



# **PROCEDURES FOR REIMBURSEMENT FROM THE PETROLEUM CLEANUP FUND**

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**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES  
WASTE MANAGEMENT DIVISION**

**EFFECTIVE: JULY 2006**

**AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WASTE MANAGEMENT DIVISION  
103 SOUTH MAIN STREET, WEST BUILDING  
WATERBURY, VERMONT 05671-0404  
(802) 241-3888  
FAX (802) 241-3296**

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## **Introduction**

The purpose of this document is to provide guidance for owners and permittees of petroleum storage tanks submitting claims against the [Petroleum Cleanup Fund \(PCF\)](#). Included in this document is a description of the coverage the [PCF](#) provides and the parties who may be eligible to receive this coverage. This document is established pursuant to [3 V.S.A. § 835](#) of the Administrative Procedures Act, and replaces the preceding [PCF](#) reimbursement procedure dated April 12, 2004. This document, including the [Consultant Fee Schedules](#), will be updated as needed.

The [PCF](#) is administered by the Agency of Natural Resources (ANR), Department of Environmental Conservation (DEC), Waste Management Division (WMD). Throughout this document, the “tank owner” refers to the underground storage tank (UST) or aboveground storage tank (AST) owner or permittee.

An important component of receiving a full and prompt payment from the [PCF](#) is knowing what information is required when submitting a claim and what costs may be eligible for reimbursement. This document provides information that will help to clarify these issues.

## **Fund Coverage and Eligibility**

The [PCF](#), established under the authority of [10 V.S.A. Chapter 59 § 1941](#), was created to pay, subject to available funding, for certain uninsured costs for the cleanup and restoration of contaminated soil and groundwater caused by releases of [petroleum](#) from [aboveground storage tanks \(ASTs\)](#) and [underground storage tanks \(USTs\)](#) and for compensation of [third party claims](#) for injury and damage caused by such a [UST](#) release.

If you are 1) an owner of a [category one UST](#); 2) an owner of an [AST](#) or [UST](#) farm or residential tank; or 3) an owner of any size heating oil tank, and demonstrate that the cleanup costs incurred are not covered by your insurance, you may be eligible for reimbursement from the [PCF](#).

[Tank owners](#) must pay for the removal or repair of the failed tank or system, and for the applicable [PCF](#) deductible amount (see [Table 1](#)). The [PCF](#) may reimburse the tank owner for all eligible cleanup costs up to the appropriate coverage limits outlined in [Table 1](#). Landowners, future site owners and municipalities may also be eligible for reimbursement from the [PCF](#) at properties where a petroleum release from an eligible tank has occurred if these parties are willing to assume responsibility for managing the investigation and cleanup. The [PCF](#) may reimburse for all allowable third party claims resulting from a release from an eligible [UST](#) site. For sites where there is a change of ownership after the occurrence of a release, [PCF](#) coverage can be transferred to a new owner. The [PCF](#) may be used to reimburse landowners for the cost of the removal and cleanup of abandoned [USTs](#) if the conditions of [10 V.S.A. § 1926](#) are met.

The [PCF](#) may provide a grant of up to \$1,000 for the removal of any farm or residential heating oil tank or for bringing an [AST](#) system up to acceptable standards. The [PCF](#) can also be used to provide interest-free loans of up to \$40,000 to small municipalities with populations of 2,500 people or less and gas stations and country stores with gasoline sales of less than an average of 20,000 gallons

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per month. The loans may be used to replace old, high-risk gasoline tanks with newer double-wall systems that meet the 1998 upgrade requirements. Interest-free loans are also available to all [tank owners](#) to replace or improve piping, tank-top sumps, and other components of the secondary containment and release detection systems that can reduce the likelihood of a future petroleum release to the environment.

The status of a tank owner's [PCF](#) eligibility or the financial condition of the [PCF](#) itself, does not in any way defer or eliminate the owner's legal and financial responsibility for performing the required site work in a timely manner, pursuant to [10 V.S.A. § 6615b \(Corrective Action Procedures\)](#). Likewise, reimbursement from the [PCF](#) does not shift any legal or financial liability to the State of Vermont.

**Fund Exclusions**

**As specified under [10 V.S.A. § 1941](#), the [PCF](#) cannot reimburse costs that are covered by insurance.** Before the [PCF](#) can be used to reimburse eligible costs, the responsible party must be able to demonstrate that there is no insurance which would cover the costs of cleanup. At a minimum, the responsible party must submit a timely and appropriate claim for coverage to its insurer(s) and provide the insurer(s) with all information necessary to make a coverage determination. As described more fully below, no claim will be processed until the responsible party provides adequate written proof that no insurance coverage is available. This proof includes submittal of full copies of all insurance policies, including any endorsements and exclusions in effect at the time of either the release, the discovery of the release, or any third party claim. ([See #6 under REQUIREMENTS FOR SUBMITTING A CLAIM](#)).

The [PCF](#) may not reimburse for work which was not pre-approved, as specified in this document, or work which is not in conformance with the Department of Environmental Conservation (DEC), Sites Management Section (SMS) guidance documents which can be found on our website, <http://www.anr.state.vt.us/dec/wastediv/sms/msgdint.htm> (e.g. - [Site Investigation Procedures](#), [Corrective Action Guidance](#)). [Tank owners](#) that are determined by the Secretary, at his or her discretion, to be in [significant violation](#) of their permit or rules, or who have not paid a required fee for the tank from which the release occurred or, to the extent covered, when there is insurance coverage, may be denied reimbursement from this fund and subject to cost recovery for an amount up to the costs for the entire cleanup, or reimbursement (see [10 V.S.A. § 1941\(f\)](#)).

[Tank owners](#) who submit to the [WMD](#) evidence of financial responsibility in the form of a Certificate of Insurance or a Vermont self-insurance financial test and it is accepted by the [WMD](#) will **not** be reimbursed environmental remediation costs or [third party claims](#) in the event of a release from the tank systems that are covered and included in the insurance or self-insurance.

Costs incurred for taking corrective action at a site to remediate contaminated soils, groundwater, surface water or indoor air are not eligible for reimbursement from the [PCF](#) unless the site meets conditions established in the document titled, [Corrective Action Guidance](#). A Corrective Action Plan must be submitted and approved by the SMS except in emergency situations as outlined in [Attachment D](#).

Additional information on [PCF](#) reimbursable costs and costs not eligible for reimbursement from the [PCF](#) is outlined below.

**PCF Coverage**

**Underground Storage Tanks:**

For the following **USTs**, the **PCF** may provide coverage for uninsured costs up to \$990,000 for corrective action, subject to a first \$10,000 (deductible) spending requirement per occurrence, and coverage up to \$1 million for third party damage and bodily injury (see [Table 1](#)):

- × all [category one USTs](#) ;
- × all farm and residential motor fuel [USTs](#) with capacities over 1,100 gallons;
- × all non-farm and nonresidential fuel oil storage [USTs](#) used for on-premise heating with capacities over 1,100 gallons.

For the following **USTs**, the **PCF** provides coverage for uninsured costs up to \$999,750 for corrective action per occurrence, subject to a first \$250 (deductible) spending requirement per occurrence, and coverage up to \$1 million for third party property damage and bodily injury:

- × any size farm and residential fuel oil storage tank used for on-premise heating;
- × all farm and residential motor fuel tanks with capacities of equal to or less than 1,100 gallons;
- × all non-farm and nonresidential fuel oil storage tanks used for on-premise heating with capacities of equal to or less than 1,100 gallons.

**Above Ground Storage Tanks:**

For **ASTs** that are not located at bulk storage facilities, the **PCF** provides coverage for uninsured costs up to \$25,000 for corrective action per occurrence. Non-bulk **ASTs** used for commercial purposes are subject to a first \$1,000 (deductible) spending requirement per occurrence before receiving any **PCF** reimbursement and non-bulk **ASTs** used for farm or residential uses are subject to a \$250 (deductible) spending requirement per occurrence. For **ASTs** located at bulk storage facilities, the **PCF** provides coverage for uninsured costs up to \$990,000 for corrective action, subject to a first \$10,000 (deductible) spending requirement. There is no third party coverage for any release from either residential or commercial **ASTs**.

**PCF** coverage did not originally apply to **ASTs**. On April 23, 1998, [10 V.S.A. §1941](#) was amended to expand **PCF** coverage to include **ASTs**. This is the effective date when **PCF** coverage would apply to **ASTs**, and costs incurred prior to this date are not eligible for reimbursement from the **PCF**. The former law limited reimbursements for **ASTs** to \$25,000 per occurrence with a \$1,000 deductible for commercial tanks and \$250 deductible for residential tanks. On July 1, 2004, [10 V.S.A. § 1941](#) was further amended to modify the coverage for **ASTs** at bulk storage facilities. The coverage changed from \$25,000 per occurrence to \$990,000, and the deductible changed from \$1,000 to \$10,000. This change applied to all [bulk storage facilities](#) including ones where there was an existing release and ongoing cleanup.

**Table 1**

Types of Tanks and Petroleum Cleanup Fund Coverage  
UST - Underground Storage Tank  
AST - Aboveground Storage Tank

Tank Type	Use	Size	Deductible	Coverage Limit*	3 <sup>rd</sup> Party Coverage
UST - motor fuel	commercial	any	\$10,000	\$990,000	\$1 M
UST - motor fuel	Farm/residential	<1100 gal	\$250	\$999,750	\$1 M
UST - motor fuel	Farm/residential	>1100 gal	\$10,000	\$990,000	\$1 M
UST - heating oil	commercial	>1100 gal	\$10,000	\$990,000	\$1 M
UST - heating oil	commercial	<1100 gal	\$250	\$999,750	\$1 M
UST - heating oil	Farm/residential	any	\$250	\$999,750	\$1 M
AST - motor fuel	commercial	any	\$1,000	\$25,000	None
AST - heating oil/ motor fuel	Farm/residential	any	\$250	\$25,000	None
Bulk Storage plants**	commercial	**	\$10,000	\$990,000	None

\* If you are an AST or UST owner or permittee, including farm and residential tanks, have paid an annual tank assessment and tank permit fee (if applicable), and demonstrate that the cleanup costs are NOT covered by any insurance policy on the property which was in effect at the time of the release discovery, you may be eligible for reimbursement from the PCF.

\*\* **Bulk Storage Plant:** A non-transportation-related facility with a total aboveground oil storage capacity of greater than 1,320 gallons, or total completely buried oil storage capacity greater than 42,000 gallons. The regulations apply specifically to a facility's storage capacity, regardless of whether the tank(s) is completely filled. In addition to the storage capacity criteria, a facility is regulated if due to its location the facility could reasonably be expected to discharge oil into navigable waters of the U.S. or adjoining shorelines. These facilities are required to have a Spill Prevention Control and Countermeasure (SPCC) Plan pursuant to 40 C.F.R. Section 112.

### Inability to pay determinations

The PCF may be used to finance the first \$10,000 of cleanup costs for tank owners who are determined by the Secretary at his or her discretion to be financially unable to conduct a cleanup as directed by the SMS. The SMS must be informed by the tank owners in writing of their inability to pay. The SMS will require that a tank owner complete an application for deferment, which must include financial information to support the application. The information requested may include copies of personal, and, if applicable, business tax returns, a list of personal or business assets and other financial information. The SMS will make a determination of the tank owner's ability to pay. In making this determination, the SMS may request additional financial information from the tank owner. Once it is determined that a tank owner can not pay the first \$10,000, then the funds will be paid by a loan from the PCF and the SMS will establish a mutually acceptable plan for the repayment of the loan. The failure of a tank owner to provide proof of financial status, if requested by the SMS, may result in a determination that the tank owner is financially capable of funding the first \$10,000. If a tank owner fails to make regular payments to the PCF after a mutually agreed upon payback plan has been established, the DEC will pursue legal methods of cost recovery such as the attachment of assets and the use of judgment liens.

### Reimbursable Costs

The following costs may be eligible for reimbursement from the PCF at the discretion of the Secretary:

1. **Soils.**

(a) The reasonable costs of the removal, treatment and disposal of petroleum contaminated soils caused by a release from an AST or UST which were removed as part of a corrective action plan pre-approved in writing by the SMS; **or**

(b) The reasonable costs of the treatment and disposal of up to 80 cubic yards (120 tons) of petroleum contaminated soils removed for the installation of replacement USTs. This does not apply to soil which is removed as a remedial measure without SMS written approval when there are no replacement USTs installed; **or**

(c) The reasonable costs of the removal, treatment and disposal of up to 80 cubic yards (120 tons) of petroleum contaminated soil that was excavated during an AST or UST release, when such action can be shown to remove the full extent of the contamination. This can be completed without SMS approval provided that there is no indication of groundwater contamination, and the field and laboratory data from the limits of the excavation demonstrate that the contamination was limited to the amount which was removed from the ground. If more than 80 cubic yards (120 tons) of petroleum contaminated soil are excavated for treatment and disposal and all conditions of this requirement are met,

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a percentage based on 80 cubic yards compared to the total volume removed will be used to determine the reasonable costs eligible for reimbursement. If all of the above criteria are not met, the SMS may provide approval for limited soil removal including PCF reimbursement on a case by case basis.

2. The costs of **tank owners'** on-site employees necessary to respond to an initial emergency response, according to the following schedule:
  - (a). Company management personnel - \$40.00/hr
  - (b). Specialized technicians/laborers - company published service call rate
  - (c). Common laborers - hourly rate and fringe benefits
  - (d). Emergency response materials - actual cost
  
3. Reasonable cleanup contractor and consultant costs associated with emergency response from petroleum **UST** or **AST** releases. For **PCF** coverage determinations, an emergency is defined as a situation where a **sensitive receptor** is directly impacted or imminently threatened by a release of petroleum from an **UST** or **AST** requiring immediate response to contain or mitigate the release in order to minimize human health risks or environmental damage. Typically, the emergency phase of a response should not take longer than seven days. If an emergency response action requires more than seven days, a work plan and cost estimate must be approved by the **SMS** for activities after the seven days. However, the **SMS** has the option to waive this requirement if deemed necessary. Refer to **Attachment D** for guidance on what the SMS considers critical documentation necessary to justify the costs.
  
4. The costs of **tank owners'** on-site employees for routine monitoring, only if the following conditions are met:
  - (a). All work performed is associated with onsite remediation, and
  - (b). The monitoring is routine and the results of that monitoring do not serve as the sole basis for the ultimate decision regarding future site remediation and monitoring, and
  - (c). The monitoring is not conducted as part of the regulatory compliance for release detection as per the **Vermont Underground Storage Tank Regulations**, and
  - (d). The cost of this monitoring is significantly less than the industry rate for this work as established by the environmental consultant performing the cleanup, and
  - (e). The work is performed according to a written plan/agreement between the responsible party and the consultant hired by the responsible party and this plan is pre-approved in writing by the **SMS**. The plan should address schedule, personnel, training, health and safety, sample Quality Assurance/Quality Control (QA/QC), and costs.
  
5. All reasonable costs associated with the purchase of site remedial equipment that has been pre-approved in writing by the **SMS**. The **SMS** will not approve reimbursements for the purchase of

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new equipment until the party seeking reimbursement demonstrates that they have considered alternatives to purchasing the equipment such as the availability of state-managed equipment, equipment previously used at other sites where PCF reimbursements were used, and an analysis of the purchase versus the lease cost. Additionally, an agreement must be reached which identifies the ultimate fate of the equipment once it is no longer needed at the site where it was purchased.

6. All reasonable costs, subject to eligibility criteria established in this document, associated with the remediation and environmental investigation or monitoring of leaking underground or aboveground storage tank sites, other than for UST leak detection.
7. All costs as established under a written pay-for-performance agreement reached between a tank owner and a consultant/contractor, which were approved by the SMS.

**Costs NOT Eligible for Reimbursement**

1. All costs that are covered under an insurance policy or plan irrespective of whether the owner or operator is liable for those costs and has released the insurer from liability to pay. If the insurance carrier denies coverage for costs but the SMS determines that those costs should have been covered under the insurance policy or plan, those costs may not be reimbursed by the PCF.
2. All costs associated with confirming the presence of a suspected release as required under Subchapter 6 of the Vermont Underground Storage Tank Regulations, including the cost of tightness testing or a subsurface investigation to determine the integrity of the tanks and piping.
3. All costs associated with the repair, removal/excavation or closure of any AST or UST (See 10 V.S.A. Chapter 59, § 1926 for exceptions to this category). This includes the costs of removing product contained in the tank, excavation costs, disposal costs of tank bottoms and tank, costs to fill the tank in place, costs of the initial site assessment required by §8-605(2)(c) of UST Regulations, and the costs of repairing the facility as part of a capital improvement, such as replacing pavement.
4. All costs associated with the installation of release detection systems, including monitoring wells, installed for the purpose of leak detection.
5. All costs associated with the removal, treatment and disposal of petroleum contaminated soil in excess of 80 cubic yards, or 120 tons that was not preapproved in writing by the SMS and, all costs associated with the removal of non-contaminated soil that is excavated during the installation of new UST(s).
6. All costs associated with the removal, treatment and disposal of petroleum contaminated soil that was removed as a remedial measure but was not pre-approved in writing by the SMS (unless the conditions of #3 under the section entitled “Reimbursable Costs” of this document are met).
7. All costs associated with the removal and treatment of petroleum contaminated groundwater that was not approved in a corrective action plan by the SMS.

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8. Any cost in excess of 20% of the average cost or "reasonable" cost associated with the work in question. "Reasonable" cost can be determined by one of the following methods:
  - (a). Obtaining a minimum of three competitive work proposals and cost estimates. The estimates will need to be submitted to the **SMS** for review and approval to determine if the estimates are within prevailing industry rates.
  - (b). The submittal of a work proposal and cost estimate for review and approval by the **SMS**. The **DEC** will compare the work proposal and cost estimate to past costs for similar work performed over the past three years of the **PCF**, as a means of determining reasonableness.
- Note: The **SMS** will waive the requirement of obtaining and reviewing cost proposals during emergency situations, however the **SMS** expects the consultant or contractor will follow the guidance outlined in **Attachment D**.
9. Any cost in excess of the fees established in the attached **Consultant Fee Schedules**. This includes situations where inappropriate labor rates were selected for the work in question (e.g. - charging engineer rate for field technician work).
10. Any cost in excess of a preapproved estimate that has not been reapproved by the **SMS** prior to the completion of the work. If subcontractor costs are less than the preapproved estimate, then the preapproved budget will be reduced by the cost savings of the subcontractor work.
11. Any cost that exceeds the total price for conducting a corrective action under a pay-for-performance agreement. When required by the **SMS**, the total price for a particular corrective action will need to be determined using a competitive bidding process. The **SMS** will only authorize payment for the corrective action up to the amount of the lowest acceptable bid.
12. Markups on the performing subcontractors work which exceed 10 percent.
13. Any markups on materials and equipment.
14. The cost of purchasing equipment for a site by an owner/operator who wishes to retain the ownership of the equipment, unless this cost is part of an **SMS** approved pay-for-performance agreement.
15. The costs of operating a remediation system that has not been preapproved by the **SMS** .
16. The total lease payment that exceeds 125% in the first year, and 25% in subsequent years, of the value of the equipment. This does not include the operation and maintenance costs needed for the equipment.
17. The costs of work performed without the **SMS's** written approval of a workplan or corrective action for non-emergency remedial work. The **SMS** will waive the requirement for preapproval of workplans if the work is for an initial site investigation or corrective action feasibility investigation, and is in compliance with the attached **Consultant Fee Schedules**. These costs

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must also be within prevailing industry rates.

18. Any cost associated with conducting a site assessment for the purpose of initiating a real estate transaction.
19. Any cost that is incurred as a result of making a capital improvement on the tank owners property that is not part of a **SMS** preapproved corrective action plan.
20. Any cost incurred for corrective action performed prior to January 1, 1987 for **UST** sites. Any cost incurred for corrective action performed prior to April 23, 1998 for **AST** sites. Any cost greater than \$25,000 (not including first \$1,000 spending requirement) incurred for corrective action performed after April 23, 1998 but before July 1, 2004 for **AST bulk storage facilities**.
21. Any cost incurred for third party contractor oversight that has not been preapproved by the **SMS**.
22. Any general category fee (e.g. - hand tool fee, bailer fee) that is not identified on the **Consultant Fee Schedule** or preapproved by the **SMS**.
23. Attorneys fees.
24. Interest charges and surcharges.
25. Owner/operator administrative costs.
26. Loss of business costs for first parties.
27. Penalties or fines imposed by the **DEC** or other governmental entity.
28. Any cost incurred and submitted for reimbursement where there is no supporting evidence that the work was completed, such as a summary report, monitoring data, etc. This shall include reports that are not filed within three months following the completion of the work (e.g. - date of monitoring well installation).
29. The reimbursement of invoices that are over one year old, once the spending requirement deductible) has been met and have not been submitted to the **SMS** for review.
30. Any costs which represents a misuse of the **PCF** (e.g. - fraud, falsification of data, double-billing).
31. Any costs that are incurred when the **PCF** is determined by the **SMS** to be insufficiently capitalized to handle foreseeable claims. The priority of **PCF** outlays will be determined by the **SMS** based on the relative risk the site poses to public health and the environment, and will be subject to available funding.
32. Any cost associated with the cleanup of a non-petroleum waste.
33. Any cost payable to a property owner for granting access to conduct an investigation into the nature, degree and extent of contamination resulting from a petroleum release.

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34. Any cost of investigating, remediating or monitoring a release that is caused by negligence (e.g. - fuel delivery overfill).
35. The cost of purchasing liability insurance for equipment or activities associated with the cleanup.

**Third Party Claims**

Please refer to the [DEC](#) document titled, "[Policies and Procedures Manual for Third Party Claims Against the Petroleum Cleanup Fund](#)" for a complete description and explanation of [PCF](#) coverage.

**Requirements For Submitting A Claim**

The following reimbursement procedure has been established to clarify and expedite requests for payment from the [PCF](#). Submittal claims that do not follow the procedures outlined below will not be considered for reimbursement.

The [DEC](#) will authorize one of two types of payments. The owner and operator can pay all invoices and seek direct repayment, or the owner and operator can pass the invoices onto the [DEC](#) who will then issue a joint check made out to the owner/operator and the contractor. **The two-party check option is especially important in emergency response sites, where high costs can be incurred in a short time frame.**

**Reimbursement Procedure:**

1. Bills must be submitted for a period of time of no less than thirty (30) days, and not greater than 1 year. For each package of bills, the attached submittal form must be completed ([Sections 1-4 of the Request for Reimbursement Form](#)). A total of the expenses for each vendor should also be given. All submittal forms must be signed by the responsible party in order for the [DEC](#) to process the claim.
2. A copy of all invoices, including subcontractor's invoices, as well as a copy of all canceled checks must be attached, unless the reimbursement is under a pay-for-performance agreement. The invoices and checks should be compiled in the same order as they appear on the [Submittal Form](#).
3. For submittals of work based on an [SMS](#) approved workplan, the invoice must include a cost summary estimate table as established in [Section 5 of the Request for Reimbursement Form](#).
4. For sites where the [tank owner](#) is required to pay a deductible, these costs must be clearly

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documented, and submitted to the **SMS** in the initial claim.

5. For all equipment purchased using **PCF** funds with value greater than \$500.00, submittals must include the title or bill of sale, and a separate page with a list of the equipment manufacturer's name, model and serial number. When the equipment is no longer needed at a site the equipment must either be transferred for use at another site or be sold for a salvage value with the proceeds being returned to the **PCF**. A copy of the owner's manual may need to be supplied to the **SMS** upon request. This requirement does not apply to pay-for-performance agreements where the equipment ownership is retained by the consultant or tank owner.
6. Before any claim will be processed, the responsible party must provide the following as evidence that it has sought and been denied insurance coverage:
  - (1) the name of all insurance carrier(s);
  - (2) complete copies of all insurance policies, that were in effect at the time of either a release, the discovery of a release or any third party claim, providing property or liability insurance for the responsible party and/or the site, with those sections that relate to pollution coverage for the site and for off site 3<sup>rd</sup> party damage clearly marked;
  - (3) a statement from each insurer declining coverage for the petroleum release at the site, which must contain the following:
    - (i) the name and address of the insurer, including the name and telephone number of the claims analyst or other contact person handling the claim for the insurer;
    - (ii) the name of the policyholder, the policy number(s), and the dates of coverage;
    - (iii) an acknowledgment that the insurer has been put on notice of the petroleum release at the site; and
    - (iv) an explanation, including reference to specific policy language, of why the insurer is declining to provide coverage for the petroleum release at the site.

**The **SMS**, or its representative, reserves the right to request additional information relating to insurance policies or claims made by the responsible party.**

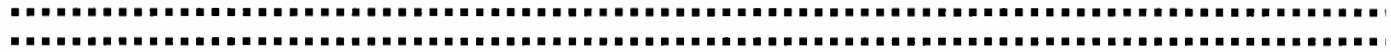
**The **SMS** will not process the claim until all required information regarding insurance coverage has been received.**

**Claims Review Process**


All claims for reimbursement from the **PCF** shall be reviewed for eligibility by the **SMS** site manager or section chief. Any costs found to be not eligible for reimbursement shall be individually addressed with an explanation as to why a particular claim is not eligible for reimbursement. Claims will be returned to the responsible party if the **SMS** determines that the applicable spending requirement (deductible) has not been met.

**Appeal of Denied Costs**

Appeals of any act or decision by a site manager or section chief relating to PCF eligibility or reimbursement must be made in writing to the Director of the Waste Management Division within 30 days of that decision. The Secretary of ANR, or his or her authorized representative shall make a final determination regarding eligibility or reimbursement in writing. An appeal of the Secretary's act or decision must be made to the Vermont Environmental Court in accordance with 10 V.S.A. Chapter 220. This appeal must be made within 30 days of the date of the Secretary's act or decision.



**Procedures For Reimbursement from the Petroleum Cleanup Fund Approval:**

  
Jeffrey Wennberg, Commissioner  
Department of Environmental Conservation

7/7/06  
Date

**Attachment A -**  
**Applicable Definitions**

**Aboveground storage tank:** any tank, other than an underground storage tank, used to store any of the following petroleum products: gasoline, diesel, kerosene, used oil or heating oil.

**Bulk storage facility:** A non-transportation related facility with a total aboveground (i.e. not completely buried) oil storage capacity of greater than 1,320 gallons, or total completely buried oil storage capacity greater than 42,000 gallons which required a Spill Prevention Control and Countermeasure (SPCC) Plan pursuant to 40 C.F.R. Section 112.

**Bulk storage tank:** any aboveground petroleum storage tank at a facility required to have a Spill Prevention Control and Countermeasure (SPCC) Plan pursuant to 40 C.F.R. Section 112.

**Category One Tank or "Permitted Tank:** an underground storage tank, except for the following:

- (a) Fuel oil storage tanks used for on-premises heating purposes;
- (b) Farm or residential tanks used for storing motor fuel.

**Emergency:** a situation when a [sensitive receptor](#) is directly impacted or imminently threatened by a hazardous material release requiring immediate response to contain or mitigate the release in order to minimize human health risks or environmental damage.

**Occurrence:** the point in time that a release of petroleum from an underground storage tank or aboveground storage tank is discovered or determined. The following interpretations are written to alleviate confusion over multiple releases or occurrences:

- (a) If multiple releases are determined for a single owner or permittee, at the same facility, at the same time and the contaminant plumes are commingled, then a single occurrence and site is established, and will be subject to full [PCF](#) coverage after the first \$10,000 of eligible cleanup costs have been spent.
- (b) Any new release at the facility will be treated as a new occurrence at the site, and will be subject to full [PCF](#) coverage after the first \$10,000 of eligible cleanup costs have been spent.
- (c) If more than one owner has a simultaneous occurrence at a site as described in C(a) above, then the first \$10,000 of eligible and uninsured cost shall be shared by the responsible owners, and will be subject to full coverage and \$10,000 requirement provided under the [PCF](#).

**Permittee:** the owner or operator of an underground storage tank(s) who has been issued a permit under the provisions of the "[Underground Storage Tank Regulations](#)".

**Petroleum:** crude oil or any fraction thereof that is liquid under normal conditions of temperature and pressure. Includes petroleum-based substances comprising a complex blend of hydrocarbons derived from crude oil through the process of separation, conversion, upgrading and finishing, such as motor fuel, jet oil lubricants, petroleum solvents, and used oil.

**Residential tank:** An AST or UST used for heating a residential property, including, but not limited to, single

family homes, apartment buildings, condominiums and mobile homes.

**Sensitive receptor:** areas which may be affected by a release of a hazardous material. These may include public and private water supplies, surface waters, wetlands, sensitive ecological areas, outdoor and indoor air, and enclosed spaces such as basements, sewers and utility corridors.

**Significant violation:** includes any one or more of the following:

- (a) any violation of a statute or regulatory requirement which results in substantial harm to public health, safety or the environment or poses a threat of substantial harm to the public health, safety or environment, as determined by the Secretary in his or her discretion; or
- (b) any of the following;
  - 1. failure to conduct release detection monitoring in accordance with [Vermont Underground Storage Tank Regulations](#).
  - 2. failure to report a suspected release under [10 VSA § 6617](#) or failure to report a suspected or confirmed release under [Vermont UST Regulations](#).
  - 3. failure to investigate and confirm a suspected release in accordance with [Vermont UST Regulations](#).
  - 4. failure to initiate corrective action of a release under [Vermont UST Regulations](#).
  - 5. failure to operate an [UST](#) system with compatible equipment for release detection, overfill protection or corrosion protection in accordance with [Vermont UST Regulations](#).
  - 6. failure to obtain a permit in accordance with [10 VSA § 1927](#) and [Vermont UST Regulations](#).
  - 7. failure to abate a release or threatened release, or fully perform a site investigation, removal action, or remedial action as required under [10 VSA § 6615](#) or as required by the terms of a permit, order, or assurance of discontinuance.

The above definition of significant violation is established solely for the purpose of bringing an action for cost recovery under [10 VSA § 1941 \(f\)](#) which authorizes the Secretary to seek reimbursement to the Petroleum Cleanup Fund. This definition of significant violation is not intended to be used for the interpretation of the term “significant violation” which may appear under any other provisions of the Vermont statutes or regulations. Furthermore, the Secretary’s determination that an alleged violation is or is not a significant violation under [10 VSA § 1941 \(f\)](#) shall not preclude the Secretary from pursuing any enforcement remedy or penalty, nor shall it constitute a defense in enforcement proceedings.

**Third Party Claim:** any statement of potential responsibility or demand for money or services made against the tank owner caused or claimed to be caused by a release of a petroleum product from an uninsured underground storage tank.

**Tank owner:** the underground storage tank (UST) or aboveground storage tank (AST) owner or permittee.

**Underground storage tank (UST):** any one or combination of tanks, including underground pipes connected to it or them, which is or has been used to contain an accumulation of regulated substances, and the volume of

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which, including the volume of the underground pipes connected to it or them, is 10 percent or more beneath the surface of the ground. Provided, however, that the following are excluded from the definition of "underground storage tank" established under this section:

- (a) septic tanks and manure storage tanks;
- (b) flow through process tanks permitted under [chapter 47 of this title](#) and tanks regulated by [chapter 159 of this title](#);
- (c) stormwater or wastewater collection systems;
- (d) storage tanks situated in an underground area if the tank is upon or above the area floor;
- (e) pipeline facilities regulated by the federal [Natural Gas Pipeline Safety Act \(49 U.S.C. App. 2001 et seq.\)](#) or an intrastate pipeline regulated under state laws similar to the foregoing;
- (f) liquid petroleum gas storage tanks, used predominantly for the storage of propane, propylene, butane, and butylenes, regulated by the Vermont Fire Prevention and Building code.

**Attachment B**

**Vermont Department of Environmental Conservation  
 Petroleum Cleanup Fund  
 Request for Reimbursement Form**

**Section 1. General Information:**

<b>Facility</b>	<b>Owner/Operator</b>
Site Name: _____	Name: _____
Dec Site #: _____	Contact: _____
Site Address: _____	Business Address: _____
_____	_____
Telephone #: _____	Telephone #: _____

**Section 2. Responsible Party Reimbursement Request Checklist (Each statement must have a box checked):**

	YES	NO	N/A
1. All costs submitted are associated only with petroleum USTs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. All costs submitted are associated only with petroleum ASTs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The completed invoice summary and cost summary are enclosed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. A copy of all invoices, including subcontractors invoices, and a copy of canceled checks have been enclosed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. For all equipment purchased with value greater than \$500, submittals include the title or bill of sale, and a list of the equipment manufacturer's name, model and serial number.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. The deductible with proof of payment is documented.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. All deliverables have already been submitted that relate to services associated with this reimbursement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Statement from the Insurance Company and a copy of the insurance policy(s) for this site is enclosed or previously submitted.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section 3. Declaration**

I declare under penalty of perjury that the representations made in this Request for Reimbursement are to the best of my knowledge true and correct. I agree to reimburse for any payments made to me based upon incorrect information.

\_\_\_\_\_  
 Name of Owner/Operator Representative (printed)

\_\_\_\_\_  
 Company Title

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**Section 4. Invoice Summary**

Invoice # & Date	Consultant/Contractor (Fed ID# or SS# )	Check # (proof of payment)	Amount
1.			\$
2.			\$
3.			\$
4.			\$
5.			\$
6.			\$
7.			\$
8.			\$
9.			\$
10.			\$
11.			\$
12.			\$
13.			\$
14.			\$
15.			\$
16.			\$
17.			\$
18.			\$
Subtotal.....			\$
Minus PCF Deductible.....			- \$
<b>Total Request for Reimbursement.....</b>			<b>\$</b>

\* The disclosure of your social security (or federal identification) number is mandatory, is solicited by authority granted by 32 V.S.A. § 3113(c) and 42 U.S.C. § 405 (c)(2)(c), and will be used by the Department of Taxes in the administration of tax laws, to identify individuals affected by such laws.

**Section 5. Cost Summary**

**BOB ' S BTEX BARN, GREEN MOUNTAIN, VT SITE#86-6574**

Tasks		Project Costs		% of Tasks Remaining	Invoice # 1001-1	Invoice # 1001-2
		Estimated	Actual		7-31-2003	8-31-2003
<b>Proposed</b>	<b>Unanticipated</b>					
Task 1: Full round of groundwater sampling	Also collected surface water samples	\$2,000.00	\$2,090.00	0	\$2,090.00	
Task 2: Survey of SVE & sparging points		\$725.00	\$725.00	0	\$725.00	
Task 3: Soil Vapor Extraction System						
a. Equipment Shed		\$2,200.00	\$2,500.00	0	\$2,500.00	
b. Sparge Compressor		\$7,354.00	\$7,054.00	0	\$7,054.00	
c. SVE blower and water knockout		\$8,450.00	\$8,325.00	0	\$8,325.00	
d. Piping, ponds and culvert		\$3,125.00	\$3,020.00	15	\$1,020.00	\$2,000.00
Task 4. Soil Vapor extraction Installation						
a. Installation of points	air rotary drilling needed	\$8,045.00		100		
b. Trenching	longer distance to shed	\$5,600.00	\$5,750.00	0		\$5,750.00
<b>Totals: Project as of 8-31-03</b>		<b>\$37,499.00</b>	<b>\$29,464.00</b>		<b>\$21,714.00</b>	<b>\$7,750.00</b>

\* Please note: This example provides a suggested format only. Cost summaries including similar information will also be accepted.

**Attachment C**

**Consultant Fee Schedule**  
**Allowable Amounts for Petroleum Cleanup Fund Reimbursement**

<b>Costs of Initial Site Investigation</b> <b>(4-2" monitoring wells or a minimum of 6 direct-push wells)</b>				
<b>Well Depth</b>	<b>Drilling Costs<sup>+</sup></b>	<b>Consultant Costs<sup>#</sup></b>	<b>Summary Report Costs<sup>*</sup></b>	<b>Maximum Total Costs<sup>**</sup></b>
20' (or less) Depth	\$3,875	\$3,000	\$1,600	\$8,475
40' Depth	\$6,100	\$4,000	\$1,600	\$11,700
60' Depth	\$8,000	\$5,000	\$1,600	\$14,600

- + - Using Hollow Stem Augers or Direct-Push.
- # - Includes all consultant costs except report writing.
- \* - Includes cost to submit electronic copy of report
- \*\* - Does not include analytical costs.

<b>Analytical Costs</b>	
<b>Method</b>	<b>Maximum Rate (\$/Sample) Water/Soil</b>
EPA 8010	\$60
EPA 8021B	\$75
EPA 8015M-GRO/DRO	\$92
EPA 8080	\$110
EPA 8100	\$110
EPA 8260	\$120
EPA 8270	\$240
EPA 524.2	\$160
Priority Pollutant Metals	\$205
Immunoassay	\$30
TO-2 (Air)	\$200
TO-15 (Air)	\$330

<b>Equipment Rental Charges</b>	
<b>Equipment</b>	<b>Maximum Rate (\$/Day) (1/2 day rate must be charged if used less than 4 hours)</b>
Combustible Gas Meter	\$50
Photoionization Detector (PID)	\$ 90
Flamionization Detector (FID)	\$ 100
Interface Probe	\$ 50
Dissolved Oxygen Meter	\$ 45
Water Level Meter	\$ 30
pH Meter	\$ 25
Temperature/Conductivity Meter	\$ 40
Low Flow Sampling Pump	\$75
Data Logger	\$100
Digital Camera	\$ 0.50/picture
Vehicle Charge (car/truck)	Current federal mileage rate at the time of vehicle use*
1.5 Hp Regenerative Blower	\$100
2 Hp Air Compressor	\$40
Sampling Equipment & materials	\$15 per collected sample per monitoring well
Multi-parameter water quality meter	\$100
Turbidity meter	\$25
Survey Equipment	\$50
Electrical Generator	\$50

\*the current federal mileage rate may be found at:

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=9646&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=9646&contentType=GSA_BASIC)

<b>Personnel Labor Rates</b>	
<b>Personnel Title*</b>	<b>Maximum Rate (\$/Hour)</b>
Principal	\$125
Senior Scientist/Engineer	\$115
Project Scientist/Engineer/Manager	\$90
Staff Scientist/Engineer	\$75
Field Technician II	\$65
Field Technician I	\$55
Draftsperson II	\$70
Draftsperson I	\$60
Administrator	\$55
Secretary/Clerical	\$50

\* See Professional Services Definitions

**Professional Services Definitions**

**Principal**

Graduate science degree or engineering degree, plus at least 10 years experience in investigation and remediation of contamination in soil and groundwater. Administrative and/or professional head of organization. Directs professional staff. Charges a very limited number of hours per site, primarily for review of projects documents.

**Senior Scientist/Engineer**

Science or engineering degree and at least 8 years applicable experience. Professional registration when applicable. Senior technical leader. Develops technical and budgetary work plans. Duties include aquifer characterization, review of technical reports and corrective action plans. Supervises work activities of lower level professional staff. Generally performs limited field work. Performs design and investigation work in technically complex situations often requiring innovative applications.

**Project Scientist/Engineer/Manager**

Engineering, hydrology or related science degree and at least four years applicable experience. Identifies problems and develops investigative and remedial solutions to site situations. Consults with higher level professional staff. Prepares work plans, cost estimates and reports. Analyzes and interprets field data. May supervise lower level technical personnel during on-site drilling, sampling or remediation activities. Frequently communicates with state personnel and client.

**Staff Scientist/Engineer**

Engineering, geology, hydrology or related science degree and at least two years of experience. Implements field work for on site investigation and remediation activities including site characterization, drilling supervisor and monitoring well installation and sampling activities. Assists in report preparation.

**Field Technician II**

Science or engineering degree or 2 years experience. Supervises installation, maintenance and repair of investigative and remediation machinery and equipment. Conducts sampling and monitoring. Maintains remedial systems.

**Field Technician I**

No degree required. Performs assigned work and routine labor tasks. Assists in equipment installation and maintenance. Conducts sampling and monitoring. Assists with field supervision of subcontractors.

**Draftsperson II**

2 years schooling and 5 years experience, or 8 years experience. Technically familiar with the basic engineering principles and construction methodologies. Works independently. Proficient with AutoCad or other forms of computer aided design drafting.

**Draftsperson I**

2 years experience or 1 year related college and 1 year experience. Works directly under a registered engineer or scientist. Has some computer-aided drafting skills.

**Administrator**

No degree required. Tracks work plan costs, prepares and processes invoices, administers leasing and ordering of equipment, performs general administrative work for report and work plan preparation.

**Secretary/Clerical**

No degree required. Operates computer for word processing and spreadsheet entry. Assists technical and senior personnel with report production, correspondence preparation and data entry. Performs general office work.

Attachment D

**Guidance for PCF Reimbursement of Emergency Response Costs**

In most cases, site investigation and remedial activities related to releases are pre-approved by the Sites Management Section (SMS) or Waste Management Division Spill Responder. During an emergency response, pre-approval of costs is not realistic. However, the SMS must still evaluate whether the costs associated with the emergency response are reasonable before the PCF can reimburse. Below is guidance for cleanup contractors and consultants to follow during a response to an emergency. Following this guidance should minimize the potential for non-PCF reimbursable response costs, and will facilitate prompt reimbursement by the PCF.

1. An emergency is defined as a situation when a sensitive receptor is directly impacted or imminently threatened by a release of a hazardous material requiring immediate response to contain or mitigate the release in order to minimize human health risks or environmental damage. Once the immediate threat has been mitigated, the SMS considers the emergency response over. SMS approval of a work plan and cost estimate would then be required for subsequent work related to site characterization or remediation.
2. If an emergency response action requires more than seven days, a work plan and cost estimate must be approved by the SMS for activities after the seven days.
3. The contractor, consultant, or responsible party must frequently update the DEC spill responder or site manager assigned to an emergency response. The frequency of the update depends on the specific conditions of a emergency response and the direction given by the DEC spill responder or site manager.
4. Daily invoices with itemized breakdown of labor, equipment, materials, and subcontractors are required with the PCF reimbursement request. Receipts and invoices for material purchases and subcontractors must be included with the reimbursement request. Labor and equipment rates will be compared to rates at similar jobs.
5. Sufficient documentation is required to support the work that was completed. At a minimum, description of the response activities must be included on each daily invoice. However, the SMS may require supplemental information (such as the field log) if there are questions concerning costs.
6. **A detailed field log should be kept by the cleanup contractor or consultant.** A log is helpful to ensure that there is adequate documentation of the emergency response and provides a means to evaluate the costs of the work completed. The log should include, at a minimum, the following information:
  - × Documentation of arrival and departure time of all personnel and equipment during an emergency response. This includes when worked started and stopped during the day.
  - × Clear description of the emergency
  - × Weather conditions
  - × Timed entries in the log to adequately describe activities to address the emergency. Entries

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must be sufficient to describe activities of labor and equipment on the site.

- ✧ Sketch (s) showing locations of buildings, potential or known contaminant source areas, borings, test pits, sampling points, stockpile soils, and sensitive receptors (water supply wells).
- ✧ Listing of number and type of sample(s). Also, state the analysis or method that will be completed on the sample(s).
- ✧ Signature of logger at end of his/her entry for the day

Also, a copy of the log entries for the emergency response should be included as an attachment to the final report documenting the emergency response.

7. Document the work with photographs. This will help the Site Manager better understand the activities that took place during the emergency response.
8. After the immediate response to the emergency is over, a written report must be submitted that contains a description of all response actions and findings of these actions. A copy of the field log entries for the emergency response should be included with the report..
9. The two-party check option is recommended for reimbursement of emergency response sites. This will allow the responsible party to know what costs are considered reimbursable (or non-reimbursable) by the **PCF** before payment is made to the contractor or consultant.