

Fund Coverage Cost Guide

Maine Department of Environmental Protection

The Fund Coverage Cost Guide that follows is intended to give guidance regarding what will be considered as eligible for payment or reimbursement from the Ground Water Oil Clean-Up Fund on a site where an applicant has been found eligible for coverage by the Fund program, under 38 M.R.S.A. Section 568-A.

Only eligible cleanup costs will be paid. Maine statute provides that eligible cleanup costs are those direct expenses including expenses for site investigation that are necessary to clean up the discharge of oil to the satisfaction of the Commissioner, are cost effective, reliable and technologically feasible and effectively mitigate or minimize damages and provide adequate protection of public health, welfare and the environment. To ensure the Department's support for reimbursement of expenses, all remedial actions and their associated costs should be submitted in writing and pre-approved by Department personnel before the work takes place.

1) Administrative Costs

Administrative costs incurred in completing an application for fund coverage or reimbursement request and responding to Department requests and comments are not eligible cleanup costs.

2) Aesthetics

Restoration of those portions of the property affected by the investigation/remediation (excluding the areas of the tanks and piping) to their pre-discharge appearance is eligible for payment. Such restoration may include but not be limited to replacing fences, pavement, trees, lawns, etc. Improvements to real and personal property beyond the condition existing prior to implementation of the investigation/remediation are not eligible for payment. Site restoration activities must be completed using a method that is the most cost effective, feasible, reliable, and likely to succeed. Therefore, it may not be possible to replace items in kind (e.g. mature growth trees may need to be replaced with younger nursery stock). Note: This section pertains primarily to discharges from USTs and outdoor ASTs. See the section on Fixed and Personal Property (Section #17) for information on the eligibility of costs associated with the removal and replacement of carpet, paneling, and other indoor items.

3) Asbestos analysis, removal and disposal

These are not eligible costs.

4) Asphalt/concrete replacement

This is an eligible cleanup cost only where existing pavement of sound structural integrity has been removed or damaged for the purpose of conducting investigation or remediation, or when an impenetrable surface is needed to minimize infiltration. For example, if the Department requires an increased paved area for remedial purposes (to create an impermeable surface), then the additional paving will be eligible. Replacement in those areas of a site located above the removed tanks or piping, or expansion of asphalt/concrete areas are not eligible costs. Any increase in areal coverage or thickness of asphalt/concrete

relative to the areal coverage or thickness of the pavement existing prior to the remediation is ineligible. If increases in the areal coverage or thickness of a paved area are required to conform to local construction, highway, building codes, etc., the increased cost of complying with these code compliance upgrades are ineligible.

5) Attorneys' fees

Reasonable attorneys' fees incurred while undertaking a successful appeal to the FIRB are payable upon approval by the FIRB.

6) Backfill

Clean backfill (bank run at the local rate) is eligible up to an amount equal to 115% of the amount of contaminated soils removed from the excavation. For soil measured by weight, a standard coefficient of 1.5 tons per cubic yard shall be used. Special materials such as pea stone that are used for the installation of new tanks are not payable unless at the bank run fill price up to the 115% limit when the new installation is in the existing excavation. In the event that crushed stone is needed as a base for repaving, only that portion placed beneath the area of the eligible pavement is eligible and at the crushed stone price.

7) Contaminated groundwater removal from tank excavation

When done solely for the purpose of installing new tanks, that is, the Department has not required removal, only the actual cleaning of the water (e.g., carbon filtration units or a similarly cost efficient means of treatment and disposal) will be approved for payment.

8) Contaminated groundwater removal from the tanks

This is not eligible except for that water that unexpectedly refills a tank after it is pumped out, and the tank remains in the ground and fills up with groundwater. (Note: This item can only be billed for one occurrence.)

9) Contaminated soil disposal

Costs associated with the disposal or treatment of petroleum contaminated soils (not determined to be hazardous waste) required to be removed by the Department, and in a manner pre-approved by the Department, are eligible. No mark-up is allowed on the price charged by the disposal or treatment facility accepting the contaminated soil. These include costs incurred by an applicant to construct and maintain a Department approved land spreading operation (see Section #23) or other treatment system.

10) Contaminated soils removed in conjunction with a new tank installation

Costs associated with the Department required removal of contaminated soils associated with a new UST or AST installation at a fund eligible site which cannot be returned to the excavation due to its contaminated nature are eligible for reimbursement. Eligible costs are limited to the trucking and disposal of the contaminated soils only.

11) Damage

Repair or replacement of sewer lines, water lines, electrical lines, telephone lines, fiber optic lines or other utilities, buildings, roads, yards, fences, trees or other property damaged due to the negligence of a consultant or contractor who is not employed by the Department is not an eligible cost.

12) Decreased property value

Loss of property value is not eligible.

13) Discounts

The Fund should receive the benefit of any discounts provided by a vendor and the Fund should only be billed at the discounted rate. Any amount billed which exceeds the discounted cost is not an eligible expense. Any amount rebated based on the volume of materials or services should be forwarded for deposit into the Fund.

14) Express mail and air delivery

Unless specifically requested or pre-approved by Department staff, expedited or 'special' delivery of communications or laboratory samples is not an eligible expense. Costs for shipments sent via regular mail or UPS ground are eligible expenses. The applicant or his representative may demonstrate that expedited responses, notifications, and/or samples for analysis are cost effective in the successful completion of a project, in which case faxes, express mail and air deliveries may be determined to be eligible.

15) Facility Dismantling and Reassembly

The costs for dismantling an underground or aboveground oil storage facility (including tanks, piping, or other appurtenances) if required solely for a Department-required cleanup action may be eligible for Fund coverage. The costs for reassembling a facility following the completion of a Department-required cleanup action may also be eligible. Costs for dismantling and reassembling a facility are not eligible for facilities that require removal for reasons other than facilitating a Department-required cleanup action. For example, costs to remove failing facility piping, sumps, or tanks are not eligible. The costs of dismantling an abandoned or improperly out of service UST or AST facility are not eligible. Facility reassembly costs for upgrades and the replacement of components or parts that could have been reused following a cleanup are not eligible. The costs of reassembling or replacing an abandoned or improperly out of service facility are not eligible. An abandoned UST is defined in Chapter 691 of the Department's rules. For the purpose of this guideline only, an AST facility is considered abandoned if out-of-service for 12 consecutive months. See also Section #37 for cost eligibility information for the removal and replacement of structures and systems.

16) Filters

In situations where it is not technologically or economically feasible to replace an applicant's water supply, the cost of purchasing; installing; and operating and maintaining a point-of-entry treatment system to provide the applicant with potable water are eligible for coverage by the fund. An applicant requesting reimbursement for point-of-entry treatment

system costs must provide copies of invoices, proof of payment of invoices, copies of lab reports for sample analyses, and/or other forms of documentation required by the Department. In most cases, the Department will limit coverage of eligible point-of-entry treatment costs to a period of time of 10 years and not to exceed 20 years.

17) Fixed and Personal Property

“Fixed property” includes major structural items in a home’s construction, carpeting, paneling, and other items that are at least semi-permanently attached to a residence or other structure by nails tacks, adhesives, or similar means. “Personal property” includes items stored or present in the home (clothing, furniture, appliances, kitchen items, sports and camping equipment, etc. Cleaning of oil contaminated fixed and personal property is an eligible cleanup cost. If cleaning is not a viable option, then removal and disposal of the oiled property are eligible cleanup costs. The amount of fixed property eligible to be replaced is limited to those items that affect the structural integrity or habitability of the building. Examples would be the replacement of major structural items (beams, etc) or plywood flooring required to be removed to complete a cleanup. Replacement of fixed property for aesthetic reasons only is ineligible. Replacement of personal property is not an eligible cleanup cost under any circumstances.

18) Food, lodging etc.

These are eligible costs only when an overnight stay is necessary by cleanup contractors and pre-approved by department staff. The maximum allowable per person must not exceed rates established by the State Controllers Office in the State of Maine Travel and Expense Reimbursement Policy. Costs of meals must not exceed the State rate for in state travel. Copies of all receipts must be provided for: lodging costs; car rentals; taxi fares and parking charges; tolls; and all telephone charges. The purchase of alcoholic beverages is not an eligible cost.

19) Hazardous waste analysis and disposal

Analytical costs are eligible cleanup costs if required for disposal of petroleum contaminated soils. If soils are determined to be hazardous, the cost for removal, transportation and disposal is not eligible.

20) Hydrogeologic investigations

Costs for pre-approved hydrogeologic investigations are eligible. Approval of a Work Plan or task is not tantamount to approval of all expenses incurred during its implementation. The Department may review line items for eligibility. Authority to exceed pre-approved costs must be obtained from the Department.

21) Insurance settlements

Costs paid or to be reimbursed to the applicant by an insurance company that are duplicative, are not eligible for payment or reimbursement from the Ground Water Oil Clean-Up Fund. Costs recovered from private insurance are not eligible for Insurance Fund coverage, except that payments made by a private insurer directly to cleanup contractors, etc. on the applicant’s behalf for eligible cleanup costs may be credited to the applicant up to the Insurance Fund deductible amount. In addition, if the applicant’s private insurance

coverage includes the payment of a deductible amount to the insurance company, then that deductible amount may be eligible for Fund coverage to the extent that it is for eligible cleanup costs. The Department may require copies of denial letters, claims decisions/payments, etc. from private insurers in reviewing Insurance Fund cases

22) Interest

Interest accrued on funds borrowed in association with the payment of cleanup costs or any other eligible expenditures are not reimbursable through the fund.

23) Land spreading

Use of an applicant's land for land spreading petroleum contaminated soil from his own site may be paid at \$10.00 per yard up to the deductible amount provided the land spreading is conducted pursuant to written department approval and instructions, and the site meets the established criteria for land spreading contaminated soil. Permission to spread contaminated soil must be granted in writing by the property owner.

24) Loss of income/business interruption

These are not eligible expenses.

25) Lump sum invoices

Invoices billed as a lump sum are not eligible for payment. Invoices must be itemized in a time and materials basis for personnel and equipment. Back-up documentation in the form of contractor daily worksheets, timecard/payroll records, travel claims, or other forms of documentation accepted by the Department is required. Flat rate surcharges (fuel surcharges, administrative fees, communications fees, etc.) are not eligible.

26) Maintenance

Pre-approved maintenance of Department approved investigation/remediation equipment is an eligible cleanup cost.

27) Markups

The primary or general contractor or consultant must perform corrective action work; i.e., the primary cannot simply serve as a "broker" and subcontract out all work.

Markups for actual payments made for materials and for subcontractors that are not affiliates or subsidiaries of the general contractor may be considered for payment. Only the DEP or the General Contractor may retain subcontractors. No layered markups will be allowed (i.e., subcontractor in succession marks up an invoice). DEP reserves the right to require direct billing in order to minimize expenses for any subcontractual service or purchased supplies or equipment.

* No markups will be allowed for soil disposal.

* Markups must not be applied to direct charges by the primary (general) consultant/contractor.

* Markups must only be applied to actual subcontractor costs paid by the primary contractor.

*Mark-up is not allowed on over the counter purchases of basic supplies (sampling tubing, ice, etc.), tolls, lodging, and other items that are not actual subcontractor expenses.

* Only the actual amount paid for a subcontractor invoice can be marked up, not “list” or other artificial prices.

* Markups up to 10% will be allowed for applicable project costs up to \$250,000. Markups up to 5% will be allowed for applicable project costs greater than \$250,000.

28) Mileage

Mileage charges for automobiles and light duty trucks are limited to the maximum allowed by the State of Maine Travel and Expense Reimbursement Policy as of the date the travel is performed. Mileage charges for larger vehicles are determined on an individual basis.

29) Miscellaneous or other expenses

All expenses must be identified. Those billing categories such as “miscellaneous”, “office work”, “mobilization/demobilization, or “other” expenses will not be considered until adequate detail is provided. Please also see Section #25 relative to the ineligibility of flat rate surcharges, fees, etc.

30) Overtime

Allowance of overtime will be determined on a case-by-case basis. Overtime that is not pre-approved by Department staff will not be paid unless it can be shown that emergency conditions or extenuating circumstances justify working beyond normal hours, and doing so does not increase the total cost of cleanup. Normal working hours will be defined on a site-specific basis and will be based upon an 8 hour work day relative to the fund eligible project. (Note: Working more than 8 hours in a day is allowable as long as overtime rates are not charged without prior approval. The Department recognizes that the Industry Standard for contractors is 7:00 to 3:30.)

31) Owner or operator’s time and materials

Only those costs for investigation/remediation that are pre-approved are eligible and only if the owner/operator is deemed qualified to perform such tasks. Allowable rates will be consistent with what is reasonable and customary for the area and the task performed or equipment provided.

32) Product Loss

The cost of purchasing new product to replace the product spilled/leaked/discharged, as well as the value of the product actually discharged, is not eligible for reimbursement by the fund.

33) Remediation systems

Costs for installation and operation of approved remediation systems are eligible cleanup costs. Any costs incurred outside of the normal operating costs of the system must be pre-approved by the Department in order to be considered for payment or reimbursement.

34) Rental equipment

The total billable cost for rental equipment on any project (not including markup) shall not exceed 110% of the purchase price. Up to ten percent (10%) markup will be allowed for equipment rented by the contractor or consultant (see Section #27 – Markup). A copy of the rental invoice is required as back-up documentation. No markup is allowed for equipment owned by the contractor or consultant which is used on a fund eligible cleanup project.

35) Reusable equipment or materials

Reusable equipment costs will be considered by comparing average usable life to time on site. Materials (e.g., hammers, knife, screwdrivers, tape measure, coolers, etc.) which can reasonably be expected to be owned by consultants/contractors as tools of their trade will not be paid for.

36) Stolen, lost, or damaged equipment or materials

Items lost or damaged on site, or stolen from the site are the responsibility of the applicant and his agents and will not be replaced by the fund. (Note: The Department recommends that contractors and consultants maintain General Liability insurance to cover acts of theft and vandalism.)

37) Structures and Systems

Removal and replacement of structures and systems (e.g. buildings, plumbing and septic systems, wiring/electrical systems, etc.) will be considered for payment if necessary to clean up the site, not if necessary solely to remove tanks and piping. Expenses to remove a structure or properly functioning system to facilitate a Department-approved cleanup action may be eligible for coverage. The costs to reinstall, reassemble, or replace (if necessary) the structure or properly functioning system may be eligible only to the extent that it restores a site to its pre-spill condition (i.e. no upgrades). Costs to replace an abandoned UST or AST facility (as defined in Section 15) or an improperly out of service AST or UST facility are not eligible. The cost of replacing an abandoned structure is not eligible. For the purpose of these guidelines, an abandoned structure is one that is uninhabitable or unusable and does not meet current electrical, plumbing, building or other applicable structure or system codes. Costs to upgrade a structure or system to comply with federal, state, or local standards, ordinances, building codes, etc. existing at the time of reinstallation, reassembly, or replacement following the completion of the cleanup are not eligible. In the event an applicant elects not to reinstall, reassemble, or reinstall a structure following a cleanup, then

the value of the structure (with value established by tax valuation, appraisal, or other means acceptable to the Department) may be eligible for Fund coverage. See also the separate section (#15) regarding costs associated with underground and aboveground oil storage facility dismantling and reassembly to facilitate a Department-required cleanup action.

38) Tank and piping installation costs

All costs associated with upgrading, retrofitting, repairing, or installing new tanks or piping (including copper lines) are ineligible.

39) Tank and piping removal costs

These costs are not eligible for payment in the case of facilities that are required to be removed. They include, but are not limited to, the removal of liquid or sludge from tanks (see item Section #8 above for exception), the removal of associated piping, excavation and removal of soils necessary for removal or installation of tanks and associated piping (unless the soils are contaminated, in which case only eligible contaminated soils will be covered), and the removal of aboveground structures necessary for the removal of tanks and associated piping. See also the separate section (#15) regarding costs associated with underground and aboveground oil storage facility dismantling and reassembly to facilitate a Department-required cleanup action.

40) Telephone calls

Labor costs for telephone conversations must be billed to the nearest 1/4th hour. (1 hour minimums, etc. will not be paid.) Corroborating telephone records may be required for phone charges. Documentation provided must also establish a connection between a call and cleanup activities. No flat percentage rate communications fees, etc. are eligible for coverage.

41) Third party damage claims

Payment of eligible third party damage claims filed with the Department up to \$200,000 per claimant per occurrence is eligible if the claims are generated as a result of the covered discharge. Note: Maine law states that the remedies provided for third party claims are nonexclusive.

42) Upgrading of Facilities

No expenditures for the upgrading of facilities will be paid for by the Ground Water Oil Clean-Up Fund. Also see Sections #4, 15, 37, and 38 for related information.

43) Water supplies

Replacement or treatment of contaminated or threatened water supplies both on the property where the discharge has occurred and on neighboring properties as pre-approved by the Department is eligible. Also see Item # 16 above for information on eligible point-of-entry treatment costs in situations where it is not technologically or economically feasible to replace water supplies. In most cases, the Department will limit coverage of eligible point-of-entry treatment costs to a period of time of 10 years and not to exceed 20 years.

44) Work commensurate with qualifications

Work performed at labor rates that are above the level of skill required will be paid for at a rate commensurate with the work performed. E.g., Hydrogeologist rates will not be paid for work that can be performed by a technician, unless it can be demonstrated that doing so is more cost effective. Allowable rates will be consistent with what is reasonable and customary for the area and the task performed or equipment provided. Also see Section #31 for a related discussion.

NOTE

This document is intended to be used as a guide by applicants, contractors and Department staff on sites where an applicant has been found eligible for coverage by the fund program. These guidelines are not rules of the Department and are not intended to have the force and effect of law. This document does not create or affect any legal rights or duties of applicants. Legal rights are determined under the applicable statutes and law. Questions concerning the guide should be directed to the Oil Remediation and Claims Unit staff by calling (207) 287-2651. All Department decisions denying payment/reimbursement of expenses may be appealed to the Fund Insurance Review Board.

Revised February 2009