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Nonrule Policy Document

Title: Excess Liability Trust Fund/Risk Integrated System of Closure

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Other Policies Repealed or Amended: None

Brief Description of Subject Matter: This document will address whether the Excess Liability Trust Fund (ELTF) will reimburse eligible parties for the costs incurred in implementing a corrective action plan using the Risk Integrated System of Closure (RISC).

Citations Affected: IC 13-23-8, IC 13-23-9, 328 IAC 1-3-5

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Excess Liability Trust Fund/Risk Integrated System of Closure

The IDEM will be issuing a policy regarding the cleanup of sites using a risk based system [Risk Integrated System of Closure (RISC)]. This policy will replace the current policy for the remediation of leaking underground storage tanks, contained in the 1994 Underground Storage Tank Manual. Upon implementation of the RISC policy, there will be a transition period during which responsible parties will have to choose which policy they want to proceed under. This decision will be required on all sites undergoing corrective action. After the implementation of the RISC policy, responsible parties reporting releases must develop corrective action in accordance with the RISC policy.

There have been questions regarding whether the Excess Liability Trust Fund (ELTF) will reimburse responsible parties for corrective action costs under RISC and if so, under what conditions. IDEM does not intend to promulgate rules for this transition period because IDEM believes that the current rules are flexible enough to provide for reimbursement under RISC, as long as the responsible

party has an approved Corrective Action Plan (CAP). Also, as the RISC policy is expected to be implemented in the second half of 2000, rules could not be promulgated quickly enough. Therefore, IDEM is issuing this nonrule policy document to explain how it intends to interpret the laws and rules concerning ELTF reimbursement.

IC 13-23-8-4(a)(5) requires that the responsible party have an approved CAP to be eligible for reimbursement from ELF. The CAP must be developed in accordance with the Underground Storage Tank Guidance Manual, *including the department's risk-based corrective action plan standards when the standards become effective*. Thus, IDEM has the authority to require and approve CAPs that are developed in accordance with IDEM's policies.

To ensure the solvency of the ELTF, IDEM will require owners/operators to submit a cost comparison to show the cost benefit of changing a site currently undergoing remediation under the 1994 Underground Storage Tank Guidance to a RISC based clean-up approach. IDEM will review the comparison and make a determination as to which method of remediation would be most cost effective.

Schedule for the ELTF reimbursement of LUST costs for sites during the transition to the RISC Policy.

Eligible Costs

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| <i>Costs incurred before the implementation and transition period of the RISC policy, including:</i> | |
| D | Costs incurred in the implementation of an approved CAP that is consistent with the 1994 Underground Storage Tank Manual. |
| D | Costs associated with the collection of data that will be used in a decision as to which policy the responsible party wishes to use. |

Costs incurred throughout the transition period for the RISC policy, including:

- D If the responsible party has an approved Corrective Action Plan (CAP), costs incurred for corrective action, regardless of whether the CAP is developed under the current guidance or under the RISC Guidance would be eligible.
- D Costs associated with transitioning a site from the 1994 policy to the RISC policy.
- D Costs associated with the collection of data necessary to make an informed decision as to which policy to proceed under.
- D Costs incurred in acquiring environmental notices (these costs will be considered third party claims and will be processed in accordance with IC 13-23-9-3).

Costs incurred once the RISC policy transition period has ended, including:

- D Costs incurred for corrective action at leaking underground sites which have approved CAPs.
- D Costs incurred in acquiring environmental notices (these costs will be considered third party claims and will be processed in accordance with IC 13-23-9-3).

Ineligible Costs

Costs not reimbursable under any circumstance:

- D Costs that are not eligible under 328 IAC 1-3-5.
- D Costs that do not fall within the reasonable cost range established under 328 IAC 1-3-5.
- D Costs associated with the development of a CAP under the RISC policy before the policy has been implemented, other than those costs associated with the collection of data which will be used in a decision as to which policy the responsible party wishes to use.
- D Costs associated with transitioning a site to RISC, if, through a cost comparison, IDEM determines that the cost to complete the remediation using RISC would be greater than that of completing the remediation using the 1994 Underground Storage Tank Guidance.