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## State Water Resources Control Board

October 1, 2021

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

### **DESIGNATION OF REASONABLE AND NECESSARY REIMBURSABLE COSTS AND UPCOMING ADDITIONAL CHANGES THAT APPLY TO THE FUND**

Since 1989, the Underground Storage Tank Cleanup Fund (Fund) has provided a means for petroleum UST owners and operators to meet the federal and state requirements of maintaining financial responsibility to pay for damages arising from their tank operations. Claims submitted to the Fund prior to January 1, 2015 may receive a maximum reimbursement of \$1.5 million (less the deductible); claims submitted after January 1, 2015 may receive a maximum reimbursement of \$1 million (less the deductible).

The Fund is authorized to reimburse claimants for reasonable and necessary corrective action costs. As part of the Fund's continuing efforts to improve communication, consistency, and efficiency at the Fund, and in this time of increased activation of claims from the priority list and submittal of reimbursement requests, the Fund would like to provide updated guidance regarding some commonly incurred costs that are generally considered eligible for reimbursement, as well as identifying certain costs that are generally not considered eligible for reimbursement.

This letter supersedes the August 15, 2011 letter regarding reasonable, necessary, and eligible costs and is effective for reimbursement requests reviewed on or after the date of this letter. This updated guidance regarding reasonable and necessary costs will not be applied retroactively to Fund determinations that have already been made and will not be applied to appeals of past Fund determinations. The Fund's cost guidance does not apply to the grant and loan programs associated with the Fund.

The Fund only may reimburse a claimant for: 1) actual, reasonable and necessary corrective action costs and regulatory technical assistance costs; and 2) specified third-party costs incurred by or on behalf of the claimant. The following is guidance regarding corrective action costs that are reasonable, necessary, and eligible for reimbursement and provides links to previous guidance regarding the eligibility of regulatory technical assistance costs. The Fund provides cost guidance to assist claimants and consultants in evaluating proposed and incurred corrective action costs at sites eligible for participation in the Fund. The Fund's cost guidance is a guideline only. The Fund will continue to review the eligibility of costs on a case-by-case basis in accordance with statutory and regulatory requirements. To aid Fund staff in evaluating reasonable reimbursements, claimants can

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provide justification for any corrective action costs that fall outside of the Fund's cost guidance.

### **Demonstration of Cost Eligibility**

1. Reimbursement requests must contain sufficient detail and documentation to demonstrate to the Fund that costs are reasonable, necessary, and eligible for reimbursement. The Fund will make efforts to understand each request, which may include reaching out to claimants for additional information. However, due to the volume of requests received, if the request is not sufficiently organized or detailed and additional information is not provided within ten working days after the Fund requests it, the costs in question will be deemed ineligible.
2. Claimants can assist the Fund in establishing eligibility of costs in a timely manner by providing one or more narrative summaries in, or similar to, the format found on the Fund website and linked below (Narrative Summary (Revised July 2020)). This is especially helpful for large reimbursement requests with many invoices, when a single task is itemized in multiple reimbursement requests, and when generic project task descriptions and deliverables are used.

#### **[Narrative Summary \(Revised July 2020\)](#)**

### **Regulatory Technical Assistance Costs / Electronic Technical Assistance Costs**

Guidance is provided on the Fund's website at: [Frequently Asked Questions For Electronic Technical Assistance Costs \(Updated August 9, 2018\)](#);

[Underground Storage Tank Cleanup Fund Guidance for Costs Associated with RTAC and ETAC \(Updated August 9, 2018\)](#); and

[UST Cleanup Fund Task Descriptions Associated with RTAC and ETAC \(July 20, 2018\)](#)

### **Eligible Travel Costs**

1. Actual travel time for site visits, with a maximum of eight hours travel time (round trip) per individual site visit. If multiple sites are visited in a day, the time at each site must be apportioned and total hours at all sites visited on the one day must not exceed the total hours billed by the staff for that day.
2. Actual fees for use of company car or truck, or for vehicle rental.
3. Mileage driven and billed in accordance with California State government rates at the time the expense was incurred, if not included in daily rental or use fee. See [CA State Mileage Rate](#)
4. Actual, reasonable and necessary amounts for lodging, meals, and tolls, provided receipts are submitted. Please note, the Fund considers these costs to be handled as employee expenses and passed through without markup. Alcohol purchase is not considered necessary.
5. Actual reasonable and necessary costs for airfare within California. Airfare must be economy rates.

### **Ineligible Travel Costs**

1. Travel outside the State of California is not considered necessary.
2. Mileage within California over 500 miles round trip is not considered reasonable for reimbursement.
3. Mileage for rental cars and trucks and for company cars and trucks when it is included in the rental or use fee is not considered reasonable or necessary for reimbursement.

### **Ancillary Charges**

1. 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, desktop 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, routine postage, and word processing equipment or expenses.

### **Business Licenses, Insurance, and Refundable Deposits**

1. The costs of business licenses and insurance are not eligible for reimbursement as they are not corrective action costs and are a normal cost of doing business.
2. Refundable deposits separate from fees (for example, for encroachment permits) are not eligible for reimbursement.

### **Violations**

1. The costs of traffic and parking violations, late fees, and penalties are not corrective action and are not eligible for reimbursement.

### **Rental equipment repairs and related costs**

1. The costs of repairs to rented equipment and systems are the responsibility of the owners of the rental equipment and systems and are not eligible for reimbursement.
2. The costs of travel, lodging, and meals for employees of the companies providing, repairing, or replacing rental equipment and systems are not eligible for reimbursement.

### **Markups Considered Reasonable**

1. Markups should not exceed 10 percent of the total invoice regardless of the total subcontractor or equipment amounts.

2. Markups on sales and other taxes that must be paid by the claimant are considered reasonable for reimbursement.
3. Markups on permit fees required for the project are considered reasonable for reimbursement.
4. For the amount of markup on those items that are considered reasonable, please see the attached table, UST Cleanup Fund Markup and Consultant Oversight Guidelines.

### **Main Consultant Oversight**

1. Main consultant oversight costs that are considered reasonable and necessary are outlined in the attached table, UST Cleanup Fund Markup and Consultant Oversight Guidelines.

### **Markups Considered Unreasonable**

1. Markups on agency regulatory fees.
2. Markups on per diem, meals, and travel costs are not considered reasonable as these are generally treated as employee expenses.

### **Health and Safety-Related Costs**

1. Costs for site-specific health and safety plans (including trip plans and job safety analyses), pre-field safety meetings, and onsite safety meetings are considered reasonable and reimbursable.
2. Costs for claimant-based safety and loss prevention programs fall under claimant supervision, and are therefore, not eligible for reimbursement.

### **Low-Threat Underground Storage Tank Case Closure Policy (LTCP) Considerations**

1. Work performed after the adoption of the LTCP (August 17, 2012) that is not required to close a case under that policy may not be reimbursed.

### **Ineligible Costs as defined in the California Code of Regulations, Title 23, Section 2812.2, subdivision (e), except where noted otherwise:**

1. Attorney fees of 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. Per Section 25299.57, subdivision (j)(1) of the California Health and Safety Code, the board shall pay a claim of not more than five thousand dollars (\$5,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter, except that reasonable and necessary technical assistance costs associated with the electronic submission of documents to the fund using an electronic data system approved by the board shall not be subject to this limit.;
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.

Thank you in advance for your attention to submitting reimbursement requests in accordance with the conditions outlined in this letter. If you have any questions, please contact the Fund at (800) 813-FUND (3863) or by email at [USTCleanupFund@waterboards.ca.gov](mailto:USTCleanupFund@waterboards.ca.gov). Additional Fund-related information can be found on the Fund's website at [Underground Storage Tank Cleanup Fund](#).

Sincerely,

Diane Barclay, Manager  
Underground Storage Tank Cleanup Fund

Attachment: UST Cleanup Fund Markup and Consultant Oversight Guidelines

## UST Cleanup Fund Markup and Consultant Oversight Guidelines

#	Task / Cost	Markup Allowed	Guidance (per invoice)	Main Consultant Oversight
1	Subcontracted field services involving sampling, monitoring, remediation system operation & maintenance	Yes	Markup of up to 10% allowed	No
2	System/ Equipment Rentals from Subcontractor	Yes	Markup of up to 10% allowed	N/A
3	Equipment Purchase	Yes	Markup of up to 10% allowed	N/A
4	Fencing rental	Yes	Markup of up to 10% allowed	No
5	Drilling/ Backhoe/ Bobcat	Yes	Markup of up to 10% allowed	Yes
6	Laboratories	Yes	Markup of up to 10% allowed	No
7	Waste/Water/Soil Transportation	Yes	Markup of up to 10% allowed	No
8	Waste/Water/Soil Disposal	Yes	Markup of up to 10% allowed	No
9	Traffic Control	Yes	Markup of up to 10% allowed	No
10	Soil Excavation	Yes	Markup of up to 10% allowed	Yes
11	Backfill and Compaction	Yes	Markup of up to 10% allowed	Yes
12	Remediation Installation	Yes	Markup of up to 10% allowed	Yes
13	Site Geophysical Survey	Yes	Markup of up to 10% allowed	Yes
14	Underground Utility Check	Yes	Markup of up to 10% allowed	Yes
15	Shipping/Freight	Yes	Cost incurred by claimant as part of corrective action; typically included with invoice for equipment	N/A

## UST Cleanup Fund Markup and Consultant Oversight Guidelines

#	Task / Cost	Markup Allowed	Guidance (per invoice)	Main Consultant Oversight
16	Sales/Other Taxes	Yes	10%; Cost incurred by claimant to procure necessary material or equipment as part of corrective action	N/A
17	Propane/Gas	Yes	Markup of up to 10% allowed	N/A
18	Utilities	Yes	Markup of up to 10% allowed	N/A
19	Permits	Yes	Markup of up to 10% allowed	N/A
20	Mileage	No	In accordance with <a href="#">CA State Mileage Rate</a>	N/A
21	Per Diem (Meals)	No	Covered under general overhead as employee expenses.	N/A
22	Per Diem (Lodging)	No	Covered under general overhead as employee expenses.	N/A
23	Equipment/Vehicle Rentals from Main Consultant	No	Rental fee covers holding/overhead cost. For vehicles, main consultant may charge daily rate or mileage but not both.	N/A
24	RTAC (not including ETAC)	No	RTAC activities are standard labor.	No
25	ETAC	No	ETAC activities are standard labor.	No
26	Affiliated Subcontractor	No	Considered a part of the main consultant.	No
27	Local Agency Regulatory Fees	No	Should be handled as a direct bill to claimant.	N/A

If markup costs exceed the above parameters, additional justification should be provided.