.**

(3) Submit the CAP must be submitted on a form as described in section 1.6(g) of this rule 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.
~~(4) For eligible releases that occurred before July 1, 2016, or, if the date of occurrence cannot be determined, that were discovered before July 1, 2016, an eligible party shall submit all:~~

- ~~(A) claims for payment of reimbursable costs within three hundred sixty-five (365) days after the eligible release is granted a status of no further action by the administrator; and~~
- ~~(B) resubmittals associated with any disallowed cost within three hundred sixty-five (365) days after the denial of the claim.~~

(b) A reduction in reimbursement due to unpaid fees under IC 13-23-9-1.3 does not exempt a UST **or an AST** owner from the requirement to pay any unpaid past due fee. The reduction does not render ~~any~~ a fee as paid for the purposes of IC 13-23-12.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(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; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

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

328 IAC 1-3-5 Eligible costs for corrective action and liability indemnity claim payments
Authority: IC 13-23

Affected: IC 13-12-3-2; IC 13-23-3-2; IC 13-23-8-4; IC 13-23-9-1.5

Sec. 5. (a) The administrator may pay ELTF claims for costs described under IC 13-23-9-1.5.

(b) ~~An eligible parties~~ **party** may seek payment from the ~~fund~~ **ELTF** for the following **costs related to eligible releases:**

(1) Site characterization costs, ~~which include~~ **including:**

- (A) research;
- (B) field time;
- (C) report writing; and
- (D) clerical support.

(2) Lodging and per diem costs in accordance with the most current Indiana department of administration ~~financial management circular~~ **(IDOA) travel reimbursement rates** covering state travel policies and procedures. **IDOA's travel reimbursement rates are available at <https://www.in.gov/idoa/procurement/travel-services/travel-reimbursement-rates/>.** Mileage must 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.

(3) Soil, water, and vapor sampling for petroleum and petroleum constituents only as necessary to achieve the applicable remediation objectives determined under IC 13-12-3-2.

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

- (A) normal expected life of the item; and
- (B) length of time the item was used for a single corrective action.

In no event ~~will~~ **shall** the ~~fund~~ **ELTF** pay for purchases of machinery and equipment ~~in excess of~~ **exceeding** the market cost of leasing the item for a corrective action. Examples of equipment charges that can be made to the ~~fund~~ **ELTF** 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.
 - (ii) Cement.
- (C) Preservatives.

(6) Governmental administrative fees for local, state, or federal permits necessary for one

(1) or both of the following:

- (A) Corrective action.
- (B) Site characterization activities.

(7) ~~Provision of~~ **Providing an** alternate water supply, ~~This cost must have been the cost of which has been~~ previously approved by the administrator.

(8) Any other reimbursable costs the administrator finds to be necessary.

(9) Costs associated with transitioning management of a site from previous ~~remediation standards~~ to current remediation standards as determined by the department, if these costs would be less than the costs to complete the remediation under the previous remediation standards.

(10) Only one (1) markup may be taken on any item. A markup of not more than ten

percent (10%) of the unit rate or the lowest bid may 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 the office of the attorney general.

(12) Costs for emergency measures determined to be appropriate by the administrator, including the following:

- (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.

(13) Compensation paid to technicians for services performed in preparation and submittal of the ELTF claim.

(c) The approval of the site characterization and ~~the~~ CAP 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~~ ELTF:

- (1) Costs from releases that occurred before April 1, 1988.
- (2) Costs incurred more than twenty-four (24) hours ~~prior to~~ **before** the date and time the release had been reported. ~~under the spill reporting rule in effect at the time of the release.~~
- (3) Costs ~~of~~ **associated with a UST or an AST, or its associated equipment, except as allowed by 328 IAC 3-3, as follows:**
 - (A) ~~the~~ Maintenance. ~~of~~
 - (B) ~~the~~ Repair. ~~of~~
 - (C) ~~upgrading~~ **Upgrades.**
 - (D) ~~removing~~ **Removal**, unless tank removal is approved **by the administrator** as part of ~~the~~ **an approved CAP.**
 - (E) ~~the~~ Replacement. ~~of~~ ~~an underground petroleum storage tank or its associated equipment.~~
- (4) The costs of environmental investigation and remediation not directly related to an eligible release, ~~Ineligible costs include~~ **including** the cost of testing for nonpetroleum

contamination and the cost of vapor or groundwater monitoring devices ~~that are~~ not associated with corrective action.

(5) Costs that exceed reimbursable costs even if incurred ~~pursuant to~~ **in accordance with** an approved CAP.

(6) The cost of equipment purchases, ~~other than those costs routinely required to implement a CAP. Examples of nonreimbursable purchases include~~ **including** the following:

- (A) Drilling rigs.
- (B) Earth moving equipment.
- (C) Photoionization detectors.
- (D) Explosimeters.
- (E) Hand tools.

(7) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with **the following**:

- (A) Corrective action. ~~or~~
- (B) Emergency response activities.
- (C) **An approved UST removal under subsection (b).**

(8) Lost income or reduced property values unless part of an ELTF indemnity claim.

(9) Interest or finance charges.

(10) Contractor 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.

However, **an eligible parties party** may seek reimbursement for these costs if the costs meet the requirements in subsection (b)(13).

(11) Fines or penalties imposed by local, state, or federal government agencies.

(12) Punitive or exemplary damages.

(13) ~~Any~~ Costs for remediation of contamination not shown to accomplish the applicable remediation objectives determined under IC 13-12-3-2, except for groundwater contamination affecting a public or private drinking water well.

(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 by the administrator.

(15) Any other cost not directly related to site characterization, corrective action, or ELTF indemnity claims, or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(16) Remediation costs arising from the acts or omissions on the part of a contractor, owner, or operator that result in:

- (A) damage to:
 - (i) a UST **or an AST** system; or

- (ii) dispensing components; or
- (B) a release of petroleum to the environment; or**
- ~~(B)~~ **(C)** exacerbation of an existing release.

(17) ~~Any~~ Costs to purchase equipment, which was previously purchased and the cost was previously reimbursed from the ~~fund~~ **ELTF**.

(18) ~~Any~~ Costs incurred after ~~receipt of~~ **receiving** 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 necessary costs, until the modified CAP is approved:

- (A) Development of the modified CAP, including pilot studies or additional investigation.
- (B) Demobilization of the corrective action system currently at the site.
- (C) Abandonment of monitoring, extraction, or other wells associated with the CAP.
- (D) ~~Maintained~~ Compliance with applicable regulations and permits, including quarterly groundwater monitoring.
- (E) **Reasonable** maintenance, but not operation, of the corrective action system.

(19) Credits, rebates, refunds, **insurance payments**, or other similar payments made to the owner or operator or received by the owner, operator, or applicant.

~~_____ (e) Costs that may be paid from the fund are as follows:~~

Activity	Cost Range or Maximum Amount
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~~SITE CHARACTERIZATION~~

~~Direct push technology (other costs pertaining to direct push technology are included in the per foot allowance specified).~~ ~~\$600 per day~~

~~In addition to the day rate, costs for boring advancement \$6 per foot may be invoiced at the following per foot rates:~~

~~Mobilization and demobilization. This includes the cost of moving general contractor owned equipment, setup, and removing equipment.~~ ~~\$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	\$24 per foot
16 through 25 feet	\$30 per foot
26 feet or more	\$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~~

~~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 is 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 \$10 per foot~~

~~51 feet or more \$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	\$12 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	\$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	\$9 per foot
4 inch well	\$15 per foot
6 inch well	\$27 per foot
Flush grade well covers	\$125 per cover
Laboratory services, including containers, packaging, and postage.	
Soil analysis methods	
TPH 8015 GRO	\$50 per sample
TPH 8015 DRO	\$50 per sample
TPH 8015 ERO	\$50 per sample
TPH 418.1	\$95 per sample
TRPH-HEM-1664/9071B	\$60 per sample
VOC-8260	\$130 per sample
SVOC-8270	\$225 per sample
PAH-8270SIM	\$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	\$80 per sample
Ignitability	\$30 per sample
Fraction of organic carbon	\$70 per sample
Water analysis methods	
TPH 8015 GRO	\$50 per sample
TPH 8015 DRO	\$50 per sample
TPH 8015 ERO	\$50 per sample
TPH 8015 Methane	\$80 per sample
TRPH-HEM-1664	\$50 per sample
VOC 8260	\$135 per sample
BTEX/MTBE 8021	\$50 per sample
BTEX/MTBE 8260	\$80 per sample
SVOC 8270	\$225 per sample
PAH 8270 SIM	\$135 per sample
PAH 8310	\$150 per sample
Metals – 7 barium, cadmium, chromium, lead, mercury, nickel, zinc	\$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	\$20 per sample
Air analysis methods	
VOC TO-15	\$400 per sample
Other Methods	
TCLP lead	\$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 is required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates are 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 are adjusted annually on June 1 of each year, in accordance with the product price index (PPI) percentage listed for December of the previous year. The North American Industry Classification System (NAICS) Code for Environmental Consulting Services is 541620 and is described at: https://www.naics.com/naics-codedescription/?code=541620 The PPI Industry data tables are available through the Bureau of Labor and Statistics (BLS) at: https://www.bls.gov/ppi/home.htm	
Principal	\$136 per hour

Senior project manager	\$126 per hour
Project manager	\$103 per hour
Staff project person	\$87 per hour
Field/ELTF claims technician	\$59 per hour
Drafting person	\$50 per hour
Word processor/clerical	\$35 per hour
Toxicologist	\$155 per hour

~~INITIAL ABATEMENT AND FREE PRODUCT REMOVAL~~

~~Except where provided in this rule, approval of costs is on a case-by-case basis.~~

~~SITE SET-UP PREPARATION~~

Trailer rental	\$360 per month (\$12 per day)
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Portable toilet	\$180 per month (\$6 per day)
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~~Utility check, the date and time of the utility check must be documented. Utility check includes air knifing, hand-augering, and private utility location service.~~

~~Utilities for temporary facilities~~

Temporary power	\$600 per month (\$20 per day)
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Temporary water	\$180 per month (\$6 per day)
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Temporary phone	\$240 per month (\$8 per day)
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~~DEMOLITION~~

~~Three (3) bids must be submitted for demolition of structures in accordance with an approved CAP for reimbursement consideration as defined under CORRECTIVE ACTION TECHNOLOGIES.~~

~~EXCAVATION~~

Activities in accordance with an approved CAP are 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	\$2.70 per ton
Mobilization (includes vehicle mileage)	\$400 per trailer
Stockpiling soil on-site	\$1.65 per ton
Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless approved as part of corrective action.	
Under 1,000 gallons	\$1,200 per tank
1,000 through 5,999 gallons	\$1,800 per tank
6,000 through 10,000 gallons	\$2,400 per tank
Above 10,000 gallons	\$3,000 per tank

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

Three (3) bids must be submitted for demolition of structures in accordance with an approved CAP for reimbursement consideration as defined under ~~CORRECTIVE ACTION TECHNOLOGIES~~.

Mobilization (includes vehicle mileage)	\$400 per trailer
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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
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Saw asphalt, prices are per linear foot

	3 inch concrete	4 inch concrete	6 inch concrete
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
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The administrator shall approve hauling costs based on three (3) bids.

TRANSPORTATION

Activities in accordance with an approved CAP are considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates:

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

DISPOSAL OF SOIL, GROUND WATER, AND TRASH

Landfill fees

Sampling required by landfill. Receipts and analytical results from local municipality must be included.

Sanitary sewer, if approved for disposal of treated ground water. Receipts must be included.

Contaminated or disposable equipment and decontamination fluids.

~~Landfill reimbursement must 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 are allowed on the basis of the lowest of three (3) comparable, competitive bids for the work specified in the 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 is required to show a line item breakdown of the tasks to be performed in order to verify that all tasks are eligible for reimbursement. The administrator may 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 must not be reimbursed above the purchase price.~~

~~SITE RESTORATION~~

~~Activities in accordance with an approved CAP are considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates:~~

Backfill hauling	\$85 per hour per truck
Backfill material	\$18 per ton of stone \$9 per ton of soil
Backfill placement, compaction, and density verification	\$6 per ton
Resurfacing	
4 inch concrete	\$5 per square foot
For each additional inch of concrete	Add \$0.75 per square foot

For rebar	Add 15%
Asphalt pad, 4 inch thickness	\$2.75 per square foot
Asphalt curb and gutter	\$6 per linear foot
Island Forms	
4 feet by 10 feet with 2 foot bumpers	\$900 each
4 feet by 16 feet with 2 foot bumpers	\$1,400 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, and detergent)	\$15
Power auger	\$60
Hand auger sampling kit (hand auger/brass sleeves)	\$42
Slide hammer core sampler	\$42
Photoionization detector	\$90
Flame ionization detector	\$135
LED/O2 meter	\$60
pH and conductivity meter	\$24
Dissolved oxygen meter	\$36
Oxidation/reduction meter (REDOX)	\$50
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	\$60
Ferrous iron field test	\$8 per sample
Hydrogen sulfite field test	\$8 per sample
Geographic positioning system (GPS) unit for site mapping to 1 foot accuracy	\$120

2 inch submersible pump	\$140
4 inch submersible pump	\$115
Steam cleaner/pressure washer	\$90
Water level indicator	\$15
Oil/water interface probe	\$70
Bailer rental	\$20
Anemometer	\$42
Carbon dioxide meter	\$30
Portable generator, generator $\leq$ 5kW	\$60
Portable generator, generator $\leq$ 10kW	\$120
Portable generator, generator $>$ 10kW	\$150

(e) The administrator shall apply the appropriate rate based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection (g) for task descriptions for personnel classifications. These labor rates are adjusted annually on June 1 each year, in accordance with the average monthly producer price index (PPI) percentage listed for the previous year. The PPI industry grouping for Management Consulting Services is 541610. The PPI industry data tables are available through the Bureau of Labor and Statistics at <https://www.bls.gov/ppi/home.htm>. When submitting a claim for reimbursement, the applicant shall specify the:

- (1) personnel classification;**
- (2) task being performed; and**
- (3) name of the individual performing the task.**

(f) The maximum costs for the work done for corrective action are allowed based on the lowest of three (3) comparable, competitive bids for the work specified in the approved CAP and the following:

- (1) Bids for the work specified in the CAP must include bids for installation and labor; however, separate bids may be obtained for the cost of installation and labor.**
- (2) Copies of the request for proposal (RFP) for implementation of the CAP that was sent to each vendor must be submitted.**
- (3) Each RFP and bid submittal is required to show a line item breakdown of the tasks to be performed to verify that all tasks are eligible for reimbursement.**
- (4) The administrator may 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.

(5) Lease or rental on equipment must not be reimbursed above the purchase price.

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

(1) The principal shall do the following:

- (A) Serve as technical expert on sites.
- (B) Limited site visits on projects.
- (C) Coordinate legal matters with attorneys.

(2) The senior project manager (limited to licensed professional geologist or hydrogeologist (LPG), registered professional engineer (PE), certified hazardous materials manager (CHMM), professional soil scientist, or at least five (5) years professional remediation experience) shall provide the following:

- (A) Project planning/oversight.
- (B) Final review of project documents.
- (C) Acquisition of and negotiation with subcontractors.
- (D) Hydrogeologic and contaminant modeling.
- (E) Remediation system design.
- (F) ~~Risk integrated system of closure (RISC)~~ **Evaluation of risks related to conceptual site models.**

(3) The project manager shall provide the following:

- (A) Technical document preparation **as** required by 329 IAC 9 **or 40 CFR Part 280*** (CAP, ISC, FSI, pilot study, etc.) **and similar documents for AST-related releases.**
- (B) Site work preparation and planning.
- (C) Supervision of investigation and remediation activities.
- (D) Oversight of waste characterization, transportation, and disposal.
- (E) Statistics and equations required by the department for corrective action in accordance with applicable guidance.
- (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 shall do the following:

- (A) Implement remediation system installation, operation, and maintenance.
- (B) Conduct site mapping.
- (C) Oversee installation of soil borings and monitoring wells.
- (D) Provide on-site supervision or perform site characterization and remediation activities, or both.
- (E) Oversee well water records searches.
- (F) Request, oversee, or identify and mark **the** utility location on the site.
- (G) Survey wells.
- (H) Oversee free product removal.
- (I) Oversee quarterly sampling.

(5) The field/ELTF claims technician shall perform the following:

- (A) Well purging and development.

- (B) Sample collection, preparation, and delivery.
- (C) Decontamination/site cleanup tasks.
- (D) Assist with waste characterization, transportation, and disposal, including drum labeling/disposal.
- (E) Activities associated with the operation and maintenance of remediation systems.
- (F) Activities associated with preparation and submittal of the ELTF claim.
- (6) The drafting person shall do the following:
 - (A) Provide computer-aided design drafting work.
 - (B) Generate the following:
 - (i) Drawings.
 - (ii) Maps and plans.
 - (iii) Boring logs.
 - (iv) Monitoring well installation logs.
 - (C) Revise drawings and maps and plans.
- (7) The word processor/clerical person shall provide the following:
 - (A) Word processing/data input.
 - (B) General clerical duties.
 - (C) Documentation reproduction, report binding, and filing.
 - (D) Proofreading/editing.
- (8) The toxicologist shall provide guidance for risk-based closures utilizing toxicological parameters.

~~(g)~~ **(h)** Attorney costs are considered for reimbursement as follows:

- (1) Attorney costs are 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 may not be reimbursed for the following:
 - (A) Reviewing consultant reports.
 - (B) ~~Charging Fees in excess of~~ **exceeding** 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.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(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; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; errata filed Jul 31, 2018, 9:26 a.m.: 20180822-IR-328150231ACA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 14. 328 IAC 1-3-5.1 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-5.1 Cost guidelines

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 5.1. (a) The maximum hours reimbursable for tasks related to site characterization and investigations are as follows:

(1) For soil borings, the following:

(A) Ten (10) hours for the first day of field activities, comprising:

- (i) one (1) hour at the senior project manager rate;**
- (ii) three (3) hours at the project manager rate; and**
- (iii) six (6) hours at the staff project person rate.**

(B) Two and one-half (2 ½) hours for each subsequent day of field activities, comprising:

- (i) one-half (½) hour at the project manager rate; and**
- (ii) two (2) hours at the staff project person rate.**

(2) For groundwater monitoring well installation, the following:

(A) Twelve (12) hours for the first day of field activities, comprising:

- (i) one (1) hour at the senior project manager rate;**
- (ii) four (4) hours at the project manager rate; and**
- (iii) seven (7) hours at the staff project person rate.**

(B) Two and one-half (2 ½) hours for each subsequent day of field activities, comprising:

- (i) one-half (½) hour at the project manager rate; and**
- (ii) two (2) hours at the staff project person rate.**

(3) For groundwater monitoring well development, the following:

(A) Four (4) hours for the first well, comprising:

- (i) one (1) hour at the project manager rate; and**
- (ii) three (3) hours at the field technician rate.**

(B) One (1) hour at the field technician rate for each subsequent well.

(4) Nine (9) hours for monitoring well network survey, comprising:

- (A) one (1) hour at the project manager rate; and**
- (B) eight (8) hours at the staff project person rate.**

(5) For site investigation reports, the following:

(A) Seventy-eight (78) hours for initial site characterization report preparation, comprising:

- (i) eight (8) hours at the senior project manager rate;
 - (ii) forty-four (44) hours at the project manager rate;
 - (iii) twenty-two (22) hours at the drafting person rate; and
 - (iv) four (4) hours at the word processor or clerical rate.
- (B) Fifty-four (54) hours for further site investigation report preparation, comprising:
 - (i) six (6) hours at the senior project manager rate;
 - (ii) twenty-six (26) hours at the project manager rate;
 - (iii) eighteen (18) hours at the drafting person rate; and
 - (iv) four (4) hours at the word processor or clerical rate.
- (6) For tasks related to environmental restrictive covenants (ERCs), the following:
 - (A) Fifteen (15) hours for preparation and recordation of an ERC, comprising:
 - (i) one (1) hour at the principal rate;
 - (ii) three (3) hours at the senior project manager rate;
 - (iii) five (5) hours at the project manager rate;
 - (iv) three (3) hours at the staff project person rate;
 - (v) two (2) hours at the drafting person rate; and
 - (vi) one (1) hour at the word processor or clerical rate.
 - (B) Seven (7) hours for preparation of an affected area map, comprising:
 - (i) one (1) hour at the senior project manager rate;
 - (ii) three (3) hours at the project manager rate; and
 - (iii) three (3) hours at the drafting person rate.
- (b) Costs allowed for consultant drilling oversight and sampling activities will be dependent on the drilling technique and total feet drilled, as follows:
 - (1) Eight dollars (\$8) per foot for soil boring using direct push technology.
 - (2) Fourteen dollars (\$14) per foot for soil boring using hollow stem auger techniques.
 - (3) Ten dollars (\$10) per foot for groundwater monitoring well installation using direct push technology.
 - (4) Sixteen dollars (\$16) per foot for groundwater monitoring well installation using direct push technology.
- (c) The maximum hours reimbursable for tasks related to groundwater monitoring are as follows:
 - (1) For groundwater sampling planning and field work, the following:
 - (A) Ten (10) hours for groundwater sampling planning and preparation, comprising:
 - (i) one (1) hour at the senior project manager rate;
 - (ii) four (4) hours at the project manager rate;
 - (iii) four (4) hours at the field technician rate; and
 - (iv) one (1) hour at the word processor or clerical rate.
 - (B) Three (3) hours at the field technician rate for field work related to purging and sampling the first well, and one (1) hour at the field technician

rate for field work related to purging and sampling each additional well.
(2) Twenty (20) hours for quarterly monitoring or remediation status report preparation, comprising:

- (A) two (2) hours at the senior project manager rate;
- (B) seven (7) hours at the project manager rate;
- (C) four (4) hours at the staff project manager rate;
- (D) six (6) hours at the drafting person rate; and
- (E) one (1) hour at the word processor or clerical rate.

(d) The maximum hours reimbursable for tasks related to site closure activities are as follows:

(1) For no further action (NFA) reports, the following:

(A) Twelve (12) hours for an NFA request report with unconditional disclosure, comprising:

- (i) one (1) hour at the senior project manager rate;
- (ii) four (4) hours at the project manager rate;
- (iii) four (4) hours at the staff project person rate;
- (iv) two (2) hours at the drafting person rate; and
- (v) one (1) hour at the word processor or clerical rate.

(B) Twenty-four (24) hours for an NFA request report using lines of evidence, comprising:

- (i) five (5) hours at the senior project manager rate;
- (ii) nine (9) hours at the project manager rate;
- (iii) six (6) hours at the staff project manager rate;
- (iv) two (2) hours at the drafting person rate; and
- (v) two (2) hours at the word processor or clerical rate.

(C) Fifty-seven (57) hours for an NFA request report with an ERC, comprising:

- (i) one (1) hour at the principal rate;
- (ii) six (6) hours at the senior project manager rate;
- (iii) thirty-four (34) hours at the project manager rate;
- (iv) eight (8) hours at the staff project person rate;
- (v) six (6) hours at the drafting person rate; and
- (vi) two (2) hours at the word processor or clerical rate.

(2) For site restoration activities, the following:

(A) Ten (10) hours for remediation system decommissioning and site restoration planning and preparation, comprising:

- (i) one (1) hour at the senior project manager rate;
- (ii) five (5) hours at the project manager rate; and
- (iii) four (4) hours at the staff project person rate.

(B) Ten (10) hours for permanent well closure planning and preparation, comprising:

- (i) two (2) hours at the project manager rate; and
- (ii) eight (8) hours at the staff project manager rate.

(C) Eight (8) hours at the staff project person rate for field work related to

the oversight of well abandonment activities.

(e) The maximum hours reimbursable for ELTF claim preparation is seven and one-half (7 ½) hours at the ELTF claims technician rate.

(f) The maximum hours reimbursable for miscellaneous tasks are as follows:

(1) One-half (½) hour at the project manager rate for field notification.

(2) Six (6) hours for health and safety plan preparation, comprising:

(A) one (1) hour at the project manager rate;

(B) four (4) hours at the staff project person rate; and

(C) one (1) hour at the word processor or clerical rate.

(3) Four (4) hours for utility clearance coordination, comprising:

(A) one (1) hour at the project manager rate; and

(B) three (3) rate at the staff project person rate.

(4) Five (5) hours for access agreements, comprising:

(A) one (1) hour at the principal rate;

(B) three (3) hours at the project manager rate; and

(C) one (1) hour at the word processor or clerical rate.

(5) Five (5) hours for meetings with regulatory agency staff, comprising:

(A) one (1) hour at the senior project manager rate;

(B) three (3) hours at the project manager rate; and

(C) one (1) hour at the word processor or clerical rate.

(g) The maximum rates reimbursable for laboratory analytical costs for soil are as follows:

(1) TPH-8015 GRO, TPH-8015 DRO, TPH-8015 ERO	\$50/sample
(2) TPH-418.1	\$95/sample
(3) TRPH-HEM-1664/9071B	\$60/sample
(4) VOC-8260	\$130/sample
(5) SVOC-8270	\$225/sample
(6) PAH-8270SIM	\$130/sample
(7) PAH-8310	\$150/sample
(8) PCB-8082	\$110/sample
(9) Metals - 7 barium, cadmium, lead, mercury, nickel, zinc	\$100/sample
(10) Individual metals	\$15/sample
(11) BTEX/MTBE-8021	\$60/sample
(12) BTEX/MTBE-8260	\$80/sample
(13) Ignitability	\$30/sample
(14) Fraction of organic carbon	\$70/sample

(h) The maximum rates reimbursable for laboratory analytical costs for water are as follows:

(1) TPH-8015 GRO, TPH-8015 DRO, TPH-8015 ERO	\$50/sample
(2) TPH-8015 Methane	\$80/sample
(3) TRPH-HEM-1664	\$50/sample
(4) VOC-8260	>\$135/sample
(5) SVOC-8270	\$225/sample
(6) PAH-8270SIM	\$135/sample
(7) PAH-8310	\$150/sample
(8) Metals - 7 barium, cadmium, lead, mercury, nickel, zinc	\$100/sample
(9) Individual metals	\$15/sample
(10) BTEX/MTBE-8021	\$50/sample
(11) BTEX/MTBE-8260	\$80/sample
(12) Metal-soluble iron	\$25/sample
(13) Nitrates	\$25/sample
(14) Sulfate	\$25/sample
(15) Sulfide	\$25/sample
(16) COD	\$20/sample
(17) BOD ₅	\$40/sample
(18) Total suspended solids	\$20/sample

(i) The maximum rate reimbursable for laboratory analytical costs for air is four hundred dollars (\$400) per sample of VOC-TO-15.

(j) A twenty percent (20%) markup is allowed per sample if the commissioner requires all quality assurance or quality control, including raw data and internal chain of custody necessary to validate analytical results.

(k) The cost to rent small equipment may be reimbursed at the following daily rate. The list of equipment includes, but is not limited to, the following:

(1) Decontamination equipment (bucket, brushes, and detergent)	\$15
(2) Power auger	\$60
(3) Hand auger sampling kit (hand auger or brass sleeves)	\$42
(4) Slide hammer core sampler	\$42

(5) Photoionization detector	\$90
(6) Flame ionization detector	\$135
(7) LED/O2 meter	\$60
(8) pH and conductivity meter	\$24
(9) Dissolved oxygen meter	\$36
(10) Oxidation or reduction meter (REDOX)	\$50
(11) Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	\$60
(12) Geographic positioning system (GPS) unit for site mapping to 1 foot accuracy	\$120
(13) Two (2) inch submersible pump	\$140
(14) Four (4) inch submersible pump	\$115
(15) Steam cleaner or pressure washer	\$90
(16) Water level indicator	\$1
(17) Oil or water interface probe	\$70
(18) Bailer rental	\$20
(19) Anemometer	\$42
(20) Carbon dioxide meter	\$30
(21) Portable generator, generator $\leq 5\text{kW}$	\$60
(22) Portable generator, generator $\leq 10\text{kW}$	\$120
(23) Portable generator, generator $> 10\text{kW}$	\$150
(24) Laser survey equipment	\$90
(25) Metal detector	\$20
(26) Peristaltic pump	\$35
(27) Vacuum air sampling pump	\$60
(28) Drum vacuum	\$50
(29) Hammer drill	\$20

(l) The maximum rates reimbursable for drilling costs are as follows:

(1) Mobilization of contractor equipment	\$1,200/day
(2) Direct push technology	\$1,800/day
(3) Hollow stem auger (HSA)	\$2,000/day
(4) Soil boring advancement	\$20/foot
(5) Monitoring well installation, two (2) inch	\$50/foot
(6) Monitoring well installation, four (4) inch	\$60/foot

(m) The maximum rates reimbursable for well abandonment costs are as follows:

- (1) Well size of two (2) inches or less diameter \$21/foot
- (2) Well size of greater than two (2) inches up to six (6) inches \$27/foot

(n) The maximum rate reimbursable for a qualified professional to demarcate the area for public or private utility clearance is one thousand one hundred dollars (\$1,100) per event.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5.1)

SECTION 15. 328 IAC 1-3-5.2 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-5.2 Eligible costs after “no further action” or “NFA” designation

Authority: IC 13-23-9-1.5; IC 13-23-11-7

Affected: IC 13-23; IC 13-25-5-8.5

Sec. 5.2. (a) Certain costs are eligible for reimbursement after “no further action” status is granted for the eligible release, if the department or owner decide to permanently decommission the use of the site as a UST or an AST facility and undertake the investigation and remediation of any residual contamination arising from the site's former use as a UST or an AST facility. This investigation and remediation remains subject to the statutory requirements of IC 13-25-5-8.5.

(b) Before reopening ELTF eligibility and funding, the administrator may require the applicant to provide information regarding the planned future use of the site.

(c) Costs incurred for the following activities under subsection (a) may be reimbursed from the ELTF under this article:

(1) Disposal of contaminated soils.

(2) Treatment or disposal of contaminated groundwater as part of a soil removal or an excavation activity.

(d) An eligible party shall request preapproval under section 1.6 of this rule for costs or work to be performed under subsection (c). Preapproval is based on:

(1) the quantity of contaminated material to be removed, managed, and disposed; and

(2) the reasonableness and cost effectiveness of the costs or work.

(e) Costs associated with redrafting, rerecording, or removing an existing environmental restrictive covenant are ineligible for reimbursement.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5.2)

SECTION 16. 328 IAC 1-3-5.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-5.3 Eligible costs for remediation expenses for subsequent owner

Authority: IC 13-23-8-9

Affected: IC 13-23-12; IC 13-25-5-8.5

Sec. 5.3 A subsequent owner of a property with a restrictive covenant placed on it due to soil or water contamination from a leaking UST or AST is eligible for reimbursement for remediation expenses to remediate the site under the ELTF if:

- (1) the UST or AST was registered under IC 13-23-12;**
- (2) all annual fees for the UST or AST were paid before the eligible release; and**
- (3) the remediation objectives are consistent with the requirements of IC 13-25-5-8.5.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5.3)

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

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

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 1. (a) Claim applications for reimbursement must be submitted on ~~forms approved by the administrator~~ **the form described in subsection (f), as follows:**

- (1) Applicants shall itemize all reimbursable costs as required by the application package.**
- (2) Documentation of reimbursable costs as required by the administrator must be submitted as part of the application.**
- (3) The administrator may request additional information and records to substantiate claims submitted, including the following:**
 - ~~(1)~~ **(A)** A copy of original employee time sheets.
 - ~~(2)~~ **(B)** Invoices relating to ~~the~~ purchase or other acquisition of equipment and supplies used for corrective action.
 - ~~(3)~~ **(C)** Copies of requests for bids for work specified in the CAP.

(b) The application must contain the following statement, which must be signed and attested by the ~~person applying to the fund~~ **applicant:** "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 **performed only as necessary to the performance of complete** 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) One (1) copy of ~~all the~~ documents required by the administrator must be submitted by the person applying to the ~~fund~~ **ELTF** to support the application. Original documents must be kept by the person applying to the ~~fund~~ **ELTF** for ~~a minimum of at least~~ **at least** 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, other than~~ **Except for** final claims, **claims** that had costs disallowed ~~if that~~

are resubmitted 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.

(e) A single claim application may not be submitted to the ~~fund~~ ELTF 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 one hundred eighty (180) days from the date of the previous claim.

(3) A claim made within fifteen (15) days of an eligible release being categorized to a lower category, with one (1) being the highest category, under 328 IAC 1-4.

(4) Eligibility ~~preapproval~~ claims requesting zero dollars (\$0).

(5) A claim for eligible costs that are less than five thousand dollars (\$5,000) and submittal is required to comply with the three hundred sixty-five (365) day deadlines established in 328 IAC 1-3-3.

(f) For reimbursement of costs, a complete ELTF application must be submitted on a form approved by the Indiana archives and records administration for use by the department. The form must include the following information:

(1) Applicant information, including the applicant's name, contact information, and tax identification number or last four digits of their social security number.

(2) Eligible party's name and contact information.

(3) Site information, including the following:

(A) Facility name and department identification number.

(B) Incident number.

(4) Reimbursement requests.

(5) Claim preparer's name and contact information.

(6) Identification of the phases requested for cost evaluation.

(7) Private insurance that may cover the release, including the name of the insurer and policy number.

(8) Certification of the UST or AST owner, operator, property owner, attorney-in-fact, or assignee of rights.

(9) Notarized affidavit regarding payment of costs.

(10) An invoice summary, including the following:

(A) For resubmitting previously denied costs, the following:

(i) Claim and item number of originally denied costs.

(ii) Reasons for reconsideration of denied costs.

(iii) Amount denied and requested.

(B) For costs not previously submitted for reimbursement, the following:

(i) Incident and invoice number.

(ii) Name of applicant and vendor.

(iii) Date range and description of the task performed.

(iv) Units, unit cost, percent mark-up, and amount requested.

(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; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; filed Oct 30, 2024, 10:51 a.m.: 20241127-IR-328230811RFA)

SECTION 18. 328 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. EXCESS LIABILITY TRUST FUND UNDERGROUND STORAGE TANK DECOMMISSIONING AND REPLACEMENT CLAIM PAYMENTS

Rule 1. Definitions and References

328 IAC 3-1-1 Application of definitions

Authority: IC 13-23-11-7

Affected: IC 13-11-2; IC 13-23

Sec. 1. In addition to the definitions in IC 13-11-2 and 328 IAC 1-1, the definitions in this rule apply throughout this article.

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

328 IAC 3-1-2 “Project” defined

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 2. “Project” means the UST decommissioning or replacement as approved for ELTF eligibility, under 328 IAC 3-3-2.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-1-2)

Rule 2. Scope and Fund Management

328 IAC 3-2-1 Applicability

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 1. The owner of a UST may apply to the ELTF for payment of reimbursable costs, in accordance with the following:

(1) Eligibility must be approved before beginning field activities associated with the project.

(2) The applicable cost range or amount of the reimbursable cost, as set forth in 328 IAC 3-3-6, must be determined by the date the work was completed.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-2-1)

328 IAC 3-2-2 Obligation of monies

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 2. (a) Claims are paid in the order received by the administrator unless the procedure set forth in 328 IAC 3-4 applies.

(b) At the beginning of each state fiscal year, the administrator shall obligate sufficient monies for administering the ELTF. This amount must be approved by the financial assurance board.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-2-2)

Rule 3. Fund Coverage and Eligibility

328 IAC 3-3-1 ELTF access for purposes of UST decommissioning or replacement payments

Authority: IC 13-23-11-7

Affected: IC 13-23-9-1.7

Sec. 1. (a) ELTF access is limited to:

- (1) the owner of the UST; and**
- (2) the owner for which project eligibility has been approved.**

(b) A UST owner may apply to the ELTF for payment of fifty percent (50%) of reimbursable costs if:

- (1) the decommissioning or replacement are granted eligibility before beginning site work;**
- (2) the UST closure, as required by 329 IAC 9-6, is deemed complete by the department; and**
- (3) a claim for the same costs has not been submitted to or paid by the ELTF.**

(c) A claim may not be paid more than once by the ELTF.

(d) The administrator may not reimburse costs related to duplicative acts performed by multiple UST owners. If more than one (1) UST owner submits a claim for reimbursement of costs, the administrator shall determine the appropriate reimbursement based on the:

- (1) order in which the claim was received by the administrator; and**
- (2) reasonableness and cost effectiveness of the claims.**

(e) The department may:

- (1) determine the identity of the UST owner based on the notification form submitted under 329 IAC 9-2-2; and**
- (2) require an affirmation that an applicant is an owner of the UST.**

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

328 IAC 3-3-2 ELTF eligibility

Authority: IC 13-23-11-7

Affected: IC 13-23-9-1.7

Sec. 2 (a) The owner of the UST to be decommissioned or replaced shall submit an application for ELTF eligibility and coverage as described in subsection (b). The application is subject to the following:

- (1) The applicant must own the UST at the time of application submittal.**
- (2) The applicant must provide a site map indicating the location of the existing UST to be decommissioned and the location of the replacement tank, if applicable.**
- (3) Decommissioning or replacement must be necessary, in the judgment of the administrator, to protect human health and the environment considering the:**
 - (A) age;**
 - (B) obsolescence; and**
 - (C) level of deterioration of the UST.**

(b) Owners shall submit an ELTF eligibility application for UST decommissioning or replacement on a form approved by the Indiana archives and records administration for use by the department. The form must include the following information:

- (1) Name and contact information.**
- (2) Site information, including the following:**
 - (A) Name of facility.**
 - (B) Facility location.**
 - (C) Number of USTs onsite.**
- (3) Information on the proposed USTs for decommissioning including the following:**
 - (A) Install date.**
 - (B) Capacity.**
 - (C) Substance stored in the UST.**
 - (D) UST material.**
 - (E) Whether the age of the UST exceeds thirty (30) years.**
- (4) Information on proposed tank reinstallation.**
- (5) Certification of the UST owner or attorney-in-fact.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-2)

328 IAC 3-3-3 Electronic submittal of claim

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 3. The commissioner may request electronic submission of information required by this article. The format and submittal mechanism will be prescribed by the commissioner. Information submitted on electronic media must also be submitted as a paper copy or copies, unless the commissioner determines that only an electronic copy is needed.

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

328 IAC 3-3-4 Preapproval of work

Authority: IC 13-23-11-7

Affected: IC 13-23-7; IC 13-23-9-1.7

Sec. 4. (a) If costs for a specified task are projected to exceed the maximum task-based reimbursement rates listed in this article, the UST owner may submit to the administrator a request for a preapproval of projected work to be performed for UST decommissioning or replacement.

(b) The submission and any additional information necessary to evaluate the proposed work must be on a form described in section 7 of this rule.

(c) The administrator shall base preapproval of a request on the following:

- (1)** An approved eligibility application.
- (2)** Cost guidance under this article.
- (3)** The reasonableness of costs.

(d) The administrator may ask for additional information to substantiate the projected work and projected costs.

(e) The administrator shall issue a preapproval letter stating how much of the work is preapproved as reasonable and cost effective. This preapproval is not a determination on eligibility under section 5 of this rule.

(f) A request to amend a preapproval must be submitted on a form described in section 7 of this rule before performing the work.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-4)

328 IAC 3-3-5 Requirements for reimbursement

Authority: IC 13-23-11-7

Affected: IC 13-23-9-1.7

Sec. 5. A UST owner shall comply with the following requirements for a claim for reimbursable costs to be considered for reimbursement from the ELTF by the administrator:

(1) Demonstrate that the decommissioning or replacement has been deemed eligible by the administrator.

(2) Submit all:

(A) claims for payment of reimbursable costs incurred before the effective date of this rule within three hundred sixty-five (365) days after the effective date of this rule;

(B) remaining claims for payment of reimbursable costs within three hundred sixty-five (365) days after the date those costs were incurred; and

(B) resubmittals associated with any disallowed cost within three hundred sixty-five (365) days after the denial of the claim.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-5)

328 IAC 3-3-6 Eligible costs for UST decommissioning or replacement claim payments

Authority: IC 13-23-11-7

Affected: IC 13-23-8-4; IC 13-23-9-1.5

Sec. 6. (a) The administrator may pay ELTF claims for costs described under IC 13-23-9-1.5.

(b) The owner of a UST may seek payment from the ELTF for the following costs related to UST decommissioning or replacement:

(1) Removal and disposal of USTs and ancillary equipment.

(2) Proper removal and disposal of contaminated water, sludge, and soil only as necessary to decommission or replace the UST.

(3) Site assessment requirements specified in 329 IAC 9-6-2.5(b).

(4) Backfill and returning facility to grade.

(5) Resurfacing.

(6) Installation of replacement tanks, including the following:

(A) Ancillary equipment below the shear valve.

(B) Required leak detection equipment.

(7) Documentation submittal to the Indiana department of environmental management described in 329 IAC 9-2-2(a)(1), 329 IAC 9-2-2(a)(3), and 329 IAC 9-2-2(a)(4).

(8) Lodging and per diem costs under the most current Indiana department of administration (IDOA) travel reimbursement rates covering state travel policies and procedures. IDOA's travel reimbursement rates are available at <https://www.in.gov/idoa/procurement/travel-services/travel-reimbursement-rates/>. Mileage must be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303*, in effect January 1 each year.

(9) Costs for materials and supplies, such as the following:

(A) Disposable protective equipment.

(B) Piping.

(C) Piping adhesive or cement.

(D) Preservatives.

(10) Governmental administrative fees for local, state, or federal permits necessary for one (1) or both of the following:

(A) UST removal or decommissioning.

(B) Replacement tank installation.

(11) Any other reimbursable costs the administrator finds to be necessary.

(12) Only one (1) markup may be taken on any item. A markup of not more than ten percent (10%) of the unit rate or lowest bid may 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) Governmental administrative fees for local, state, or federal permits.

- (D) Equipment and supplies not purchased or rented specifically for use at a facility.
- (13) Compensation paid to technicians for services performed in preparation and submittal of the ELTF claim.
- (14) Costs described in this article.
- (c) The following costs are not reimbursable from the ELTF:
 - (1) Field work performed before eligibility approval.
 - (2) Maintenance of existing UST equipment, including the following:
 - (A) Relining of existing USTs.
 - (B) Repairs.
 - (3) Removal or replacement of equipment above the shear valve, including the following:
 - (A) Dispensers.
 - (B) Nozzles.
 - (C) Island or canopy.
 - (4) Costs that exceed reimbursable costs even if incurred under an approved UST decommissioning or replacement.
 - (5) The cost of equipment purchases, such as the following:
 - (A) Drilling rigs.
 - (B) Earth moving equipment.
 - (C) Photoionization detectors.
 - (D) Explosimeters.
 - (E) Hand tools.
 - (6) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with approved UST decommissioning or replacement under subsection (b).
 - (7) Lost income or reduced property value.
 - (8) Interest or finance charges.
 - (9) Unless the costs meet the requirements of subsection (b)(7), contractor or subcontractor costs not directly related to approved UST decommissioning or replacement, such as the following:
 - (A) Preparing cost estimates.
 - (B) Reviewing environmental work or documents.
 - (C) Budgeting.
 - (D) Changing contractors.
- However, the owner of the UST may seek reimbursement for these costs if the costs meet the requirements in subsection (b)(13).
- (10) Fines or penalties imposed by local, state, or federal government agencies.
- (11) Punitive or exemplary damages.
- (12) Costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of contaminated soil unless the soil removal is necessary as part of an approved UST closure and the disposal of that volume has been preapproved.
- (13) Any other cost not directly related to approved UST decommissioning or

replacement or otherwise determined not to be reimbursable under this rule because of a financial or technical review.

(14) Investigation or corrective action costs related to a release from the UST system other than those specified in subsection (b).

(15) Costs to purchase equipment, which was previously purchased, and the cost was previously reimbursed from the ELTF.

(16) Credits, rebates, refunds, insurance payments, or other similar payments made to the owner or operator or received by the owner, operator, or applicant.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.
(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-6)

328 IAC 3-3-7 Cost guidelines

Authority: IC 13-23-11-7

Affected: IC 13-23-3-2; IC 13-23-8-4; IC 13-23-9-1.5

Sec. 7. (a) The maximum hours reimbursable for tasks related to tank closure and replacement are as follows:

(1) For tank closure, the following:

(A) Fourteen (14) hours for the planning and preparation of UST decommissioning and removal, comprising:

- (i) one (1) hour at the senior project manager rate;**
- (ii) six (6) hours at the project manager rate; and**
- (iii) seven (7) hours at the staff project manager rate.**

(B) Twenty-seven (27) hours for UST closure report preparation, comprising:

- (i) two (2) hours at the senior project manager rate;**
- (ii) twelve (12) hours at the project manager rate;**
- (iii) six (6) hours at the staff project person rate;**
- (iv) six (6) hours at the drafting person rate; and**
- (v) one (1) hour at the word processor and clerical rate.**

(2) Nineteen (19) hours for the planning and preparation of tank installation, comprising:

- (A) two (2) hours at the senior project manager rate;**
- (B) fifteen (15) hours at the project manager rate; and**
- (C) two (2) hours at the staff project person rate.**

(b) Additional costs not listed in subsection (a) are reimbursed based on the rates found at 328 IAC 1-3-5 and maximum hours permitted by 328 IAC 1-3-5.1.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-7)

328 IAC 3-3-8 ELTF scope of work form

Authority: IC 13-23-11-7

Affected: IC 13-23

Sec. 8. If an applicant seeks preapproval for work, the applicant shall submit a complete ELTF scope of work on a form approved by the Indiana archives and records administration for use by the department. The form must include the following information:

- (1) UST owner's name, title, and contact information.**
- (2) If applicable, consultant's or authorized agent's name and contact information.**
- (3) Facility name and identification number.**
- (4) Certification of the UST owner, operator, property owner, or attorney-in-fact, including the current copy of power of attorney, if applicable.**
- (5) The following information may be submitted, as applicable:**
 - (A) UST decommissioning information and costs.**
 - (B) Tank replacement information and costs.**
 - (C) Claim preparation costs.**
 - (D) Total cost.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-3-8)

Rule 4. Prioritization of Claims

328 IAC 3-4-1 General procedure for prioritization

Authority: IC 13-23-11-7

Affected: IC 6-6-1.1-103; IC 13-12-3-2; IC 13-23-9-4

Sec. 1. If the administrator invokes prioritization, as described in 328 IAC 1-4, claims for UST decommissioning or replacement under this article may not be reimbursed.
(Underground Storage Tank Financial Assurance Board; 328 IAC 3-4-1)

328 IAC 3-4-2 Reinstatement of reimbursement mechanism

Authority: IC 13-23-11-7

Affected: IC 6-6-1.1-103; IC 13-12-3-2; IC 13-23-9-4

Sec. 2. On discontinuation of prioritization procedures, as described in 328 IAC 1-4-5, claims for UST decommissioning or replacement under this article are paid, subject to 328 IAC 3-5-2, in chronological order according to the date and time the administrator received the claim, as indicated by the date and time stamped by the administrator on the submitted claim.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-4-2)

Rule 5. Claims

328 IAC 3-5-1 Applications for payment of reimbursable costs

Authority: IC 13-23-11-7

Affected: IC 13-23-9-6

Sec. 1. (a) Claim applications for reimbursement must be submitted on the form described in subsection (f) as follows:

(1) Applicants shall itemize all reimbursable costs as required by the application package.

(2) Documentation of reimbursable costs required by the administrator must be submitted as part of the application.

(3) The administrator may request additional information and records to substantiate claims submitted, including the following:

(A) A copy of original employee time sheets.

(B) Invoices relating to the purchase or other acquisition of equipment and supplies.

(C) Copies of requests for bids for work.

(b) The application must contain the following statement, which must be signed and attested by the applicant: "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 UST decommissioning or replacement related to this site during the period of time indicated on this application. I swear or affirm that all charges presented as part of this application were necessary to the performance of UST decommissioning or replacement. I also swear that I have not altered the calculations in this electronic form. I understand that pursuant to IC 13-23-9-6, I may be subject to criminal prosecution for submitting false or inaccurate information on or in connection with this application."

(c) One (1) copy of the documents required by the administrator must be submitted by the UST owner to support the application. Original documents must be kept by the UST owner for at least four (4) years after the date the application for payment was submitted or four (4) years after completion of UST decommissioning or replacement, whichever is later.

(d) Except for final claims, claims that had costs disallowed that are resubmitted 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.

(e) A single claim application may not be submitted to the ELTF 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 project and the claim is identified as such.

(2) A claim for costs incurred over one hundred eighty (180) days from the date of the previous claim.

(3) A claim for eligible costs that are less than five thousand dollars (\$5,000) and submittal is required to comply with the three hundred sixty-five (365) day deadlines established in 328 IAC 3-3-5.

(f) For reimbursement of costs, a complete ELTF application for UST

decommissioning or replacement must be submitted on a form approved by the Indiana archives and records administration for use by the department. The form must include the following information:

(1) Applicant information, including the applicant's name, contact information, and tax identification number or last four digits of their social security number.

(2) Site information, including the following:

(A) Facility name and location.

(B) Number of USTs onsite.

(3) Claim preparer's name and contact information.

(4) Reimbursement requests.

(5) Information on the decommissioned UST, including the following:

(A) UST number.

(B) Number of compartments.

(C) UST capacity.

(D) Date closed.

(E) Closure type.

(6) Information on the installed tank, if applicable, including the following:

(A) Tank number.

(B) Number of compartments.

(C) Tank capacity.

(D) Construction material.

(E) Date installed.

(F) Date brought into use.

(7) Certification of the UST owner or attorney-in-fact.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-5-1)

328 IAC 3-5-2 Fund payment procedures

Authority: IC 13-23-11-7

Affected: IC 13-23-8; IC 13-23-9-1.7; IC 13-23-9-4

Sec. 2. (a) Contingent on the availability of monies as determined by IC 13-23-9-1.7, the administrator shall authorize payment after determining that the requirements of IC 13-23-8, IC 13-23-9, and this article have been met. When a person applying to the ELTF submits documentation verifying that the person has incurred reimbursable costs, payment must be made directly to that person using a payment method accepted by the department.

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

(c) Only the owner of the UST may seek preapproval of costs to have reimbursable costs paid from the ELTF.

(Underground Storage Tank Financial Assurance Board; 328 IAC 3-5-2)