

## **Fund Coverage Cost Eligibility Guide**

### **Maine Department of Environmental Protection**

This Fund Coverage Cost Eligibility Guide is intended to provide guidance regarding as the types of expenses that are eligible for payment or reimbursement from the Maine Ground and Surface Waters Clean-up and Response Fund (Fund), when an applicant has been found to be eligible for coverage by the Fund program under 38 M.R.S. § 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, remediation, and reconstruction, which are necessary to clean up the discharge of oil to the satisfaction of the Commissioner, which are cost effective, reliable and technologically feasible, and which 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 eligible clean-up costs, all remedial actions and associated costs should be submitted in writing for pre-approval by the Department before any work takes place. Approval of a Work Plan or task is not equivalent to approval of all expenses incurred during its implementation. The Department may review line items for eligibility. Any exceedance of pre-approved costs must be authorized by the Department in order to be considered an eligible clean-up cost. Non-emergency work undertaken without prior approval from the Department will be performed at the applicants own risk, and may or may not be reimbursed.

1) Administrative Costs Incurred by Applicant

Administrative costs incurred in completing an application for Fund coverage or a request for reimbursement, or in 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 an eligible clean-up cost. This eligibility does not extend to the portions of the property not directly impacted by the discharge, nor does it include any tanks and pipes. Such restoration may include but is not limited to replacement of the portion of any fences, pavement, etc. that are actually damaged or destroyed in the course of the investigation/remediation, but does not extend to portions of a structure not directly impacted (e.g. replacement of damaged sections of a fence may be an eligible clean-up cost, but replacement of an entire fence because a weathered or worn section does not match the new portion is not eligible). Improvements to real and personal property beyond the condition existing prior to implementation of the investigation/remediation are not eligible clean-up costs. Site restoration activities must be completed using a method that is the most cost effective, feasible, reliable, and likely to succeed. Restoration and regrading of landscaping/lawns shall be limited to Best Management Practices for erosion control outlined in the Maine Erosion and Sediment Control BMPs published by the Department. (Note: This Section pertains primarily to discharges from USTs and outdoor ASTs. See Section 16 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

Costs related to the investigation and remediation of asbestos are not eligible clean-up costs.

4) Asphalt or Concrete Replacement

The cost of asphalt or concrete paving is an eligible clean-up cost only where existing pavement of sound structural integrity has been removed or damaged during the course of investigation/remediation, or when an impenetrable surface is required to minimize infiltration. The cost to replace pavement removed to access tanks or pipes for removal or replacement, and the cost of any expansion of pavement coverage or thickness in areas where such expansion is not required by the Department as part of the remediation, are not eligible clean-up costs. For example, if the Department requires an increased paved area to create an impermeable surface for remedial purposes, then the additional paving is an eligible clean-up cost. Upgrading or repairing old, deteriorated pavement at a site to match a section of new pavement required as part of remediation is not an eligible clean-up cost. Costs associated with any increases in pavement area or thickness that may be required in order to meet state or local code or ordinance are not eligible clean-up costs. Reasonable costs for engineered base material for the reconstruction of eligible paved areas may be considered as an eligible clean-up cost on a case-by-case basis as determined by Department staff.

5) Attorneys' Fees

Reasonable attorneys' fees incurred while undertaking a successful appeal to the Clean-up and Response Fund Review Board (Board) are payable upon approval by the Board.

6) Backfill

The cost of clean backfill (bank run at the local rate) up to an amount equal to 115% of the volume of contaminated soils removed from the excavation is an eligible clean-up cost. For soil measured by weight, a conversion factor of 1.5 tons per cubic yard shall be used. The cost of special material (such as pea stone) used in the installation of new tanks, pro-rated at the bank run fill price up to the 115% limit, is an eligible clean-up cost when the new installation is in the existing excavation. In the event that crushed stone is needed as a base for repaving, only the cost of crushed stone placed beneath an area of eligible pavement is an eligible clean-up cost.

7) Contaminated Groundwater Removal from Tank Excavation

If the Department has required the removal of contaminated groundwater from the excavation, then the cost of both removal and treatment of the contaminated water are eligible clean-up costs. 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 similar cost-efficient means of treatment and disposal) is an eligible clean-up cost.

8) Contaminated Groundwater Removal from Tanks

If, after a tank has been pumped out, it unexpectedly refills with contaminated groundwater, the cost of pumping out the tank and treating the water removed is an eligible clean-up cost for one occurrence per tank.

9) Contaminated Soil Disposal

Costs associated with the disposal or treatment of petroleum-contaminated soils (not determined to be hazardous waste) required by the Department to be removed, in a manner pre-approved by the Department, are eligible clean-up costs. No mark-up is allowed on the price charged by the disposal or treatment facility accepting the contaminated soil. Costs incurred by an applicant in constructing and maintaining a Department-approved land spreading operation (see Section 22) or other treatment system are also eligible clean-up costs.

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, when the soil in question cannot be returned to the excavation due to its contaminated nature, are eligible clean-up costs. Eligible costs are limited to the trucking and disposal of the contaminated soils only. If a tank installation results in surplus contaminated soils that are contaminated below site-specific clean-up standards, but that are unable to be returned to the excavation due to construction requirements or site space limitations, the disposal of those soils must be compliant with federal, state, and local requirements, and the cost of disposal is an eligible clean-up cost.

11) Damage

Costs associated with the repair or replacement of any public or private 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 are not eligible clean-up costs.

12) Decreased Property Value

Any loss of value in an applicant's property resulting from the Fund-covered discharge or related clean-up activities is not an eligible clean-up cost. Payment of a loss in property value to third parties for properties other than the applicant's is addressed in Section 40 of this Guide.

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 clean-up cost. Any amount rebated to an applicant or contractor for materials or services paid for with Fund funds, based on criteria such as total annual or monthly volume of materials or services purchased, must 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 clean-up cost. Costs for shipments sent via regular mail or UPS ground are eligible clean-up costs. The applicant or a representative may demonstrate that expedited delivery of 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 by Department staff to be eligible clean-up costs on a case-by-case basis.

15) Facility Dismantling and Reassembly

Costs associated with dismantling and reassembling an active underground or aboveground oil storage facility (including tanks, piping, or other appurtenances), if incurred solely for a Department-required cleanup action, may be eligible clean-up costs. Costs associated with reassembling a facility following the completion of a Department-required cleanup action may also be eligible. Costs associated with dismantling and reassembling a facility for reasons not related to a Department-required cleanup action are not eligible clean-up costs. Costs associated with dismantling an abandoned or improperly out of service UST or AST facility are not eligible clean-up costs. Costs associated with reassembly of a facility after installation of upgrades, and the cost of replacing reusable components or parts following a cleanup are not eligible clean-up costs. Costs associated with reassembling or replacing an abandoned or improperly out of service facility are not eligible clean-up costs. 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 it has been out-of-service for 24 consecutive months. Also See Section 36 for cost eligibility information regarding the removal and replacement of structures and systems.

16) Fixed and Personal Property

“Fixed property” includes major structural items in a home’s construction, such as carpeting, floors, walls, windows and doors, framing and bracing, paneling, kitchen and bathroom fixtures, 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, such as clothing, furniture, appliances, kitchen utensils, sports and camping equipment, vehicles, etc. Costs associated with the cleaning of oil-contaminated fixed and personal property are eligible clean-up costs, and are limited to areas directly impacted by the covered discharge. If cleaning is not a viable option, then removal and disposal of the oiled property are eligible cleanup costs. Costs associated with the replacement of fixed property items that affect the structural integrity or habitability of the building are eligible clean-up costs. Examples include major structural items such as beams, framing, plywood flooring (excluding floor coverings such as carpet or tiles), insulation, and wallboard (including one application of drywall compound, but excluding wall coverings such as paint or wallpaper) which the Department has required to be removed to complete a clean-up. Replacement of fixed property for aesthetic reasons is not an eligible clean-up cost. Replacement of personal property is not an eligible clean-up cost under any circumstances.

17) Food, Lodging, and Expenses Paid to Contractors

When an overnight stay by clean-up contractors is pre-determined by Department staff to be necessary for cost-effective remediation and minimization of damage from a discharge at a Fund-eligible site, the cost of food, lodging and expenses for the overnight stay is an eligible clean-up cost within Department-approved limits. The maximum amount reimbursed 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 clean-up cost.

18) Hazardous Waste Analysis and Disposal

Costs related to the sampling and analysis of petroleum-contaminated soils are eligible clean-up costs if the analysis is required for disposal of such soils. If the soils are determined to be hazardous waste, the cost for removal, transportation and disposal is not an eligible clean-up cost.

19) Hydrogeologic Investigations

When pre-approved by Department staff, costs associated with hydrogeologic investigations are eligible clean-up costs.

20) Insurance Settlements

Costs related to activities at a Fund-eligible site which are or will be paid or reimbursed to the applicant by an insurance company are not eligible clean-up costs. Payments made by a private insurer directly to cleanup contractors, etc. on an applicant's behalf for eligible cleanup costs may be credited to the applicant up to the applicable Fund deductible amount, in lieu of payment of the deductible by the applicant. In addition, if an applicant's private insurance coverage requires the payment of a portion of the cleanup costs as a deductible amount, then that deductible amount may be eligible for reimbursement from the Fund to the extent that the costs paid are eligible clean-up costs. The Department may require copies of denial letters, claims decisions, payments, receipts, and other relevant documents and records from private insurers and contractors when reviewing Fund cases where private insurance is covering a portion of the eligible clean-up costs.

21) Interest

Interest accrued on funds borrowed by an applicant in association with the payment of eligible clean-up costs or any other related expenditure are not eligible clean-up costs.

22) Land Spreading

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

23) Loss of Income/Business Interruption

Costs to an applicant in the form of lost income due to interruption of the applicant's business during clean-up activities are not eligible clean-up costs. Such costs may be eligible clean-up costs when associated with a third party damage claim (see Section 40).

24) Lump Sum Invoices

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

25) Maintenance

Costs associated with pre-approved maintenance of Department-approved investigation/remediation equipment are eligible clean-up costs.

26) Markups

Markups for actual payments made for materials and for subcontractors that are not affiliates or subsidiaries of the General Contractor (GC) may be eligible clean-up costs. The GC or consultant must perform corrective action work; i.e., the GC cannot simply serve as a "broker" and subcontract out all work. Only the DEP or the GC 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 GC.

\* Markups must only be applied to actual subcontractor costs paid by the GC.

\* Markups are 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.

27) 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.

28) Miscellaneous or Other Expenses

All expenses must be identified. Billing categories such as “miscellaneous”, “office work”, “mobilization/demobilization”, or “other” expenses submitted for reimbursement without adequate detail are not eligible clean-up costs. See Section 24 for discussion of flat rate surcharges, fees, etc.

29) Overtime

Costs associated with payment of overtime wage rates may be eligible clean-up costs; determinations will be made on a case-by-case basis. Overtime that is not pre-approved by Department staff is only an eligible clean-up cost if the applicant demonstrates that emergency conditions or extenuating circumstances justify working beyond normal hours, and doing so does not increase the total cost of the clean-up. 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.)

30) Applicant’s Time and Materials

Costs associated with the use of the applicant’s own time and materials for investigation/remediation are eligible clean-up costs only if they are pre-approved and the applicant 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. Reasonable costs related to an applicant’s time spent soliciting and reviewing quotes and estimates for remediation efforts may be eligible clean-up costs to the extent that the remediation efforts in question are eligible.

31) 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 an eligible clean-up cost.

32) Remediation Systems

Costs for installation and normal maintenance and operation of approved remediation systems are eligible clean-up costs. Costs associated with repairs or modifications of the system are not eligible clean-up costs unless pre-approved by the Department.

33) Rental Equipment

Costs associated with the rental of any piece of equipment on a fund-eligible project (not including markup) are eligible clean-up costs only to the extent that they do not exceed 110% of the purchase price of the individual piece of equipment being rented. Up to ten percent (10%) markup will be allowed for equipment rented by the contractor or consultant

(see Section 26). A copy of the rental invoice is required as back-up documentation. No markup is allowed for equipment used on a fund-eligible clean-up project when the equipment is owned by the contractor or consultant.

34) Reusable Equipment

Costs associated with reusable equipment such as pumps, compressors and generators may be eligible clean-up costs, and will be considered on a case-by-case basis by comparing average usable life to time on site. Costs associated with tools and equipment which can reasonably be expected to be owned by consultants/contractors as tools of their trade (e.g., hand tools, power saws, ladders, tape measures, etc.) are not eligible clean-up costs.

35) Stolen, Lost, or Damaged Equipment or Materials

Costs associated with replacement or repair of items lost or damaged on site or stolen from the site are not eligible clean-up costs. (Note: The Department recommends that contractors and consultants maintain General Liability insurance to cover acts of theft and vandalism.)

36) Structures and Systems

Costs associated with the removal and replacement of structures and properly functioning systems (e.g. buildings, plumbing and septic systems, wiring/electrical systems, etc.) may be eligible clean-up costs if the Department determines that they are necessary to clean up the site, and not solely to remove tanks and piping. Costs associated with reinstalling, reassembling, or replacing (if necessary) the removed structure or properly functioning system may be eligible clean-up costs only to the extent that such action restores a site to its pre-spill condition (i.e. no upgrades). Costs associated with replacement of an abandoned structure or an abandoned UST or AST facility (as defined in Section 15) or an improperly out of service AST or UST facility are not eligible clean-up costs. 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 associated with upgrading 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 clean-up are not eligible clean-up costs. In the event an applicant elects not to reinstall, reassemble, or replace a structure following a cleanup, then the value of the structure, as established by tax valuation, appraisal, or other means acceptable to the Department, may be an eligible clean-up cost. See section 15 regarding costs associated with dismantling and reassembling an underground or aboveground oil storage facility to facilitate a Department-required clean-up action.

37) Tank and Piping Installation Costs

Costs associated with upgrading, retrofitting, repairing, or installing new tanks or piping (including copper lines) are not eligible clean-up costs.

38) Tank and Piping Removal Costs

Costs associated with the removal of facilities that are required to be removed for reasons unassociated with the spill are not eligible clean-up costs. These costs include, but are not limited to, costs associated with the removal of liquid or sludge from tanks (see 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 section 15 regarding costs associated with dismantling and reassembling an underground or aboveground oil storage facility to facilitate a Department-required cleanup action.

39) Telephone Time

Costs associated with contractor or consultant time spent on phone calls may be eligible clean-up costs. Labor costs for telephone conversations must be billed to the nearest 1/4 hour (1 hour minimums, etc. will not be considered). Corroborating telephone records may be required to validate telephone time 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.

40) Third Party Damage Claims

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

41) Upgrading of Facilities

Costs associated with the upgrading of aboveground or belowground oil storage facilities are not eligible clean-up costs. See Sections 4, 15, 36, and 37 for related information.

42) Water supplies

Costs associated with replacement or treatment of contaminated or threatened water supplies both on the property where the covered spill has occurred and on affected neighboring properties may be eligible clean-up costs. When a spill at a fund-eligible site has contaminated a drinking water supply to such an extent that the water supply no longer meets state drinking water standards for petroleum products; and it is either technologically or economically not feasible to replace the water supply; costs associated with purchasing, installing, and operating and maintaining a point-of-entry treatment system to remove petroleum contamination from the affected water supply may be eligible clean-up costs. In such a case, an applicant must consult with Department staff prior to installing a treatment system to ensure that the system selected is the most cost-effective method for removing the petroleum contamination. The Department is not obligated to take any actions for water treatment exceeding those required to abate the threats or hazards posed by the discharge. Costs associated with removing other contaminants are not eligible clean-up costs, unless it is determined by Department staff that their removal will improve the overall cost-effectiveness of the treatment system as a mechanism for removing petroleum contamination; however, an applicant may undertake to pay the difference in cost for a system that addresses such other contaminants upon approval by the Department. 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 relevant forms of documentation as required by the Department. Testing of the treated water supply using a method and frequency determined by the Department is required, and is an eligible clean-up cost. When test results show the untreated supply meets drinking water standards for the petroleum contaminants being treated for two consecutive tests, the cost of operating, maintaining and repairing the treatment system and of any further testing will no longer be an eligible clean-up cost. Costs associated with operating and maintaining a point-of-entry treatment system more than twenty years after its installation are not eligible clean-up costs.

43) 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. See Section 30 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 this guide should be directed to the Collections, Claims, and Recovery Section staff by calling (207) 287-7688. All Department decisions denying payment/reimbursement of expenses may be appealed to the Board.**

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