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

LSA Document #02-204(F)

DIGEST

Amends 328 IAC 1 concerning the excess liability trust fund (ELTF) to provide for additional cost accountability by claimants, to maintain the ELTF, to amend the method for prioritization of claims in the event of a fund balance near or at \$25 million, to clarify the definition of "third party liability", to clarify the fund access provisions and to include access to the fund by multiple owners and operators, and to revise and update the schedule of specific costs allowed to be reimbursed. Any references to the underground storage tank rule at 329 IAC 9 are to that rule as effective on September 29, 2004. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: August 1, 2002, Indiana Register (25 IR 3906).

Continuation of First Notice of Comment Period: February 1, 2003, Indiana Register (26 IR 1744).

Second Notice of Comment Period: December 1, 2003 Indiana Register (27 IR 952).

Notice of First Hearing: December 1, 2003 Indiana Register (27 IR 952).

Date of First Hearing: March 11, 2004, continued to April 8, 2004.

Proposed Rule: June 1, 2004, Indiana Register (27 IR 2769).

Notice of Second Hearing: July 1, 2004, Indiana Register.

Date of Second Hearing: July 8, 2004.

Finally Adopted: July 8, 2004.

328 IAC 1-1-2	328 IAC 1-3-3
328 IAC 1-1-3	328 IAC 1-3-4
328 IAC 1-1-4	328 IAC 1-3-5
328 IAC 1-1-5.1	328 IAC 1-3-6
328 IAC 1-1-7.5	328 IAC 1-4-1
328 IAC 1-1-8	328 IAC 1-4-1.5
328 IAC 1-1-8.3	328 IAC 1-4-3
328 IAC 1-1-8.5	328 IAC 1-4-4
328 IAC 1-1-9	328 IAC 1-4-5
328 IAC 1-1-10	328 IAC 1-5-1
328 IAC 1-2-1	328 IAC 1-5-2
328 IAC 1-2-3	328 IAC 1-5-3
328 IAC 1-3-1	328 IAC 1-6-1
328 IAC 1-3-1.3	328 IAC 1-6-2
328 IAC 1-3-1.6	328 IAC 1-7-2
328 IAC 1-3-2	328 IAC 1-7-3

SECTION 1. 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~~ **commissioner** of the ~~fund~~ **department**. (*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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 123)

SECTION 2. 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~~ **any or all work performed or to be performed, including all work performed or to be performed under a CAP as defined under section 3.1 of this rule and rules of the solid waste management board at 329 IAC 9-1-14.7, to:**

- (1) minimize;
- (2) contain;
- (3) eliminate;
- (4) remediate;
- (5) mitigate; or
- (6) clean up a release **caused by an occurrence;**

including emergency measures taken as part of an initial response 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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 123*)

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

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

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

Sec. 4. “Deductible amount” means the amount ~~set forth~~ **specified** in IC 13-23-8-3 applicable to each incident number assigned by the department. A person applying to the fund under 328 IAC 1-3-1 must provide evidence of payment of 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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124*)

SECTION 4. 328 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

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

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

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

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.~~ **work described under IC 13-23-8-4(b)(1). 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 an inhabitable building greater than short term risk-based concentrations 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) Petroleum or petroleum constituents are detected at or above the maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives 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) Any other condition requiring direct abatement, as specified by the commissioner, based on the potential threat to human health 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)

SECTION 5. 328 IAC 1-1-7.5 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-7.5 “Off-site” 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. 7.5. “Off-site” means property other than the following:

(1) The parcel of real estate that contains the underground storage tank that is the cause 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)

SECTION 6. 328 IAC 1-1-8.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-8.3 “Reasonable” 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. 8.3. “Reasonable” means that the site characterization and corrective action are appropriate and performed only as necessary to meet the cleanup objectives for the site. The term also means that corrective action and site characterization are consistent with the requirements of 329 IAC 9, other applicable state and federal laws and regulations, and 328 IAC 1-3-5(b) through 328 IAC 1-3-5(e). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.3; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124)*

SECTION 7. 328 IAC 1-1-8.5 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 13-23-8-1; 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 work performed under the initial site characterization described in rules of the solid waste management board at 329 IAC 9-5-5.1 and or work performed under further site 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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125)*

SECTION 8. 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; IC 13-23-12

Sec. 9. (a) “Substantial compliance” means that, at the time a release was first discovered or confirmed:

(1) the owner or operator had taken affirmative steps to comply with has met the requirements of IC 13-23-8-4. IC 13-23-8-4(a), with the exception of minor violations of:

(A) statutory deadlines;

(B) regulatory deadlines; or

(C) regulatory requirements;

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

(2) registration fees have been paid as required under IC 13-23-12 and 328 IAC 1-3-3.

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

(1) Has not been reported within seven (7) days of the date the release was required to be reported under the spill reporting rule in effect at the time of the release.

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

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

SECTION 9. 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. (a) "Third party liability" ~~is means~~ means the damage a tank owner or operator is legally obligated to pay for injury, ~~expense,~~ **costs,** and damage suffered by a third party as the result of a release. ~~Third party liability~~ **The term** includes bodily injury and property damage. ~~Third party liability~~

(b) **The term** does not include **the following:**

(1) Punitive or exemplary damages.

(2) **Claims for injury, costs, or damages arising on behalf or in favor of a person listed in 328 IAC 1-3-1.**

(3) **Costs that were previously determined ineligible for reimbursement.**

(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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125)

SECTION 10. 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 13-23 for the administration of the fund. This article establishes procedures by which persons listed in 328 IAC 1-3-1 may apply to the fund for payment of ~~corrective action~~ **reimbursable** costs and third party liability claims. ~~arising from petroleum releases.~~ Payment of ~~corrective action~~ **reimbursable** 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: November 16, 2001.~~

(2) The **applicable** cost range or amount of the ~~expenditure to be reimbursed by the fund; reimbursable cost,~~ as set forth in 328 IAC 1-3-5, shall be determined as ~~of under the section in effect on the date the expense was initially of the invoice for the work and the costs so incurred unless the work is performed by the owner, operator, or applicant, to the fund: in which case, it is 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)

SECTION 11. 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) Claims shall be paid in the order received by the ~~department~~ **administrator** unless the procedure set forth in ~~328 IAC 1-4~~ **328 IAC 1-4** 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. (*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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125*)

SECTION 12. 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) The following persons may apply to the fund for payment of **expenditures arising from corrective action and reimbursable costs or for indemnification of third party liability claims:**

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

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

- (1) **The payment for the applicable deductible amount for the release has been made.**
- (2) **A claim for the same costs has not been submitted to or paid by the fund. A claim for the same costs will not be paid more than once by the fund.**

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

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

SECTION 13. 328 IAC 1-3-1.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.3 Cost effectiveness 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 13-23-7; IC 13-23-8-4

Sec. 1.3. (a) **After the person described in section 1 of this rule has:**

- (1) **completed the initial site characterization under 329 IAC 9-5-5.1 and the further site investigation under 329 IAC 9-5-6 for the release at the site; and**
- (2) **submitted the information in clauses (A) through (C) to the administrator in a form or format approved by the administrator:**
 - (A) **for each of the remediation alternatives as required by 329 IAC 9-5-6(d), details of the work to be performed and the projected costs;**
 - (B) **the approved CAP; and**
 - (C) **if appropriate, a demonstration that the selected remediation alternative will substantially reduce or eliminate third party liability;**

the administrator will determine if the work to be performed or the work already performed, or a portion thereof, under the approved CAP is cost effective. The administrator may review information concerning cost effectiveness while reviewing a CAP submitted for approval; however, the administrator will not make a determination on cost effectiveness before a CAP

is approved.

(b) The administrator's determination for cost effectiveness will be 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 cleanup 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) A demonstration that the selected remediation alternative will substantially reduce or eliminate third party liability.

(c) Upon the administrator's request, the applicant shall provide additional information to substantiate the projected work and projected costs.

(d) At any time, if the administrator finds that the approved CAP will not achieve or is not achieving the cleanup objectives under 329 IAC 9, then the administrator may determine that the work to be performed under the approved CAP is no longer cost effective. The administrator will 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*)

SECTION 14. 328 IAC 1-3-1.6 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.6 Preapproval of work

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. 1.6. (a) Persons described in section 1 of this rule may submit to the administrator a request for a preapproval of projected work to be performed under the approved CAP. The request and any additional information requested by the administrator must be in a form or format approved by the administrator. The administrator's preapproval will be based on a determination of the following:

- (1) Cost effectiveness under section 1.3 of this rule.
- (2) That the costs are reasonable.

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

(c) The administrator will send a preapproval letter to the owner or operator 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. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.6; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127*)

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

328 IAC 1-3-2 Fund disbursement

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 persons listed in section 1 of this rule for payment of corrective action reimbursable 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, as specified under section 5 of this rule.

(b) Monies may be disbursed to persons listed in section 1 of this rule for payment of claims of liability to third parties party

liability claims in compliance with IC 13-23-9-3. (*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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127*)

SECTION 16. 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 6-8.1-1-1; IC 6-8.1-10-1; IC 13-23-7; IC 13-23-8-4; IC 13-23-12

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

(1) ~~Meet~~ **Demonstrate that** the requirements set forth in IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4) **have been met. The CAP as required by IC 13-23-8-4(a)(4) must be submitted with projected costs that describe in detail the costs for work to be completed under the CAP. The projected costs must be in a form or format approved by the administrator.**

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

(2) **Demonstrate that the tank owner or operator was in substantial compliance with the spill reporting rule or law applicable at the time the release is discovered.**

(3) ~~Current tank owners or operators who have failed to Pay all tank past and currently due 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 and all past due fees; interest and penalties that are due under subsections (e) and (f) of this section.~~

(4) ~~For a person who acquires ownership in accordance with subsection (e) shall be eligible for reimbursement from the fund upon (d), make timely payment of all past due tank fees, interest, and penalties in accordance with subsection (h): (f) to make a claim for reimbursable costs for any site characterization or corrective action related to a release that is first suspected, discovered, or confirmed after the payment of all past and currently due fees, interest, and penalties.~~

(5) **Register the tank or tanks within thirty (30) days of the time the tank or tanks were first put into use, even if a release is discovered or confirmed before the tank or tanks were registered. Tanks are considered "in use" when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.**

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

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

(1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, 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 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) ~~Persons listed in section 1 of this rule who 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 demonstrating the resolution of the appeal. The department has the option to settle any pending appeals and resubmitted claims:

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

(1) Submitting a fund Submit an "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 underground petroleum storage tank. This form will be kept confidential up to the earlier of the following:

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

(B) The department's administrator's receipt of the monies provided in as owed under subsection (g): (e).

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

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

(2) Paying Pay 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 underground petroleum storage tank site is liable for any and all unpaid tank fees, interest, and penalties that are assessed by the department administrator in accordance with subsection (g): (e). The purchaser is to collect all past due tank fees, interest, and penalties from the noncompliant seller and remit to the department administrator the full amount of the assessment for the subject underground petroleum storage tank provided by the department administrator in accordance with subsection (g): (e) prior to an occurrence: a release. The timely remittance of these monies is a condition of fund eligibility for the purchaser.

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

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

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

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

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

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

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

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

$$\text{Number of delinquent days} \times \text{daily interest rate} = \text{interest due}$$

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

(2) Penalty as follows:

(A) For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under IC 13-23-12-7(a) per petroleum underground storage tank per year that passes after each year's fee is due. The table (as an example) or the following formula (to calculate any length of time) may be used to calculate the penalty per tank:

Where:

n = Total number of years late.

Y_{ij} = Each year with an unpaid fee or a fee that was paid at least one (1) year late.

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

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

$$(2000) \left(\sum_{j=Y_0}^m \left(\sum_{i=1}^n Y_{i,j} \right) \right) = \text{penalty}$$

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

(B) For all other sites with tanks that are registered but not all fees have been completely paid, the penalty will be calculated at one thousand dollars (\$1,000) per petroleum underground storage tank for each year that passes after the fee becomes due and before the fee is paid missed fee payment. If a quarterly fee payment is missed, the penalty is applied at one-fourth (¼) the amount listed in the table. The following table is an example of how penalties must be paid per tank:

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

(C) The penalty is incurred:

- (i) nine (9) months after the fee is due; or
- (ii) three (3) months after the final quarterly installment is due.

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

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

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

SECTION 17. 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 13-23-8-8

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

(b) Regardless of the number of eligible persons listed in section 1 of this rule at one (1) site, No more than two million dollars (\$2,000,000) may be reimbursed for the costs, including third party liability claims, associated with a single occurrence.

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

(d) For purposes of this section, “year” means a calendar year even if more than the maximum reimbursement is received in any three hundred sixty-five (365) day period. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; filed Aug 30, 2004, 9:40 a.m.: 28 IR 129)*

SECTION 18. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-5 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 13-12-3-4; IC 13-23-3-2; IC 13-23-8-4

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

- (1) consistent with an approved or deemed approved CAP or under one (1) or more of the provisions of IC 13-23-8-4(b); and
- (2) subject to each of the following conditions:
 - (A) Credits, rebates, refunds, or other similar payments made to the owner or operator or received by the owner, operator, or applicant must be subtracted from the costs submitted for reimbursement.
 - (B) The work performed was consistent with:
 - (i) site characterization;
 - (ii) an approved CAP; or
 - (iii) emergency measures, as defined in 328 IAC 1-1-5.1.
 - (C) The work performed under the CAP has been determined to be cost effective under section 1.3 of this rule.
 - (D) The work performed has been determined to be reasonable under 328 IAC 1-1-8.3.
 - (E) The work was performed as described in subsection (b) or (e), or both, and is not described in subsection (d).

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

- (1) Investigation, Site characterization costs, which includes include:
 - (A) research;
 - (B) field time;
 - (C) report writing; and
 - (D) clerical support;

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

(2) Lodging and per diem costs 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: December 15, 2003. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402: P.O. Box 371954, Pittsburgh, PA 15250-7954.

(3) 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:

(4) (3) Soil and water sampling for petroleum and petroleum constituents shall be performed in accordance with only as necessary to achieve closure under rules of the solid waste management board at 329 IAC 9. or the risk integrated system of closure (RISC) standards:

(5) Expenditures (4) Costs for machinery and equipment must be if 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 that can be made to the fund are disposable bailers and sample bottles.

(6) Persons listed in section 1 of this rule may be reimbursed for expenditures (5) Costs for materials and supplies, such as:

- (A) disposable protective equipment;
- (B) building materials, such as:
 - (i) piping; and
 - (ii) cement; and
- (C) preservatives.

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

(8) (6) Governmental administrative fees for local, state, or federal permits necessary for corrective action.

(9) (7) Provision of alternate water supply. This cost must have been previously approved by the department administrator.

(10) (8) Any other reasonable reimbursable costs the department administrator finds to be necessary. for corrective action or payment of a third party liability claim:

(11) (9) 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)~~ **(10) Only one (1) markup may be taken on any item.** Markup of no more than ~~fifteen~~ **ten** percent ~~(15%)~~ **(10%)** of the **unit rate or the lowest bid** will be reimbursed on all eligible costs 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 not purchased or rented specifically for use at a facility or 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.

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

- (A) Evacuation and relocation of a building resident or residents.**
- (B) Ventilation of a building or utility conduit.**
- (C) Installation and maintenance of an alternate water or treatment system for contaminated drinking water.**
- (D) Recovery of free product as necessary to eliminate a release to a utility conduit.**
- (E) Installation of a system to mitigate free product migration, actual or potential drinking water impacts, or vapor intrusion into a building or a utility conduit.**
- (F) Other emergency measures required by the department.**

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

~~(b)~~ **(d) The following expenditures costs are ineligible for reimbursement not reimbursable** from the fund:

~~(1)~~ **(1) Costs incurred from releases that occurred before April 1, 1988.**

~~(2)~~ **(2) Costs incurred more than twenty-four (24) hours prior to the date and time the release has been reported under the spill reporting rule in effect at the time of the release.**

~~(2)~~ **(3) Costs of repair, upgrading, or replacement of an underground petroleum storage tank or its associated equipment.**

~~(3)~~ **(4) 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.**

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

~~(4)~~ **(6) The cost of equipment purchases other than those expenditures costs routinely required to implement a corrective action plan. Examples of equipment these not reimbursable purchases that cannot be charged to a specific site include:**

- (A) drilling rigs;
- (B) earth moving equipment;
- (C) photoionization detectors;
- (D) explosimeters; and
- (E) hand tools.

~~(5)~~ **(7) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.**

~~(6)~~ **(8) Lost income or reduced property values unless part of a third party liability claim.**

~~(7)~~ **(9) Interest or finance charges.**

~~(8)~~ **(10) Contractor costs not directly related to corrective action activities, such as preparing cost estimates.**

~~(9)~~ **(11) Fines or penalties imposed by local, state, or federal governmental agencies.**

~~(10)~~ **(12) Punitive or exemplary damages.**

~~(11)~~ **(13) Any costs for remediation of contamination not shown to be above the at concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance Manual (1994), rules of the solid waste management board at 329 IAC 9; and exceeding the risk integrated system of closure as described in IC 13-23-8-4(a)(4)(A)(ii) (RISC) industrial cleanup standards with the following exceptions:**

- (A) Ground water contamination affecting a public or private drinking water well on-site or off-site.**
- (B) Off-site contamination at concentrations exceeding RISC residential cleanup standards, not including roadways, railroads, or other property not currently used as residential property.**

(12) (14) Any costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of soil unless:
 (A) alternative remediation techniques have been considered;
 (B) excavation and disposal was shown to be the most cost effective remediation option; and
 (C) the soil removal is part of a CAP approved or deemed approved by the ~~commissioner~~ **administrator**.

(13) (15) Any other cost not directly related to **site characterization**, corrective action, or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(16) **If a release has occurred before the tank or tanks were registered, and the tank or tanks were not registered within thirty (30) days from the time the tank or tanks were first put into use, a claim is not reimbursable from the fund by the administrator. Tanks are considered "in use" when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.**

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

(18) **Any costs incurred after receipt of notice by the administrator under section 1.3(d) of this rule that the approved CAP is not successfully remediating the site, except the following costs necessary, until such time as the modified CAP is approved, to:**

- (A) **Develop the modified CAP, including pilot studies or additional investigation.**
- (B) **Demobilize the corrective action system currently at the site.**
- (C) **Abandon monitoring, extraction, or other wells associated with the CAP.**
- (D) **Maintain compliance with applicable regulations and permits, including quarterly ground water monitoring.**
- (E) **Maintain, but not operate, the corrective action system.**

(e) Appropriate expenditures which (e) **Costs that may be considered for reimbursement paid from the fund** 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); H (September 1994); HA (August 1993); HB (January 1995); HI (December 1996); and HIA (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 CHARACTERIZATION	
Direct push technology, other costs pertaining to direct push technology are included in the per/foot allowance specified.	\$1,200 (between >100 and ≤ 200 feet)
	\$750 (up to 100 feet)
Rate allowed for drilling greater than 200 feet using direct push technology in a single day	\$6 per foot
Mobilization and demobilization. within a 50 mile radius : This includes the cost of moving general contractor owned equipment, setup, and removing equipment.	\$300
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	
Less than 16 For the first 15 feet	\$20 per foot
16 through less than 26 25 feet	\$25 per foot
26 feet or more	\$30 per foot
These amounts may only be charged 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.	
Blind drilling using a hollow stem auger when well borings have already been logged within 5 feet.	
For the first 50 feet	\$6.50 per foot
51 feet or more	\$8.50 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

Materials

Well casing and screen (including riser) filter pack, annular, and surface seal:

2 inch well	\$10 \$7 per foot
4 inch well	\$12 per foot
6 inch well	\$15 \$22 per foot
Flush-grade well covers	\$75 per cover

Laboratory services, including containers, packaging, and postage.

Soil analysis methods

TPH-8015 GRO	\$75 \$60 per sample
TPH-8015 DRO	\$60 per sample
TPH-8015 ERO	\$60 per sample
TPH-418.1	\$100 \$95 per sample
TRPH-HEM-1664/9071B	\$60 per sample
VOC-8260	\$200 \$150 per sample
SVOC-8270	\$325 \$250 per sample
PAH-8270SIM	\$110 per sample
PAH-8310	\$185 \$150 per sample
PCB-8080 PCB-8082	\$110 per sample
Metals- (13) 7 barium, cadmium, chromium, lead, mercury, nickel, zinc	\$170 \$100 per sample
BTEX/MTBE-8021	\$75 \$60 per sample
BTEX/MTBE-8260	\$200 \$100 per sample
Ignitability	\$30 per sample
Fraction of organic carbon	\$70 per sample

Water analysis methods

TPH-8015 GRO	\$75 \$60 per sample
TPH-8015 DRO	\$60 per sample
TPH-8015 ERO	\$60 per sample
TPH-8015 Methane	\$60 per sample
TRPH-HEM-1664	\$60 per sample
VOC-8260	\$200 \$100 per sample
BTEX/MTBE-8021	\$75 \$60 per sample
BTEX/MTBE-8260	\$200 \$100 per sample
SVOC-8270	\$325 \$250 per sample
PAH-8270 SIM	\$130 per sample
PAH-8310	\$185 \$140 per sample
Metals- (13) 7 barium, cadmium, chromium, lead, mercury, nickel, zinc	\$170 \$80 per sample
Metal-soluble iron	\$25 per sample
Monitored natural attenuation parameters	
Nitrates	\$15 \$25 per sample
Nitrites	\$15 per sample
Sulfate	\$15 \$25 per sample
Sulfide	\$25 per sample
Dissolved methane	\$50 per sample
COD	\$20 per sample
BOD₅	\$40 per sample
Total suspended solids	\$12 per sample

Air analysis methods

VOC-TO-15	\$400 per sample
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Other Methods

TCLP-lead

Use of RISC will require DQO-Level IV; If the commissioner requires all quality assurance/quality control (QA/QC), including raw data and internal chain of custody and QA/QC necessary to validate analytical results.

\$110 per sample

20% markup allowed per sample

When submitting a claim for reimbursement, the claimant applicant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection (d) (f) for task descriptions for personnel classifications.

Principal	\$110 per hour
Senior project manager	\$102 per hour
Project manager	\$83 per hour
Staff project person	\$70 per hour
Senior technician	\$55 per hour
Technician	\$38 per hour
Drafting person	\$35 per hour
Word processor/clerical	\$28 per hour
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.

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.	\$400 \$600
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

Mobilization

\$300 per trailer

Concrete and asphalt removal

Saw concrete, prices are per linear foot

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

Saw asphalt, prices are per linear foot

	<u>3 inch asphalt</u>	<u>4 inch asphalt</u>	<u>6 inch asphalt</u>
Under 450 feet	\$1.75 per foot	\$1.90 per foot	\$3 per foot
450 through 600 feet	\$1.50 per foot	\$1.75 per foot	\$2.75 per foot
600 through 1,000 feet	\$1.35 per foot	\$1.50 per foot	\$2.25 per foot
Over 1,000 feet	\$1.25 per foot	\$1.35 per foot	\$2 per foot

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

4 inch concrete	\$3 per ton
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6 inch concrete	\$5.77 per ton
7 inch through 9 inch concrete	\$17.47 per ton
10 inch and over	\$43.96 per ton
With rebar	Add 15%
For less than 500 square feet	Add 35%
Concrete curb	\$5.04 per linear foot
Asphalt removal, 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)	\$0.25 per square foot
Removal asphalt curb	\$1.41 per linear foot
For less than 500 square feet	Add 35%
Hauling	\$70 per hour per truck
EXCAVATION	
Equipment costs and labor	\$2.22 per ton
Mobilization	\$300 per trailer
Supplies, for example, visqueen : plastic sheeting	
Stockpiling soil on-site	\$1.34 per 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 ton
Mobilization	\$300 per trailer
Hauling, mileage must be documented	\$0.37 per ton for each mile \$70 per hour per truck
For excavation, stockpiling, and loading of less than 300 tons in a single day.	\$1,000 per day or the actual cost
DISPOSAL OF SOIL, GROUND WATER, AND TRASH	
Landfill fees	
Sampling required by landfill. Must include receipts and analytical results from local municipality.	
Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.	
Contaminated or disposable equipment and decontamination fluids.	
Landfill reimbursement will be based on not exceed the least expensive combination of documented transportation 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.	
Trash	\$15 per ton
APPROVED CORRECTIVE ACTION TECHNOLOGIES	

Reimbursement The maximum costs for the work done for corrective action, costs except excavation, will be reimbursed allowed on the basis of the lowest of three (3) comparable, competitive bids on for 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. 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. The administrator can approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical.

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

SITE RESTORATION

Backfill hauling	\$0.37 per ton for each mile \$70 per hour per truck
Backfill material	\$13 per ton of stone \$6.50 per ton of soil
Backfill placement, compaction, and density verification	\$4 per ton
Resurfacing	
4 inch concrete	\$3.25 per square foot
For each additional inch of concrete	Add \$0.40 per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	\$2.15 per square foot
Asphalt curb and gutter	\$4.75 per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers	\$725 each
4 feet by 16 feet with 2 foot bumpers	\$1,100 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, and 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
TEL/O2 LED/O2 meter	\$50
pH and conductivity meter	\$20
Dissolved oxygen meter	\$30
Oxidation/reduction meter (REDOX)	\$35
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	\$50
Ferrous iron field test	\$6 per sample
Hydrogen sulfite field test	\$6 per sample
Digital camera	\$10
Geographic positioning system (GPS) unit for site mapping to 1 foot accuracy	\$95
2" inch submersible pump	\$115
4" inch 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) (f) 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~~ **or** perform site characterization and remediation activities, **or both**.
- (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 cleanup 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.

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

SECTION 19. 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~~ **reimbursable costs** does not limit the legal responsibility of 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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 137)*

SECTION 20. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1 General procedure for prioritization

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

Affected: IC 13-23-9-4

Sec. 1. (a) ~~The procedure set forth in this rule following shall be followed apply~~ in the event the unencumbered balance, ~~of funds less the unpaid, approved claims for reimbursable costs and third party liability claims,~~ in the fund falls below:

- (1) ~~Twenty-five million dollars (\$25,000,000), or by the discretion of releases will be categorized according to this section.~~
- (2) ~~Five million dollars (\$5,000,000), the prioritized claims, based on the categorized releases, will be paid according to section 4 of this rule.~~

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

- (b) 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 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 1/2 mile:		
Is contamination present in drinking water?	YES	15
	NO	1
Number of wells within 1/2 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 1/2 mile:		
Is contamination present in drinking water?	YES	15
	NO	0
Number of wells within 1/2 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		-
	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 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 1/2 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 1/4 mile	2
Over 1/4 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 _____	

(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.

(b) All claims or parts of claims submitted to the administrator for an emergency measure, as defined under 328 IAC 1-1-5.1, will be paid first. If the claim or part of the claim is for work performed that has not been determined to be an

emergency measure as defined under 328 IAC 1-1-5.1, the claim or part of the claim for that work will be paid according to the category of the release as determined in subsection (c).

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

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

(b):

(A) Petroleum or petroleum constituents are detected in a structure or a utility conduit, such as a storm sewer, sanitary sewer, or utility conduit, that exceed ten percent (10%) lower explosive limit (LEL).

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

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

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

(1):

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

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

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

(2):

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

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

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

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

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

(3) of this rule:

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

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

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

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

(d) Releases shall be initially categorized according to those conditions that existed at the time the first claim was

submitted after prioritization was initiated.

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

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

(d) (g) **Categorization of a release or** placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799; filed Aug 30, 2004, 9:40 a.m.: 28 IR 137*)

SECTION 21. 328 IAC 1-4-1.5 IS ADDED TO READ AS FOLLOWS:

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

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

Affected: IC 13-23-9-4

Sec. 1.5. All releases with unpaid claims submitted to the department on or after the date this section becomes effective, will be categorized or recategorized under this rule, as amended in 2004. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1.5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 140*)

SECTION 22. 328 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-3 Recategorization of releases

Authority: IC 13-14-8

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

Sec. 3. (a) Except for environmental emergencies, initial claims shall be ranked according to those conditions which existed at the time the corrective action was commenced. Claims determined to be of identical priority shall be ranked according to the date that an acceptable claim was received by the fund:

(b) Subsequent claims may be reprioritized based on the environmental threat present during the time period for which additional reimbursement is being claimed:

(c) The administrator shall notify claimants within sixty (60) days after the receipt of their claims whether their claims shall be approved for payment. If a claim is determined to be unacceptable or ineligible after reviewing the submitted information in accordance with IC 13-23-9-2, the administrator shall notify the owner or operator within ten (10) days of the denial and inform the claimant of the reasons for which the claim was rejected:

(d) Claims determined to be unacceptable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date that the fund receives the revised claim:

(e) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.

(a) To assure the efficient administration of the fund, the administrator may recategorize a release at any time that it is determined a release has been incorrectly categorized:

(1) The administrator will notify the applicant by mail of the new category.

(2) The applicant may petition the administrator to be put in a lower number category, with category 1 being the lowest, based on new information.

(3) If the administrator approves placement in a lower number category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement in the new category.

(4) If the administrator approves placement in a higher number category with 5 being the highest category, the applicant has fifteen (15) days after the date of the notification to submit current costs under the new category.

(b) Releases may be recategorized based on:

(1) the current environmental conditions;

(2) information indicating the elimination or abatement of the condition or conditions that led to the placement of a release in a category;

(3) other information available to the administrator demonstrates that recategorization is appropriate; or

(4) the discovery of the event that led to the placement in a lower category with category 1 being the lowest.

(c) Except as provided in section 1.5 and section 3(a) of this rule, the priority of a claim is determined by the category of the release at the time the claim is approved by the administrator and by section 1(c)(6) of this rule. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141*)

SECTION 23. 328 IAC 1-4-4 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-4-4 Monthly reimbursement

Authority: IC 13-14-8

Affected: IC 13-23-7-2; IC 13-23-9-2; IC 13-23-9-4

Sec. 4. After priority payment under section 1(a)(2) [of this rule] is initiated, the total amount reimbursed from the fund in any calendar month must not exceed the fund revenue of the previous month, less the administrative expenses of the fund. However, the administrator must adjust the total amount reimbursed from the fund in any calendar month as necessary to maintain a fund balance of at least five million dollars (\$5,000,000). For purposes of this section, the term “fund revenue” means any or all sources of money as described in IC 13-23-7-2. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-4; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141*)

SECTION 24. 328 IAC 1-4-5 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-4-5 Discontinuation of prioritization

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

Affected: IC 13-23-9-4

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

(b) In the event that monies are deposited in or appropriated to the fund in an amount exceeding twenty-five million dollars (\$25,000,000) in any calendar month, the administrator shall first apply such monies to restore the balance of the fund to an unencumbered balance, less the unpaid, approved claims for reimbursable costs and third party liability, of twenty-five million dollars (\$25,000,000). In that event, the administrator shall discontinue the prioritization procedures. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141*)

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

Rule 5. Claims

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

Sec. 1. (a) Claim applications for reimbursement of ~~corrective action~~ costs shall be submitted on forms adopted by the

administrator. ~~Claimants~~ **Applicants** shall itemize all ~~charges~~ **reimbursable costs** as required by the application package. Documentation of ~~expenses~~ **reimbursable costs** as required by the administrator must be submitted as part of the application. **The administrator may request additional information and records to substantiate claims submitted including the following:**

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

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

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

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

- ~~(1) 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) (1) The final application for that incident **and the claim is identified as such.**~~
 - ~~(B) for a third party liability claim; or~~
 - ~~(C) (2) A claim for costs incurred over a period of four (4) six (6) months or longer: **from the date of the last claim.**~~
- ~~(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:

- (3) A claim made within fifteen (15) days of a release being categorized to a lower category, with one (1) being the highest category, under 328 IAC 1-4.**
- (4) Zero dollars (\$0)/eligibility preapproval claims.**

(e) **Claims that had costs disallowed may be resubmitted with subsequent claims; however, the portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142)*

SECTION 26. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

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

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

~~(d) (2) When a person applying to the fund submits documentation verifying that ~~that~~ the person has paid for incurred reimbursable costs, of corrective action, payment shall be made by check directly to that person.~~

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

~~(e)~~ **(c)** A person who may apply to the fund under 328 IAC 1-3-1 may seek preapproval of a site's eligibility to have ~~corrective action~~ **reimbursable costs reimbursed or third party liability claims paid** from the fund. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142*)

SECTION 27. 328 IAC 1-5-3 IS AMENDED 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~~ **administrator** shall consider the CAP approved solely for purposes of reimbursement of ~~reasonable~~ **reimbursable** 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~~ **be in substantial compliance** with all applicable rules or department standards. **A deemed approved CAP shall be superseded by the administrator's issuance of a determination on the CAP.** (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-3; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143*)

SECTION 28. 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~~ **administrator**. The ~~claimant~~ **applicant** must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must submit proof of payment of the deductible amount under IC 13-23-8-3.

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

(d) The minimum single claim amount contained in 328 IAC 1-5-1(d)(1) does not apply to third party liability claims. (*Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143*)

SECTION 29. 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 13-11-2-193.5; IC 13-23-9-3

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

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

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

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

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

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

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

- (1) Access to properties not controlled by the ~~claimant applicant~~, **if not submitted as a reimbursable cost under 328 IAC 1-3-5.**
- (2) Institutional **and engineered** controls **for off-site properties**, including, but not limited to, ~~deed restrictions required by risk integrated system of closure (RISC); or restrictive covenants as defined under IC 13-11-2-193.5.~~
- ~~(3) subdivisions (1) and (2).~~
- (3) Attorney's fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars (\$30,000), whichever is less, shall only be payable if incurred by the owner or operator in defense of a third party liability claim.**
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143)

SECTION 30. 328 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-2 Termination of financial assurance

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~~ **administrator may determine** that ~~insufficient monies exist to the fund does not~~ provide owners or operators evidence of financial assurance. The ~~department administrator~~ shall notify all fund participants by certified mail. The fund coverage will continue for sixty (60) days after notice of ~~termination of coverage.~~ **insufficient funds to provide for financial assurance.** Owners or operators shall have ~~sixty (60)~~ **thirty (30)** days after receipt of the notice of ~~termination of financial assurance~~ **insufficient funds** to acquire financial assurance ~~by other means:~~ **as required under 329 IAC 9-8. Owners and operators shall provide proof of financial responsibility to the department. Invocation of prioritization under 328 IAC 1-4 does not constitute termination of financial assurance under this section.** *(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; filed Aug 30, 2004, 9:40 a.m.: 28 IR 144)*

SECTION 31. THE FOLLOWING ARE REPEALED: 328 IAC 1-1-8; 328 IAC 1-7-3.

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