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DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA

Glenn Pomeroy
Commissioner of Insurance

- BONDING FUND
- FIRE AND TORNADO FUND
- PETROLEUM TANK RELEASE COMPENSATION FUND
- BOILER INSPECTION PROGRAM

BULLETIN 94-1

TO: All Petroleum Tank Release Compensation Fund Registrants

FROM: O. J. "Bob" Olson, Administrator

DATE: March 1, 1994

SUBJECT: Procedures and Guidelines for Cost Containment, Maximum Allowable Reimbursement, and Employment of Excavation Contractors and Environmental Consultants

THIS BULLETIN SUPERSEDES BULLETINS 91-4 AND 92-4

The purpose of this bulletin is to provide Petroleum Tank Release Compensation Fund (Fund) registrants procedures and guidelines in the following areas:

1. Cost containment.
2. Maximum allowable reimbursement by unit cost.
3. Employment of excavation contractors and environmental consultants.

Chapter 299, Section 20, of the 1991 Session Laws allows only "reasonable" cleanup costs to be reimbursed by the Fund. Because this is a statewide government program, reasonable costs have been developed on excavation and consultant charges used throughout the state so all tank owners are treated equally. Claims history has been used to determine these "reasonable reimbursable unit costs."

This means the Fund will pay UP TO the "reasonable costs." It does not mean the Fund will always pay this amount. The amount "up to" the "reasonable costs" will be determined at the time the claim is adjusted by the Fund.

Reasonable Mileage Charges/Automobile and Pickup:

The maximum reimbursable cost for mileage for an automobile or pickup will be $.35 per mile.

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Reasonable Mileage Charges/Mobilization-Demobilization:

The maximum reimbursable cost for moving the drilling rig and one support vehicle to the site and back will be $3.00 per mile.

Reasonable Mileage Charges/Trucking of Contaminated Soil:

The maximum reimbursable cost for trucking of contaminated soil will be $3.50 per cubic yard.

Reasonable Per Diem Meal Charges:

The maximum reimbursable cost for meals will be $25.00 per day per person.

Reasonable Excavation Labor Charges:

The maximum reimbursable amount for labor during the excavation portion of the cleanup will be $35.00 per hour for the project supervisor. The maximum for a laborer is $18.00 per hour.

Reasonable Number of Laborers:

The maximum number of laborers working at the excavation site at any one time will be one laborer if there is a foreman/supervisor. If there is no foreman/supervisor, then up to two laborers will be allowed. If and when the tank owner is acting as the supervisor for the project, his time will not be reimbursed by the Fund. The Fund considers that to be part of the tank owner's own obligation. If, for some reason, an additional laborer is needed at the job site, the specific reasons why needs to be submitted and it will be reviewed for possible reimbursement. When we say laborers, we do not mean the equipment operators because they are usually included in the charge for each particular piece of equipment.

Reasonable Postage Charges:

The maximum reimbursable amount of postage will be the actual cost to mail or ship soil or water samples to the laboratory. This does not mean emergency turnaround costs. The majority of these samples do not need to have a one- or two-day turnaround so that additional cost would not be a reimbursable expense.

Reasonable Backhoe Charges:

The maximum reimbursable costs for backhoe charges will be $5.00 per cubic yard. This is based on the last three years of claim history.

Reasonable Loader Charges:

The maximum reimbursable costs for loader charges will be $2.50 per cubic yard. This is based on the last three years of claim history.

Reasonable Monitoring Well Sampling Charges:

The maximum reimbursable charges listed below also include on-site labor for site preparation, decontamination, well development and sampling along with the cost for disposable equipment such as bailers, ropes, and plastic sheeting.

Bail and Sample.....	$50.00/Well
Check/Record Water Levels.....	$50.00/Site plus $5.00 per well over 5 wells
Mileage.....	$.35/mile
Travel Time.....	$25.00-$30.00/Hour
Analytical.....	Actual Cost
Report Plus Map.....	1 to 2 Hours
Meals.....	$25.00/Day
Motel (if necessary).....	Actual Cost

These costs are considered "reasonable" and will allow all tank owners throughout the state to receive equal reimbursement from the Fund.

When you have a petroleum release, you must immediately contact the North Dakota State Department of Health and Consolidated Laboratories (Health Department) at 221-5166 if it is from an underground storage tank, or at 221-5210 if it is from an aboveground storage tank.

The next thing you should do is contact the Fund. The contact persons are Bob Olson, Administrator, or Martin Thompson, Claims Investigator, at 224-3246.

The majority of the petroleum releases in North Dakota have been discovered when a tank and its appurtenant equipment are being removed or upgraded.

Always Remember - Before you remove any underground storage tank, you must notify the state Health Department 30 days prior to the removal date. This enables the Health Department employees to make sure their schedule allows them to be at your site for your tank removal. They are possibly the only state UST Program that goes to all the sites

during a tank removal and determines if there is contamination. In most other states, you would have to hire an environmental consultant firm to oversee this project, which is very expensive. This is one of the many ways the Health Department is saving the tank owner and consumers of North Dakota thousands of dollars.

Excavation Contractor

Prior to hiring an excavation contractor to do your removal or upgrading work, there are some points to keep in mind:

1. Before any work is done, always check with the state Fund to make sure you are eligible to receive reimbursement. At this time, they will suggest the best way for you to proceed.

2. Always hire good people. Ask other owners or operators about contractors they may have hired.

3. Always obtain written bids from at least three different contractors. Make sure you request they bid on specific "unit costs" (backhoe, loader, trucking, etc.). Make sure they list:

   a. Unit costs by the cubic yard.

   b. The tasks they will perform.

   c. The cost of each piece of equipment (by the cubic yard).

   d. The number of employees they will have on the site (normally one foreman and one laborer is all that is necessary).

   e. The labor rate they charge.

   f. The trucking charges for hauling the contaminated soil (by the cubic yard).

   g. Any other information you feel is essential for this work being performed.

4. You need to make sure you take charge of the operation. You need to manage the contractor and do not let the contractor manage you. The Fund will assist you as much as possible.

   a. Be aware of the tasks the contractor is doing. Question them on the need to perform certain tasks you feel they might be overdoing.

b. Make sure all costs and services are accounted for and done properly.

c. Make sure you scrutinize the bills.

d. Make sure you try to locate an area where petroleum contaminated soil can be landfarmed. If there is contamination, the Fund will work closely with you during the cleanup procedure.

5. The Health Department needs to approve the disposal or treatment method of the contaminated soil. The Fund will assist you in every way possible regarding on-site treatment or landfarming of the contaminated soil. Landfarming the contaminated soil can be a very large cost savings to you and the Fund.

6. Make sure you understand your invoices and billings. You need to know what the specific expense charges are and how they are determined. This is essential in order to keep the costs of the cleanup under control. You need to make sure the bills you receive match the bid or contract they submitted. It is the tank owner's responsibility to verify the charges are legitimate and correct.

7. Make sure the contractor keeps a daily log of activities. This protects you from being overcharged. It will also provide information for the Fund should questions arise regarding "reasonable and necessary" costs.

Environmental Consultants

Prior to hiring an environmental consultant firm to do your site assessment, there are some points to keep in mind.

1. When you have a petroleum release which causes contamination, the Health Department may require you to have a site assessment performed. This needs to be done by a qualified environmental consultant firm approved by the Health Department. **The Fund only reimburses for consultant expenses when the Health Department requires it.**

2. The Fund recommends asking for three separate bids and using our worksheet for the bid specifications. This will help the tank owner understand the bid (shows specific unit costs) and keeps all consultant firms bidding the same procedures (apples for apples).

3. A minimum "site assessment" should include:

   a. A workplan explaining the procedures, type, and amount of work to be done. This needs to be approved by the Health Department prior to any work being started.

   b. Soil borings. Three to four soil borings at a site is generally sufficient. If the consultant feels more work is necessary, approval should be obtained from the Department while the contractor is on site with his drilling rig.

   c. If petroleum contamination is encountered to the ground water table at any of these borings, they shall be converted to ground water monitoring wells. They would use the same soil boring holes. Normally three properly placed monitoring wells are sufficient to determine the ground water flow direction. If the consultant feels more than three wells are needed to delineate the contamination extent, they will need to get prior approval from the Health Department for additional work.

   d. One soil sample from each boring and one water sample from each monitoring well is sufficient to determine the extent and degree of contamination.

   e. The maximum number of consultant firm employees needed on site during these borings is three (this includes the drillers).

   f. The consultant firm must complete a report and submit it to the tank owner. This report needs to be forwarded to the Health Department for their review. Once the report is submitted, your initial site assessment is finished. If more work needs to be done, the Health Department will notify you.

When all the work is completed, you need to submit the necessary receipts and the completed Excavation and Consultant worksheets to the Fund. The Fund reviews your expenses and will reimburse you for your eligible cleanup expenses. Eligible expenses are expenses which are "reasonable and necessary."

The Fund also needs a copy of your cancelled check showing proof of payment of your $5,000 deductible and your 10 percent copayment amount.

OJO/njb