

State Water Resources Control Board

AUG 15 2011

To: Underground Storage Tank Cleanup Fund (Fund) Claimants and Interested Parties

DESIGNATION OF REASONABLE AND NECESSARY REIMBURSABLE COSTS AND UPCOMING ADDITIONAL CHANGES

The Fund is authorized to reimburse claimants for reasonable and necessary corrective action costs. In our continuing efforts to improve the operational efficiency of the Fund in these times of fiscal constraints and to reduce fraud, waste and abuse of Fund monies, the Fund has identified new measures that will be implemented in the near future. Additionally, the Fund is taking a harder look regarding what costs are appropriately designated as reasonable and necessary.

In summary, the anticipated measures that we are evaluating for implementation include: 1) a determination of the overall, lifetime estimated costs for each claim as soon in the investigation/cleanup process as possible to help the Fund more effectively allocate the available resources and control runaway costs on individual claims; 2) an upfront annual budget allocation for each claim, based on the amount of money available and the phase of work for the claim, rather than an open-ended request for a budget from the claimant; 3) a revision of the Cost Guidelines to assist with the determination of reasonable and necessary unit costs for various tasks, and 4) standard invoicing through an electronic web-portal system. We are also looking into best practices successfully used by other States' Funds to help us identify further measures that we can implement to improve our own program.

Additional detailed information on the new measures will be forthcoming as they are developed.

General Designations of Reasonable and Necessary Costs (Immediate Implementation)

The Fund constantly analyzes information provided in invoices by claimants seeking reimbursement. Continuous review by the Fund has led to the following general determinations of what constitutes a necessary and reasonable cost. In general, for costs incurred after **November 1, 2011**, the following limitations will guide the Fund's decisions as to whether costs are reasonable and necessary:

1. Only actual travel time for site visits with a maximum of eight hours travel time (round trip) per site visit, is usually considered reasonable.
2. Only actual per diem amounts for lodging and meals, with a maximum amount not to exceed the current California State government rates for:
 - a) meal costs;
 - b) hotel costs; and
 - c) mileage costs.

- d) These rates, which are subject to change, can be found on the Fund's website at: http://www.waterboards.ca.gov/water_issues/programs/ustcf/
3. Ancillary charges for items considered to be part of routine equipment to perform the job are not generally considered reasonable and necessary. These ancillary charges are typically for small equipment that is considered standard office or field equipment, and are considered to be included in the loaded billing rates of staff. These ancillary charges include, but are not limited to: telephones, cellular phones, field phones, telephone voice, text or data charges, internet service charges, fax machines, copiers, portable computers, tool kits, desk or laptop computers, general office supplies, still and video cameras, drum dollies, freight dollies, computer assisted drafting workstations or computers, office electrical equipment or expenses, fire extinguishers, binders, first aid kits, pagers, copying and faxing expenses, and word-processing equipment or expenses.
 4. Generally, mark-ups should not exceed 10 percent of the maximum invoice regardless of the total subcontractor or equipment amounts.
 5. Mark-ups on any the following are usually considered unreasonable:
 - a) Sales taxes or other local, state, or federal taxes
 - b) Local, state or federal permit fees required for the project
 - c) Utility bills, including electrical, natural gas, and propane
 - d) Local agency regulatory fees, such as Local Implementing Agency fees
 - e) Per diem costs.
 6. Travel and travel-related costs for any of the following are generally considered unreasonable and unnecessary:
 - a) Any travel outside the State of California
 - b) Mileage within California over 500 miles per round trip
 - c) Airfare and/or car rentals
 - d) Company car and/or truck rentals.

Generally, the above interpretations of reasonable and necessary costs will guide Fund determinations. The above interpretations will be incorporated into upcoming revisions of the Cost Guidelines.

Timeframes for Reimbursement Submittals

Additionally, because of the need to develop sound budgeting projections for the Fund, the Fund encourages costs to be submitted to the Fund within one year from the time incurred. Due to budgeting constraints, costs submitted after more than one year from the date they were incurred may experience a delay in payment.

Existing Ineligible Costs

Finally, claimants and interested parties are reminded that all of the following are ineligible corrective action and regulatory technical assistance costs, pursuant to California Code of Regulations, title 23, section 2812.2, subdivision (e):

1. attorney fees or other legal costs, except those to provide regulatory technical assistance;
2. interest or any finance charge;
3. any cost associated with removal, repair, retrofit, or installation of an underground storage tank, residential tank, or the equipment associated with an underground storage tank or residential tank;
4. any cost associated with supervision by a claimant of corrective action;
5. the cost of soil density tests that are not directly related to the corrective action which is the subject of the claim;
6. the cost of environmental audits or pre-purchase agreements unless performed as part of corrective action;
7. the cost of testing for non-hydrocarbon contamination that is not associated with corrective action which is the subject of the claim;
8. the cost of abandonment of wells not directly impacted by the unauthorized release and not installed or used for corrective action purposes;
9. the cost of blacktop or concrete replacement or repair not directly associated with corrective action;
10. the cost of demolition of buildings except when it can be demonstrated to the Division's satisfaction to be necessary to implement the most cost effective corrective action option;
11. the cost of repairs, remodels, or reconstruction of buildings or other improvements;
12. the cost of monitoring devices to detect hydrocarbon contamination in soil, the vadose zone, or water to the extent that they are not used for corrective action;
13. the cost of small tools except as required for corrective action;
14. the cost of purchase of equipment, unless the claimant can demonstrate that the purchase of equipment is more cost effective than leasing or renting;
15. any consequential costs incurred as a result of corrective action such as, but not limited to, loss of rents or business;
16. the added costs of implementing a corrective action alternative that is not the most cost-effective alternative to achieve cleanup levels identified as necessary by the regulatory agency;
17. the costs of corrective action incurred to clean up the property beyond cleanup levels identified as necessary by the regulatory agency;
18. corrective action costs incurred by the claimant before January 1, 1988;
19. regulatory technical assistance costs incurred before January 1, 1997;

20. regulatory technical assistance costs in excess of \$3,000 per occurrence submitted with a reimbursement request received by the Fund on or after January 1, 2000;
21. costs associated with resubmitting an application or reimbursement request to the extent the costs are incurred in response to a finding of noncompliance with the application or reimbursement requirements contained in this chapter; and
22. any other costs not directly related to corrective action, including but not limited to costs associated with filing of appeals and petitions.

If you have any questions or concerns, please contact the Fund at (800) 813-FUND (3863) or by e-mail at USTCleanupFund@waterboards.ca.gov. Additional Fund related information, can be found on the web site at: http://www.waterboards.ca.gov/water_issues/programs/ustcf/.

Sincerely,



John Russell, Fund Manager
Underground Storage Tank Cleanup Fund