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# Reasonable Cost Guidelines: Overview and Assumptions

(Revised 1/23/2017)

Effective for work performed on/after July 1, 1997 with updates in 2001, 2002, 2009 and 2012.

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## **UNDER REVISION**

[\*Recognized Environmental Professionals \(REPs\)\*](#) will replace *Individual Listed Consultants* effective January 1, 2018.

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## **Article 1**

### **1-1. STATEMENT OF PURPOSE**

In adopting these Reasonable Cost Guidelines (Guidelines), the intent of the Colorado Petroleum Storage Tank Committee (Committee) is to preserve the solvency of Colorado's Petroleum Storage Tank Fund (Fund) and to protect Colorado's environment and the health and safety of its citizens by encouraging prompt remediation of petroleum contamination in a technologically sound and cost-effective manner.

The Committee believes the Guidelines are warranted by the following assumptions:

- Petroleum Storage Tank Fund revenues will not increase beyond current levels produced by the maximum \$100 per tank truckload environmental surcharge
- Reimbursement applications will continue to be submitted at or above current levels
- Allowable cost categories will not change significantly

### **1-2. EFFECTIVE DATE**

The Guidelines, including the Listed Environmental Consultant Program, will apply to all work performed on or after July 1, 1997.

For work performed before July 1, 1997, the Guidelines may be used to help the Committee determine a reasonable cost for a specific activity when the amount requested for reimbursement is judged to be excessive by the staff of the Colorado Department of Labor and Employment, Division of Oil and Public Safety (OPS).

### **1-3. ADJUSTMENTS**

Any change to Guidelines must be approved by the Committee. Any adjustment for inflation or deflation will be based on figures provided by the Colorado Department of Labor and Employment (CDLE).

The Committee may also adjust the Guidelines to preserve Fund solvency. Any such adjustment will be based on reimbursement projections provided by the OPS. Such adjustments will not apply to work already performed.

### **1-4. IMPACT ON REIMBURSEMENT**

The reasonable rates established in the Guidelines are the maximum that will be recommended for reimbursement. Requests for reimbursement at rates at or below those established in the Guidelines shall be presumed to be reasonable, and therefore reimbursable unless otherwise disqualified. Requests for reimbursement at rates that

exceed those established in the Guidelines shall be presumed to be unreasonable, and therefore subject to reduction to the rates in the Guidelines, unless the Fund Applicant can rebut the presumption. In order for Applicants to have the opportunity to rebut a presumption of unreasonableness, the OPS shall advise an Applicant in writing of those costs identified as exceeding the Guidelines before presentation of the application to the Committee. Any costs that exceed a rate established by the Guidelines and for which reimbursement is sought must be identified on the application, together with a justification for the higher rate, and will be considered separately by the Committee.

Article 2

**UNDER REVISION**

## **Article 3, Part 1**

### **3-1-1. INVOICES REQUIRED**

A primary invoice is required to support any amount claimed for reimbursement.

### **3-1-2. SUBCONTRACTOR INVOICES**

A subcontractor invoice is required to support any primary invoice line item of \$1,000 or more. Subcontractor invoices for line items under \$1,000 may be required at any time during the reimbursement application review, or up to three years after reimbursement issues, at the discretion of OPS or the Committee.

### **3-1-3. LABORATORY INVOICES**

A laboratory invoice is always required, regardless of the dollar amount.

### **3-1-4. TRANSPORTATION AND WASTE MANIFESTS**

Transportation and waste manifests are always required.

### **3-1-5. [INVOICE FORMAT](#)**

NOTE: Lodging and utility invoices are always required, regardless of the dollar amount.

## **Article 3, Part 2**

### **3-2-1. STANDARD INFORMATION REQUIRED**

Each invoice should include the following information, at a minimum.

- (a) Consultant/Subcontractor name and consultant listing number
- (b) Client's (Fund applicant's) name and billing address
- (c) Site (facility) name, address
- (d) OPS Event identification number
- (e) Beginning and ending dates of work covered by invoice
- (f) Invoice date and number
- (g) Invoice page number
- (h) Consultant/Subcontractor job number (if applicable)
- (i) Phase of work code (PWC), activity code (AC) and task and labor code (TLC). This coding can be found in the reasonable cost guideline tables.

Note: The OPS Invoice Format is required for all invoices with applications submitted after July 1, 2009.

## **Article 4, Part 1**

### **4-1-1. MINIMUM AND MAXIMUM REIMBURSEMENT PER DAY**

There is a minimum reimbursement that includes the daily rate plus mileage as well as a maximum reimbursement daily rate plus mileage.

These rates include mobilization, demobilization, rig up, rig down, decontamination, and all non-consultant labor.

### **4-1-2. INSTALL TEMPORARY WELL IN DIRECT PUSH BORING**

The per well rate includes all materials.

### **4-1-3. INSTALL PERMANENT WELL IN DIRECT PUSH BORING**

The per foot rate includes all materials except locks and permits. Locks and permits should be billed separately at cost plus applicable markup.

Permanent well means: 1" inside diameter casing, capable of accepting 3/4" diameter bailer, pre-slotted screen, adequate filter pack, bentonite seal, locking cap, street box with traffic-rated cover.

### **4-1-4. WELL ABANDONMENT (closure)**

The per well rate includes materials and labor.

### **4-1-49. CONSULTANT LABOR AND FIELD INSTRUMENTATION**

Consultant onsite labor allowable for the duration of the direct push boring time, plus two hours. Field instruments such as photo-ionization detectors (PIDs) may be billed separately.

### **4-1-50. MISCELLANEOUS FIELD SUPPLIES**

The daily rate per site includes such items as gloves, baggies, ice, water, rope, pens, etc. No receipts are required.

## **Article 4, Part 2**

### **4-2-1. RATES PER FOOT**

The per foot rates include all materials, equipment, and non-consultant labor necessary to drill a boring for either a 2" or 4" diameter well. The rates for rotary drilling apply to either air or fluid rotary drilling. The rates include decontamination, collecting split spoon samples in liners at 5' intervals, and backfilling borings with bentonite grout. The rates do not include miscellaneous small items (see Miscellaneous Field Supplies).

### **4-2-2. MOBILIZATION/DEMOBILIZATION**

The rate is per mile.

### **4-2-3. SOIL SAMPLING (split spoon)**

The per sample rate includes decontamination, labor, materials, and equipment. This cost is reimbursable only when samples are necessary more frequently than the 5' intervals included in the per foot drilling rate. Examples of when more frequent samples may be necessary, such as when drilling the first boring and trying to locate the contamination zone or the water level, or when there is a high fluctuation in groundwater level. No additional consultant fees will be reimbursed. Unless OPS requires or pre-approves a soil sampling method other than split spoon, the Fund will not reimburse additional costs for a more expensive soil sampling method.

### **4-2-4. COMPLETION OF BOREHOLE AS MONITORING WELL**

The per foot rate for 2" wells and 4" wells include all associated labor and materials.

### **4-2-5. WELL ABANDONMENT (closure)**

The per foot rate for 2" wells and 4" wells include all associated labor and materials.

### **4-2-48. MARKUP**

No markup is permitted if the consultant does his own drilling, using his own equipment and labor.

### **4-2-49. CONSULTANT LABOR AND FIELD INSTRUMENTATION**

Consultant onsite labor allowable for the duration of the drilling time, plus two hours. Field instruments such as photo-ionization detectors (PIDs) may be billed separately.

### **4-2-50. MISCELLANEOUS FIELD SUPPLIES**



The per day per site rate includes such items as gloves, baggies, ice, water, rope, pens, etc.

No receipts are required.

## **Article 4, Part 3**

### **4-3-1. RATES FOR ACTIVITIES ASSOCIATED WITH THE EXCAVATION, TRANSPORTATION AND DISPOSAL OF PETROLEUM-CONTAMINATED SOILS**

The rates for the following activities are either per cubic yard or per square foot:

- Excavation and loading
- Transportation of contaminated soil
- Disposal of contaminated soil
- Backfill and compaction (purchase, transport, compact backfill material)
- Backfill and compaction (clean excavated material)
- Remove and dispose of asphalt or concrete
- Replace asphalt
- Replace concrete

Traffic control and permits are at actual cost.

### **4-3-2. MILEAGE**

Rate per mile per cubic yard for each mile over 40 miles from excavation site to disposal site, not to exceed 200 miles total one-way.

### **4-3-3. LABORATORY ANALYSIS**

Laboratory analysis is recommended for each 100 cubic yards excavated to confirm the level of contamination.

### **4-3-4. MANIFESTS**

All transportation and waste manifests are required.

### **4-3-5. CONVERSION FACTOR**

If any excavation, transportation or disposal activities are billed by the ton instead of cubic yard, use this conversion factor: 1.4 tons = 1 cu yd

### **4-3-6. APPLICANT-PERFORMED**

Fund Applicants who perform their own work are entitled to reimbursement at the maximum rates established at §4-3-1.

#### **4-3-48. MARKUP**

Consultants may mark up pass-through (subcontracted) charges, subject to any limitations established by these reasonable cost guidelines. Applicants who perform their own work may not mark up any costs.

#### **4-3-49. CONSULTANT LABOR AND FIELD INSTRUMENTATION**

Consultant onsite labor allowable for the duration of the excavation, plus two hours. Field instruments such as photo-ionization detectors (PIDs) may be billed separately.

#### **4-3-50. MISCELLANEOUS FIELD SUPPLIES**

The per day per site rate includes such items as gloves, baggies, ice, water, rope, pens, etc. No receipts are required.

## **Article 4, Part 4**

### **4-4-1. RATE PER WELL SAMPLED**

The per well rate includes all labor and materials (bailer, non-disposable bailer, water-level indicator). It does not include analytical testing or disposal of purge water. No additional consultant labor will be reimbursed.

### **4-4-49. CONSULTANT LABOR AND FIELD INSTRUMENTATION**

No additional onsite consultant labor will be reimbursed. Field instruments may be billed separately.

### **4-4-50. MISCELLANEOUS FIELD SUPPLIES**

The per day per site rate includes such items as gloves, baggies, ice, water, rope, pens, etc.

No receipts are required.

## **Article 4, Part 5-1**

### **4-5-1-1. APPLICATION OF RATES**

The rates apply to environmental consultants. Reimbursement will be according to task performed (see "Responsibilities and Duties" in § 4-5-4), not job title of the person performing it. Listing as an environmental consultant is required for any labor billed above the staff engineer/scientist rate. Refer to the Listed Environmental Consultant portion of the Guidelines (Article 2) for more information.

### **4-5-1-2. 10% LIMITATION**

Total hours in the top 3 categories (Principal, Senior Engineer/Scientist, and Project Manager) cannot exceed 10% of consultant's total project labor hours.

### **4-5-1-3. COMPLEX SITE**

A complex site is one with extensive groundwater and soil contamination, difficult hydrogeology, multiple contaminants, or above-ground complications.

### **4-5-1-4. CONSULTANT LABOR**

There are separate labor rates for listed consultants versus unlisted consultants, the listed consultant rate being higher. Pursuant to § 12-25-105 CRS, some of the responsibilities and duties may require either licensure as a professional engineer or the proper level of supervision from a professional engineer. It is the responsibility of the consultant to comply with state law on this issue.

## **Article 4, Part 5-2**

### **4-5-2-1. APPLICATION OF RATES**

The rates apply only for Applicants who are also listed in Colorado's Listed Environmental Consultant Program and who act as the sole environmental consultant/primary contractor for the remediation project. Reimbursement will be according to task performed (see "Responsibilities and Duties" in § 4-5-4, not job title of the person performing it. Being listed as an environmental consultant is required for any labor billed above the staff engineer/scientist rate. Refer to the Listed Environmental Consultant portion of the Guidelines (Article 2) for more information.

### **4-5-2-2. 10% LIMITATION**

Total hours in top 3 categories (Principal, Senior Engineer/Scientist, and Project Manager) cannot exceed 10% of consultant's total project labor hours.

#### **4-5-2-3. COMPLEX SITE**

A complex site is one with extensive groundwater and soil contamination, difficult hydrogeology, multiple contaminants, or above-ground complications.

#### **4-5-2-4. CONSULTANT-APPLICANT LABOR RATES**

Pursuant to § 12-25-105 CRS, some of the following responsibilities and duties may require either licensure as a professional engineer or the proper level of supervision from a professional engineer. It is the responsibility of the applicant to comply with state law on this issue.

### **Article 4, Part 5-3**

#### **4-5-3-1. APPLICATION OF RATES**

The rates apply to Applicants who are not listed environmental consultants. Reimbursement will be according to task performed (see "Responsibilities and Duties" in § 4-5-4), not job title of the person performing it. Reimbursement will be the LOWER of (1) the maximum rate, or (2) 135% of the employee's ACTUAL wage.

#### **4-5-3-2. 10% LIMITATION**

Not applicable.

#### **4-5-3-3. COMPLEX SITE**

A complex site is one with extensive groundwater and soil contamination, difficult hydrogeology, multiple contaminants, or above-ground complications.

#### **4-5-3-4. UNLISTED APPLICANT'S LABOR RATES**

Pursuant to § 12-25-105 CRS, some of the following responsibilities and duties may require either licensure as a professional engineer or the proper level of supervision from a professional engineer. It is the responsibility of the applicant to comply with state law on this issue.

## **Article 4, Part 5-4**

### **4-5-4. RESPONSIBILITIES AND DUTIES OF THE VARIOUS POSITIONS**

#### POSITION RESPONSIBILITIES and DUTIES

##### PRINCIPAL

- Review complex sites
- Authorize new technology
- Project-related budget approval
- Corrective action plan review
- Project-related contract review and approval

##### SENIOR ENGINEER/SCIENTIST

(Involvement limited to projects requiring highly specialized training)

- New technology innovations
- Complex site characterizations
- Aquifer characterization (complex sites)
- Review complex technical reports
- Review complex corrective action plans

##### PROJECT MANAGER

- Project management
- Approve health and safety plan
- Review and approve reports and field data
- Review and approve work plan
- Approve onsite activities
- Perform periodic site inspections
- Prepare proposals
- Manage subcontractors
- Represent client in dealings with governmental/regulatory agencies

##### PROJECT ENGINEER/SCIENTIST

- Remediation feasibility studies and pilot testing
- Engineering/remedial equipment design
- Aquifer characterization
- Prepare final technical reports
- Prepare corrective action plans
- Data review and analysis
- Prepare work plan
- Site inspection

## STAFF ENGINEER/SCIENTIST

- Supervise onsite activities
- Field work preparation/planning
- Oversee outside contractors
- Site reconnaissance and mapping
- Permitting
- Onsite assessment activities
- Obtain off-site access permission
- Prepare draft reports
- Health and safety coordination and monitoring
- Develop site safety plan

## SENIOR TECHNICIAN

- Operate and maintain remedial equipment
- Operate field and monitoring equipment
- Well developing and sampling

## DRAFTS PERSON

- Drafting
- CAD work
- Cartography

## STAFF TECHNICIAN

- Waste handling
- Decontamination
- Free product removal
- Maintain field monitoring equipment
- Assist senior technician

## CLERICAL/COURIER

- Project-related word processing
- Project-related filing and mailing
- Project-related photocopying
- Travel to deliver or pick up job-related samples, supplies, etc.



## Article 4, Part 6

### 4-6-1. LABORATORY ANALYSIS

The rates the Fund will reimburse for actual laboratory charges include all supplies, sample handling, and disposal fees.

### 4-6-2. INVOICES

Invoices for laboratory analysis must be provided, regardless of the invoice amount.

### 4-6-3. RUSH CHARGES

Rush charges up to an additional 100% of a laboratory analysis rate that does not exceed these Guidelines will be reimbursed if justified economically by reducing overall remediation costs or if incurred because of emergency health or environmental issues. "Rush" means performing the analysis by the next laboratory working day.

### 4-6-4. INDIVIDUAL LABORATORY TESTS

| LABORATORY TEST | METHOD                         |
|-----------------|--------------------------------|
| 6.1             | BTEX                           |
| 6.2             | TVPH                           |
| 6.3             | TEPH                           |
| 6.4             | TRPH                           |
| 6.5             | MTBE                           |
| 6.6             | Oil & Grease                   |
| 6.7             | BTEX/TVPH                      |
| 6.8             | BTEX/MTBE                      |
| 6.9             | BTEX/MTBE/TVPH                 |
| 6.10            | PCB screen                     |
| 6.11            | VOA                            |
| 6.12            | Semi-VOA                       |
| 6.13            | Total Lead (Pb)                |
| 6.14            | TCLP Pb-includes extraction    |
| 6.15            | TCLP Pb&Cr-includes extraction |
| 6.16            | TCLP VOA                       |
| 6.19            | TCLP 8 RCRA Metals             |
| 6.22            | Ignitability/Flashpoint        |
| 6.23            | Corrosivity                    |
| 6.24            | Paint filter test              |
| 6.25            | Reactivity-sulfide             |
| 6.26            | Reactivity-cyanide             |
| 6.27            | WET Test (acute test)          |
| 6.28            | BTEX (soil vapor by Tedlar)    |
| 6.28            | BTEX (soil vapor by Summa)     |
| 6.29            | VOA (indoor air)               |

|      |                              |
|------|------------------------------|
| 6.30 | Semi-VOA (16 Priority PAH's) |
| 6.31 | Microbe/Plate Count          |
| 6.32 | Field test kits              |
| 6.33 | Sample shipping              |
| 6.35 | BTEX/TVPH (emissions)        |
| 6.36 | Total Suspended Solids (TSS) |
| 6.37 | TDS                          |
| 6.38 | Alkalinity                   |
| 6.39 | Total and Ferrous Iron       |
| 6.40 | Nitrate                      |
| 6.41 | Sulfate                      |
| 6.42 | BOD                          |
| 6.43 | COD                          |
| 6.44 | TOC                          |
| 6.45 | FOC                          |
| 6.46 | Phosphate                    |
| 6.98 | Rush charges                 |
| 6.99 | other (specify)              |

#### 4-6-5. MARKUP

The consultant may mark up laboratory rates if the laboratory analysis is performed by a laboratory that is not owned by nor affiliated with the consultant.

## **Article 4, Part 7**

### **4-7-1. OFFSITE ACCESS**

Maximum hours: Actual, not to exceed 8 hours per project for off-site access of up to three properties. Any additional hours should be clearly identified.

### **4-7-2. WELL DEVELOPMENT**

Maximum hours: Actual, not to exceed 1.5 hours per well. Any additional hours should be clearly identified.

### **4-7-3. UTILITY LOCATE**

Maximum hours: Actual, not to exceed 8 hours per site. Any additional hours should be clearly identified.

### **4-7-4. POTHOLING**

- The potholing RCG (Task and Labor Code [TLC] 8.14) will be \$150/hr and will include subcontractor costs for labor and equipment for surface coring and potholing.
- Potholing mileage (TLC 8.15) to and from a job site will be reimbursed at an RCG of \$2.75/mile.
- For cost estimation purposes OPS will continue to allow for up to one hour per potholed location unless it can be demonstrated through site specific information that more effort is required. Potholing must be billed on an actual level of effort basis and will be reimbursed accordingly.
- Oversight of potholing will be allowed at up to one hour per hole at a staff engineer's rate (TLC 5.5). It is expected that potholing activities will be completed in conjunction with other drilling activities and therefore drive time and mobilization time should already be accounted for.
- OPS will not reimburse for temporary backfill or temporary protective cover of potholed locations.
- Collected soil samples must be representative and undisturbed therefore potholing will not be allowed as an accepted method of collecting soil samples.
- OPS may require multiple bids for potholing efforts that exceed two days' time onsite (16 hours). This requirement may pertain to remedial system installation, in-situ injection programs, and site assessments that require extensive soil, vapor and groundwater characterization efforts and should be a part of a bid package for such activities.

## **Article 4, Part 8**

### **4-8-1. FUND REIMBURSEMENT**

The Fund will reimburse the lower of the cost to rent or purchase remediation equipment. In most instances, the burden will be on the Fund Applicant to prove that purchase was more economically feasible than leasing or renting the equipment, or to prove that it was not possible to rent/lease the equipment, such that purchase was the only option.

### **4-8-2. COMPARING RENTAL AND PURCHASE COSTS**

When determining whether to rent or purchase equipment, all costs should be factored into the decision, including operation and maintenance costs. If the prime contractor or consultant leases its own equipment to the Applicant, no operation and maintenance costs will be reimbursed.

Rental rates should factor in the following:

- Purchase price of the equipment + markup, if applicable
- Salvage value of the equipment
- Expected economic life of the equipment (assumed to be 30 months unless manufacturer states otherwise)
- Cost of capital (interest)

### **4-8-3. PARTIAL REIMBURSEMENT**

If a Fund Applicant purchases remediation equipment and uses it for only a few months, the Fund may reimburse only a portion of the purchase price, adjusted to factor in the economic life of the equipment and the number of months the equipment was used at the remediation site.

## **Article 4, Part 9**

### **4-9-1. AIRLINE TRAVEL**

Airline travel will be reimbursed only to the extent it does not exceed the per mile rate.

### **4-9-2. LODGING**

The Fund will reimburse lodging at a rate that is actual and reasonable for the area. A receipt is required. Lodging will not be reimbursed unless the job site is at least 50 miles from the office.

### **4-9-3. MEALS**

No meals will be reimbursed without an allowable overnight stay. Three meals will be reimbursed for each allowable overnight stay. No receipt is required for meal reimbursement.

### **4-9-4. MILEAGE**

The Fund will reimburse round-trip mileage from office to job site per mile per vehicle per trip for standard and 4-wheel drive vehicles. The Fund will reimburse for a maximum of 400 miles one way or 800 miles round trip per vehicle trip. Mileage reimbursement will not be allowable for more than one vehicle per trip unless the use of multiple vehicles is justified.

### **4-9-5. OUT-OF-STATE TRAVEL**

Out-of-state travel will be reimbursed, subject to the limits established by these guidelines, if the company does not have a Colorado office.

### **4-9-6. TRAVEL TIME**

The Fund will reimburse for actual travel hours per employee, billed at the appropriate activity rate, for round-trip travel to and from the job site.

### **4-9-7. VEHICLE RENTAL**

The Fund will not reimburse vehicle or company car rental charges, other than the standard reimbursement rate for mileage.

### **4-9-8. MARKUP**

No markup is allowed on any travel charge.

## **Article 4, Part 10**

### **4-10-1. MAXIMUM ALLOWABLE MARKUP**

The Fund will reimburse markup at a maximum of 15% of certain pass-through costs. These are project-related costs paid directly by the prime contractor, including payments to subcontractors, lab fees, permits, onsite utilities, and equipment purchase and rental charges. Markup is allowed only on reimbursed pass-through charges.

### **4-10-2. MARKUP NOT ALLOWED**

- (a) No markup is allowed on a company's own labor charges, or on rental charges a company charges for equipment it owns. Example: Prime Contractor "A" subcontracts drilling to Subcontractor "B". "B" cannot mark up its own labor, since profit is presumed to be built into the labor rates "B" charges. "A" may, however, mark up "B"'s entire invoice, including "B"'s labor charges.
- (b) If a pass-through charge is not reasonable, markup will be allowed only on the reasonable portion of that charge that is actually reimbursed.
- (c) If a pass-through charge is not allowable, no markup will be allowed.
- (d) No markup will be allowed on materials provided by the Applicant. The Applicant is entitled to reimbursement of his/her cost of these materials only.
- (e) No markup is allowed on normal business pass-through costs such as utilities (including telephone and fax charges), courier fees, or shipping or postage costs.
- (f) No markup is allowed on any travel charge, including lodging, per diems and mileage.
- (g) No markup is allowed on pass-through charges if the Applicant is acting as its own consultant and primary contractor.
- (h) No markup is allowed on materials or services provided by any company or person with whom the consultant has a financial interest.

## **Article 4, Part 11**

### **4-11-1. EQUIPMENT REPAIR OR REPLACEMENT**

The Fund will not reimburse the cost to repair or replace equipment that is damaged, lost, stolen, or destroyed due to negligence or vandalism.

### **4-11-2. MATERIALS PROVIDED BY APPLICANT**

Materials provided by the Applicant will be reimbursed at the Applicant's cost. No markup by Applicant or consultant is permitted.

### **4-11-3. PHOTOCOPYING**

Only job-related photocopying will be reimbursed thru 12/31/08. No reimbursement will be paid for photocopying the Fund application, any attachments to the application, or any documents or correspondence submitted pursuant to the application process. The actual cost for color or enlarged photocopies requested by the OPS is reimbursable thru 12/31/08.

### **4-11-4. RUSH CHARGES**

The Fund will not reimburse rush charges unless they (1) are justified by an environmental or public health and safety emergency, or (2) reduce overall remediation costs.

### **4-11-5. VEHICLE RENTAL**

The Fund will not reimburse vehicle rental charges with respect to a vehicle used to transport personnel or small equipment. This includes the cost of renting a vehicle from a rental company, as well as rental charges for consultant-owned vehicles.

### **4-11-50. MISCELLANEOUS FIELD SUPPLIES**

The per day per site rate includes such items as gloves, baggies, ice, water, rope, pens, etc. No receipts are required.

**Article 4, Part 12**

Waste transport disposal manifests are required to document proper waste transport disposal.



## **Article 5, Part 1**

### **5-1-1. COLORADO STATUTES AND REGULATIONS**

(1) By statute, Colorado's Petroleum Storage Tank Fund (the Fund) can reimburse to eligible Fund applicants costs related to personal injury or property damage suffered by third parties [§§8-20.5-206(1) & 8-20.5-303(1) CRS]. A \$25,000 deductible applies to third-party reimbursement awards, unless the applicant establishes Fund eligibility as a person bearing no responsibility for the release pursuant to §8-20.5-206(3) or §8-20.5-303(3) CRS. Colorado law provides no further guidance regarding third-party liability claims against the Fund. The Colorado Attorney General's Office has determined that Colorado's Petroleum Storage Tank Committee (the Committee) has authority pursuant to §8-20.5-104(4) CRS to establish procedures and policies regarding third-party liability claims.

(2) Colorado regulations state only that personal injury or property damage costs are not unallowable if suffered by third parties [7 CCR 1101-14, 8-4(a)(5)]. These costs are, therefore, presumed to be potentially allowable. The regulations provide no further guidance regarding third-party liability claims. The Colorado Attorney General's Office has further determined that nowhere in Colorado statute or regulation are there definitions of "bodily injury," "personal injury" or "property damage" that would apply to third-party liability claims against the Fund.

### **5-1-2. ENVIRONMENTAL PROTECTION AGENCY**

(1) The Environmental Protection Agency (the EPA) provides limited direction on incorporating third-party liability coverage into state funds used to satisfy EPA financial assurance requirement [40 CFR, Parts 280 & 281], including:

(a) "Bodily injury" and "property damage" shall have the meaning given to those terms by applicable state law, and may exclude from coverage those liabilities which, consistent with standard industry practice, are excluded from coverage in liability insurance policies.

(b) Coverage is required only for compensation to third parties for injury and damage caused by accidental petroleum releases.

(c) The EPA requirement for \$1 million in financial assurance applies to both third party liability and cleanup costs, but not \$1 million for each.

(d) The \$1 million reimbursement limit must be exclusive of legal defense costs.

### **5-1-3. SUMMARY OF ARTICLE V CONTENTS**

(1) This Article V of the Guidelines addresses the following aspects of third-party liability claims against the Fund:

- (a) Eligibility criteria
- (b) Definition of “bodily/personal injury,” “property damage” and “third party”
- (c) Coordination of third-party liability and remediation reimbursement claims
- (d) Supporting documentation requirements
- (e) Role of the Attorney General's Office
- (f) Potentially allowable costs
- (g) Reasonable rates for allowable costs
- (h) Unallowable costs

## **Article 5, Part 2**

### **5-2-1. ELIGIBILITY CRITERIA**

(1) Eligibility criteria pertaining to applicants, releases, or sites established by statute, regulation or Committee policy apply to third-party claims in the same manner as to cleanup claims.

(2) No initial claim pertaining to third-party liability will be considered potentially eligible for reimbursement until allowable third-party liability costs claimed exceed \$25,000, unless the applicant is eligible for Fund benefits as a person bearing no responsibility for the release pursuant to §§8-20.5-206(3) or 8-20.5-303(3) CRS

[Note: The \$25,000 deductible for third-party liability claims is separate and apart from the \$10,000 deductible applied to the reimbursement for cleanup costs.]

### **5-2-2. PERCENT REDUCTIONS**

(1) Any percent reductions applied pursuant to §8-20.5-104(4)(d)(1) CRS apply to third-party liability reimbursement as well as to reimbursement for remediation costs.

### **5-2-3. REIMBURSEMENT DIRECTLY TO THIRD PARTY NOT PERMITTED**

(1) No reimbursement will be made directly from the Fund to the third party.

## **Article 5, Part 3**

### **5-3-1. BODILY/PERSONAL INJURY**

(1) As used in this Article 5, bodily injury and personal injury are interchangeable terms. "Bodily/personal injury" means physical injury, sickness, disease or death proximately caused by an accidental release of a petroleum product. "Bodily/personal injury" does not include any loss or damage of an intangible nature, including pain and suffering, mental distress or anguish, or fear of future harm or illness. "Bodily/personal injury" does not include false arrest, detention, imprisonment; malicious prosecution; wrongful entry into or eviction of a person from a room, dwelling, premises or property that the person occupies; invasion of right of private occupancy; or other similar deprivation.

### **5-3-2. PROPERTY DAMAGE**

(1) "Property damage" means physical injury to, destruction of, or contamination of tangible property, real or personal, including resulting loss of, or interference with, use of that property. "Property damage" includes loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been permanently or temporarily evacuated, withdrawn from use, or rendered inaccessible as a proximate result of an accidental release of a petroleum product.

(2) "Property damage" does not include the following:

- (a) Cleanup costs
- (b) Damage to property the applicant owns, rents, occupies, or uses
- (c) Damage to property the applicant sells, gives away or abandons after discovery of the release
- (d) Personal property in the applicant's care, custody or control
- (e) Diminution of property value, whether actual, perceived or anticipated, except as provided for at §5-7-2(20). If diminution of property value is reimbursed, no remediation costs for the third party's property will be reimbursed for this occurrence.

### **5-3-3. THIRD PARTY**

(1) "Third party" means a person who has suffered bodily/personal injury or property damage as a proximate result of an accidental petroleum release. "Third party" does not include the following:

(a) Any employee or independent contractor of the Fund applicant whose bodily/personal injury or property damage is connected to the employment or contractual relationship.

(b) Any business associate of the Fund applicant (or a related enterprise of the Fund applicant), including without limitation a partner, shareholder, or joint venture of the Fund applicant or of a related enterprise, or any business entity or individual (or owners, agents or employees thereof) that owns, leases, operates, or manages the site, when the business relationship with the Fund applicant is related to the Fund applicant's ownership or operation of the petroleum business at the site.

(c) Any former tank owner/operator or permittee who may have been the owner/operator or permittee at the time when the release occurred, and any individual or corporation that leases the property where the release originated after the contamination is found.

(d) Recognizing there may be business arrangements of which the Committee was not aware when drafting §5-3-3(1), the Committee reserves the right to consider third-party status on a case-by-case basis.

(2) If either the tank owner or tank operator is a potentially eligible Fund applicant for the subject release, neither can be a third party, regardless of which actually establishes Fund eligibility.

## **Article 5, Part 4**

### **5-4-1. WHEN TO FILE THIRD-PARTY LIABILITY CLAIM**

(1) Third-party liability claims may be filed at any time following the discovery of a release above Colorado action levels.

### **5-4-2. WHEN REIMBURSEMENT FOR THIRD-PARTY CLAIMS WILL BE MADE**

(1) No reimbursement will be made for any third-party liability claims until all of the following have occurred:

(a) The Committee has determined that the applicant and the site are eligible for Fund benefits.

(b) The applicant has submitted a Corrective Action Plan and pertinent Technological and Economic Feasibility Summaries for the site.

(c) The OPS has approved the Corrective Action Plan.

### **5-4-3. LIMITATION ON REIMBURSEMENT**

(1) Policy #13 of the Committee, which limits reimbursement to \$50,000 until there is an approved Corrective Action Plan for the site, applies to reimbursement of third-party liability expenses as well as remediation expenses. Costs submitted for reimbursement will be processed as submitted, regardless of whether they are for remediation or for third-party liability expenses. However, if net (after factoring in any percentage reductions imposed for regulatory non-compliance) total allowable remediation expenses (incurred and projected) plus third-party liability costs submitted for reimbursement exceed \$2 million, the Committee may, at its sole discretion, withhold from reimbursement that portion of third-party liability costs that cause projected total net allowable costs to exceed \$2 million if the Committee believes this would encourage continued remediation of the site. Any third-party liability costs so withheld from reimbursement would be potentially eligible for reimbursement, subject to the \$1 million statutory limitation, once the OPS issues a no-further-action (site closure) letter.

### **5-4-4. APPLICATION FORMS**

(1) The standard original and supplemental reimbursement claim forms shall be used for both cleanup and third-party reimbursement claims until such time as the OPS creates forms tailored for third-party liability claims.

#### **5-4-5. SEPARATE APPLICATION REQUIRED**

(1) Reimbursement applications pertaining to third-party liability should be submitted separately from claims pertaining to assessment or remediation costs.

## **Article 5, Part 5**

### **5-5-1. PROOF OF PAYMENT**

(1) Because only costs that the applicant has already paid are eligible for reimbursement, proof of payment pursuant to the regulations is required for all costs submitted on a third-party liability claim. For any costs paid directly by the third party and reimbursed to the third party by the applicant, proof of payment may be required from both the third party and the applicant.

### **5-5-2. PROOF OF DAMAGES**

(1) All third-party costs must be sufficiently documented to demonstrate the amount of the damages and the basis for the damages. If the third-party claim is based upon a settlement agreement, jury verdict, or court order that does not itemize damages and costs, the applicant must provide supporting documentation to show that allowable costs were incurred whose total reached the amount paid to the third party. If the applicant cannot provide this documentation, only allowable costs which the applicant can adequately document will be reimbursed.

(2) With respect to third-party reimbursement claims submitted to the OPS before the Committee adopts this Article 5, the Committee may, at its sole discretion, approve full or partial reimbursement solely on the basis of a settlement agreement, jury verdict or final court order, and with no further documentation of actual damages and costs.

### **5-5-3. OTHER REQUIRED DOCUMENTATION**

(1) Any settlement agreement, jury verdict, or final court order must be provided with a third-party liability claim. These may be used as baselines from which the OPS will conduct eligibility, reasonableness and necessity reviews.

(2) Any other documentation as requested by the OPS or the Committee, including, but not limited to:

- (a) Waiver and/or release agreements
- (b) Subrogation agreements
- (c) Tax forms
- (d) Real and personal property appraisals
- (e) Personal property repair bills
- (f) Medical bills



- (g) Financial statements
- (h) Lease agreements
- (i) Utility bills
- (j) Pleadings and other documents of legal effect
- (k) Insurance policies

#### **5-5-4. INDEPENDENT EXAMINATION**

(1) Either the OPS or the Committee may require physical examination by a property appraiser of the damaged property which is the subject of the reimbursement claim. Fund monies may be used to pay fees and expenses associated with the appraisal, and any such payment will not count against the \$1 million per-occurrence reimbursement limit.

(2) Either the OPS or the Committee may require physical examination of any person whose bodily/personal injury is the subject of the reimbursement claim. Fund monies may be used to pay fees and expenses associated with the examination, and any such payment will not count against the \$1 million per-occurrence reimbursement limit.

## **Article 5, Part 6**

### **5-6-1. ROLE OF THE ATTORNEY GENERAL**

(1) The OPS will submit to the Colorado Attorney General's Office for review any settlement agreement, jury verdict, or final court order, together with any pertinent pleadings or other materials it has received.

(2) Based on its review of the legal adequacy of such documentation, the Attorney General's Office will provide a legal reimbursement recommendation to the Committee. Consistent with its role as legal counsel to the Committee, the Attorney General's Office may provide additional advice concerning third-party liability issues to the Committee.

(3) For aboveground storage tanks where reimbursement is sought, the Attorney General's Office must approve the settlement agreement in accordance with §8-20.5-303(1)(c) CRS.

## **Article 5, Part 7**

### **5-7-1. BODILY/PERSONAL INJURY**

The following are potentially allowable third-party bodily/personal injury costs:

(1) Compensatory damages for bodily/personal injury, including actual, necessary and reasonable medical expenses incurred by the third party and not covered by the third party's own insurance, including, but not limited to:

- (a) Emergency medical testing
- (b) Doctor visits
- (c) Diagnostic testing
- (d) Hospitalization
- (e) Prescriptions
- (f) Funeral expenses

### **5-7-2. PROPERTY DAMAGE**

(1) Compensatory damages for property damage, including, but not limited to:

- (a) Cost to repair and/or clean personal property, unless this exceeds replacement cost
- (b) Replacement cost of personal property when cleaning or repair are not possible or would exceed the replacement cost
- (c) Real property restoration (not including cleanup costs or property improvements) or the fair market value of the damaged property, whichever is the lower cost

(2) Loss of wages

(3) Loss of business income from impacted commercial property resulting from loss of, or interference with, the use of that property

(4) Loss of rental property income from impacted rental property resulting from loss of, or interference with, the use of that property

(5) Drinking water supply:

- (a) Cost to provide a permanent replacement or alternative potable drinking water supply, including developing a new drinking water supply well or hooking up to a readily available public water supply, whichever is the lower cost. (Temporary replacement/alternative drinking water supply is considered a cleanup cost, not third-party liability.)
  - (b) If neither option at (a) is practicable, the cost to install an in-home point-of-entry treatment system as directed by the OPS, and reasonable costs to operate said system until the OPS determines it is no longer needed. (No water bills following hook-up to a public supply will be reimbursed.)
  - (c) Cost to test water supply as directed by the OPS
- (6) Temporary relocation costs, only if the third party's dwelling or commercial property has been determined to be uninhabitable by the OPS. Although third parties still have access and short internal use of the impacted property during the evacuation/remediation state, they cannot receive reimbursement if they choose to relocate back into the affected structure. Allowable temporary relocation costs include:
- (7) Rent/lodging
  - (8) Costs to move essential belongings to temporary quarters and to return them to the impacted dwelling at the conclusion of the temporary relocation (either cost of private moving company or cost for rental of trailer or moving truck). Allowable moving costs do not include labor costs paid to the third party or a family member of the third party. If temporary relocation exceeds one month, moving charges for a second move are allowed to the extent they are offset by a cost savings in rent.
  - (9) Work-related additional transportation costs necessitated by the move
  - (10) Pet boarding costs necessitated by the move
  - (11) Renter's insurance on relocation dwelling or business
  - (12) Livestock relocation and boarding costs necessitated by the move
  - (13) Additional and necessary transportation costs associated with getting children to and from their local school
  - (14) Non-refundable charges for utility hookup at the temporary dwelling or business, excluding cable TV and internet access

- (15) Utility charges at temporary dwelling or business
- (16) Other actual, necessary and reasonable residential or business relocation costs
- (17) Flat fee utility charges at impacted structure during the relocation period, plus additional costs to maintain minimum temperature to prevent pipes from freezing.
- (18) Flat fees for security system at impacted structure during relocation period, provided security system was installed prior to impact on structure.
- (19) Permanent relocation costs are allowable only if the impacted structure is either determined by the OPS to be permanently uninhabitable, or if the costs to restore the structure are greater than the fair market value of the contaminated property plus relocation costs. Allowable permanent relocation costs are limited to moving costs and do not include labor costs paid to the third party or a family member of the third party.
- (20) Diminution of property value, provided all of the following apply:
- (a) The Fund applicant has made a good faith effort to remediate the third party's property but is not able to do so because of access limitations imposed by the third party;
  - (b) The fund applicant has notified the OPS of the applicant's unsuccessful effort to gain access to the third party's property and has provided to the OPS documented particulars of attempts made to gain this access;
  - (c) There is an approved Corrective Action Plan for the site.
  - (d) The diminution of property value amount is based on the estimated additional cost to remediate the third party's property if that property were cleaned up under a single corrective action plan for the entire impacted area, as demonstrated through a technical and economic feasibility analysis.
- (21) Any other bodily/personal injury or property damage cost determined to be allowable, necessary and reasonable by the Committee.

## **Article 5, Part 8**

### **5-8-1. ONLY ALLOWABLE COSTS MAY BE CONSIDERED REASONABLE**

(1) No cost is reasonable unless it is also an allowable cost pursuant to statute, regulation, or Committee policy.

### **5-8-2. MILEAGE**

(1) Mileage will be reimbursed at the rate established elsewhere by the RCGs.

### **5-8-3. PER DIEM**

(1) Per diem charges will be reimbursed for the first 30 days only at the rate established elsewhere by the RCGs.

### **5-8-4. LODGING**

(1) Lodging charges will be reimbursed for the first 30 days only at the rate established elsewhere by the RCGs. After 30 days, lodging will be reimbursed for rent billed monthly at a long-term motel, apartment/condominium/townhouse or house. Reimbursement for lodging will not exceed what is typically charged in the area for a dwelling similar to the impacted dwelling.

### **5-8-5. OTHER**

(1) For activities whose reasonable rate is not addressed in the RCGs, actual costs will be reimbursed provided the amount is one typically expected for the particular activity.

## **Article 5, Part 9**

### **5-9-1. UNALLOWABLE COSTS**

The following costs are not allowable for reimbursement:

- (1) Bodily/personal injury or property damage in excess of actual, necessary and verifiable costs
- (2) Costs otherwise insured
- (3) Governmental, civil or criminal fines or penalties
- (4) Punitive damages, exemplary damages, multiple compensatory damages, administrative or criminal fines, or penalties imposed upon the applicant
- (5) Costs considered to be part of the corrective action process, including temporary provision of potable drinking water supply for domestic consumption and off-site rents for placement and/or operation of remediation equipment or recovery wells
- (6) Costs for subjective or non-physically manifested damage components and indirect or intangible damages, including, but not limited to: pain and suffering, mental distress, loss of consortium and/or services, psychological injuries, hedonic damages, inconvenience, fear of future harm or illness, stress of anticipated or actual harm or illness, medical monitoring in the absence of actual harm or illness, loss of goodwill
- (7) Property taxes at impacted structure
- (8) Long-distance telephone charges
- (9) The following relocation costs:
  - (a) Refundable deposits
  - (b) Fees for cable television or internet access
  - (c) Homeowner's or renter's insurance for the impacted structure
- (10) Damages caused by third party's failure to mitigate, including, but not limited to, failure to provide site access for corrective action
- (11) Actual, perceived or anticipated diminution of property value for impacted property that has been remediated pursuant to the requirements of the OPS
- (12) Attorneys fees, expert witness fees, and other legal costs

- (13) Interest
- (14) Future lost earnings caused by bodily/personal injury or death
- (15) Third party's consultant or other representative oversight costs not necessary to the corrective action process
- (16) Any obligation for which the applicant can be held liable under workers compensation, unemployment compensation, disability benefits, or similar law protecting applicant's employees
- (17) Any liability assumed by the applicant under any contract or agreement, if the liability would not exist without the contract or agreement
- (18) At the Committee's sole discretion, claims for reimbursement relating to a tank owned or operated by a person who has been convicted of a violation of any law or rule that relates to the installation, operation, or management of petroleum storage tanks
- (19) At the Committee's sole discretion, corrective action costs resulting from negligence or misconduct on the part of the applicant or the third party
- (20) Costs of making improvements to the impacted property beyond those required to restore it to its pre-impact condition
- (21) Costs, including those associated with contamination assessment performed for any purpose, where no petroleum corrective action is required by OPS
- (22) Costs of corrective action taken in response to the release of an ineligible substance
- (23) Any costs identified as unallowable or ineligible for reimbursement in Colorado law, OPS regulation or Committee policy
- (24) Costs in excess of those considered reasonable by the Committee
- (25) Costs determined to be unnecessary by the Committee