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**TITLE 328 UNDERGROUND STORAGE TANK
FINANCIAL ASSURANCE BOARD**

LSA Document #00-135(F)

DIGEST

Amends 328 IAC 1, which governs the administration of the Underground Storage Tank Excess Liability Trust Fund (ELTF) and the payment of claims thereunder, to reflect the expiration of the 1998 deadline for upgrade of underground petroleum storage tanks (USTs) and legislative changes made by HEA 2041. Amends the cost schedule for reimbursement and adds updates of statutory references. Repeals 328 IAC 1-1-5, 328 IAC 1-1-11, and 328 IAC 2. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2000, Indiana Register (23 IR 2614).

Second Notice of Comment Period: February 1, 2001, Indiana Register (24 IR 1520).

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8 and Notice of First Hearing: February 1, 2001, Indiana Register (24 IR 1520).

Date of First Hearing: March 20, 2001.

Proposed Rule and Notice of Second Hearing: May 1, 2001, Indiana Register (24 IR 2498).

Date of Second Hearing: July 10, 2001.

Finally Adopted: July 10, 2001.

328 IAC 1-1-1	328 IAC 1-3-1
328 IAC 1-1-2	328 IAC 1-3-2
328 IAC 1-1-3	328 IAC 1-3-3
328 IAC 1-1-3.1	328 IAC 1-3-4
328 IAC 1-1-4	328 IAC 1-3-5
328 IAC 1-1-5	328 IAC 1-3-6
328 IAC 1-1-5.1	328 IAC 1-4-1
328 IAC 1-1-6	328 IAC 1-5-1
328 IAC 1-1-7	328 IAC 1-5-2
328 IAC 1-1-8	328 IAC 1-5-3
328 IAC 1-1-8.5	328 IAC 1-6-1
328 IAC 1-1-9	328 IAC 1-6-2
328 IAC 1-1-10	328 IAC 1-7-1
328 IAC 1-1-11	328 IAC 1-7-2
328 IAC 1-2-1	328 IAC 1-7-3
328 IAC 1-2-2	328 IAC 2
328 IAC 1-2-3	

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

**ARTICLE 1. PAYMENT OF CORRECTIVE ACTION AND THIRD PARTY LIABILITY CLAIMS FROM
THE EXCESS LIABILITY TRUST FUND**

328 IAC 1-1-1 Application of definitions

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

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

Sec. 1. The definitions in ~~this rule IC 13-11-2~~ apply ~~throughout to~~ this article. ~~All other words and phrases used in this article have the same meaning as those defined in IC 13-7-20 and 42 U.S.C. 6991 through 42 U.S.C. 6991i (and all regulations related thereto).~~ **In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-1; 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*)

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

328 IAC 1-1-2 “Administrator” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 2. “Administrator” refers to the administrator of the ~~excess liability~~ fund. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2; 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*)

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

328 IAC 1-1-3 “Corrective action” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 3. “Corrective action” means action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including emergency measures taken as part of an initial response ~~Corrective action does not include repair or replacement of an underground storage tank or its associated equipment, as specified in IC 13-7-20-33(a)(1).~~ **to the release under rules of the solid waste management board at 329 IAC 9-5-2.** (*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*)

SECTION 4. 328 IAC 1-1-3.1 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-3.1 “Corrective action plan” or “CAP” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-3

Sec. 3.1. “Corrective action plan” or “CAP” means the corrective action plan described by rules of the solid waste management board at 329 IAC 9-5-7(a) and 329 IAC 9-5-7(b). (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

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

328 IAC 1-1-4 “Deductible amount” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-3

Sec. 4. “Deductible amount” means the amount set forth in IC 13-23-8-3 applicable to each incident number assigned by the department. ~~to be paid by the owner or operator before being entitled to payment from the fund. A person applying to the fund under 328 IAC 1-3-1 must provide evidence of payment of the deductible amount under IC 13-23-8-4(a)(3).~~ (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

SECTION 6. 328 IAC 1-1-5.1 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-5.1 “Emergency measures” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 5.1. “Emergency measures” means any action that is taken at or near a petroleum release to abate an immediate threat of harm to human health, property, or the environment. The actions taken must be approved by the department prior to payment from the fund. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

SECTION 7. 328 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-6 “Fund” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

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

Sec. 6. “Fund” means the **underground petroleum storage tank** excess liability trust fund established at IC 13-23-7-1. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

SECTION 8. 328 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-7 “Occurrence” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 7. “Occurrence” means an incident ~~including continuous or repeated conditions~~, that results in a release of petroleum, **including a continuous or repeated release of petroleum**, from an underground storage tank system. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

SECTION 9. 328 IAC 1-1-8 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-8 “Reasonable costs” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 8. “Reasonable costs” means a monetary amount or range, as determined by the department, which is commensurate with a ~~response~~ **corrective** action when the **corrective** action was taken. Reasonable costs shall be determined by the department by a review of the following:

- (1) The activities outlined in the **approved or deemed approved** corrective action plan and those activities in fact performed.
- (2) The approved site characterization and those activities in fact performed.**
- (3) The emergency measures and those activities in fact performed.**
- ~~(2)~~ **(4)** The scope, complexity, and timing of the ~~response~~ **corrective action** activities.
- ~~(3)~~ **(5)** The fair market value of the costs for services or goods within the particular market or industry where the work is performed as provided, in part, in 328 IAC 1-3-5(c).

(*Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Nov 1, 1995, 8:30 a.m.: 19 IR 342; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788*)

SECTION 10. 328 IAC 1-1-8.5 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-8.5 “Site characterization” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 8.5. “Site characterization” means the initial site characterization described in rules of the solid waste management board at 329 IAC 9-5-5.1 and investigations described in 329 IAC 9-5-6 and may include, as

necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives. (Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.5; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)

SECTION 11. 328 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-9 “Substantial compliance” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23-8-4

Sec. 9. “Substantial compliance” means that, at the time a release was discovered, ~~the tank was registered under IC 13-7-20 and the owner or operator had taken affirmative steps to meet the requirements of the following underground petroleum storage tank laws:~~

~~(1) IC 13-7-20;~~

~~(2) Rules adopted under IC 13-7-20;~~

~~(3) 42 U.S.C. 6991 through 42 U.S.C. 6991i;~~

~~(4) Regulations adopted under 42 U.S.C. 6991 through 42 U.S.C. 6991i.~~

Proof of substantial compliance includes, but is not limited to, evidence of contractual agreements or other verifiable actions undertaken sufficiently in advance of a compliance date to provide a reasonable probability of meeting the terms of the statute or regulation. **comply with the requirements of IC 13-23-8-4.** (Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 12. 328 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-10 “Third party liability” defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 10. “Third party liability” is the damage a tank owner or operator is legally obligated to pay for injury, **expense, and damage** suffered by a third party as the result of a release. Third party liability includes bodily injury and property damage. **Third party liability does not include punitive or exemplary damages.** (Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-10; 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)

SECTION 13. 328 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-1 Applicability

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 1. This article implements provisions of ~~IC 13-7-20~~ **IC 13-23** for the administration of the ~~underground petroleum storage tank excess liability~~ fund. This article establishes procedures by which ~~eligible owners or operators of underground petroleum storage tanks~~ **persons listed in 328 IAC 1-3-1** may apply to the ~~excess liability~~ fund for payment of corrective action costs and third party liability claims arising from petroleum releases. **Payment of corrective action costs and third party liability claims shall be made in accordance with the following:**

(1) 328 IAC 1-3-4(b) applies to any one (1) site, upon which:

(A) an occurrence has not been reported to the department; or

(B) the corrective action has not been completed as of the effective date of this rule.

(2) The cost range or amount of the expenditure to be reimbursed by the fund, as set forth in 328 IAC 1-3-5, shall be determined as of the date the expense was initially incurred by the applicant to the fund.

(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)

SECTION 14. 328 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-2 Fund management

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 2. The ~~underground storage tank financial assurance board~~ **administrator of the fund** shall prepare an annual report of fund administration to be delivered to the ~~environmental policy commission~~ **financial assurance board** by September 1 of each year. The report shall include the following:

- (1) A financial statement detailing information for the management and oversight of the fund, including facts concerning the amount of money currently in the fund, the amount of money obligated for corrective actions and third party liability claims, and estimates of future revenue for and demands on the fund.
 - (2) An overview of the fund claims process.
 - (3) A report of the number of claims made against the fund that were approved and denied during the reporting year.
- (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)*

SECTION 15. 328 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-3 Obligation of monies

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 3. (a) ~~Monies shall be obligated from the fund based on the procedures listed under 328 IAC 1-4; however, not all claims on the priority list shall be paid each claims processing period. Claims shall be paid in the order of priority ranking as the department processes them. The department shall not forward claims for payment to the auditor of state more than sixty (60) days after the closing date for receiving claims as specified in 328 IAC 1-4.~~ **received by the department unless the procedure set forth in 328 IAC 1-4-1 is applicable.**

(b) At the beginning of each **state** fiscal year, the administrator shall obligate sufficient monies for administering the fund. This amount shall be approved by the financial assurance board. ~~and based upon a budget prepared in accordance with guidelines provided by the state budget agency.~~ *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)*

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

328 IAC 1-3-1 Fund access

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

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

Sec. 1. ~~(a) Only eligible tank owners or operators~~ **The following persons** may apply to the fund for payment of expenditures arising from corrective action and for indemnification of third party liability:

- (1) Eligible tank owners and operators, including transferees as described in IC 13-23-8-4.**
- (2) Persons assigned the right of reimbursement by any person described in subdivision (1).**
- (3) Subsequent owners of the property upon which tanks were located, if the tanks were closed by a previous property owner, tank owner, or operator who is eligible.**

(b) Corrective action costs and third party liability claims arising from releases reported or discovered before April 1, 1988, are not eligible for payment from the fund:

(e) Corrective action costs and third party liability claims arising out of intentional or reckless acts of the owner or operator, or their agents and employees, are not eligible for payment from the fund. *(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)*

SECTION 17. 328 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-2 Fund coverage

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

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

Sec. 2. (a) Monies may be disbursed from the fund to ~~the eligible owner or operator~~ **persons listed in section 1 of this rule**, for the following activities related to payment of corrective action costs in compliance with IC 13-23-8-4(a)(4) through IC 13-23-8-4(c) and IC 13-23-9-2(a) through IC 13-23-9-2(c). Site characterization costs may be disbursed from the fund to persons listed in section 1 of this rule prior to an approved or deemed approved CAP, if the work for which payment is sought is completed in accordance with rules of the solid waste management board at 329 IAC 9 or the risk integrated system of closure (RISC) standards.

(1) Investigation and environmental assessment of sites contaminated by a release of petroleum.

(2) The rehabilitation of sites contaminated by a release of petroleum including, but not limited to, the clean-up of affected soils and waters using methods approved by the department.

(3) The temporary replacement and permanent restoration of potable water supplies.

(b) Monies may be disbursed to ~~owners or operators~~ **persons listed in section 1 of this rule** for payment of claims of liability to third parties upon proper application to the administrator and approval of the claim by the attorney general. **in compliance with IC 13-23-9-3.**

(c) ~~Monies shall be placed in a reserve fund for the upgrade loan guaranty program established at IC 13-7-20-33.3. (Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790)~~

SECTION 18. 328 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-3 Eligibility requirements

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 6-8.1-10-1; IC 13-23-7; IC 13-23-8-4; IC 13-23-12

Sec. 3. (a) ~~All owners or operators of underground storage tanks~~ **Persons listed in 328 IAC 1-3-1** [section 1 of this rule] must do the following to be eligible for reimbursement from the fund:

(1) Meet the requirements set forth in ~~IC 13-23-8-4~~ **IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4).**

(2) In accordance with **rules of the solid waste management board at 329 IAC 9-4 and 327 IAC 2-6-2.1 rules of the water pollution control board at 327 IAC 2-6.1**, communicate a spill report to the department of environmental management.

(3) Current **tank** owners or operators who have failed to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible for reimbursement from the fund in accordance with subsection (b) upon payment of all past due fees, ~~and~~ **interest, and penalties.**

(4) A person who acquires ownership in accordance with subsection (e) shall be eligible for reimbursement from the fund upon timely payment of all past due tank fees, interest, and penalties in accordance with subsection (h).

(b) ~~An A tank~~ **A tank** owner or operator who fails to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible for reimbursement from the fund according to the following formula:

(1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date that the fees for each tank first became due under IC 13-23-12 and continuing until the date on which the release occurred.

(2) Determine the number of payments actually made under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date each tank became regulated under IC 13-23 and continuing until the date on which the release occurred. Divide the number of payments actually made by the number of payments due as determined in subdivision (1).

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

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

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

(c) Payments that were made or could have been paid four (4) times per year under IC 13-23-12-3 count as one (1) payment for purposes of this section. Each payment made or due on each tank at a facility shall count as an additional payment for purposes of this section in figuring the total payments made or due.

(d) ~~An owner or operator~~ **Persons listed in 328 IAC 1-3-1** [section 1 of this rule] who ~~has have~~ had a claim denied for failure to register an underground petroleum storage tank from which a release has occurred or for failure to pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due may resubmit the claim, regardless of whether the denial was appealed, under subsection (a). The resubmission must be in the form of a letter providing the facility identification number, the incident number, and, if an appeal was filed, a copy of a document ~~indicating that the appeal was dismissed~~ **demonstrating the resolution of the appeal**. The department has the option to settle any pending appeals ~~based on the current regulations. The settlement may be considered under 328 IAC 1-4-1 during the next available and resubmitted claims period.~~

(e) A person who acquires ownership or operation of an underground petroleum storage tank ~~after the expiration of P.L.69-1996, SECTION 7 as a result of:~~ **under IC 13-23-8-4.5(2).**

~~(1) a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership and control;~~

~~(2) a foreclosure or a deed transferred in lieu of a foreclosure;~~

~~(3) the exercising of the person's lien rights; or~~

~~(4) inheritance;~~

may become eligible for reimbursement from the fund by complying with subsection (f).

(f) A person described under subsection (e) may become eligible for reimbursement from the fund for any releases reported after the date that ~~HEM~~ **the department** receives the "Intent to Acquire UST and Reinstate Eligibility" form by doing the following:

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

~~(A) The date of the transfer of the property. HEM's~~

(B) The department's receipt of the monies provided in subsection (g). or

(C) For up to ninety (90) days after the projected date of closure listed in the Form.

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

(2) Paying all applicable tank fees, including past due fees, interest, and penalties for each tank not more than thirty (30) days after the transaction whereby the person acquires ownership or operation of each tank.

(3) The seller of the ~~UST~~ **underground petroleum storage tank** site is liable for any and all unpaid tank fees, interest, and penalties that are assessed by ~~HEM~~ **the department** in accordance with subsection (g). ~~Within thirty (30) days after the purchaser's acquisition of the UST identified in the Form;~~ The purchaser is to collect all past due tank fees, interest, and penalties from the noncompliant seller and remit to ~~HEM~~ **the department** the full amount of the assessment for the subject ~~UST~~ **underground petroleum storage tank** provided by ~~HEM~~ **the department** in accordance with subsection (g) **prior to an occurrence**. The timely remittance of these monies is a condition of fund eligibility for the purchaser.

(g) ~~An owner or operator~~ **Persons listed in section 1 of this rule and** described in subsection (e) who ~~fails fail~~ to pay tank fees when due ~~is are~~ subject to **pay payment of** interest and penalties on those fees in order to become eligible for the fund under subsection (f). Interest and penalties due will include the following:

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

(2) All past due underground storage tank fees under IC 13-23-12.

(3) An environmental penalty as specified in subsection (h)(2). This penalty will be distributed into the ~~Excess Liability Trust~~ fund and into the Petroleum Trust Fund in accordance with IC 13-23-12-7(b).

(4) Interest will be charged for the missed fee(s) at the percent per year based on subsection (h) and ~~IC 6-8.1-5-2; IC 6-8.1-10-1~~ until all fees due have been paid in full for each tank. This interest will be deposited into the ~~Excess Liability Trust~~ fund.

Payment of all fees, interest, and penalties due within thirty (30) days of the date of transfer of the subject property is

a requirement for ~~Excess Liability~~ fund eligibility for the purchaser.

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

(1) Interest as follows:

Number of Delinquent Days × Daily Interest Rate = Interest Due

Year	Annual Percentage	Daily Interest Rate
1990	10%	:000273
1991	10%	:000273
1992	8%	:000219
1993	8%	:000219
1994	7%	:000191
1995	6%	:000164
1996	5%	:000136
1997	7%	:000191

~~Other years~~² Interest will be calculated according to ~~IC 6-8.1-5-2~~: **IC 6-8.1-10-1.**

(2) Penalty as follows:

(A) For sites that were never registered, or sites for which no tank fees were paid when due, the penalty will be calculated at ~~fifty two thousand~~ dollars (~~\$50~~) (**\$2,000**) under **IC 13-23-12-7(a)** per petroleum underground storage tank. ~~per day~~:

(B) For all other sites, the penalty will be calculated at ~~ten one thousand~~ dollars (~~\$10~~) (**\$1,000**) per petroleum underground storage tank ~~per day~~: **for each year that passes after the fee becomes due and before the fee is paid.**

(C) The penalty will be assessed from the day that the tank fee was due, until the day that the fee was paid, for each occurrence of late fee payment. Separate incidents of late or incomplete tank fee payments will be cumulative.

*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. Copies of the Indiana Department of Environmental Management Underground Storage Tank Manual (1994) may be inspected and purchased from the Department of Environmental Management, Office of Environmental Response, Western Select Properties, 2525 North Shadeland Avenue, Indianapolis, Indiana. (*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*)

SECTION 19. 328 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-4 Amount of coverage

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 4. (a) **After payment of the applicable deductible amount**, the fund may pay for costs incurred by ~~an owner or operator persons listed in section 1 of this rule~~, for corrective action and third party liability as specified in ~~IC 13-7-20-33(a)~~: **IC 13-23-8-1.**

(b) Regardless of the number of eligible ~~owners or operators persons listed in section 1 of this rule~~ at one (1) site, no more than ~~one two million dollars (\$1,000,000) less the applicable deductible amount (\$2,000,000)~~ may be **applied to reimbursed** for the costs, including third party liability claims, associated with a single occurrence. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792*)

SECTION 20. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-5 Reimbursable expenditures

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-3-2

Sec. 5. (a) ~~A tank owner or operator~~ **Persons listed in section 1 of this rule** may seek payment from the fund for the following costs related to necessary costs actually incurred in the performance of corrective action:

- (1) Investigation, which includes research, field time, report writing, and clerical support.
- (2) ~~Travel~~, Lodging and per diem ~~These~~ costs will be paid in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures. **Mileage shall be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on September 6, 2000. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.**
- (3) ~~An owner or operator~~ **Persons listed in section 1 of this rule** may employ a certified contractor under IC 13-23-3-2 or may use the owner's or operator's personnel to perform all or part of a corrective action. ~~If applicable, personnel working on-site must be trained in accordance with the requirements in 29 CFR 1910.120*.~~
- (4) Soil and water sampling for petroleum and petroleum constituents shall be performed in accordance with ~~department guidelines.~~ **with [sic.] rules of the solid waste management board at 329 IAC 9 or the risk integrated system of closure (RISC) standards.**
- (5) Expenditures for machinery and equipment must be prorated based on the normal expected life of the item and the length of time the item was used for a single corrective action. In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges which can be made to the fund are disposable bailers and sample bottles.
- (6) ~~An owner or operator~~ **Persons listed in section 1 of this rule** may be reimbursed for expenditures for materials and supplies, such as disposable protective equipment, building materials (piping, cement), and preservatives.
- (7) Attorney fees, not to exceed ~~ten~~ **twenty-five** percent ~~(10%)~~ **(25%)** of the total claim or ~~twenty~~ **thirty** thousand dollars ~~(\$20,000)~~, **(\$30,000)**, whichever is less, shall only be payable if incurred by the owner or operator in defense of ~~litigation in a~~ third party liability claim.
- (8) Governmental administrative fees for local, state, or federal permits necessary for corrective action.
- (9) Provision of alternate water supply. This cost must have been previously approved by the department.
- (10) Any other **reasonable** costs the department finds to be ~~reasonable and~~ necessary for corrective action or payment of a third party liability claim.
- (11) Costs associated with transitioning a site to RISC will be paid if these costs would be less than the costs to complete the remediation under rules of the solid waste management board at 329 IAC 9.**
- (12) Markup of no more than fifteen percent (15%) will be reimbursed on all eligible costs except for the following:**
 - (A) Travel costs, including mileage, per diem, and lodging.**
 - (B) Personnel costs.**
 - (C) Utilities for temporary facilities.**
 - (D) Governmental administrative fees for local, state, or federal permits.**
 - (E) Equipment and supplies not purchased or rented specifically for use at a facility or that are not part of the approved remedial technology.**

(b) The following expenditures are ineligible for reimbursement from the fund:

- (1) Costs incurred before April 1, 1988.
- (2) Costs of repair, upgrading, or replacement of an underground petroleum storage tank or its associated equipment.
- (3) Costs of environmental investigation and remediation not directly related to a release from a qualifying underground storage tank. Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.
- (4) The cost of equipment purchases other than those expenditures routinely required to implement a corrective action plan. Examples of equipment purchases ~~which that~~ cannot be charged to a specific site include drilling rigs, earth moving equipment, photoionization detectors, explosimeters, and hand tools.
- (5) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.
- (6) Lost income or reduced property values, unless part of a third party liability claim.
- (7) Interest or finance charges.
- (8) Contractor costs not directly related to corrective action activities, such as preparing cost estimates.

- (9) Fines or penalties imposed by local, state, or federal governmental agencies.
- (10) Punitive or exemplary damages.
- (11) Any costs for remediation of contamination not shown to be above the concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance Manual (1994), ~~East Site Cleanup Objectives*~~ **rules of the solid waste management board at 329 IAC 9, and the RISC standards.**
- (12) Any costs related to the excavation and disposal of more than one thousand ~~(1,000) cubic yards~~ **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 ~~Corrective Action Plan~~ **CAP** approved or deemed approved by the commissioner.
- (13) Any other cost not directly related to corrective action or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(c) Appropriate expenditures which may be considered for reimbursement are set forth in the following reimbursable expenditure chart. **Sampling and analysis must be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (May 1999). Publication SW 846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.**

Activity	Cost Range or Maximum Amount
SITE INVESTIGATION	
Mobilization and demobilization within a 50 mile radius. This includes the cost of moving general contractor owned equipment, set-up, and removing equipment.	Maximum \$200 \$300
Soil borings	
Number of feet in incremental amounts	
Less than 16 feet	\$20 per foot
16 through less than 26 feet	\$25 per foot
26 feet or more	\$30 per foot
Decontamination and equipment cleaning	\$10 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	\$90 per hole
Monitoring wells	
Installation, which includes labor for completing soil boring as a monitoring well; surveying; and well development. Add to the cost of soil borings and materials.	\$175 per well
Materials	
Well casing and screen (including riser) filter pack, annular and surface seal:	
2 inch well	\$10 per foot
4 inch well	\$12 per foot
6 inch well	\$15 per foot
Flush-grade well covers	\$75 per cover
Sampling which includes on-site labor for site preparation; decontamination; sampling; and the cost for dispensable equipment such as ropes and plastic sheeting. Lab analyses; reports; mileage; per diem; and travel time are separate.	
Bail and sample	\$50 per well
Check and record water	Add \$5 per well
Laboratory services, which includes including containers, packaging, and postage.	

Soil analysis **methods**

TPH-8015	\$125 \$75 per sample
TPH-G only	\$105 per sample
TPH-FO only	\$150 per sample
TPH-418.1	\$100 per sample
VOC-8260	\$250 \$200 per sample
SVOC-8270	\$485 \$325 per sample
PAH-8310	\$185 per sample
PCB-8080	\$125 \$110 per sample
Metals-(13)	\$150 \$170 per sample
BTEX/MTBE-8021	\$75 per sample
BTEX/MTBE-8260	\$200 per sample

Water analysis **methods**

TPH-8015	\$125 \$75 per sample
VOC-8260	\$250 \$200 per sample
BTEX/MTBE-8021	\$125 \$75 per sample
BTEX/MTBE-8260	\$200 per sample
SVOC-8270	\$485 \$325 per sample
PAH-8310	\$185 per sample
Metals-(13)	\$125 \$170 per sample

Monitored natural attenuation parameters

Nitrates	\$15 per sample
Nitrites	\$15 per sample
Sulfate	\$15 per sample
Dissolved methane	\$50 per sample

Use of RISC will require DQO-Level IV, including raw data, internal chain of custody, and QA/QC.

20% markup allowed per sample

Personnel costs which include costs for report preparation, analysis, and field work. Personnel costs must be documented. When submitting a claim for reimbursement, the claimant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection (d) for task descriptions for personnel classifications.

Principal	\$110 per hour
Senior project manager geologist, engineer, hydrogeologist	\$90 \$102 per hour
Project manager	\$73 \$83 per hour
Staff project person	\$60 \$70 per hour
Senior technician	\$50 \$55 per hour
Technician	\$34 \$38 per hour
Drafting person	\$31 \$35 per hour
Word processor processor/clerical	\$24 \$28 per hour
Other clerical support	\$20 per hour
Travel and per diem	
Travel	\$0.25 per mile
Per diem Luxury and resort accommodations not reimbursable.	\$24 per day
Toxicologist	\$125 per hour

INITIAL ABATEMENT AND FREE PRODUCT REMOVAL

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

Air monitoring	\$50 per day
SITE SET-UP PREPARATION	
Trailer rental	\$300 per month (\$10 per day)
Portable toilet	\$150 per month (\$5 per day)
Utility check, the date and time of the utility check must be documented.	\$200 flat amount \$400
Utilities for temporary facilities	
Temporary power	\$500 per month (\$16.67 per day)
Temporary water	\$150 per month (\$5 per day)
Temporary phone	\$200 per month (\$6.67 per day)

DEMOLITION

Concrete and asphalt removal

Saw concrete, prices are per linear foot

	<u>4 inch concrete</u>	<u>6 inch concrete</u>
Under 200 feet	\$1.20 \$1.60 per foot	\$1.78 \$2 per foot
200 through 400 feet	\$1.10 \$1.40 per foot	\$1.63 \$1.81 per foot
400 through 600 feet	\$1.06 \$1.33 per foot	\$1.53 \$1.70 per foot
600 through 1,000 feet	\$0.96 \$1.20 per foot	\$1.49 \$1.66 per foot
Over 1,000 feet	\$0.86 \$1.08 per foot	\$1.44 \$1.60 per foot

Saw asphalt, prices are per linear foot

	<u>3 inch asphalt</u>	<u>4 inch asphalt</u>	<u>6 inch asphalt</u>
Under 450 feet	\$0.34 \$1.75 per foot	\$0.44 \$1.90 per foot	\$0.55 \$3 per foot
450 through 600 feet	\$0.34 \$1.50 per foot	\$0.42 \$1.75 per foot	\$0.63 \$2.75 per foot
600 through 1,000 feet	\$0.29 \$1.35 per foot	\$0.39 \$1.50 per foot	\$0.60 \$2.25 per foot
Over 1,000 feet	\$0.27 \$1.25 per foot	\$0.34 \$1.35 per foot	\$0.58 \$2 per foot

Concrete removal, ~~which includes~~ **including** the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees

4 inch concrete	\$1.86 \$3 per square yard ton
6 inch concrete	\$3.58 \$5.77 per square yard ton
7 inch through 9 inch concrete	\$9.08 \$17.47 per square yard ton
10 inch and over	\$28.92 \$43.96 per square yard ton
With rebar	Add 15%
For less than 500 square feet	Add 35%
Concrete curb	\$5.04 per linear foot

Asphalt removal, ~~which includes~~ **including** the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees

Removal asphalt pad (3 inches)	\$0.16 \$0.25 per square foot
Removal asphalt curb	\$1.41 per linear foot
For less than 500 square feet	Add 35%
EXCAVATION	
Equipment costs and labor	\$2.22 per cubic yard ton
Mobilization	Maximum \$200 \$300
Supplies, for example, visqueen. receipts must be included.	
Stockpiling soil on-site	\$1.34 per cubic yard ton
Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless necessary as part of corrective action.	
Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement	
Under 1,000 gallons	\$1,000 per tank
1,000 through 4,999 gallons	\$1,500 per tank
5,000 through 10,000 gallons	\$2,000 per tank
Above 10,000 gallons	\$2,500 per tank
TRANSPORTATION	
Loading	\$1.34 per cubic yard ton
Hauling, mileage must be documented	\$7.32 \$0.37 per cubic yard ton for each 20 miles mile
DISPOSAL OF SOIL, GROUND WATER, AND TRASH	
Landfill fees	
Sampling required by landfill. Must include receipts and analytical results from local municipality.	
Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.	
Contaminated or disposable equipment and decon decontamination fluids.	
Landfill reimbursement will be based on the least expensive combination of documented transportation costs and documented disposal costs at a permitted landfill. certified to accept special waste.	
Trash	\$15 per cubic yard ton
APPROVED TECHNOLOGIES	
Reimbursement for corrective action costs will be reimbursed on the basis of the lowest of three (3) competitive bids on the work specified in the corrective action plan that is approved or deemed approved by the department. If the claimant can provide sufficient technical justification for the selection of another bid, the corrective action costs associated with the higher bid will be reimbursed.	
Lease or rental on equipment will not be reimbursed above the purchase price.	
SITE RESTORATION	
Backfill hauling	\$2.22 \$0.37 per cubic yard ton for each mile
Backfill material	\$10 \$13 per cubic yard ton/stone \$6.50 per ton/soil
Backfill placement, compaction, and density verification	\$4 per ton

Resurfacing	
4 inch concrete	\$2.41 \$3.25 per square foot
For each additional inch of concrete	Add \$0.23 \$0.40 per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	\$6.60 \$2.15 per square yard foot
Asphalt curb and gutter	\$3.95 \$4.75 per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers	\$485 \$725 each
4 feet by 16 feet with 2 foot bumpers	\$675 \$1,100 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, detergent)	\$10
Power auger	\$50
Hand auger sampling kit (hand auger/ brass sleeves)	\$35
Slide hammer core sampler	\$35
Photoionization detector	\$75
Flame ionization detector	\$95
LEL/O2 meter	\$50
pH and conductivity meter	\$20
Dissolved oxygen meter	\$30
2" submersible pump	\$115
4" submersible pump	\$95
Direct push technology	\$1,200 per day \$750 per ½ day
Steam cleaner/pressure washer	\$75
Water level indicator	\$12
Oil/water interface probe	\$55
Bailer rental	\$15
Anemometer	\$35
Carbon dioxide meter	\$25
Portable generator, generator ≤ 5kW	\$50
Portable generator, generator > 5kW	\$90
Portable generator, generator ≤ 10kW	\$100
Portable generator, generator > 10kW	\$125

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

(1) Principal will do the following:

- (A) Supervise professional staff.
- (B) Serve as technical expert on sites.
- (C) Provide final review of project documents.
- (D) Limit site visits on projects.
- (E) Handle legal matters.
- (F) Coordinate with attorneys.

(2) Senior project manager (includes professional geologist, engineer, and hydrogeologist) will provide the following:

- (A) Project management/oversight.
- (B) Technical document preparation/review.
- (C) Coordination with the department, client, and contractors.
- (D) Hydrogeologic and contaminant modeling.
- (E) Supervision of investigation/remediation activities.
- (F) Site access/permitting.

- (3) Project manager will provide the following:
- (A) Remediation work plan preparation (CAP, ISC, FSI, pilot study).
 - (B) Site work preparation and planning.
 - (C) Supervision of remediation activities.
 - (D) Oversight of waste characterization, transportation, and disposal.
 - (E) RISC statistics and equations.
 - (F) Coordination of subcontractor work (drillers, plumbers, and electricians).
 - (G) Coordination of heavy equipment mobilization.
- (4) Staff project person will do the following:
- (A) Implement remediation system installation, operation, and maintenance.
 - (B) Conduct site mapping.
 - (C) Assist with waste characterization, transportation, and disposal.
 - (D) Oversee installation of soil borings and monitoring wells.
 - (E) Provide on-site supervision and/or perform site characterization and remediation activities.
 - (F) Oversee well water records searches.
 - (G) Define how site utilities are marked.
 - (H) Survey wells.
 - (I) Oversee free product removal.
 - (J) Conduct quarterly sampling.
 - (K) Provide drilling/sampling support.
- (5) Senior technician will oversee the following:
- (A) Activities associated with operation and maintenance of remediation system.
 - (B) Equipment installation.
- (6) Field technician will oversee the following:
- (A) Well purging and development.
 - (B) Sample collection.
 - (C) Drum labeling/disposal.
 - (D) Decontamination/site clean-up tasks.
 - (E) Sample preparation and delivery.
- (7) Drafting person will do the following:
- (A) Provide CADD work.
 - (B) Generate drawings, maps and plans, boring logs, and monitoring well installation logs.
 - (C) Revise drawings and maps and plans.
- (8) Word processor/clerical will provide the following:
- (A) Word processing/data input.
 - (B) General clerical duties.
 - (C) Documentation reproduction, report binding, and filing.
 - (D) Proofreading/editing.
- (9) Toxicologist will provide guidance for nondefault risk-based closures utilizing nondefault toxicological parameters.

*Copies of the Indiana Department of Environment Management Underground Storage Tank Manual (1994) may be inspected and purchased from the Department of Environmental Management, Office of Environmental Response, Western Select Properties, 2525 North Shadeland Avenue, Indianapolis, Indiana. (*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*)

SECTION 21. 328 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-6 Limitation of liability

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
 Affected: IC 13-23

Sec. 6. The application for or receipt of payment for corrective action does not limit the legal responsibility of a tank

~~owner or operator~~ persons listed in section 1 of this rule for damages incurred by another person as a result of a release. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 798*)

SECTION 22. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1 General procedure

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 1. (a) The procedure set forth in this rule shall be followed in the event the unencumbered balance of funds in the fund falls below twenty-five million dollars (\$25,000,000) or by the discretion of the administrator.

(a) (b) Each qualifying claim shall be assigned a priority score based on a ranking system designed to address the following:

(1) Initial prioritization of all claims shall be based on the degree of environmental threat existing at the time the occurrence was discovered. The administrator shall assign a priority score upon evaluation of the following technical criteria (listed in descending order, from highest priority to lowest priority, clause (A) having the highest priority):

- (A) Impacts to public and private water supply.
- (B) Type of petroleum.
- (C) Health standards and explosivity hazard.
- (D) Corrective action taken.
- (E) Number of gallons released.
- (F) Degree of access to contaminated soil.
- (G) Designated use of surface water.
- (H) Site geology and hydrology.

(2) For purposes of scoring claims resulting from occurrences before the effective date of this article December 4, 1992, and after March 31, 1988, the administrator shall give additional consideration for when the corrective action was taken.

(3) Scoring of claims shall be determined by application of the following site assessment model:

Site Assessment Scoring Model for Prioritization of Claims

<u>Criteria</u>	<u>Value</u>
Site assessment information.	
Public drinking water supply or well within 1 mile:	
Is contamination present in drinking water?	YES 15
	NO 1
Number of wells within 1 mile	
	1 1
	2 through 3 2
	4 through 6 3
	6 or more 4
	Public water total _____ times 24 equals _____
Private drinking water supply or well within 1 mile:	
Is contamination present in drinking water?	YES 15
	NO 0
Number of wells within 1 mile	
	1 through 10 1
	11 through 25 2
	26 through 100 3
	greater than 100 4
	Private drinking water total _____ times 12 equals _____
Type of petroleum	
Mixed products or waste oil	15
Leaded gasoline	13

Gasoline	12
Jet fuels	10
Diesel fuels	9
Heating fuels	8
Kerosene fuels	7
Crude oil	5
Other	4
	Type of petroleum total _____ times 10 equals _____
Health standards and explosivity hazards	
Contamination phase	
Vapors present at the time release discovered	10
Free product present at the time the release was discovered	7
Surface contamination present at the time the release was discovered	5
Structures affected	
Residential housing	7
Municipal, commercial, or industrial	5
Utility lines or trenches	1
Area designation	
Large municipality or urban area	7
Small municipality or suburban area	5
Rural, agricultural, or livestock area	1
	Health standards total _____ times 6 equals _____
Corrective action taken	
Corrective action complete	5
Corrective action over 50% complete	5
Corrective action initiated	5
Corrective action approved by HDEM the department	5
Site characterization complete	5
Release response measures complete	5
	Corrective action total _____ times 4 equals _____
Number of gallons released	
Over 12,000	10
5,000 through 11,999	8
2,000 through 4,999	6
500 through 1,999	4
100 through 500	2
Under 100	1
	Number of gallons released total _____ times 5 equals _____
Degree of access to contaminated soil	
Contamination access	
Surface (0 to 2 feet below surface)	10
Subsurface (over 2 feet below surface)	5
	Access total _____ times 4 equals _____
Designated use of surface water	
Surface waters within ½ mile	
Lake or river	3
Swamp or wetlands	3
Pond or canal	2
Stream, creek, or active drainage ditch	1
Distance to surface waters	
Under 500 feet	3
500 feet to ¼ mile	2
Over ¼ mile	1
Designated use of surface water	

Drinking water	4
Recreational or full body human contact	3
Aquatic, wildlife, or partial human contact	3
Agriculture or livestock	2
Designated use of surface water total _____ times 4 equals _____	
Site geology and hydrogeology	
Soil type	
Sand	4
Clay	1
Depth to water table in feet	
0 through 10	4
11 through 20	3
21 through 40	2
Over 40	1
Unusual geologic factors, for example, fractured bedrock, sand or gravel veins, perched aquifers, or geological outcroppings	
YES	5
NO	0
Site geology and hydrogeology total _____ times 3 equals _____	

(b) (c) To assure the efficient administration of the fund, the administrator may reclassify a claim at any time that it is determined a claim has been incorrectly ranked.

(e) (d) Placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799*)

SECTION 23. 328 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-1 Applications for payment of corrective action

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 1. (a) Claim applications for reimbursement of corrective action costs shall be submitted on forms adopted by the administrator. Claimants shall itemize all charges as required by the application package. Documentation of expenses as required by the administrator must be submitted as part of the application.

(b) The application shall contain the following statement, which shall be signed and attested by the ~~owner or operator~~ **person applying to the fund**:

“I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the actual costs incurred in the performance of corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of corrective action.”.

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

(d) **A single claim application may not be submitted to the fund for reimbursement in an amount less than the following:**

- (1) **Initial claim may be submitted for any amount, including \$0/eligibility preapproval claims.**
- (2) **Subsequent claims, five thousand dollars (\$5,000) unless the claim is:**

- (A) the final application for that incident;
- (B) for a third party liability claim; or
- (C) for costs incurred over a period of four (4) months or longer.

(3) Persons applying to the fund may resubmit claims in any amount if the costs were disallowed for lack of backup documentation.

Persons applying to the fund shall identify the final application as such. (*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*)

SECTION 24. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-2 Fund payment procedures for corrective action

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23-9-2

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

(b) Processing and payment of claims are contingent upon the availability of monies.

(c) When ~~an owner or operator~~ **a person applying to the fund** submits an application under section 1 of this rule, which includes expenses for which ~~the owner or operator~~ **that person** has not made payment, then payment shall be made by check jointly to the ~~eligible owner or operator~~ **person applying to the fund** and the contractor **involved**.

(d) When ~~an eligible owner or operator~~ **a person applying to the fund** submits documentation verifying that ~~the owner or operator~~ **that person** has paid for costs of corrective action, payment shall be made by check directly to the ~~eligible owner or operator~~ **that person**.

(e) ~~An eligible owner or operator~~ **A person who may apply to the fund under 328 IAC 1-3-1** may seek preapproval of ~~costs related a site's eligibility to have~~ **corrective action costs reimbursed** from the ~~department~~ **fund**. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801*)

SECTION 25. 328 IAC 1-5-3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-5-3 Deemed approved; reimbursement of costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23-8-4

Sec. 3. "Deemed approved", under IC 13-23-8-4, means that the department shall consider the CAP approved solely for purposes of reimbursement of reasonable costs from the fund. A CAP having been deemed approved shall in no way relieve the person applying to the fund of the obligation to comply with all applicable rules or department standards. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-3; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802*)

SECTION 26. 328 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23-8-3

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

the third party.

(b) The owner or operator must submit proof of payment of the deductible amount under ~~IC 13-7-20-33(c)~~. **IC 13-23-8-3.**

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802*)

SECTION 27. 328 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23-9-3

Sec. 2. (a) If the attorney general determines that the requirements under ~~IC 13-7-20-38~~ **IC 13-23-9-3** have been met, the attorney general shall approve a request for indemnification of a third party not later than sixty (60) days after receiving the request:

- (1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;
- (2) based upon priority ranking of the site under 328 IAC 1-4 **if applicable**; and
- (3) if the administrator determines that the owner or operator is in compliance with the requirements of ~~IC 13-7-20~~ **IC 13-23** and rules adopted thereunder.

(b) When an owner or operator submits an acceptable application for indemnification of a third party but the claim has not already been paid by the owner or operator, then payment shall be made jointly by check to the eligible owner or operator and the third party.

(c) When an eligible owner or operator submits an acceptable application for indemnification of a third party along with documentation verifying that the owner or operator has paid the third party liability claim, payment shall be made directly to the eligible owner or operator.

(d) Third party liability claims subject to review by the attorney general shall include the reasonable fees or compensation paid to obtain:

- (1) access to properties not controlled by the claimant;**
- (2) institutional controls, including, but not limited to, deed restrictions required by risk integrated system of closure (RISC); or**
- (3) subdivisions (1) and (2).**

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

SECTION 28. 328 IAC 1-7-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-1 Financial assurance certificate

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 1. (a) In accordance with 40 CFR 280.101, the department shall issue a certificate of financial assurance **upon request** to each eligible tank owner or operator, as defined in 328 IAC 1-3-3, within sixty (60) days after the effective date of this rule. Under ~~40 CFR 281.37~~, **IC 13-23 and the rules promulgated thereunder**, this state issued certificate shall fulfill the federal financial assurance requirements.

(b) The certificate of financial assurance shall contain the following information:

- (1) Facility name and address.
- (2) Facility identification number issued by the department.

(3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(c) The owner or operator shall maintain the certificate of financial assurance ~~at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available immediately upon request of the department.~~ **in compliance with rules of the solid waste management board at 329 IAC 9-8-21.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802*)

SECTION 29. 328 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-2 Termination of financial assurance by the department

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 2. If, after consultation with the financial assurance board, the department determines that insufficient monies exist to provide owners or operators evidence of financial assurance, the department shall notify all fund participants by certified mail. ~~Excess liability~~ **The** fund coverage will continue for sixty (60) days after notice of termination of coverage. Owners or operators shall have sixty (60) days after receipt of termination of financial assurance to acquire financial assurance by other means. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803*)

SECTION 30. 328 IAC 1-7-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-3 Revocation of certificate by the department

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7

Affected: IC 13-23

Sec. 3. If the department determines that the owner or operator has not maintained eligibility for participation in the ~~excess liability~~ fund, the certificate of financial assurance issued by the department shall be revoked. The owner or operator shall have fifteen (15) days after revocation of a certificate to reinstate eligibility. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803*)

SECTION 31. THE FOLLOWING ARE REPEALED: 328 IAC 1-1-5; 328 IAC 1-1-11; 328 IAC 2.

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