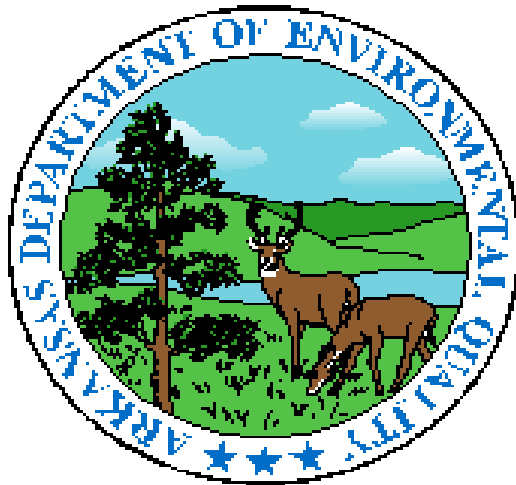


ARKANSAS PETROLEUM STORAGE TANK TRUST FUND

GUIDELINES FOR REIMBURSEMENT OF CORRECTIVE ACTION COSTS



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SECTION 1 – GENERAL

1.1 INTRODUCTION

The Arkansas Petroleum Storage Tank Trust Fund was established by the Arkansas Legislature via Act 173 of 1989. Its purpose was twofold: 1) to assist underground storage tank owners in meeting the federal financial assurance requirements found in 40 C.F.R. 280, Subpart H; 2) to provide a financial incentive for the prompt reporting, investigation and remediation of releases from regulated storage tank systems.

The trust fund is funded by a petroleum environmental assurance fee collected at the wholesale level on each gallon of motor fuel or distillate special fuel purchased in or imported into the state. Storage tank fees, established by Act 172 of 1989, are not a funding source for the trust fund. Instead, those fees provide funding for the administration of the Regulated Storage Tanks Program including compliance, enforcement, technical, licensing, underground storage tank operator certification and other program support activities.

This document is the culmination of efforts by ADEQ staff, industry, and various other stakeholders to develop guidance that is clear, fair and consistent in its application. Efficiency, flexibility and good stewardship of the Petroleum Storage Tank Trust Fund are the primary purposes to which end this guidance is published.

SECTION 2 – TRUST FUND ELIGIBILITY AND FUND COVERAGE

2.1 ELIGIBILITY REQUIREMENTS

Trust fund eligibility is determined based on the tank owner's compliance with the following requirements at the time of the discovery of a release:

- a. The storage tank(s) is registered with ADEQ
- b. All storage tank fees are paid and current
- c. The tank owner or operator maintained financial responsibility for the trust fund deductible of seven thousand five hundred dollars (\$7,500)

2.2 TRUST FUND COVERAGE REQUIREMENTS

The requirements for trust fund coverage of a release are:

- a. At the time of discovery of the release, the tank owner or operator must have met all the requirements for trust fund eligibility found in Reg.12.302(D) and Subsection 2.1 above
- b. The release must have occurred after February 22, 1989
- c. The release must have been reported to ADEQ within twenty-four (24) hours of its discovery
- d. The tank owner or operator must cooperate fully with ADEQ in conducting corrective action to address the release
- e. The tank owner or operator must have expended seven thousand five hundred dollars (\$7,500) in reasonable, allowable and necessary costs for the release

2.3 TRUST FUND COVERAGE LIMITS

The trust fund coverage limit for corrective action costs is one million five hundred thousand dollars (\$1,500,000). The maximum trust fund reimbursement to an eligible tank owner or responsible party for corrective action costs required by ADEQ to address a release is one million four hundred ninety-two thousand five hundred dollars (\$1,492,500).

Although these guidelines focus on reimbursement of corrective action costs, the trust fund may also provide coverage for payment of third-party claims associated with an eligible release. The trust fund coverage limit for third-party claims is one million dollars (\$1,000,000). The maximum in trust fund payments for third-party claims for a release is nine hundred ninety-two thousand five hundred dollars (\$992,500).

2.4 TRUST FUND DEDUCTIBLES

The first seven thousand five hundred dollars (\$7,500) of reasonable, allowable and necessary corrective action costs incurred by a tank owner or operator for an occurrence is considered a deductible.

The first seven thousand five hundred dollars (\$7,500) of costs incurred by a tank owner or operator for third-party claims for an occurrence is considered a deductible.

Trust fund deductibles are not reimbursable.

2.5 APPLYING FOR REIMBURSEMENT

In order to apply for reimbursement of corrective action costs, a tank owner or operator must meet the requirements for trust fund eligibility and fund coverage found in Subsections 2.1 and 2.2 of these guidelines.

An application for trust fund reimbursement must be submitted on forms provided by ADEQ. (See Appendix A for copies of the forms or, for access to the forms electronically, go to: <https://www.adeg.state.ar.us/rst/programs/trustfund/>)

SECTION 3 – CORRECTIVE ACTION COSTS

3.1 REASONABLE, ALLOWABLE, NECESSARY

All corrective action costs submitted for reimbursement from the trust fund must meet a three-pronged test of reasonable, allowable and necessary as outlined in Reg.12.311, Reg.12.312 and Reg.12.313.

The subsections that follow provide clarifying information in addition to that found in the regulatory citations above. For questions about any specific costs or categories not mentioned herein, please contact the Trust Fund Administrator, Petroleum Tanks Program & Enforcement, Office of Land Resources, ADEQ.

3.2 HOTEL AND MEALS

Hotel and meal expenses may be reimbursed if an overnight stay is necessary to facilitate corrective action in an efficient manner.

Requests for reimbursement of hotel expenses must be supported by an original hotel receipt (not a credit card receipt) showing the actual amount paid for the hotel room including applicable taxes and fees. No reimbursement will be made without a receipt. Additional charges such as room service, in-room movies, club fees, phone calls, internet, etc., are not reimbursable.

Meals are reimbursed on a per diem basis at the State allowance rate (currently \$41.00 per day). No per diem will be reimbursed unless associated with an overnight stay. A hotel receipt is necessary to document an overnight stay. Hotel receipts must indicate the number of persons in occupancy if more than one per diem is claimed per hotel receipt. No meal-related costs, such as taxes, tips, delivery fees, etc., will be reimbursed in excess of the per diem amount.

Only hotel and per diem costs meeting these criteria and paid by the tank owner or responsible party may be reimbursed. There is no markup allowed on per diem. Markup for hotel costs may not exceed the twenty percent (20%) markup rate for direct costs.

3.3 MILEAGE

Mileage, regardless of vehicle class/size, is reimbursed on a per mile basis at the loaded rate of seventy cents (\$0.70) per mile. No additional markup is allowed.

Rolling equipment such as dump trucks, drill rigs, dozers, etc., is a separate category not covered by this section. (See Subsection 3.10 - “Rolling Equipment”)

Mileage may be reimbursed only for the actual miles driven which are necessary to facilitate corrective action in an efficient manner. Consultants and contractors are

encouraged to minimize the number of trips to and from locations, where possible, by combining planned site activities. For example, plan to do well gauging and well sampling activities on the same trip rather than on separate trips.

Only mileage charges meeting these criteria will be allowable for reimbursement.

Mileage rates will be reviewed annually but no more than thirty (30) days prior to the end of each calendar year. Rates for the next calendar year will be proposed by ADEQ and reviewed by the Advisory Committee on Petroleum Storage Tanks in December of each year prior to implementation on January 1st of the next calendar year.

3.4 TOOLS OF THE TRADE

Consultants are expected to provide necessary tools of the trade as part of their base services. No direct charges (rental, lease or purchase) or indirect charges (labor, mileage or other charges related to procurement) for tools of the trade are reimbursable. Any exceptions as specified below must be approved by ADEQ in a workplan in order to be considered an allowable cost for reimbursement.

Tools of the trade include, but are not limited to:

- a. Hand tools (manual or powered)
- b. Ice chests
- c. Buckets
- d. Water hoses
- e. Wheelbarrows
- f. Safety equipment (e.g., caution tape, safety cones)
- g. Traffic control equipment (with the exception of the rental of concrete barricades, safety fencing, caution lights, warning/directional signs, or site-specific equipment necessary for traffic control and approved by ADEQ in a workplan)
- h. Personal protective equipment
- i. Surveying equipment
- j. Communication equipment (cell phones, pagers, etc.)
- k. Computing equipment (laptops, iPads, etc.)
- l. Photography equipment (cameras, lens, etc.)

3.5 FIELD EQUIPMENT RENTAL

Rental fees may be reimbursed for consultant-owned equipment or for equipment obtained from a third-party vendor. Field equipment purchases are not reimbursable. (However, the cost to purchase *remediation* equipment which must be installed at a site to implement a corrective action plan is typically a reimbursable cost.)

Rental fee rates must be based comparatively to the most cost effective rental timeframe for the expected duration of use for the equipment, i.e., hourly, daily, weekly, monthly, etc.

Rental fees must not exceed a competitive rate. Competitive rates may be established by no less than three (3) independent bids or quotes. For consultant-owned equipment, each consultant must provide a list of rental rates with justification supporting that each rental rate is a competitive rate. All rental rates must be reviewed and approved by ADEQ. Approved rental rates will be reviewed annually by ADEQ. Any recommended adjustments to those rates will be reviewed by the Advisory Committee on Petroleum Storage Tanks in December of each year with final approved rental rates effective January 1st of the following year.

Equipment covered by this subsection includes:

- a. Air compressors
- b. Generators
- c. Concrete saws
- d. Jack hammers
- e. Interface probes
- f. PIDs, FIDs, and OVAs
- g. Infrared analyzers
- h. Portable gas chromatographs
- i. Dataloggers
- j. Soil gas probes
- k. Portable groundwater sampling pumps
- l. Water quality sampling meters
- m. Air flow meters
- n. Decibel meters

Rental costs for field equipment not listed here may be allowed upon approval by ADEQ.

An approved competitive rental rate for consultant-owned equipment is considered a loaded flat rate. Additional markup is not allowed. Markup on field equipment rented from a third-party vendor is allowed subject to Section 4.1.

3.6 EMERGENCY RESPONSE

The costs of responding to emergencies caused by a release of regulated substances from qualified storage tanks may be reimbursed provided such costs are reasonable, allowable and necessary. Pre-approval of emergency response costs by ADEQ is not required during the initial emergency response period. However, ADEQ must be provided with an estimate of emergency response costs within 72 hours of the beginning of the emergency. If ADEQ offices are closed during a period in which an emergency response cost estimate is due, the cost estimate may be submitted on the first business day ADEQ is open after the expiration of the 72-hour submittal deadline.

Overtime costs may be charged for field personnel responding to an emergency, if overtime work is required. No administrative or professional personnel overtime costs are reimbursable for emergency response.

3.7 OVERTIME

Labor costs based on overtime rates for non-exempt employees may be reimbursed for personnel hours worked in overtime status. To qualify for reimbursement at overtime rates, the following conditions must be met:

- a. The overtime work is necessary at a specific project.
- b. Overtime may only be claimed after an individual works more than eight (8) hours on a specific project in a single day. Only the hours in excess of eight (8) hours for that day may be reimbursed at an overtime rate, unless those hours are also in excess of forty (40) hours worked by that individual in a week.
- c. The work must qualify as overtime under the provisions of the Fair Labor Standards Act.

For overtime costs on emergency response projects, see Subsection 3.6 – “Emergency Response”.

3.8 WORKPLAN PREPARATION

Preparation costs for workplans submitted upon request of ADEQ for each stage of a cleanup are allowable costs which may be reimbursed. However, the costs of correcting technical deficiencies in workplans which have been submitted for ADEQ review and approval but returned with a notice of deficiency are **not** reimbursable.

When required by ADEQ, the costs of revising workplans due to changes in project scope are reimbursable.

3.9 FIELD SUPPLIES

The costs of consumable items necessary for conducting corrective action are generally considered supplies. Supplies include items such as:

- a. Sample containers and bailers expended at a specific site
- b. Ice used for sample preservation
- c. Disposable gloves used for sampling
- d. Plastic storage bags used for sampling
- e. Deionized water (or other water used for decontamination)
- f. Wear parts such as saw blades and hand drill bits (if broken or otherwise expended on a specific project.)

Supplies do not include items identified as tools of the trade, items not completely expended at a site, or any item excluded from reimbursement by regulation.

Supplies which are **not** reimbursable include:

- a. Gatorade ® or equivalent sports drinks
- b. Energy drinks
- c. Bottled water (for consumption – not decontamination)
- d. Ice for personal use

Reimbursement for these supplies is excluded as personal protective equipment (hydration fluids) and should either be covered under per diem when an overnight stay is necessary, or included in the consultant's overhead expenses. Bottled water, soft drinks, ice, etc., purchased by a consultant, a contractor, or by associated staff for incidental consumption or use by field personnel should be considered a cost of doing business and not billed to the tank owner or responsible party.

3.10 ROLLING EQUIPMENT

Rolling equipment includes dump trucks, earth moving equipment, drilling equipment, etc. Costs to purchase rolling equipment are not allowable costs for purposes of reimbursement.

Reimbursement for consultant-owned rolling equipment will be made on a loaded unit cost based on competitive rates. A minimum of three (3) third-party quotes is required to establish a competitive rate for a unit cost. All unit cost rates submitted by a consultant as competitive must be reviewed and approved by ADEQ. Approved rates will be reviewed annually in accordance with the procedure outlined in subsection 3.5.

Unit costs may be based on volume, weight, time, footage, mileage or other appropriate and verifiable unit measurement. However, the selected unit type must result in the best efficiency and lowest overall cost for the work being conducted which requires the use of rolling equipment.

An approved competitive rate is considered a loaded flat rate. No additional markup is allowed.

Rolling equipment obtained by subcontract with a third-party vendor must follow the same procedures for establishing a competitive rate for a unit cost. Subcontract costs for rolling equipment are considered a direct cost for the purpose of determining allowable project markup.

3.11 UTILITY REPAIR/REPLACEMENT

APC&EC Regulation 12.312(B)(2) prohibits the reimbursement of costs to repair damages, caused by the performance of corrective action, that are due to contractor

negligence, error or other wrongful action. This includes utilities damaged accidentally or unexpectedly during excavation, drilling or other corrective action work being conducted by a contractor. Unexpected or accidental damage to utilities during corrective action activities is, at a minimum, the result of error and can pose serious endangerment to workers. Proper planning to locate utilities and safely remove, repair, or replace them (if necessary to facilitate corrective action) is a reimbursable cost.

SECTION 4 – MARKUP OF COSTS

4.1 MAXIMUM MARKUP

The maximum amount of markup which can be charged on actual costs incurred by a primary consultant in the performance of corrective action activities is twenty percent (20%) of the actual cost. (For maximum markup on labor, see subsection 4.2 below.)

4.2 LABOR

For labor, the actual cost is the number of hours (including partial hours) worked by an individual on a project then multiplied by that individual's "raw labor rate". "Raw labor rate" is the gross hourly rate paid to an employee before any employer taxes, benefits, etc. The raw labor rate is multiplied by three to determine the total labor cost for which reimbursement may be requested.

4.3 DIRECT COSTS

A direct cost is the actual cost paid directly by a tank owner, responsible party, or primary consultant for a product or service. Direct costs include subcontract costs, laboratory services, and purchases of equipment and supplies for corrective action. No indirect costs are reimbursable. All direct costs must be reasonable, allowable and necessary to qualify for reimbursement.

4.4 LOADED COSTS

Some costs must be charged by the primary consultant at a "loaded" unit rate, meaning markup is included in these costs. These types of cost are identified in other subsections of this guidance document and include costs charged for per diem, mileage, reimbursement application preparation and consultant-owned equipment rentals. No additional markup may be added to costs in this category.

SECTION 5 – CHANGE ORDERS

5.1 COST OVERRUNS

Each workplan submitted to ADEQ for review and approval includes a detailed cost estimate for all corrective action tasks included in the scope of the workplan. ADEQ will approve costs based on an evaluation of this estimate. The total amount of all approved costs in a workplan must not be exceeded unless a change order is submitted and approved by ADEQ.

It is preferred and recommended by ADEQ that potential or actual cost overruns be identified and ADEQ notified prior to the performance of any work resulting in an overrun. Failure to identify and notify ADEQ of a cost overrun may result in the excess cost being disallowed. Submitting a change order under the provisions of Subsection 5.2 does not guarantee approval by ADEQ of a cost overrun nor does it guarantee trust fund reimbursement for a cost overrun.

5.2 CHANGE ORDER PROCEDURES

The procedures of this subsection must be followed when submitting a change order to ADEQ. A change order is to be submitted in writing (or verbally with written follow-up) to ADEQ in advance of the work being performed whenever possible. If it is not possible to submit a change order prior to the work being performed, the change order must be submitted for approval as soon as possible but prior to requesting any trust fund reimbursement for the work.

ADEQ will review change orders as submitted and provide a response in writing (or a verbal response with written follow-up) as soon as possible.

The required content of a change order must define area(s) of change (i.e., cost, scope or schedule) as follows:

- a. Any change in cost that will exceed the approved total cost of a workplan
- b. Any change in scope (may or may not result in exceedance of the approved total cost for a workplan)
- c. Any change in schedule (may or may not result in exceedance of the approved total cost for a workplan)

SECTION 6 – REIMBURSEMENT APPLICATION

6.1 PREPARATION COSTS

Costs for preparation of reimbursement applications will be reimbursed on a loaded rate unit basis as follows:

- a. \$500.00 for an application equal to or less than \$50,000.00
- b. \$1,000.00 for an application greater than \$50,000.00

No additional markup is allowed on the loaded rates listed above for reimbursement application preparation.

An application for interim payment of reimbursable corrective action costs may be submitted prior to the conclusion of corrective action activities. Per APC&EC Reg.12.309(D), applications for interim payments may be submitted ninety (90) days following initiation of work and at ninety-day intervals thereafter until completion of the authorized activities.

6.2 PRESENTATION TO ADVISORY COMMITTEE

Reasonable costs for a single representative to present an application to the Advisory Committee on Petroleum Storage Tanks are reimbursable. Reasonable costs include labor and mileage costs for the representative to attend a committee meeting.

When a representative is presenting multiple applications at a single meeting, the total cost for attending the meeting must be appropriately prorated for each application. Costs for the tank owner or responsible party to attend a committee meeting are **not** reimbursable.

SECTION 7 – CONFLICT OF INTEREST

7.1 GENERAL

It is the responsibility of the tank owner or responsible party to prevent conflicts of interest from occurring in the remediation project. The tank owner or responsible party and the environmental consultant must disclose to ADEQ any financial interest amounting to five percent (5%) or more ownership or voting control in a vendor of costs to the cleanup project. It is important in determining reasonableness of costs that prices reflect the marketplace and the forces of supply and demand rather than control by the tank owner, responsible party or consultant.