



# PROCEDURES FOR REIMBURSEMENT FROM THE PETROLEUM CLEANUP FUND

VERMONT STATE AGENCY OF NATURAL RESOURCES  
WASTE MANAGEMENT AND PREVENTION DIVISION

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## **CHAPTER 1. INTRODUCTION**

This document establishes the minimum standards for owners and permittees of petroleum storage tanks for receiving reimbursement from the Petroleum Cleanup Fund (PCF). The purpose of this document is to provide guidance for owners and permittees of petroleum storage tanks for the submittal of claims against the 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 July 2006. This document, including the Consultant Fee Schedules, (Attachment C) will be updated as needed.

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

## **CHAPTER 2. 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, and to mitigate impacts to sensitive environmental receptors and protect public health, 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 releases.

Owners of 1) category one tanks; 2) AST or UST farm or residential tanks; or 3) any size heating oil tank, who demonstrate that cleanup costs incurred are not covered by insurance, 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. Third party claims are not transferrable, unless a new condition is discovered. 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.

When more than one release has occurred at a site, PCF coverage is available as follows:

- If multiple releases are determined for a single owner or permittee, at the same facility, at the same time and the contaminant plumes are determined to be commingled, then a single occurrence and site is established, and will be subject to full PCF coverage after the deductible has been met.
- If multiple releases are determined that require separate investigation and/or remediation then multiple deductibles will be assessed.
- 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 deductible has been met.
- If more than one owner has a simultaneous occurrence at a site as described above, then the deductible may be shared by the responsible owners, and will be subject to full coverage provided under the PCF.

The PCF may provide a loan or grant of up to \$2,000 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 fewer and businesses with gasoline sales of less than an average throughput 20,000 gallons of motor fuel per month. The loans may be used to replace single walled gasoline tanks with double-wall systems in accordance with the 1998 upgrade requirements. Interest-free loans are also available to all tank owners for the replacement or improvement of piping, tank-top sumps, and other components of the secondary containment and release detection systems, for the purpose of reducing the likelihood of a future petroleum release to the environment.

The PCF can also be used to provide loans of up to \$150,000 to assist a tank owner with the removal, replacement or upgrade of underground or aboveground storage tanks. An upgrade to a tank system includes replacement of piping, tank-sumps, interior lining of a double wall tank, upgrading the corrosion protection of a double wall steel tank, and the installation of electronic release detection systems. The maximum term of a loan is ten years. For a tank owner with 4 or less facilities the loan is interest free (0%). A tank owner with 5 or more facilities the interest rate is two percent (2%).

**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).** Reimbursement from the PCF does not shift any legal or financial liability to the State of Vermont.

### CHAPTER 3. 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. 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. 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.

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) IROCP which can be found on our website, <http://www.anr.state.vt.us/dec/wastediv/sms/smsgdint.htm>. At the Secretary's sole discretion, tank owners that are determined 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 subject to cost recovery for an amount up to the costs for the entire cleanup, or reimbursement (see 10 V.S.A. § 1941(f)).

Underground storage tank owners who choose a form of financial responsibility other than the PCF in an application for an Underground Storage Tank Permit will not be eligible for PCF reimbursement for environmental remediation costs or third party claims in the event of a release from the tank systems.

Tank owners who submit to the WMPD evidence of financial responsibility in the form of a Certificate of Insurance or a Vermont self-insurance financial test which is accepted by the WMPD will not be eligible for PCF

reimbursement of environmental remediation costs or third party claims in the event of a release from the tank systems.

Costs incurred for implementing 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 WMPD's Investigation and Remediation of Contaminated Properties Procedures, Chapter 4. A Corrective Action Plan must be submitted and approved by the SMS prior to the initiation of work except in emergency situations as outlined in Attachment D.

### **CHAPTER 3(a): FRAUD, MISUSE AND/OR ABUSE OF THE PCF**

Any fraud, misuse or abuse of the PCF is prohibited. Fraudulent actions against the PCF will be investigated by appropriate parties such as the SMS and the Attorney General's office. During fraud investigations, all records associated with reimbursement from the PCF must be maintained by both the owner and their consultant, and will be subject to scrutiny by the State of Vermont. If the State determines a consultant and/or owner has committed fraud or misused the PCF, the consultant and/or owner will be barred from conducting future PCF work and will be required to reimburse the fund.

A person seeking reimbursement under the PCF is required to disclose any settlement discussions or offer of a settlement from an insurance company. This disclosure must take place prior to the tank owner settling with the insurance company. A failure to disclose may result in a determination that fraud, misuse, or abuse has taken place with respect to the settlement amount.

If an insurance settlement is received for work which was previously reimbursed by the PCF, these funds must be immediately paid back in full to the PCF. Failure to repay the PCF for these funds may result in: (1) an enforcement action against the responsible party; (2) a cost recovery action to recover insurance settlement funds; and (3) cessation of all reimbursements to the site until the responsible party repays the PCF.

### **CHAPTER 4. PCF COVERAGE**

**Underground Storage Tanks:** For the following USTs, the PCF may provide coverage for uninsured costs up to \$1,240,000 for investigation and remediation, subject to an initial 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 \$999,000 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.

**Aboveground Storage Tanks:** For ASTs that are not located at bulk storage facilities, the PCF provides coverage for uninsured costs up to \$25,000 for investigation and remediation per occurrence. ASTs which are not included under the bulk storage facility definition which are used for commercial purposes are subject to a first \$1,000 (deductible) spending requirement per occurrence before receiving any PCF reimbursement. ASTs not included under the bulk storage facility definition used for farm or residential uses are subject to a \$250 (deductible) spending requirement per occurrence (see table 1).

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.

**Table 1. Petroleum Cleanup Fund Coverage**

Tank Type	Use	Size	Deductible	Coverage Limit*	3 <sup>rd</sup> Party Coverage
UST – motor fuel	Commercial- double-walled	any	\$10,000	\$1,240,000	\$1 M
UST – combination	Commercial- lined or unlined	any	\$15,000	\$1,240,000	\$1 M
UST – motor fuel	Commercial – single walled	any	\$25,000	\$1,240,000	\$1 M
UST – motor fuel	Farm/residential	<1100 gal	\$250	\$990,000	\$1 M
UST – motor fuel	Farm/residential	>1100 gal	\$10,000	\$1,240,000	\$1 M
UST – heating oil	Commercial	>1100 gal	\$10,000	\$990,000	\$1 M
UST – heating oil	Commercial	<1100 gal	\$250	\$990,000	\$1 M
UST – heating oil	Farm/residential	any	\$250	\$990,000	\$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 facility	Commercial	**	\$10,000	\$990,000	None

\*\*see Attachment A: Definitions

## CHAPTER 5. INABILITY TO PAY DETERMINATIONS

The PCF may be used to finance the deductible for tank owners who are determined by the Secretary to be financially unable to conduct an investigation or cleanup 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 (see Attachment G), 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 is unable to pay the deductible, 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 (see Attachment G). 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 deductible. 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.

## CHAPTER 6. PCF REIMBURSABLE COSTS

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

1. **Soils.** Reasonable costs of the removal, transportation, treatment, and disposal of petroleum contaminated soils caused by a release from an eligible AST or UST during the following activities:
  - (a) **Soils removed during corrective action.** All soils included in a formal corrective action plan (follows the procedure outlined in the IROCP 4.2 Correction Action Plan) that has been pre-approved in writing by the SMS.
  - (b) **Soils removed during UST removal and replacement:** up to 80 cubic yards, or 120 tons, of petroleum contaminated soils removed for the installation of replacement USTs. If more than 80 cubic yards, or 120 tons, of petroleum contaminated soil are excavated for treatment and/or disposal and all conditions of this requirement are met, a percentage based on 80 cubic yards compared to the total volume removed (e.g. -  $80/100 = 80\%$ ) will be used to determine the reasonable cost that will be eligible for reimbursement.
  - (c) **Soils removed without a corrective action plan:** Only when this action is preapproved by the SMS and can be shown to remove the full extent of the petroleum contamination.
2. **Emergency response:** Reasonable cleanup contractor and consultant costs associated with emergency response from petroleum UST or AST releases. Refer to Attachment E for additional guidance on eligible emergency response costs.
3. **Remedial equipment:** 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 new equipment until the party seeking reimbursement demonstrates that they have considered alternatives to purchasing the equipment such as the availability of state-owned equipment, equipment previously used at other sites where PCF reimbursements were used, and an analysis of the purchase versus the lease cost. For all equipment purchased using PCF funds with value greater than \$1,000.00, 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 must be supplied to the SMS. A list of available PCF owned remedial equipment may be found here: [http://www.anr.state.vt.us/dec/wastediv/sms/PCF\\_Inventory.html](http://www.anr.state.vt.us/dec/wastediv/sms/PCF_Inventory.html)
4. **Pre-approved costs:** All reasonable costs, subject to eligibility criteria established in this document, associated with the investigation, remediation and/or monitoring of releases from UST or AST sites which have been pre-approved by the SMS and are in accordance with the Consultant Fee Schedule.
5. **Field work notification:** All reasonable costs for field work associated with the investigation, remediation and/or monitoring of releases from UST or AST sites which have been pre-approved by the SMS, and only when the SMS has been notified at least 24 hours in advance of the onsite work. Notification to the SMS

may be either through a phone call, electronic message, entry into WMID, etc. Last minute changes to the field work schedule must be notified to the SMS. This notification occurs after the work plan has been approved and prior to the onsite field work.

6. **Abandoned USTs:** Costs for properly closing an abandoned UST when the conditions in 10 V.S.A., Chapter 59, Section 1926(d) are met. Section 1926(d) states:

(d) If the persons described in subdivisions (b)(1) and (2) of this section are unknown or cannot be contacted, or if the person owning the land on which the tank is located does not allow access to the tank, the person owning the land on which the tank is located, upon direction of the secretary, shall close the tank. If the following conditions are met, the secretary shall draw upon the petroleum cleanup fund established by section 1941 of this title in order to reimburse the person owning the land for the reasonable costs of that action and the secretary shall not seek repayment to the fund from the person owning the land:

(1) the person owning the land can establish that after making a diligent and appropriate investigation he or she had no knowledge or reason to know of the existence of an underground storage tank; and

(2) the person owning the land has given all reasonable assistance in the closing of the tank; and

(3) the person owning the land is directed in writing by the secretary to close the tank, and does so.

7. **Overnight stays:** Reasonable costs for lodging and meals if cost effective and receipts are submitted and do not exceed Federal rates (<http://www.gsa.gov>).
8. **Markups:** Markups up to 10% and not to exceed \$1,000 on site specific purchased equipment, materials and subcontractors if proof of payment is received. The markup is applied on a per task basis.
9. **Capital Improvements:** reasonable pre-approved costs to address petroleum contamination from a PCF-eligible release encountered during a capital improvement. In this case the SMS will only consider reimbursing the lowest cost remedial option to address the contamination encountered to reduce the risk to human health and the environment.

## CHAPTER 7. COSTS NOT ELIGIBLE FOR REIMBURSEMENT FROM THE PCF

1. **Insured costs:** 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. **Consultants who have not been approved.** Only work conducted by a WMPD Approved Environmental Consultant may be reimbursed from the PCF. Site work such as paving, shed construction, site restoration, etc., does not need to be conducted by a WMPD Approved Environmental Consultant in order to be eligible for reimbursement.



3. **Suspected release investigation costs:** All costs associated with investigating and 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.
4. **Tank closure costs:** 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.
5. **Soils.** All costs associated with the removal, treatment and/or 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. **Pre-approval.** All costs which were not pre-approved in writing by the SMS, except during an emergency response as detailed in Attachment E.
7. **Costs in excess of "Reasonable" costs.** Any cost that exceeds by 20% or more 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 to determine if the estimates are within prevailing Vermont 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.
8. **Costs in excess of fee schedule.** 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).
9. **Costs in excess of pre-approved estimate.** Any cost in excess of a preapproved estimate that has not been reapproved by the SMS prior to the completion of the work. Modifications to the initial estimate may be submitted via letter, email, or phone call. If subcontractor costs are less than the preapproved estimate, then  
  
the preapproved budget will be reduced by the cost savings of the subcontractor work.
10. **Markups.** Markups which exceed 10% or \$1,000 where proof of payment has not been received.
11. **Purchasing equipment.** The cost of purchasing equipment for a site by an owner/operator or consultant who wishes to retain the ownership of the equipment.
12. **Operation of a remediation system.** The costs of operating a remediation system that has not been preapproved by the SMS.

13. **Remedial System Damage.** Any cost incurred to repair damage to a remediation system or repair a monitor well network, caused by the owner or consultant. (For example: a monitor well network which has to be replaced due to site paving.) This does not apply to anticipated repairs which have been pre-approved by the SMS.
14. **Lease payments.** The total lease payment that exceeds 125% in the first year, and 25% in subsequent years, of the value of the equipment, and maintenance costs.
15. **Environmental Site Assessment.** Any cost associated with conducting a site assessment for the purpose of initiating a real estate transaction.
16. **Capital Improvements.** Any cost that is incurred as a result of making a capital improvement that has not been preapproved by the SMS.
17. **Third party contractor oversight.** Any cost incurred for third party contractor oversight that has not been preapproved by the SMS.
18. **General Category Fee.** 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.
19. **Attorney's fees.**
20. **Interest charges and surcharges.**
21. **Owner/operator administrative costs.**
22. **Loss of business costs for first parties.**
23. **Penalties or fines imposed by the DEC or other governmental entity.**
24. **Lack of supporting documentation.** 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, summary email, etc. This shall include supporting evidence which is not filed within three months following the completion of the work (e.g. - date of monitoring well installation).
25. **Invoices over a year old.** The reimbursement of invoices that are over one year old, once the deductible has been met, and have not been submitted to the SMS for review.
26. **Fraud.** Any costs which represents a misuse of the PCF (e.g. - fraud, falsification of data, double-billing).
27. **Lack of adequate PCF monies.** 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.
28. **Property access costs.** Any cost/fee charged by the property owner for granting access to their property to conduct an investigation into the nature, degree and extent of contamination resulting from a petroleum release. This includes any legal fees by either party.

29. **Intentional misconduct clause.** Any cost of investigating, remediating or monitoring a release that was caused by intentional or inappropriate conduct of the responsible party or consultant. (e.g. - fuel delivery overfill, violations of a condition of an Underground Storage Tank Permit, failure to respond to a release when a reasonable underground storage tank owner/operator would have been aware a release had taken place).
30. **The cost of purchasing liability insurance.**
31. **Subsurface Damage costs.** Costs to repair any subsurface utility or structure (eg. Water, sewer, or tank line) that was unintentionally damaged during the site investigation or remediation.
32. **Continued monitoring costs when site has been determined eligible for a Site Management Activity Completed (SMAC) designation.** Continued monitoring costs in circumstances when the site has been determined eligible for a SMAC designation with an approved institutional control (such as a notice to land record), but the responsible party has refused to implement the institutional control.

## CHAPTER 8. 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 process 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 two-party 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.

## CHAPTER 9. REIMBURSEMENT PROCEDURE

1. Invoices should be submitted electronically, for a period of time of no less than thirty (30) days, and not greater than 1 year once the deductible has been met. Submittals must be emailed to [ANR.WMPCFClaims@vermont.gov](mailto:ANR.WMPCFClaims@vermont.gov). Paper copies are also acceptable, but electronic submittals will be given payment priority. The SMS accepts electronic signatures. For each package of invoices, 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. Each contractor must include an IRS W-9 form with the first PCF Reimbursement Submittal for each site. W-9 forms must be submitted if/when a new consultant is hired for each site. W-9 forms are available on line and the most current one must be used (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>).
3. If the owner/operator seeks reimbursement (no two-party check) then the owner/operator must submit a W-9 form along with the first reimbursement request.
4. A copy of all invoices, including subcontractor's invoices and receipts for purchased materials, as well as a copy of all canceled checks or other form of proof-of-payment must be included. The invoices and proof-of-

payment should be compiled in the same order as they appear on the Submittal Form. Consultant invoices must exactly match the owner/operator listed on the reimbursement form. This is especially important when an owner/operator may have multiple business entities, such as a petroleum distributorship and a property ownership business.

5. For submittals of work based on an SMS approved work plan, the invoice must include a cost summary estimate table as established in Section 5 of the Request for Reimbursement Form. The invoice must also be broken down by approved work plan task.
6. For sites where the tank owner is required to pay a deductible, these costs must be clearly documented, and submitted to the SMS in the initial claim. Consultant and subcontractor invoices must be included, as well as proof-of-payment of all invoices.
7. For all equipment purchased using PCF funds with value greater than \$1,000.00, 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 must be supplied to the SMS.
8. 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, and 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.**

9. All records relating to PCF work and reimbursement requests must be maintained by the responsible party and their consultant in the event of an audit of their records to insure that fraudulent claims have not been made. These records should include, but not be limited to, field logs, employee time sheets, contracts with subcontractors, etc. Records shall be retained for a minimum of three years from the date site management activities have been completed.

## **CHAPTER 10. 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 reimbursement submittal is incomplete or if the SMS determines that the applicable deductible has not been met.

## **CHAPTER 11. THIRD-PARTY CLAIMS**

The WMPD is authorized through 10 V.S.A. Chapter 59, Section 1941(b)(2) to compensate third parties for bodily injury and property damage resulting from petroleum releases from underground storage tanks. The PCF may pay eligible third party claims up to \$1 million per site which are caused by releases of petroleum from a UST and where uninsured costs are incurred after January 1, 1987 and where claims are made prior to April 1, 2016.

### **Eligible third-party costs:**

1. reasonable relocation costs, including lodging, meals and transportation, and general living expenses from a dwelling that has been determined to be uninhabitable by the Department of Environmental Conservation (DEC).
2. reasonable costs associated with cleaning and repairing property damaged by an eligible petroleum release
3. reasonable costs to provide for replacement when cleaning or repair are not possible, or the cost of cleaning and repair would be greater than the replacement cost.
4. Reasonable costs associated with addressing an impacted drinking water supply which include the following:
  - a. all reasonable costs associated with the closure of a contaminated well if determined by the WMPD to be necessary; hook-up to a readily available public water supply; or development of a new drinking water supply well or other approved drinking water source.
  - b. all reasonable costs to install an in-home point-of-entry treatment (poet) system in cases where the installation was directed by the WMPD. The WMPD has a contract with a point of entry treatment system installer/operator, and will coordinate installation of the poet system for impacted parties.
  - c. costs to purchase bottled water until a permanent alternate supply can be provided. The WMPD has a contract with a bottled water delivery company and will coordinate delivery to impacted parties.
  - d. the reasonable cost of testing the water supply as directed by the DEC. Reimbursement will cover only tests to identify petroleum or hydrocarbon constituents of petroleum, or for tests necessary to properly operate a water treatment system.
  - e. Compensation for bodily injury costs, which will be handled on a case-by-case basis.
5. Diminution of Property Value (DPV) costs, if DPV is determined to have occurred via the process described below:

### **Diminution of Property Value:**

The Diminution of Property Value (DPV) is determined as the difference between the fair market value of the property uncontaminated and the fair market value of the property with contamination present. Diminution in property value claims are available only to a person who: (1) is not liable for the contamination from the

release as defined in 10 V.S.A. Section 6615; and (2) owns impacted property at the time the release was discovered. The DPV will only be paid on those properties on which contamination has been found, and an actual loss of property value has been incurred through the following process:

- a. The property owner must list the property with a real estate agent or formally list the property for sale by owner;
- b. An offer must be made for the property in writing by a potential buyer. The state must agree that the offer is reasonable and represents the fair market value for the contaminated property. The fair market value is determined by the following:
  - i) The impacted third-party or the State will have a real estate appraisal conducted on the property. The PCF will reimburse the cost of this appraisal as long as the property is listed with a real estate agent or has been formally listed as for sale by owner.
  - ii) If the State or the impacted third-party disputes the initial appraiser's report, a second appraisal may be performed at the disputing party's expense.
  - iii) If disagreement remains, a third appraiser jointly selected by the State and the impacted third-party will be selected, at the expense of both parties jointly
  - iv) Any agreement between two of the three appraisers will constitute an acceptable DPV. If disagreement remains, then the three appraisals will be averaged to determine the acceptable DPV.

Once the DPV amount is agreed, the DEC will prepare a release form (see Attachment F). The buyer and seller must certify that the agreed to price took place from an arm's length transaction and represents a fair and reasonable price for the property. Once this document is signed by the seller and purchaser, the DEC will authorize payment from the PCF.

If the remediation of the third party's property makes the property "clean" (contamination below established standards or guideline levels), then no DPV will be made. No DPV will be paid for a perceived or anticipated loss of property value. No DPV will be paid for loss of property value alleged to have been caused by being in the neighborhood of contamination.

**Third-party incurred costs not eligible for reimbursement:**

1. Legal expenses
2. Compensation for fear of sickness or stress of anticipated illness
3. Any damages covered by medical insurance or workers compensation
4. Injury and damages that are insured by the UST owner/operator or permittee which resulted in the claim.
5. Any obligation for which the UST owner/operator or permittee may be held liable under Workers Compensation, unemployment compensation, disability benefits, or similar law.
6. Any Third Party Damages of any employees or any independent contractor of the UST owner/operator or permittee arising out of, or in the scope of, his or her employment by the owner/operator or permittee.

7. Any Third Party Damages arising out of the release of petroleum products from any oil, gas, or similar well, above ground tank or from a UST that is not eligible for coverage under the PCF.
8. Any punitive damages, exemplary damages, multiple compensatory damages, administrative or criminal fines, or penalties imposed upon the UST owner/operator or permittee.
9. Any costs, charges or expenses of the UST owner/operator or permittee for normal or routine operations or maintenance at any site.
10. Third Party Damages claimed by an owner or permittee or by a partner, family member, shareholder, or joint venture of any UST owner/operator or permittee or by a business enterprise or individual or its agents, employees, assignees or subrogees that wholly or partly owns, leases, operates or manages the eligible site. Also excluded is any former UST 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.
11. Any costs, charges, or expenses for the reconditioning or replacement of any petroleum products or any storage tank or pipes or pumps attached thereto at any site.
12. Any Third Party Damages arising out of a violation of, or alleged violation of, Federal or state anti-competition, antitrust, racketeering and corrupt organization, or similar law.
13. Any costs, charges, or expenses for legal services used to prepare, negotiate or litigate a third party claim.
14. The costs of any water bills following hook-up to a public supply.

**Submittal and review of a third party claim:**

The SMS must be notified, in writing, that a third party claim is being made against the PCF. The written notification must include the following information:

- Name, address, phone and email contact information of the impacted third-party;
- Name, address and site number where the release originated;
- Name of responsible party for contamination;
- Nature of claim (property damage or bodily injury);
- A description of the claim, including all documentation to support damage estimates.

The claim will be reviewed by the SMS for accuracy, reasonableness, and eligibility. The claim will also be reviewed against the PCF balance and priorities. Following review of the third-party claim, the SMS will prepare a response detailing if the claim has been accepted or denied, the amount of the payment, as well as an explanation of reasons for acceptance or denial of the claim.

**CHAPTER 12. 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

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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.

Environmental Court  
2418 Airport Rd., Suite 1  
Barre, VT 05641-8701

This appeal must be made within 30 days of the date of the Secretary's act or decision. Failure to appeal in a timely manner may result in the dismissal of the appeal.



**APPROVAL SIGNATURE:**

\_\_\_\_\_  
David K. Mears, Commissioner  
Vermont Department of Environmental Conservation

9/10/14

\_\_\_\_\_  
Date



## ATTACHMENT A. 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.

**Bodily Injury** means bodily injury, including sickness, disease, or death sustained by any person. Bodily injury does not include mental anguish.

**Bulk storage facility:** Any facility:

- (1) That stores heating fuel, motor fuel, or used oil in an aboveground tank and the principle purpose of the storage is (A) in the case of heating fuel, for distribution to consumer homes, and (B) in the case of motor fuel, for distribution to a person for sale to consumers;
- (2) With a total capacity of greater than 1,320 gallons; and
- (3) That is stationary and located at a fixed location.

**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:

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

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

**Defense of Claims:** The fund may make such investigation and settlement of any **Claim** as it deems advisable.

**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 (See Attachment E for Guidance for PCF Reimbursement of Emergency Response Costs).

**Occurrence:** the point in time that a release of petroleum from an underground storage tank or aboveground storage tank is discovered or determined.

**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. This 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 fuel, oil lubricants, heating oil and used oil.

**Property Damage** means: (a) physical damage to tangible property including all resulting loss of use of that property; or (b) loss of use of tangible property which is not physically damaged.

**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. The PCF reimburses releases based on tank use; for example; a tank located at residential apartment building owned by an LLC is considered a residential tank, and would have a \$250 deductible.

**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.

**Third Party Damages:** Bodily Injury, Property Damage, diminution of property value, and relocation expenses as a result of release of a petroleum product from a UST system that is covered under the PCF.

**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 and secondary containment components connected to it or them, which is or has been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it or them, is 10 percent or more beneath the surface of the ground. The following are excluded from the definition of “underground storage tank”:

- 1.septic tanks and manure storage tanks;
- 2.flow through process tanks permitted under chapter 47 of this title and tanks regulated by chapter 159 of this title;
- 3.stormwater or wastewater collection systems;
- 4.storage tanks situated in an underground area or vault if the tank is upon or above the area floor;
- 5.pipeline facilities regulated by the federal Natural Gas Pipeline Safety Act (49 U.S.C. App. 1671 et seq.), the Hazardous Liquid Pipeline Safety Act (49 U.S.C. App. 2001 et seq.) or an intrastate pipeline regulated under state laws similar to the foregoing;
- 6.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;
- 7.Reservoir tanks containing hydraulic fluid for a closed loop mechanical system such as elevators or lifts; and
- 8.Oil water separators.

**ATTACHMENT B. REIMBURSEMENT FORMS**  
**Vermont Department of Environmental Conservation - Petroleum Cleanup Fund**  
**Request for Reimbursement Form**

**Section 1. General Information:**

**Facility**  
 Site Name: \_\_\_\_\_  
 Dec Site #: \_\_\_\_\_  
 Site Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone #: \_\_\_\_\_  
 Email address: \_\_\_\_\_

**Owner/Operator**  
 Name: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Business Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone #: \_\_\_\_\_  
 Email address: \_\_\_\_\_

**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.			
2. All costs submitted are associated only with petroleum ASTs.			
3. The completed invoice summary and cost summary are enclosed.			
4. A copy of the W-9 form is included if there is not one on file with the Department of Environmental Conservation or it has been more than 6 months since the DEC has received a current W-9 form.			
5. A copy of all invoices, including subcontractors invoices, and, if appropriate, proof of payment, such as copies of cancelled checks are attached.			
6. 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 #.			
7. The deductible with proof of payment is documented or has been previously documented.			
8. Supporting documentation relating to the services associated with this reimbursement request has been submitted.			
9. Statement from the Insurance Company and a copy of the insurance policy(s) for this site is attached or previously submitted.			
10. Reimbursement in the form of a two-party check is requested.			
11. Reimbursement via direct payment to the consultant is requested (consultant must have signed up for direct deposit with the State). <b>Signed Owner Authorization (Section 4) is attached.</b>			
12. Reimbursement via direct payment to the Owner/Operator is requested.			

**Section 3. Declaration/Certification**

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. Owner/Operator Authorization for Direct payment to Consultant/Contractor**

I authorize direct payment to the consultant/contractor who I hired to complete the work included in this claim.

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Section 5. Invoice Summary**

**Work Plan Cost Estimate (WPCE) Tracking #:** \_\_\_\_\_

Invoice # and date	Check # (proof of payment)	Amount
1.		\$
2.		\$
3.		\$
4.		\$
5.		\$
6.		\$
7.		\$
8.		\$
9.		\$
10.		\$
11.		\$
12.		\$
13.		\$
14.		\$
15.		\$
<b>Subtotal.....</b>		<b>\$</b>
<b>Minus deductible.....</b>		<b>-\$</b>
<b>Total Request for Reimbursement.....</b>		<b>\$</b>

**Section 5. Cost Summary**

SITE NAME						
Tasks		Project Costs		% of Tasks Remaining	Invoice # 1001-1	Invoice # 1001-2
Proposed	Unanticipated	Estimated	Actual		Invoice date	Invoice date
<b>SAMPLE</b>						
<b>Totals:</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**

Analytical Costs	
Method	Maximum Rate/Sample Water/Soil
EPA 8010	\$80
VTDEC Petroleum Target Compound List*	\$90
EPA 8015M – GRO/DRO	\$90/each
EPA 8080	\$90
EPA 8100	\$115
EPA 8260	\$140
EPA 8270	\$180
EPA 524.2	\$160
Priority Pollutant Metals	\$160
RCRA 8 Metals	\$125
TCLP Metals	\$175
Ignitability	\$35
TOC	\$40
Nitrate	\$15
Sulfate	\$15
Immunoassay	\$30
TO-2 (Air)	\$200
TO-15 (Air)	\$265

\*Benzene  
 Toluene  
 Ethylbenzene  
 Xylene  
 1,2,4-trimethylbenzene  
 1,3,5-trimethylbenzene  
 Methyl tertiary butyl ether (MTBE)  
 Naphthalene

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<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	\$65
Photoionization Detector (PID)	\$90
Flameionization Detector (FID)	\$100
Interface Probe	\$55
Dissolved Oxygen Meter	\$40
Water Level Meter	\$30
pH Meter	\$25
Temperature/Conductivity Meter	\$30
Low Flow Sampling Pump	\$75
Data Logger	\$100
Vehicle Charge (car/truck)	Current federal mileage rate at time of vehicle use**
1.5 Hp Regenerative Blower	\$70
2 Hp Air Compressor	\$65
Sampling equipment & materials	\$15
Multi-parameter water quality meter (YSI)	\$120
Turbidity meter	\$40
Survey equipment	\$75
Electrical Generator	\$90
Jackhammer	\$80
Metal Detector/Location	\$25
Soil Hand Auger	\$15



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GPS – WGS 84 coordinate system in decimal degrees, with minimum accuracy of 15 feet	\$15
Anemometer/Manometer	\$20
Power hand tool – drill, hammer drill, circular saw, reciprocating saw, etc.	\$25
Magnehelic pressure gauge	\$10

\*\* The current federal mileage rate may be found at: <http://www.gsa.gov/portal/category/100000#>; this rate is also applicable for vans, pickup trucks and panel trucks. For vehicles other than cars, vans, pickups or panel trucks, the PCF will reimburse a reasonable multiplier which has been approved by the SMS.

\*\*\* Any equipment not included in the above will not be eligible for reimbursement without pre-approval by the SMS. Common hand tools such as a screw driver, hammer, shovel, rake, wrenches, pliers, pry bar, cell phone, bucket, etc. are considered a part of normal field equipment and part of company overhead. They are not eligible for PCF reimbursement. Ice, cooler, cord, bailers, gloves, tape, marker, labels sample containers, etc., are part of the per well sample fee and should not be itemized in addition to the sample charge. Digital photos are considered part of site documentation; they should be included in reports as necessary to fully convey site descriptions and conditions.

<b>Personnel Labor Rates****</b>	
<b>Personnel Title</b>	<b>Maximum Rate/Hour</b>
Principal	\$140
Senior Scientist/Engineer	\$115
Project Scientist/Engineer/Manager	\$100
Staff Scientist/Engineer	\$80
Field Technician II	\$65
Field Technician I	\$60
Draftsperson II	\$70
Draftsperson I	\$65
Administrator	\$55
Secretary/Clerical	\$50

\*\*\*\*See Professional Services Definitions

**ATTACHMENT D.  
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 E.**  
**Guidance for PCF Reimbursement of Emergency Response Costs**

In most cases, site investigation and remedial activities related to petroleum releases are pre-approved by the Waste Management and Prevention Division, Sites Management Section (SMS) or Spill Program. During an emergency response, pre-approval of costs is often unrealistic and infeasible. However, the SMS must still evaluate whether the costs associated with the emergency response are reasonable prior to PCF reimbursement. 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.

**During and emergency response, the consultant and/or contractor must be in frequent contact with the SMS Project Manager or Division Spill Manager, regardless of PCF eligibility status.**

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 finished. SMS or Spill Program 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 or the Spill Program for activities after the seven days.
3. The contractor, consultant, or responsible party must frequently update the DEC Spill or Site Manager assigned to an emergency response. The frequency and method of the update depends on the specific conditions of an emergency response and the direction given by the DEC Spill 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 or Spill Program may require supplemental information (such as the field log) if there are questions concerning costs.
6. The PCF will reimburse a maximum of 1.5 times regular hourly rates for overtime hours.
7. 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

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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 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
8. A copy of the log entries for the emergency response should be included as an attachment to the final report.
  9. Document the work with photographs. This will help the Site or Spill Manager better understand the activities that took place during the emergency response.
  10. 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.
  11. The two-party check option is recommended for reimbursement of work performed during emergency responses. 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.

**ATTACHMENT F.**  
**Third Party Eligibility and Release From Future Claims**

WHEREAS, \_\_\_\_\_ (“Seller”) are the current owners of the property located at \_\_\_\_\_, Vermont (“Property”) and has entered a purchase and sale agreement for the Property with \_\_\_\_\_ (“Buyer”).

WHEREAS, on \_\_\_\_\_ the Department of Environmental Conservation (“DEC”) was notified of a release that resulted from an underground storage tank located at \_\_\_\_\_ Vermont (“Release”).

WHEREAS, on \_\_\_\_\_ an appraisal was conducted by \_\_\_\_\_ who determined that the value of the property was \$\_\_\_\_\_.

WHEREAS, prior to the date of sale, Buyer was notified of: the Release, the impacts of the Release on the Property; and that there were records available for inspection at DEC if Buyer wished to obtain additional information.

WHEREAS, the Buyer offered to purchase the Property for the price of \$\_\_\_\_\_, which was accepted by Seller.

WHEREAS, Buyer and Seller certify that the agreed to price took place from an arms length transaction and represents a fair and reasonable price for the property.

WHEREAS, the Buyer agrees, at the time of closing, this Release shall be recorded in the land records against the Property in the Town of \_\_\_\_\_ and shall be binding against all successors and assigns.

THEREFORE, the parties agree to the following:

The DEC agrees that Seller was impacted as a third party and is eligible to receive \$\_\_\_\_\_ from the Vermont Petroleum Cleanup Fund (“PCF”) pursuant to 10 V.S.A. § 1941(b)(2).

Seller releases the PCF for all diminution of property value third party claims associated with the Property from the Release.

Buyer releases the PCF for all diminution of property value third party claims associated with Property from the Release.

Under the authorizing legislation and subject to available funding, the PCF is authorized to pay all eligible third party claims that the UST owner/operator or permittee becomes legally obligated to pay (up to \$1 million per site).

\_\_\_\_\_  
(Seller)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Buyer)

\_\_\_\_\_  
(date)

Attachment G. PCF Deductible Deferment Application

FORM 001A – BUSINESS APPLICATION APPLICATION FOR DEFERMENT – VT PETROLEUM CLEANUP FUND				
<b>Applicant:</b>				
<b>Trade name:</b>			<b>Tax ID#:</b>	
<b>Street Address:</b>		<b>City/Town:</b>		<b>County:</b>
<b>State:</b>	<b>Zip:</b>	<b>Tel #:</b>	<b>Date of Application:</b>	<b>Date Business Established:</b>
<b>Bank of Business Account &amp; Address:</b>			<b>Accountant Name and Address:</b>	
<b>BUSINESS ORGANIZED AS:</b> <input type="checkbox"/> C-Corporation <input type="checkbox"/> S-Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Partnership			<b>BASIS OF ACCOUNTING:</b> <input type="checkbox"/> Cash <input type="checkbox"/> Income Tax (Modified Cash) <input type="checkbox"/> Accrual <input type="checkbox"/> Fund	
<b>MANAGEMENT: (Proprietor, partners, officers, directors, and all holders of outstanding stock – 100% of ownership must be shown). Use separate sheet if necessary.</b>				
<b>Name and SS#</b>		<b>Complete Address</b>		<b>Title</b>
<b>ASSET LISTING: If your assets consist of (A) Land and Building, (D) Accounts Receivable and/or, (E) Inventory, fill in the appropriate blanks. If your assets include (B) Machinery or Equipment, (C) Furniture and Fixtures and/or, (F) Other, please provide an itemized list (labeled Exhibit A) for all articles that had an original value greater than \$500.</b>				
<b>Asset</b>		<b>Present Market Value</b>		<b>Original Purchase Price</b>
A. Land and Building				
B. Machinery & Equipment				
C. Furniture & Fixtures				
D. Accounts Receivable				
E. Inventory				
F. Other				
Totals				

Vermont DEC/Waste Management and Prevention Division/Sites Management Section  
 Procedures for Reimbursement from the Petroleum Cleanup Fund  
 September 2014

**INDEBTEDNESS: Furnish the following information on all installments, debts, contracts, notes, and mortgages payable.**

To whom payable (Name & Address)	Original Amount	Original Date	Present Balance	Rate of Interest	Maturity Date	Monthly Payment	Security	Current or Past Due
	\$					\$		
	\$					\$		
	\$					\$		
	\$					\$		

**Describe the following RELATED PARTY transactions:**

	Amount/Balance	Paid To	Terms
Officers' Salaries			N/A
Rent			N/A
Loans from Shareholders			

**Vermont DEC/Waste Management and Prevention Division/Sites Management Section  
 Procedures for Reimbursement from the Petroleum Cleanup Fund  
 September 2014**

**ATTACHMENTS:**

- 1) Include with this application a **signed current personal financial statement** for each stockholder, partner, officer, and owner with 20% or greater ownership. Social Security number should be included on personal financial statement.
- 2) Include with this application, the most recent interim statement prepared by your business. Must be dated within 90 days of application and include the following:
  - a. Income Statement
  - b. Balance Statement
- 3) Include with this application the most recent 3 years of business tax returns and business financial statements to include the following:
  - a. Balance sheet
  - b. Profit and Loss Statement
  - c. Statement of Changes in New Worth
  - d. State of Cash Flows, if available
- 4) Provide projected Income Statement and/or Balance Sheet for upcoming year if:
  - a. Business has been established for less than 3 years.
  - b. Major changes or capital expenditures will be occurring within the next year.
- 5) Please list any other liens on business assets or other commitments or contingencies (i.e. purchase commitments, pending or threatened litigations, etc.)

If applicant is a proprietor or general partner, sign below:

By \_\_\_\_\_  
 Proprietor/General partner                      Date

If applicant is a corporation, sign below:

By \_\_\_\_\_  
 Signature of President                              Date

**Provide a brief description of your company and a paragraph describing projected expansion or major asset purchases in upcoming year:**



**PETROLEUM CLEANUP FUND  
DEDUCTIBLE DEFERMENT  
REPAYMENT AGREEMENT**

**RE: Sites Management Section Site # \_\_\_\_ - \_\_\_\_, [site name], [town], VT**  
**Responsible Party:** \_\_\_\_\_  
**Landowner:** \_\_\_\_\_

I, \_\_\_\_\_, have read, understand, and agree to the terms and conditions of the Petroleum Cleanup Fund (PCF) deferment program in that the Agency will advance up to \$\_\_\_\_\_ of the \$10,000 deductible for all state pre-approved work and costs associated with the investigation/remediation required at the above hazardous site.

In consideration of the Vermont Agency of Natural Resources, Department of Environmental Conservation, Waste Management Division allowing me to participate in the deferment program, I hereby agree to pay a *minimum of* \$\_\_\_\_\_ *per year* to the State of Vermont by **quarterly payments of \$\_\_\_\_\_** on the 1<sup>st</sup> of each month. The first quarterly payment is to begin on \_\_\_\_\_.

In the event that the property is sold, all outstanding payments are to be paid in full.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Responsible Party

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared \_\_\_\_\_ of the foregoing written instrument and acknowledged the same to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_