

STATE OF NEW HAMPSHIRE

Petroleum Reimbursement Fund Program

RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G

Guidance Manual

Policies, Procedures & Rules for Reimbursement



Oil Fund Disbursement Board

January 2012

PREFACE

This publication provides information, guidance, forms and procedures for the New Hampshire Petroleum Reimbursement Fund Program, administered by the Oil Fund Disbursement Board (“Board”). The program includes four dedicated funds established by the Legislature to provide financial assistance for the cleanup of petroleum contamination. The funds provide assistance for gasoline, diesel, oil, fuel oil, motor oil, used motor oil and gasoline ether contamination (typically “MtBE”).

The document is organized in seven sections including: Program Overview; Key Provisions of Policies, Rules & Statutes; Achieving & Maintaining Facility Operational Compliance; Work Scope & Budget Approval; Reimbursable Corrective Action Costs; “Unit-Based” & “Project-Based” Costs; and How-To Obtain Fund Program Coverage & Submit Reimbursement Requests. The Appendix includes cost tables, forms, policy statements, rules, and statutes (all available as separate documents).

Four fact/guidance sheets appear at the end of the Appendix. These are: Quick Reference Guide; Overview of Facility Requirements; Information Resources; and Participation in Web-Based Reimbursement Request Submittal. Contact the individuals on the resource list if you have questions in their specialty area. In addition:

Program Note: Important information is highlighted throughout the document using this “Program Note” format.

This January 2012 *N.H. Petroleum Reimbursement Fund Program Guidance Manual* replaces the manual originally published in October 2003, subsequent revisions, and precursor Board documents including the *Fund Program Description and Report on Unit-Based & Project-Based Costs*.

The Board and Department of Environmental Services strongly encourage the use of electronic media when submitting technical documents, work scopes, and reimbursement requests, using the DES OneStop Data Provider system:

<https://www2.des.state.nh.us/OnestopDataProviders/DESLLogin.aspx>

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I. OVERVIEW

New Hampshire Petroleum Reimbursement Fund Program

The New Hampshire Petroleum Reimbursement Fund Program is a financial assistance program for reimbursement of costs incurred for corrective action, third-party damages, public water supply gasoline ether monitoring, and consumer notification. In New Hampshire, gasoline ether contamination is typically methyl tertiary-butyl ether ("MtBE"). Although MtBE is no longer in the gasoline fuel supply, contamination is still present in the environment.

Program Note: "Corrective action" means activities performed in accordance with state statute or administrative rules to contain a petroleum discharge, or to remedy contamination. "Third-party damages" are a monetary obligation of a fund-eligible party based on a court-approved settlement or judgment in a civil action. Public water supply consumer notification and water quality monitoring are required under state statute and administrative rules when MtBE is found in the supply.

Owners of petroleum storage facilities, owners of properties identified as a source of gasoline ether contamination, and owners of public or private water supplies may participate in the program.

The reimbursement fund program is comprised of four separate dedicated funds authorized by state statute. These funds are; the Oil Discharge & Disposal Cleanup Fund under RSA 146-D, the Fuel Oil Discharge Cleanup Fund under RSA

146-E, the Motor Oil Discharge Cleanup Fund under RSA 146-F, and the Gasoline Remediation & Elimination of Ethers Fund under RSA 146-G.

The RSA 146-D, E & F funds provide "excess insurance" coverage for owners of above ground petroleum storage ("AST") tank facilities, owners of underground petroleum storage tank ("UST") facilities, owners of on-premise-use fuel oil facilities, including residential properties, and certain property owners. Owners of these petroleum storage facilities may request reimbursement for corrective action and third-party damage costs incurred due to petroleum contamination. To qualify for fund coverage, the facility owner must (1) demonstrate private insurance coverage is not available and (2) the facility must be operated in compliance with all applicable local, state and federal rules to prevent new petroleum discharges.

Program Note: Petroleum storage facilities include ASTs and USTs storing gasoline, diesel fuel, oil, fuel oil, motor oil or used motor oil, and on-premise-use fuel oil facilities (typically at single-family homes).

The RSA 146-G fund is available to reimburse corrective action costs, public water supply monitoring costs and public water supply consumer notification costs incurred due to MtBE or other gasoline ether contamination. Reimbursement is not available for third-party damage costs. Eligible parties include owners of public or private water supplies affected by

contamination, and owners of properties identified as a source of contamination. Gasoline handling and storage operations at source properties must still be in compliance with all applicable local, state and federal rules for operation, even though MtBE is not in the fuel supply.

Program Note: Gasoline ether contamination source properties include motor vehicle salvage yards, vehicle dealerships, repair shops and other locations where gasoline that contained MtBE was handled or stored.

The RSA 146-G fund does not function as excess insurance by statute. However, reimbursement is not available for costs paid by private insurance. Monies expended from this fund may be recoverable under certain circumstances.

Administration

The program is administered by the Oil Fund Disbursement Board (“Board”), which is composed of twelve members representing the N.H. Legislature, the petroleum industry, state agencies and the general public. The Board is administratively attached to the New Hampshire Department of Environmental Services (“NHDES”), which performs program support services. The Board meets monthly to hear appeals, approve activity reports, and review policies and procedures. Reimbursements are subject to Board policies and the requirements of N.H. Administrative Rules Part Odb 400 effective September 1, 2011. Policy statements and rules may be found in the Appendix.

Petroleum Storage Facility & Contamination Source Site Owner Responsibilities

When a petroleum discharge occurs or contamination is discovered, corrective action is needed. Typically, this includes performing an investigation to determine the extent and magnitude of the problem, and developing a remedy plan. Quite often, “Initial Response Action” is needed to abate imminent environmental or health hazards. This may include contaminated soil removal, “free product” removal or vapor abatement measures. NHDES is responsible for ensuring that surface waters, groundwater and public health are protected, by requiring the owner to perform investigation and remediation, and for managing the corrective action. Any person who becomes aware of a discharge/petroleum contamination has a duty to report to NHDES, and facility owners and contamination source property owners must undertake corrective action to meet state requirements.

Related Programs

Under RSA 146-E, homeowners who demonstrate financial need may receive up to \$1,500 in funds for repair or replacement of substandard fuel oil storage tank systems, and up to \$2,500 to remove a UST, to prevent a discharge. The “SafeTank” program is described in various other guidance documents. Contact NHDES for details.

Where Do I Start & What Steps Do I Follow To Access The Funds?

Read Sections II, III, IV, V and VI for key fund program information and requirements. Follow the “How-To” procedures in Section VII if you need fund program resources. Contact NHDES personnel listed on the *N.H. Petroleum Reimbursement Fund Program Information Resources* guidance sheet for further assistance (see Appendix).

II. KEY PROVISIONS OF STATUTES, RULES & POLICIES

Corrective Action Liability

When a petroleum discharge occurs or contamination is discovered, NHDES personnel will determine who is responsible for performing corrective action, and will issue a Notice of Strict Liability for groundwater and surface water impacts. The reimbursement funds are available to the legal owner of a petroleum storage facility or contamination source property, and not others who are related to a discharge or contamination event. For example, a discharge from a petroleum storage facility due to a delivery company overflow, is not a covered occurrence. In such a case, the delivery company must complete corrective action with their own resources.

However, the RSA 146-G fund is available to a party that has suffered gasoline ether contamination, even if the discharge facility/source is not known.

Program Note: The fund-eligible party is a party who performs corrective action, and may be liable under state statute.

Petroleum Storage Facilities & Gasoline Ether Contamination Source Properties

Petroleum storage facilities covered under the program include “active facilities” (where one or more tanks are currently in-service), and “permanently closed facilities” (where all tanks and appurtenances are closed in accordance with NHDES rules) and a discharge has

occurred and/or contamination is discovered.

Covered gasoline ether contamination source properties include any location where soil or groundwater contamination levels necessitate corrective action.

Public & Private Water Supplies

Public water supplies covered under the program include those on an increased water quality monitoring program due to gasoline ether contamination, have MtBE contamination levels necessitating consumer notification (>5.0 parts-per-billion), and/or have contamination levels necessitating corrective action.

Covered private water supplies are those with contamination levels necessitating corrective action.

Owners

Covered petroleum storage facility owners include: the current owner of an active or permanently closed facility, the former owner of an active facility who incurred costs during their period of ownership, and the former owner of an active facility who remains liable for corrective action after the facility is sold. Incurred costs include work contracted prior to transfer of facility ownership. An owner is the person or entity that has, or held, legal title to the facility and whose name appears, or appeared, on the NHDES facility registration form, if applicable.

Covered landowners are those who own property where a compliant facility was

located, and where an on-premise-use fuel oil storage facility is located. For example, the owner of a manufactured housing park with multiple fuel oil storage tanks may qualify, or the individual tank owners may qualify.

Program Note: The fund program is available for certain facilities, properties, and water supplies, and is available to certain owners. The excess insurance funds are available for petroleum storage facilities. The gasoline ether fund is available for contamination source properties.

Covered gasoline ether fund owners include contamination source property owners which may have gasoline storage or handling operations subject to facility compliance requirements, and owners of contaminated public and private water supplies.

When requesting fund eligibility, the owner must identify a parent company, if any.

Ownership Transfer & Fund Program Coverage

Fund program coverage is transferable to the purchaser of an active petroleum storage facility, gasoline ether contamination source property, public water supply, private water supply or property owner. Or, a former owner may retain coverage after transfer, under the terms of a sales agreement. A copy of the sales agreement showing a continued liability for corrective action after transfer must be submitted with each reimbursement request. See Section VII.

“Applicants”

An “Applicant” is a person or firm hired by an owner, *under a written contract*, who performs corrective action, public water supply monitoring or consumer notification, and may seek reimbursement directly from the fund(s). For corrective action work, the Applicant must agree to waive all claims against the owner for the services performed. (See: N.H. Administrative Rule Odb 406.03 in the Appendix.) The written contract for services must be executed prior to start of the work, and the waiver of claims language for corrective action, must be included prior to reimbursement approval. Applicants are also required to maintain a “Project Cost Ledger” for each State fund project they work on, for audit purposes.

Program Note: Owners and Applicants may not establish contracts that violate a statute or rule. An Applicant may not balance-bill their client for non-reimbursable costs.

Petroleum Storage Facility Operating Requirements

To qualify for fund coverage, the facility must be operated in compliance with all applicable local, state and federal rules. Owners must achieve compliance to be eligible for fund coverage for a petroleum discharge, and then maintain compliance to be eligible for a future discharge. General requirements for each facility type are as follows:

- Gasoline, diesel and oil UST facilities must be registered with NHDES and be in compliance with N.H. Administrative Rules Env-Wm 1401.

- Gasoline, diesel and fuel oil AST facilities must be registered with NHDES, be in compliance with N.H. Administrative Rules Env-Wm 1402, meet state fire codes, and meet federal regulations for spill prevention control and countermeasures (40 CFR 112). The deadline for AST registration was July 1, 1996. (Contact NHDES regarding a late registration waiver if fund program assistance is needed.)
- All on-premise-use fuel oil facilities must be equipped with a vent whistle for overfill alert. On-premise-use facilities installed on or after August 28, 1993, must meet all applicable local codes or ordinances and National Fire Protection Association standard NFPA 31. These standards and additional requirements are described in the NHDES publication, *“Best Management Practices for the Installation or Upgrade of On-Premise-Use Heating Oil Tanks - 2008 Edition”*. Facility owners must achieve compliance and meet the “BMP” standards by July 1, 2015, or corrective action coverage will be reduced. Owners of on-premise-use facilities regulated under Env-Wm 1401 or 1402 must demonstrate compliance with those rules.

Program Note: Owners of residential on-premise-use fuel oil facilities, who meet low-income guidelines, may qualify for a \$1,500 grant to improve or replace a sub-standard system. Call NHDES for details.

- Motor oil or used motor oil storage facilities must be in compliance with Env-Wm 1401 or 1402 (if applicable),

meet local codes, state fire codes and federal regulations for spill prevention, control and countermeasures.

- Gasoline dispensing facilities must in compliance with Env-Wm 1404.

Gasoline Ether Source Property Requirements

Other than AST and UST facilities that stored gasoline with MtBE, motor vehicle salvage yards, auto dealerships and repair shops are the most common sources of gasoline ether contamination due to historic discharges. Current gasoline handling and storage operations at such source properties must be in compliance with all applicable local, state and federal rules for operation to prevent new discharges. For salvage yards, principal operating requirements are included in the “Motor Vehicle Salvage Yard Environmental Compliance Manual & Self-Audit Checklist”

<http://des.nh.gov/organization/commissioner/pip/publications/wmd/documents/wmd-09-1.pdf>, and N.H. Administrative Rules Env-Wq 401.

Achieving and maintaining compliance with operating requirements is explained further in Section III.

Fund Program Projects & Other Contamination

A property or “site” may include a mix of fund-eligible petroleum contamination, and contamination from other sources. Additional stand-alone or incremental corrective action costs may be incurred by an owner due to other contaminants.

Such costs are not reimbursable and must be accounted for separately.

Private Insurance Coverage

The RSA 146-D, E, & F funds provide “excess insurance” coverage for owners of AST facilities, owners of UST facilities, and owners of on-premise-use fuel oil facilities. The RSA 146-G fund is not an excess insurance fund by statute. However, costs paid by private insurance are not reimbursable. Facility owners must file a claim with their private insurance company(s) *before requesting state fund assistance*. A private insurance claim must specifically request if coverage is available for damages to land owned, i.e., “first-party coverage”, and for damages to waters of the state and/or abutting landowners, i.e., “third-party damage/liability coverage”. Owners may not interpret their policy coverage or provide an interpretation from an insurance agent. Only coverage determinations from the insurance company or an authorized adjuster will be accepted.

When requesting fund eligibility, the owner must include a copy of the correspondence from their insurance company or an authorized adjuster that details available coverage. If there is no private insurance policy in force, the owner must provide a notarized letter stating so. The state fund(s) is available when there is no private insurance, no coverage, or only limited coverage.

Program Note: The fund program provides excess insurance coverage for a petroleum storage facility owner. It does not provide liability coverage for corrective action service providers.

Under New Hampshire law, any person who causes or suffers an oil discharge to land, groundwater, or surface water is “strictly liable” for corrective action. Oil contamination in groundwater and surface water are damages for which the facility or property owner may have liability coverage under their private insurance policy. For water contamination, NHDES will issue a Notice of Strict Liability that includes specific information regarding insurance coverage expectations. Private insurance companies have specific obligations under New Hampshire Insurance Department rules to provide a timely coverage determination when requested. Contact NHDES program staff for more information.

Petroleum Discharges & Contamination Discovery

The fund program is available for reimbursement of corrective action costs that result from discharges. Costs associated with the discovery of the discharge are not reimbursable. Such activity is undertaken voluntarily, or is due to regulatory obligations, e.g., facility monitoring, thus the costs are known and planned for.

Program Note: Discovery-related costs are not reimbursable. This may include “due diligence” investigations for property development or sale, facility testing, monitoring, and other activities that identify a discharge.

Fund Program Coverage Limits & “Deductibles”

The petroleum storage facility funds are available for reimbursement of corrective action costs and third-party damage costs. The gasoline ether fund is available for reimbursement of corrective action costs, public water supply monitoring costs and consumer notification costs. It is not available for reimbursement of third-party damage costs. Each fund is available for costs incurred after certain dates provided in the statutes, or the date of discharge or contamination discovery, whichever is later.

Owners of petroleum storage facilities must cover initial corrective action costs out-of-pocket (i.e., a “deductible”), based on the type of facility and number of facilities owned. Deductibles range from \$100 or \$500 for each on-premise-use fuel oil storage facility, regardless of the number owned, to \$30,000 for each AST or UST gasoline, diesel, fuel oil, or motor oil storage facility, if 20 or more are owned. There is no deductible for owners of gasoline ether contamination source properties. On-premise-use facility owners that receive SafeTank funding have a \$100 deductible, vs. \$500 for all other on-premise-use facility or property owners. Owners of property where a compliant AST, UST or motor oil storage

facility was located have a \$5,000 deductible.

The deductible is *subtracted* from the amount of reimbursement for reimbursement requests submitted by the owner, and on-premise-use facility requests submitted by an Applicant. The deductible is *billed to the owner* for all other reimbursement requests submitted by an Applicant, if the deductible is not already met. Deductibles are determined by counting the number of facilities registered with NHDES in the name of the owner (or parent company) seeking fund eligibility. The facility count includes all active and permanently closed facilities where a discharge occurred and all active facilities where fund assistance may be needed in the future.

Program Note: There are two “deductible” schedules that apply for AST, UST and motor oil storage facilities based on the date of discharge discovery, before or after 7/1/95. Deductibles cannot be waived or forgiven, but a periodic payment plan can be approved.

The AST, UST and motor oil storage facility funds provide “first dollar coverage” if the owner has a financial hardship. Such owners must request that the Board approve a periodic payment plan so the deductible obligation is eventually met. Fund program coverage limits and deductibles are shown in the *Overview of Facility Requirements* table in the Appendix.

Usual & Customary Market Rates, Or Costs

The Board publishes usual and customary market rates or costs for corrective action work based on a variety of “Unit-Based Cost” and “Project-Based Cost” services. See Section VI for a description, and the cost tables in the Appendix.

Work Scope & Budget Approval

With the exception of *Emergency Services*, all corrective action work must be pre-approved by NHDES for both scope and budget. See Section IV for work scope and budget approval requirements.

Corrective Action Performance Standards

Reimbursement requests may not be processed for payment until corrective action is completed in accordance with NHDES requirements, including appropriate reporting.

Payment for work-in-progress is permissible, provided NHDES, the owner, and the corrective action service provider(s) have agreed on a payment schedule for completed work and the submittal of certain interim reports.

Reimbursable Costs

Reimbursable corrective action costs incurred by fund-eligible facility and property owners may include work authorized by NHDES under statute or rule to contain a discharge and complete contamination cleanup. This may be one or more “phases” of work such as: Initial Response Action (including Emergency

Services), Site Investigation, Remedial Action Plan, Remedial Plan Implementation, permit application preparation, NHDES permit and local corrective action fees, and Groundwater Monitoring.

Owners of public and private water supplies may be reimbursed for certain corrective action costs due to gasoline ether contamination, even if the contamination source is not known. Incurred corrective action costs are reimbursable at the not-to-exceed usual and customary market rates or costs, published by the Board.

Public water supply (gasoline ether-related) consumer notification and water quality monitoring costs are reimbursable at reasonable market-based costs.

Reimbursable third-party damage costs include court-ordered damages for bodily injury or property damage claims. Contact NHDES for specific guidance on reporting a third-party demand, filing a copy of a writ or petition, and other information.

See Sections V and VI for reimbursable cost information.

Reimbursement Request Submittals

Facility and property owners may submit a reimbursement request upon completion of corrective action as directed by NHDES.

Public water supply owners may submit a reimbursement request upon completion of consumer notification or water quality monitoring.

See Section VII for an explanation of “How-To” secure fund eligibility and submit a reimbursement request.

Program Note: Reimbursement requests and corrective action reports should be submitted concurrently to avoid payment delays. Submittal using NHDES OneStop is strongly encouraged, and preferred.

III. ACHIEVING & MAINTAINING FACILITY COMPLIANCE

When Is Facility Compliance Required?

The fund program statutes and rules include requirements that petroleum storage facilities, and certain activities at gasoline ether contamination source properties, be operated/conducted in compliance with applicable local, state and federal standards. If a facility/property is in compliance, fund coverage is automatic in the event of a discharge or contamination discovery. Owners of UST facilities are required to demonstrate financial responsibility for corrective action under NHDES rules (which is based on a federal requirement). For a compliant facility, the RSA 146-D fund provides financial responsibility.

There are *no* facility compliance requirements for owners of public and private water supplies seeking reimbursement for gasoline ether contamination costs, where the contamination source is not known.

What Is Facility Compliance & How Do I Achieve It?

A “facility” may be an on-premise-use fuel oil tank system at a private residence, commercial ASTs or USTs storing gasoline, diesel fuel, oil, fuel oil, or motor oil, or various gasoline handling and storage operations at, e.g., a motor vehicle salvage yard.

The key purpose of facility operational compliance requirements is to prevent discharges and resultant contamination. *Achieving* and then *maintaining*

compliance is critical to discharge prevention. Facility owners should contact appropriate NHDES program staff listed on the Information Resources table to obtain compliance assistance/guidance. Owners should employ a qualified tank system installer, consultant, contractor or other professional to review their facility compliance status, and correct any deficiencies.

Gasoline, diesel fuel and oil UST facilities must be registered with NHDES and be in compliance with N.H. Administrative Rules Env-Wm 1401. Gasoline, diesel fuel and fuel oil AST facilities must be registered with NHDES, be in compliance with N.H. Administrative Rules Env-Wm 1402, meet state fire codes, and meet federal regulations for spill prevention control and countermeasures (40 CFR 112). Gasoline dispensing facilities must be in compliance with Env-Wm 1404. The deadline for registration of AST facilities was July 1, 1996. If fund program assistance is needed for a non-registered AST facility, a “late registration waiver” will be required. Contact NHDES for more information.

Owners of on-premise-use fuel oil UST and AST facilities, regulated under Env-Wm 1401, or 1402, must demonstrate compliance with those rules. By statute, on-premise-use fuel oil facilities installed on or after August 28, 1993, must meet all applicable local codes or ordinances and National Fire Protection Association standard NFPA 31. All on-premise-use facilities must be equipped with a vent

(overfill) alarm system. These standards and additional requirements are described in the NHDES publication, *“Best Management Practices for the Installation or Upgrade of On-Premise-Use Heating Oil Tanks - 2008 Edition”*. Facility owners must achieve compliance and meet the “BMP” standards by July 1, 2015, or corrective action coverage will be reduced.

Program Note: Owners of residential on-premise-use fuel oil facilities, who meet low-income guidelines, may qualify for a \$1,500 SAFETANK grant to improve or replace a sub-standard system. Call NHDES for details.

Motor oil or used motor oil storage facilities must be in compliance with Env-Wm 1401 or 1402 (if applicable), meet local codes, state fire codes, and federal regulations for spill prevention, control and countermeasures.

Typical gasoline ether contamination source properties are motor vehicle salvage yards, vehicle dealerships and repair shops. “Facility operations” encompass various gasoline handling and storage activities conducted at the site. This may include: ASTs and USTs, small fuel storage containers/storage areas, fuel transfer devices, and motor vehicle storage, repair and dismantling activities. Operational compliance determinations may involve various NHDES program interests, rules, and personnel.

Active Facility Compliance Inspections

NHDES personnel perform inspections periodically at active AST and UST

petroleum storage facilities. Facility owners should expect to be contacted that an inspection is due, and should provide assistance as necessary. Periodic inspections and compliance record keeping are valuable in preventing discharges and providing early detection to minimize the spread of contamination. Early detection opportunities may be lost due to failure to maintain adequate records.

Compliance & Fund Eligibility

When a discharge occurs, or contamination is discovered, and corrective action is initiated, NHDES personnel will review compliance records, may perform an inspection, and notify the facility owner of their fund-eligibility status. If the facility is permanently closed and a proper closure report was provided, if applicable, the owner is eligible for the fund program. If the facility is active any compliance deficiencies must be corrected before reimbursement requests can be processed. Periodic compliance reviews will be performed during the corrective action process. The facility owner must certify that compliance will be maintained by signing the Owner's Liability Statement and Affirmation, on the *Request For Reimbursement Authorization* form included in the Appendix.

Program Note: Failure to achieve and maintain operational compliance after the first discharge may result in loss of coverage for future discharges.

IV. WORK SCOPE & BUDGET APPROVAL

Corrective Action “Phases”

Under its rules and guidelines, NHDES generally categorizes corrective action work by phase for purposes of consistent identification, smooth workflow and cost control. These include: Initial Response Action (including Emergency Services), Site Investigation, Remedial Action Plan, Remedial Action Plan Implementation and Groundwater Monitoring. Groundwater monitoring is typically performed under a NHDES-issued site groundwater management permit, as required by statute. Public and private water supply corrective action costs may fall under the above general phase categories, or may be other specific work.

Usual & Customary Rates, Or Costs Actual Cost

Reimbursement for corrective action is available at the not-to-exceed usual and customary market rate or cost for professional and contractor services. The Board publishes rate and cost information for a variety of Unit-Based Cost and Project-Based Cost corrective action services. These are described in Section VI, and shown in tables in the Appendix. The cost categories and tables are periodically updated based on changes in market conditions.

Reimbursement for public water supply gasoline ether consumer notification and water quality monitoring is available at a reasonable market-based cost.

When Is Work Scope Approval Required?

With the exception of emergency services, all corrective action work must be pre-approved by NHDES for both scope and budget. (Emergency services should be undertaken with NHDES knowledge and concurrence.)

In the event of a petroleum discharge or contamination discovery, qualifying persons (See Section II for a description) must retain a contractor and/or consultant to complete work as directed by NHDES. This may require preparation and submittal of a work scope and budget for NHDES approval using Unit-Based Costs, and/or adherence to one of the Project-Based Cost work scope categories. Certain costs incurred while performing corrective action such as utility costs, local police detail and permit fees, are not market-based and thus not subject to pre-approval.

Forms are available for use in submitting a work scope and budget, or a work scope Change Order, and are included in the Appendix. (Contact NHDES regarding use of the forms and see additional guidance in this Section.)

Pre-approval is *not* required for public water supply gasoline ether consumer notification and water quality monitoring. However, public water supply owners intending to seek reimbursement for such costs should contact Talcott Hubbard, P.E. at (603) 271-2014 or David Reid, P.G., at (603) 271-3431.

Program Note: Work scope and budget pre-approval is required for all corrective action work, except emergency services. Pre-approval is not required for public water supply consumer notification or water quality monitoring.

Work Scope Approval Process

Because of the specialized nature of corrective action services, different NHDES personnel are responsible for approval and oversight of work as a project moves from one phase to the next. Qualifying persons should contact appropriate NHDES program staff listed on the Information Resources table to obtain assistance.

Corrective action work performed under the fund program is typically conducted on a time & materials basis, subject to the reimbursable cost guidelines provided in Sections V & VI. In some cases, NHDES personnel will request that work be performed following a standard, Project-Based Cost scope. Since the program has matured, these standard scopes will be phased-out over the next few years in favor of project-specific work scopes and budgets. For complex projects, and public/private water supply projects, NHDES will request that a project-specific work scope and budget be prepared.

Competitive Pricing, Contract & Performance Requirements

Certain projects, as determined by NHDES, will involve competitive pricing (i.e. bidding) for implementation of a remedial action plan. The overseeing

consultant and the construction contractor performing remedial plan implementation (“RPI”) work must adhere to standard engineered-construction contract practices, under American Society of Civil Engineers guidelines. It is expected that RPI work will meet specific overall performance standards, and achieve specific performance milestones as the work progresses, which may or may not include a performance time schedule.

A qualified Applicant performing corrective action, public water supply monitoring or consumer notification may seek direct reimbursement from the fund(s). RPI contracts may be structured so the overseeing consultant or engineer is an Applicant for their work, and the implementation contractor is an Applicant for their work. However, Applicant contracts are not permitted for individual subcontractors. For corrective action work, the Applicant must agree to waive all claims against the owner for the services performed. All contracts for services must be executed prior to start of the work.

Program Note: Certain corrective action must be bid. Applicant (i.e. direct-pay) contracts are permitted for the consultant/engineer and/or the contractor. Corrective action must be conducted using a cost-effective approach and performance standards must be met to qualify for reimbursement.

Reimbursement from the fund program is conditional on meeting NHDES-established performance standards. Typically, NHDES will establish performance standards at the time of work

scope approval. If corrective action will involve installation of “capital equipment”, a cost comparison of leasing vs. purchasing the equipment must be completed prior to installation. Capital equipment is any electronic, chemical, mechanical or structural equipment installed to perform contamination source removal or treatment, and has a long-term life greater than 2 years, and is valued at \$10,000 or more. The chosen option, lease vs. purchase, must represent the lowest cost over the estimated duration of the project.

Public & Private Water Supplies

Owners of qualifying public and private water supplies (See Section II) may be reimbursed for the costs to remedy gasoline ether contamination, where the contamination source is not known. For owners of private water supply wells, reimbursement is available for connection to a public water system at or near the property boundary, or replacement of the contaminated well. Such owners may submit a project-specific work scope and budget for connection to a public water system, or for (1) investigating the feasibility of installing a replacement well and (2) well installation, if feasible.

For owners of public water supplies, reimbursement is available for construction of a distribution system extension (to serve contaminated private properties), construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public water system. Due to the

potential complexity of such projects, the owner must first submit a work scope and budget to perform a detailed feasibility study. Feasibility study costs are reimbursable whether or not a project proceeds further.

Owners of public and private water supplies should contact Talcott Hubbard, P.E. at (603) 271-2014 for more information.

How Is Corrective Action Or Other Work Implemented?

If NHDES requests corrective action work following the Project-Based Cost categories described in Section VI, the consultant or contractor may proceed without submitting a work scope and budget.

If the proposed corrective action does not conform to the Project-Based Cost categories, or involves a public or private water supply, a project-specific work scope and budget must be submitted for review and approval prior to performing the work. This may include complex site investigations, Initial Response Action, Remedial Action Plan, and Remedial Plan Implementation work.

As noted previously, pre-approval is *not* required for public water supply gasoline ether consumer notification and water quality monitoring. Public water supply owners intending to seek reimbursement for such costs should contact NHDES for guidance.

Using Work Scope & Budget Forms

Work Scope Authorization: The Work Scope Authorization form is used to submit a time and materials proposed scope and budget for performing corrective action when the Project-Based Cost categories described herein do not apply. A work scope should be based on the best means and methods to perform the work, including planned use of overtime. It should be complete, accurate, and the budget should include all reasonably anticipated costs. For complex work, such as remedial action plan preparation and implementation, additional supporting documents may be needed. Contact the NHDES project manager for guidance.

Change Order: The Change Order form is used to submit a request to modify the scope of a Project-Based Cost category described herein, or other approved work scope, due to a change in conditions encountered after the work is initiated. The form is used to add tasks/work or make other adjustments which increase the total budget, including adding overtime. However, NHDES prefers not to process a Change Order for occasional minor substitutions that provide equivalent performance, or occasional minor omissions. In certain cases NHDES may provide verbal and/or email approval for a change order, provided a written Change Order form is submitted within 48 hours.

Engineer Certification of Contractor Quantities: The certification form is to support a contractor reimbursement claim for remedial plan implementation. Use of

this form allows reimbursement of a contractor payment request when the full implementation report is not complete.

Program Note: Forms are available for submittal of a work scope and budget and certification of contractor work. See the Appendix.

Overtime

Overall project cost savings may be realized by incorporating overtime for time and materials work. Overtime is typically appropriate for projects with long travel distances, versus re-mobilizing to the site, but may be used on any project to reduce overall costs. If cost savings are marginal, a cost comparison may be needed to help NHDES in reviewing the work scope and budget. If cost savings are obvious, overtime rates may be included in a proposed work scope and budget, with a footnote/explanation noting that overtime was included and the approximate project cost savings.

How Do I Prepare & Submit A Work Scope & Budget?

NHDES recommends that corrective action service providers prepare and submit work scopes and budgets, rather than the owner. Service providers with fund program experience are already familiar with NHDES corrective action criteria and approval procedures. In addition, work scope and budget preparation costs are reimbursable.

This recommendation also applies for corrective action work that will be performed by the owner. The overseeing consultant or contractor is best qualified to

prepare the submittal. Owners should contact appropriate NHDES program staff listed on the Information Resources table for SOW assistance/guidance.

Work scopes and budgets are typically submitted directly to the NHDES staff responsible for the project.

What Happens When A Work Scope & Budget Is Submitted?

If a work scope and budget (“SOW”) submittal does not provide sufficient descriptive or cost information, it may be returned to the sender, or held until it is completed. Typically, NHDES personnel will telephone and/or email to request additional information to complete a submittal. A completed and approved SOW is logged into a database for tracking and reporting.

V. REIMBURSABLE COSTS

Reimbursable Corrective Action Costs

Reimbursable corrective action costs are those costs incurred by qualifying persons (See Section II for a description), in responding to a NHDES work request. As noted in the previous section, corrective action work is identified by phase and must be pre-approved by NHDES for both scope and budget. (Emergency corrective action work may be approved without a budget.) The Board has published not-to-exceed usual and customary rates or costs for a variety of Unit-Based Cost and Project-Based Cost corrective action services that are detailed in Section VI. Reimbursable corrective action costs include:

- Management of gasoline ether, virgin oil and waste oil petroleum contaminated soils in accordance with NHDES regulations;
- Services associated with temporary surface and groundwater discharge permits that are not related to closure or installation of a fund-eligible facility;
- Corrective action in response to a discharge or contamination performed in accordance with NHDES regulations and policies; and
- Fees for corrective action permits.

Corrective Action Cost Limitations

Under Odb 400, certain reimbursable cost limitations apply as follows:

- For corrective action performed by a qualifying person, reimbursable costs are limited to actual costs based on employee pay rates, cost of benefits and equipment operating expenses;
- Reimbursement cannot exceed actual costs, paid or incurred less any discounts received;
- Inspection fees, or access fees charged by property owners, are not reimbursable;
- Legal costs are not reimbursable;
- Administrative, fiduciary management or supervisory costs are not reimbursable;
- Interest charges on unpaid invoices are not reimbursable;
- Civil penalties or state double cost recovery charges are not reimbursable;
- Costs associated with the discovery of a discharge or contamination, are not reimbursable;
- Costs paid by insurance are not reimbursable;
- Costs in excess of approved budgets are not reimbursable;
- For bid-based services reimbursement is limited to bid and Change Order items measured or certified by the Engineer; and
- NHDES performance standards must be achieved.

Reimbursable Public Water Supply Costs

In addition to corrective action costs, owners of qualifying public water supplies (See Section II) may be reimbursed for consumer notification and water quality monitoring. The Board has not published specific rates or costs for this work. However, some corrective action rates are applicable, e.g., Unit-Based Costs for laboratory analysis. The Board expects costs for notification and water quality monitoring to be reasonable and market-representative. Public water supply owners intending to seek reimbursement for such costs should contact Talcott Hubbard, P.E. at (603) 271-2014 or David Reid, P.G., at (603) 271-3431.

Property Damage Restoration

When a release or spill of stored petroleum product occurs, reimbursable and non-reimbursable property damage may result. In general, restoration of damages resulting from performance of corrective action is reimbursable, provided there was no contractor error/omission covered under their company liability insurance. Restoration of damages directly resulting from the release or spill of petroleum, or otherwise not related to performing corrective action, is not reimbursable unless in the context of a legal action. (Under Odb 400, corrective action is distinguished from third-party damage costs in legal actions.) In addition to direct damages, loss of property use or disruption of business activities may occur while corrective action is performed. These are also non-

reimbursable costs under the general administrative, fiduciary management or supervisory cost limitations provided in Odb 400.

A fuel oil release from a basement storage tank is a typical situation where reimbursable and non-reimbursable damages can occur. Fuel oil releases may saturate the premises and affect: (1) *structural features* including; load-bearing framing/walls, partition walls, stairways, foundations, basement fill materials and concrete floor slabs, (2) *architectural features* including; flooring, carpeting, special decorative trim and paneling, and (3) *personal belongings* including books, clothing, and family memorabilia.

Due to hazardous vapors, corrective action may involve removal and proper disposal of *all* oil-saturated materials including structural features, architectural features and personal belongings. Reimbursable corrective action restoration includes repair of structural features, *if removed or damaged for vapor control or other corrective action work*. Reimbursement *is not available* for restoration of oil-saturated architectural features and replacement of personal belongings. This is done at the owner's discretion and cost. In some cases, private insurance may cover these personal property losses.

Program Note: In-kind restoration of corrective action damages is often not possible or warranted. Reimbursement is not available for restoration of architectural features and personal belongings impacted by a petroleum release.

Fund-eligible parties should understand reimbursement is only available for *cleanup costs*. The state funds do not provide comprehensive damage restoration coverage that may be available through private insurance. Whenever possible, NHDES will follow a corrective action approach that avoids structural features and otherwise minimizes property damages. Assessment of damages and determination of a reasonable restoration cost is often difficult. In-kind repair or replacement following corrective action is often not possible or warranted, particularly when aesthetic features such as landscaping are involved.

Reimbursable Third-Party Damage Costs

Reimbursement for third-party damages is limited to those defined in the Board rules, and is subject to specific procedural requirements. A petroleum storage facility owner must follow the procedural requirements in the event of service of a (legal) writ or petition. Owners should contact NHDES immediately upon service, and must provide written notice to the Board within 30 days of service.

VI. UNIT-BASED & PROJECT-BASED COSTS

Unit-Based & Project-Based Costs

Usual and customary *not-to-exceed* corrective action service costs are identified from market data obtained by NHDES, with input from contractors and consultants. This data is published by the Board categorized as “Unit-Based Costs” or “Project-Based Costs” and is periodically updated. Service providers interested in performing corrective action in New Hampshire are encouraged to provide rate and cost information upon request.

The published cost information is used to facilitate corrective action pre-approval, performance, and subsequent reimbursement request processing. The cost data published herein represents the typical upper limits *for services that are not bid*. Therefore, the cost data is not applicable for bid-based implementation of a NHDES-approved Remedial Action Plan.

Reimbursement for incurred corrective action costs is limited to actual invoiced costs, paid or incurred less any discounts received. For work scope and budget proposals or reimbursement requests, where costs are at or below those published herein, the costs are presumed reimbursable unless otherwise disqualified. Any submitted costs exceeding those published herein are subject to reduction to the published rates or costs.

In general, all proposed corrective actions subject to Odb 400, must conform to the

Unit-Based Costs or Project-Based Cost categories described herein. Non-conforming corrective action costs are subject to pre-approval by NHDES, in consideration of a written justification that (1) describes the need for the work and (2) includes data that demonstrates the proposed items or costs represent a usual and customary rate. Certain costs incurred while performing corrective action such as utility costs, local police detail and permit fees, are not market-based and thus are not subject to pre-approval. In order to verify actual cost, NHDES may request copies of invoices or other information from service providers.

Four tables are included in the Appendix that list current Unit-Based Costs and Project-Based Costs. The cost tables are periodically updated as circumstances warrant.

Using Cost Data

Unit-Based Costs: Unit-Based Costs are a unit of labor, service, activity, or product delivered for a set cost. Examples include laboratory analytical tests or an hourly rate for a specific piece of equipment such as a backhoe. It may not be reasonable in all cases to apply Unit-Based Costs over the entire duration of the activity being performed. Therefore, NHDES reserves the right to consider “economy of scale” in reviewing work scopes, and may require negotiation of costs, or bidding, for a specific project. Most of the reimbursement fund program Unit-Based Costs are equivalent to rates in NHDES

Initial Response Action and Planned Remediation, and Point-of-Entry Treatment contracts

Project-Based Costs: A Project-Based Cost is the aggregate cost for the completion of a specific work category. The Project-Based Costs describe a level of effort required to perform a certain category of work. Examples of Project-Based Costs include, Site Investigation, Initial Site Characterization, and Groundwater Monitoring.

Applicability, Recommended Billing Practices & Cost Limitations

Ancillary Costs: Many small items should be considered as overhead and inclusive to the billing rates of personnel. These ancillary costs include, but are not limited to: telephone, faxes, postage, copies, computers, software, cellular phones, cameras, and miscellaneous non-powered hand tools. Ancillary costs are considered inclusive to the Project-Based Cost budgets.

Equipment Downtime, Storage, Repair or Replacement: Excess charges for equipment downtime, storage, or the cost to repair or replace equipment that is damaged, lost or stolen due to negligence or vandalism are not reimbursable.

Equipment Rental or Purchase: The decision to rent or purchase equipment should be based on the option that provides the lowest overall cost for the duration of the project. Generally these considerations apply to “Capital Equipment” as defined in the rules. It is recognized that rental charges reflect

purchase cost, maintenance, depreciation, handling and reasonable profit. However, in some instances, the Board and NHDES may determine that proposed or billed rental charges are not appropriate given acquisition costs and market considerations.

Field Supplies: Several small items are used during cleanup activities. For billing ease, composite costs for such items are typically billed at \$25 per day, unless an item is listed in the Unit-Based Cost tables.

Fuel Cost Adjustment: Service providers seeking compensation for increases in fuel costs, must track fuel usage for a project and calculate the cost differential from the base fuel cost, effective at the time of Unit-Based Cost publication. Fuel cost information for New England region PADD 1A is available from the U.S. Department of Energy Information Agency.

http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r1x_w.htm

Health & Safety: Level D is adequate for almost all activities at petroleum sites in New Hampshire. Levels A, B and C are rarely used. However, costs for higher levels of protective equipment are reimbursable provided NHDES agrees it is required to adequately protect the health and safety of workers.

Limitation on Reimbursement for Project Transition Costs: Reimbursement for project transition costs shall be limited to one consultant transition per project, unless NHDES grants additional transition

approvals in response to a written request.

Limitation on Senior Personnel – 15%:

In general, the total hours for senior level oversight should not exceed 15% of the total project labor hours. Senior level personnel are typically defined as Senior Project Engineers/Geologists/Managers, Supervisors and Principals.

Markup of Service Costs: A service provider may charge up to 15% of the actual cost of subcontracted services, paid or incurred less any discounts received, to cover project-specific administration and insurance costs. Subcontracted services may include laboratory analysis, drilling, disposal of contaminated materials, or other services performed under a written subcontract.

Program Note: For large or special projects, the Board and NHDES reserve the right to negotiate markup multipliers. A service provider may only markup work that is usual and customary for their type of business.

A service provider may charge up to 10% of the actual cost of vendor services, paid or incurred less any discounts received. This includes project-specific materials, supplies, equipment rentals, remediation equipment, police details, and utilities.

Project-specific inventory held more than 30 days may qualify for up to 5% of the actual cost of the service paid or incurred less any discounts received.

The Board and NHDES reserve the right to negotiate markup multipliers for large remediation projects, on a case-by-case basis.

A service provider may markup work that is performed in accordance with usual and customary industry practice. For example, an environmental consultant may markup a laboratory, driller, or structural engineer, but not another consultant or remediation general contractor. A remediation general contractor may markup a remediation system vendor, or materials disposal facility, but not another remediation general contractor, or consultant.

No markup is allowed on any listed Unit-Based Cost that is usual and customary for a service provider. For example, an Initial Response Action Contractor should have a “Vacuum Truck” in their regular equipment inventory. See the Appendix for Unit-Based Cost Tables 1 and 1A, and Table 3, Allowable Markup.

Overtime: Overtime is appropriate for projects with long travel distances, versus re-mobilizing to the site, but may be used on any project to reduce overall costs. If cost savings are marginal, a cost comparison may be needed to help NHDES in reviewing the work scope and budget. If cost savings are obvious, overtime rates may be included in a proposed work scope and budget, with a footnote/explanation noting that overtime was included and the approximate project cost savings. Overtime may also be combined with overnight stays.

Per Diem: Reimbursement for per diem (meals and lodging) for site activities requiring more than one day of fieldwork is recommended where there is a net savings in daily travel costs. Overnight stays may be combined with overtime for

further efficiency, and to reduce overall project costs. Reimbursement is limited to actual costs with no markup allowed. Luxury accommodations and travel are excluded.

For example, hazardous waste disposal is not available in-state.

Program Note: Overtime and per diem may be used for efficiency and to reduce overall project costs.

Professional & Contracted Labor Costs:

For purposes of work scope approval and reimbursement, NHDES evaluates labor costs based on the budget for each task, to determine if costs are usual and customary. For professional services, the total approved budget for each task or class generally governs, versus labor rates, to allow flexibility in the use of personnel resources. However, use of labor categories must be consistent with standard industry practice. For example, a “Principal” does not normally perform field work, in lieu of a “Technician”.

For contractor services, the published Unit-Based Cost hourly labor rates apply for purposes of work scope approval and reimbursement.

Travel: Reimbursement for round trip travel from office to job site is payable at the published Unit-Based Cost mileage rate, for standard and four wheel drive automobiles, or the published pickup truck/van rate.

Taxes & Fees: There is no general sales tax, for goods or services sold or provided in New Hampshire. However, out-of-state taxes and state fees are reimbursable for services that cannot be provided in-state.

Project-Based Cost Category Descriptions

The following paragraphs describe the tasks or elements included in the scope of work (“SOW”) for each Project-Based Cost category. All work must be performed in accordance with applicable NHDES rules, and based upon an authorization to proceed. The not-to-exceed reimbursement limit for consulting services for each category is listed in Tables 2 in the Appendix, and includes reporting and electronic transmittal through OneStop.

Initial Response Action Report Standard Form

This SOW consists of completing the Initial Response Action Standard Report Form and providing supporting information. The submittal shall document response actions conducted and shall include a site sketch and any applicable attachments such as laboratory data, bills of lading for soil disposal, and site photos. The form is completed by a Contractor (or by a Consultant at Contractor rates).

Initial Response Action Report – Complex Site

This SOW consists of completing the Initial Response Action Standard Report Form and providing supporting information listed above, and additional correspondence or a brief report providing data interpretation and recommendations for additional work. This SOW is applicable for sites/projects where groundwater impacts are known, potential third-party impacts are anticipated, or the site occupants may be at risk, as determined by NHDES. This report is completed by a Consultant, or a Contractor with a licensed professional on staff.

Dig-Safe Pre-Marking

This SOW consists of conducting a site visit and pre-marking boring/well and/or excavation locations as required by Dig-Safe.

Off-Site Access Agreement

This SOW consists of obtaining a site access agreement for an off-site property to perform required cleanup activities. The cost for this SOW is based on two attempts to obtain a written access agreement. NHDES shall be notified immediately upon failure to obtain a signed agreement. Unrelated legal fees are not eligible for reimbursement.

Initial Site Characterization

This SOW consists of a site visit for Dig-Safe mark-out, background research, site safety plan, and limited subsurface investigation including soil and groundwater sampling and report preparation. Consult with a NHDES project manager on the parameters for subsurface investigation.

Level I Site Investigation

This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 5 soil borings and installation of up to 4 monitoring wells (3 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on one day of drilling.

Level II Site Investigation

This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 10 soil borings and installation of up to 8 monitoring wells (5 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, slug/bail down testing of up to 3 wells, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on two days of drilling.

Supplemental Site Investigation

This SOW consists of a site visit for Dig-Safe mark-out, site safety plan, completing additional borings and monitoring wells as requested by NHDES, soil sampling, one complete round of groundwater sampling from all monitoring points, well elevation survey, project management and report. The report shall include a summary of soil and groundwater quality to date, a revised conceptual model, updated groundwater contour map, proposed groundwater management zone and updated contaminant plume map. The cost for this SOW is based on one day of drilling.

Project Transition – Single Project

This SOW is applicable when there is a change in the consultant for a site/project, and includes the costs for completing a review of NHDES files, discussions with the NHDES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan creation.

Project Transition – Multiple Projects

This SOW is applicable when there is a change in the consultant for multiple sites/projects, all under the same ownership, and includes the costs for completing a review of NHDES files, discussions with the NHDES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan creation. NHDES file review, discussion with NHDES project manager, and other activities may be accomplished concurrently, and the site(s)/project(s) have complex investigative or remedial issues, as determined by NHDES.

Dissolved-Contaminant Plume/Groundwater Management Zone (“GMZ”) Delineation

This SOW consists of completing additional monitoring well installations to define the limits of a contaminant plume. The costs included are Dig-Safe mark-out, site safety plan, monitoring well installations, location and elevation survey, one round of groundwater sampling from new monitoring wells, and coordination to update the SI data tables and site figures. The costs for this

SOW are based on one day of drilling on or off the site.

One Round of Groundwater Monitoring (1-5 wells)

This SOW consists of groundwater and/or drinking water sampling and reporting as requested by NHDES, for a project location with 1-5 wells. (Projects with greater than 5 wells require a specific work scope and budget approval.) The data submittal shall include a tabulated summary of analytical results, a revised site plan, groundwater elevation data, and lab data sheets. The cost for this SOW is based on the number of wells where samples are collected, including monitoring well, surface water and drinking water points. Minor product recovery via hand bailing, or replacement or absorbent materials, is inclusive to this SOW for a sampling event. Routine road box maintenance including cleaning/replacement of gaskets and bolts should also be performed.

One Round of Groundwater Monitoring Increments for Wellhead Re-Survey & Private Water Supply Sampling

Incremental cost increases to the one round SOW, are allowed for off-site private water supply sampling and wellhead elevation re-survey. The wellhead elevation re-survey increment includes coordination, fieldwork, calculations, data tabulation and site map update. The private water supply increments include mob/demob., travel, equipment rental and transportation costs.

Annual or Periodic Summary Report

This SOW consists of completing an annual or periodic summary report. The summary report shall include a tabulated summary of all analytical data collected to date, graphical presentation of trends in the data for representative sample locations, an assessment of the trends in the data, and any recommendations for remedial action plan or groundwater management permit revisions. The annual report shall include an updated groundwater contour map and contaminant plume map.

Groundwater Management Permit Application

This SOW consists of completing a Groundwater Management Permit Application form and providing supporting information.

Renewal of Groundwater Management Permit

This SOW consists of completing a Renewal of Groundwater Management Permit form and providing supporting information.

Groundwater Management Permit Notification to Landowners & Deed Recordation

This SOW consists of providing notification of the Groundwater Management permit by certified mail to all owners of lots of record within the GMZ and submitting documentation to NHDES. This SOW also includes recording notice of the permit in the local Registry of Deeds in the chain of title for each lot within the GMZ and submitting a copy of the recorded notice to NHDES. The cost for this SOW is based on notification and recordation for up to 3 lots.

Site Closure

This SOW is for completing final site closure activities as authorized by NHDES, for purposes of receiving a Certificate of No Further Action. The work includes project management and technical support for: (1) project review and client coordination; (2) contractor coordination and oversight for decommissioning up to 8 overburden monitoring wells (or up to 120 linear feet); (3) landowner notification and release of deed recordation; (4) coordination and decommissioning of the site POE (only); (5) final site walkover; and (6) a brief letter report of closure activities including recommendations for follow up work.

Residential Indoor Air Sampling

This SOW consists of completing a pre-sampling inspection conducted a minimum of 24 hours prior to sampling, collection of 3 twenty four (24) hour time integrated indoor air samples, one each from the basement, first floor living space and an outdoor (ambient) sample and submittal of data to NHDES. The data submittal shall include copies of laboratory data, reported in units of micrograms per meter cubed, and the completed Residential Indoor Air Sampling Form.

Sub-Slab Source Characterization for Residential OPUF

This SOW consists of completing cores through the concrete floor to obtain soil samples, screen soils with a PID, submit soil samples for laboratory analysis as directed by NHDES, seal core holes and complete a data submittal. The data submittal shall include a sketch showing sample locations, PID data and copies of laboratory data. The cost for this SOW is based on one day of fieldwork and includes any subcontracted coring services.

Groundwater Quality Assessment for Residential OPUF

This SOW consists of completing a site visit for Dig-Safe mark-out, site safety plan and the following or as otherwise directed by NHDES: Install up to 3 monitoring wells, (one well at a minimum to be installed as close as possible to the source area in the presumed down gradient direction), collect one round of groundwater sample(s), collect one source area soil sample, complete a well elevation survey (if all 3 wells are installed) and submit data results to NHDES. The data submittal shall include a site sketch showing sample locations and the location of the discharge, PID data and copies of laboratory data. The cost for this SOW is based on one day of drilling. Should the NHDES request additional sampling round(s) the one-round of groundwater monitoring task listed above may be used.

Soil Delineation Sampling and Increment

This SOW consists of completing soil sampling to characterize the nature and extent of soil contamination including in-situ disposal characterization sampling. Tasks included in this SOW include dig-safe mark-out, completion of soil borings or test pits, collection of soil samples for extent and disposal characterization analysis in accordance with NHDES and receiving facility requirements (for VPC soils this typically includes VOC, TPH and ignitability), and report completion. The report shall include a site sketch showing sample locations, location of discharge, lateral limits of contamination, calculations estimating the amount of contaminant mass and quantity of soil (in tons) exceeding NHDES

standards, PID data, copies of laboratory data, boring or test pit logs and recommendations. The cost for this SOW is based on one day of soil borings or test pits. An incremental cost increase is allowed for soil delineation sampling that requires a second day of fieldwork.

Electronic Transmittal Monitoring Station Location & Setup (See Appendix for Additional Guidance)

This SOW is for one-time station locating using GPS equipment and one-time station setup, for purposes of periodic transmittal of public water supply or corrective action water quality monitoring data via electronic media. One-time station location and setup is as directed by NHDES using NHDES templates. Station field locating is performed during a routine monitoring event. The budget is for increments of up to six (6) stations.

Electronic Transmittal - Water Quality Monitoring Field Data & Lab Data (See Appendix for Additional Guidance)

This SOW is for periodic transmittal of public water supply or corrective action water quality monitoring field and laboratory data via electronic media, as directed by NHDES using NHDES templates. The budget is for increments of up to six (6) stations. The consulting firm or laboratory may perform the work to populate the NHDES template with laboratory analysis data, using appropriate hourly personnel.

VII. HOW-TO OBTAIN FUND PROGRAM COVERAGE & RECEIVE REIMBURSEMENT

How Can I Secure Fund Program Coverage?

- Owners of regulated AST and UST facilities should achieve compliance with operational rules and then maintain compliance, or permanently close a non-compliant facility. Facility owners should be aware of NHDES inspection procedures, and be prepared to assist when inspections occur.
- Owners of residential fuel oil facilities should contact their fuel oil dealer to request an inspection, or otherwise verify that the system is sound and in conformance with BMPs. NHDES strongly recommends that buried fuel oil lines in direct contact with the ground be replaced.
- AST, UST and on-premise-use fuel oil facility owners *must* review their insurance policies and determine if there is pollution coverage, and the coverage limits. NHDES recommends that owners of gasoline ether contamination source sites also review insurance coverage.
- Owners of gasoline ether contamination source sites, including motor vehicle salvage yards and dealerships, should achieve and maintain compliance with applicable rules for gasoline release prevention. Owners should be aware of NHDES inspection procedures, and be

prepared to assist when inspections occur.

- Owners should know there is a duty to report petroleum contamination and Strict Liability may apply to a person who caused or suffered a petroleum discharge.

I Have Petroleum Contamination, At My Facility Or Property – What Steps Should I Follow?

- Report to NHDES.
- Hire a corrective action service provider(s).
- For the excess insurance funds, contact your insurer and specifically request if coverage is available for *any* corrective action costs that *may* be incurred. If there is no private insurance policy in force, a notarized letter stating so will be needed. Owners of gasoline ether contamination source properties should also check availability of insurance.
- Correct any facility compliance deficiencies.

NHDES Has Requested Corrective Action & I Don't Have Insurance, Or My Own Funds

Many corrective action service providers will work under a contract with provisions for direct payment as an Applicant to the fund program. If you are an on-premise-

use fuel oil facility owner, you will have to pay \$500 to the service provider for the fund program deductible. If you are an owner of a regulated AST or UST facility, you will receive a bill for your fund program deductible after the Applicant receives payment for the first reimbursement request. (There is no deductible for the gasoline ether fund.)

Program Note: Proof of payment for invoiced costs is not required.

If, due to financial hardship, you cannot pay the fund program deductible within 30 days of invoice receipt, you *must* propose a payment plan to the Board. Contact NHDES for guidance and payment plan approval criteria.

I Have Incurred Corrective Action Costs, & Have Limited Insurance Coverage

If you have limited private insurance coverage you must submit invoices to your insurer until the limits of coverage are reached. If your insurer denies payment of any costs as, *not payable within the limits of coverage*, you may submit these denied costs to the state fund program. You may not submit costs to the state fund program that are subject to a private insurance deductible. However, you may use private insurance specifically to cover the costs of state fund program AST or UST facility deductibles. You may also qualify for state fund coverage due to a private policy that included self-insured risk retention provisions.

When the limits of coverage under private insurance are reached, the state fund program is available and a qualifying person may submit reimbursement requests.

What Does A Complete Fund Program Eligibility Request Include?

The first step to obtain fund program coverage is determining eligibility, which is requested prior to an initial reimbursement claim. Eligibility documents include:

- Cover Letter. See eligibility request cover letter format in the Appendix;
- A completed Request For Reimbursement Authorization form (found in the Appendix). The form is to request fund eligibility for the first reimbursement request submitted by a facility owner or eligible property owner. If fund eligibility is transferred, a form is needed prior to the first request from the new owner;
- Complete information on private insurance, including a statement explaining the coverage limits, a letter denying coverage, or a notarized statement for un-insured properties;
- Information on facility compliance, which may be an OPUF inspection letter, or information from NHDES programs for regulated facilities;
- For a subsidiary business, identifying information on the parent company, if any; and

- ❑ Information the owner has obtained a “Vendor Number” if the owner intends to submit reimbursement requests, vs. a direct Applicant.

[https://admin.state.nh.us/purchasing/vendorregistration/\(S\(mi5lxa45suxhgxyzwfk022p45\)\)/welcome.aspx](https://admin.state.nh.us/purchasing/vendorregistration/(S(mi5lxa45suxhgxyzwfk022p45))/welcome.aspx)

It should be noted that the owner requesting fund eligibility must match the responsible party listed in the NHDES database.

What Does A Complete Fund Program Reimbursement Request Include?

Once eligibility is determined, reimbursement requests may be submitted and include:

- ❑ Cover Letter. See reimbursement request format in the Appendix. A reimbursement request cover letter is needed for OneStop upload and paper requests, but is not needed for web-based requests;
- ❑ A summary (listing) of invoiced expenses is needed for OneStop upload and paper requests, but not web-based requests;
- ❑ A copy of the Work Scope Approval, Change Order Approval, or NHDES corrective action request letter applicable to the request;
- ❑ Copies of invoices from all contractors and sub-contractors, and contractor timesheets or a

timesheet summary. Invoices must be directed to the facility owner or eligible property owner, including a request submitted by an Applicant. Invoices cannot be directed to NHDES;

- ❑ A copy of the services contract between the facility owner or eligible property owner and the Applicant, if applicable;
- ❑ Employee wage, benefits, and equipment operating cost data for corrective action performed by a facility owner or eligible property owner;
- ❑ Complete information on payments received from private insurance; and
- ❑ A copy of the legal agreement stating a former facility owner is obligated to perform corrective action after ownership transfer.

I Do Not Have All Required Documentation, Or Approvals

A waiver request may be submitted for missing documentation or approvals including subcontractor invoices, late registration of an AST facility, or other provisions of the program rules, for consideration by Board. The Board cannot waive any rule that would constitute a waiver of a statute. Contact NHDES for guidance concerning waiver requests.

Audits & Qualifications

Owners and Applicants must allow the Board to conduct periodic financial audits of all records related to a reimbursement request. Applicants that complete NHDES training may submit web-based reimbursement requests, and trained Applicants can seek qualification for expedited payment. Applicants must maintain Project Cost Ledgers regardless of reimbursement submittal methods used.

What Happens When An Eligibility Request Is Submitted To NHDES?

Eligibility requests are logged into a database for tracking, processing and reporting. If a request is not substantially complete, it may be returned to the sender, or held until completed. NHDES personnel may telephone or email to request additional information to complete a request. If NHDES records indicate facility compliance was not achieved the request may also be held pending verification of compliance. Eligibility can be tracked using OneStop by checking the review status of the request, and the project status. Eligibility requests are processed quickly if there are no document completeness/compliance issues.

What Happens When A Reimbursement Request Is Submitted To NHDES?

If a reimbursement request is not substantially complete for web acceptance, upload, or scanning it will be returned to the sender, or held until

completed. NHDES personnel may telephone or email to request additional information to complete a request. If complete, the request is logged into a database for tracking, processing and reporting. Expedited web-based requests are processed for payment without review, provided technical reports are complete, and subject to periodic audit. Non-expedited web-based, upload, and paper requests (that must be scanned) are assigned to a NHDES project manager for review. Requests that involve a waiver request must be considered by the Board after NHDES review.

For requests assigned for review, the project manager will determine (or confirm) if the costs are reimbursable under Board rules and policies, verify that the corrective action was performed, and verify that acceptable reports were provided by the contractor or consultant.

How Long Does It Take To Process A Reimbursement Request?

Reimbursement requests are reviewed in consideration of the submittal method and priority status of the project, or on a first-in, first-out basis if funds are limited. Expedited web-based requests are highest priority, and are processed for payment in approximately 2-3 weeks. Non-expedited web-based, upload, and scanned requests are successively lower priority, and are reviewed and processed for payment between 45 and 60 days. All requests require an additional 30 days after processing for payment via check or direct deposit.

When a request is approved NHDES issues a Notice of Reimbursement (“NOR”) that is viewable through OneStop. The NOR includes detailed information on the amount of the current reimbursement request, the amount payable for the current request, the total amount of reimbursable (a.k.a. eligible) costs to date, the deductible amount, a listing of costs for each current invoice, and comments regarding reimbursable cost deductions, if any. (Deductions are often referred to as “short-pays”).

After A Reimbursement Request Is Processed, Can Additional Information Be Submitted?

Yes. A re-submittal of a processed request may be provided within 180 days of NHDES action on the original request, and must include: (1) a copy of the NOR with the specific invoices identified for which reconsideration is sought, and (2) an explanation of the basis of the re-submittal with additional supporting documentation as needed. However, NHDES encourages persons submitting reimbursement requests to provide complete documentation in the first instance, and avoid re-submittals. Re-submittals are also considered based on priority, or on a first-in, first-out basis.

Can Multiple Reimbursement Requests Be Submitted?

Yes. As long as corrective action is necessary and costs are being incurred to bring the project to regulatory closure, reimbursement requests may be submitted as project work proceeds. However, individual requests must be

complete and include all costs for the particular corrective action work/report, so invoicing and costs are not split among multiple requests.

Are There Time Limits for Submitting A Request?

Yes. For corrective action work performed on or after September 1, 2011, the request must be submitted with 1 year of completing the work.

How Do I Prepare & Submit A Reimbursement Request?

Three alternatives are available for the preparation of reimbursement requests. A request may be prepared and submitted by the qualified person, or by a corrective action service provider on behalf of a qualified person, or by an Applicant seeking direct payment. Applicant requests using electronic submittal methods are the preferred method, and result in fastest processing.

An Applicant for direct payment *must* prepare and submit the reimbursement request for their services, due to the waiver of claims provision in an Applicant contract (See Section II). Because of the waiver, the Applicant cannot bill their client for the balance of any non-reimbursable costs. However, the Applicant may bill their client for other work not included under the corrective action contract.

For all other work, NHDES recommends that the corrective action service provider prepare and submit reimbursement requests on behalf of their client. Service

providers with fund program experience are already familiar with reimbursement request submittal criteria and approval procedures. It may be difficult for the client to assemble the information necessary in support of a reimbursement request, particularly for unusual project circumstances. Although not reimbursable, the fee charged for reimbursement request preparation is typically small. (Owners of multiple fund-eligible locations often employ the services of firms that specialize in preparing state fund reimbursement requests.)

submittal is highly “user friendly”, allows the user to track each step of the process, and includes automated email notification at each step. Contact NHDES for more information on submitting web-based requests.

Do I Have Rights Of Appeal?

Yes. Any person aggrieved by a decision concerning fund program eligibility or reimbursement may request an appearance or a formal hearing before the Board. Appearance and hearing procedures are detailed in rule Odb 200 found in the Appendix.

Web-Based Reimbursement Requests

The Board and NHDES encourage the use of electronic media when submitting corrective action data, documents and reimbursement requests. Electronic submittal through OneStop facilitates timely review and processing by NHDES and improves public access.

Applicants should attend OneStop web-based reimbursement request training, and seek qualification for expedited payment status. See the *Participation in Web-Based Reimbursement Request Submittal* guidance in the Appendix. Web-based reimbursement request

APPENDIX

Reimbursable Costs **For Environmental Monitoring Database (“EMD”)**

The following tasks are reimbursable for EMD station setup and data transmittal.

Work Tasks

Monitoring station setup and electronic submittal of field and laboratory data

Reimbursable Costs

- 1) Station Setup – Not-to-Exceed (NTE) \$600
 - a. GPS locating is to be completed during a groundwater sampling event.
 - b. The NTE budget is for establishment of up to six (6) stations using a GPS with ≤ 20 feet accuracy. For additional stations, the NTE budget is increased \$75 per station.
 - c. This effort is completed by the consultant under NHDES direction.

- 2) Submittal of Field and Laboratory Data - NTE \$380
 - a. Field-measured parameters - groundwater level/elevation, free product thickness, pH, DO, etc., completed by the consultant that performs sampling.
 - b. Submittal of laboratory results - in an electronic database format acceptable for the NHDES EMD, completed either by the laboratory directly to the EMD or by the consultant to the EMD.
 - c. The NTE budget is for submitting both field and laboratory data for up to six (6) stations, *including markup* of a subcontracted laboratory. For additional stations, the NTE budget is increased \$55 per station.

N.H. PETROLEUM REIMBURSEMENT FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS

Table 1. Unit-Based Costs



Absorbents, Cleaning, & Containment Effective August 2009			Drilling - Effective January 2012			Level C PPE		
Unit	Not-to-Exceed ("NTE") Rate	Unit	NTE Rate	Unit	NTE Rate	Day/person	Day/person	\$75.00
Containment boom, up to 18"	Foot	\$1.33	Drill rig (HSA) with 2-man crew	Day	\$1,425.00	(Reserved)	(Reserved)	(Reserved)
Containment boom, 24"	Foot	\$1.58	Drill rig (ATV) with 2-man crew	Day	\$1,525.00			
Sorbent pads, 18"x18"x3/16", 200 per bale	Bale	\$93.80	Steam cleaner	Day	\$85.00			
Sorbent boom 10"x8" diam., 4 per bale	Bale	\$187.60	Air Hammer Attachment + Compressor	Day	\$350.00			
Oil Snares, 30 units/box	Box	\$46.00	Geoprobe/Direct Push Rig with operator	Day	\$1,100.00			
Speedi-dry, 50lb. Bag	Bag	\$7.12	Grout Pump	Day	\$300.00			
Polyethylene bags, 38" x 60" 4 mill	Bag	\$1.02	Auger teeth	Job	\$35.00			
Polyethylene roll 100' x 20'	Each	\$93.75	8-inch flush road box	Each	\$85.00			
Degreasers	Gallon	\$54.00	4-inch steel protective casing	Each	\$95.00			
Containers - Effective August 2009			Geoprobe well points - 3.25" casing	Each	\$28.00			
Storage tank (1,000 - 2,500 gallon)	Half-Day	\$15.60	Compression or "J" Plugs	Each	\$16.00			
Storage tank (5,000 - 7,500 gallon)	Half-Day	\$30.00	Core/Air Hammer bit wear	Foot	\$17.50			
Storage tank (Frac-20,000-gallon)	Half-Day	\$9.18	Well installation materials - 2-inch PVC	Foot	\$11.50			
Roll-Off Container, 10 c.y.	Half-Day	\$12.25	Well decommissioning materials - 2-inch PVC (2)	Foot	\$4.50			
Roll-Off Container, 20 c.y.	Half-Day	\$13.25	Support Vehicle	Half-Day	\$100.00			
Roll-Off Container, 30 c.y.	Half-Day	\$13.25	Mobilization/demobilization (installation or decommission) <50, 50-100 miles	Lump Sum	\$350-\$475			
(Reserved)	(Reserved)	(Reserved)	(Reserved)	(Reserved)	(Reserved)			
Roll-Off Liner, all sizes	Each	\$65.25	(Reserved)	(Reserved)	(Reserved)			
Drums, 55 gallon Type 17E, closed head	Each	\$40.00	Excavating & Loading - Effective August 2009			Unit	NTE Rate	
Drums - 55 gallon 17H, open head	Each	\$68.00	Vector Truck	Hour	\$111.25	Hour	\$111.25	
Drums, 25M, poly, 55 gallon	Each	\$59.00	Vector Hose, 6 inch diameter	Foot	\$1.80	Foot	\$1.80	
Drums, 17E, poly, 30 gallon	Each	\$81.00	Backhoe with attachments	Half-Day	\$275.40	Half-Day	\$275.40	
Drums, 17H, poly, 30 gallon	Each	\$105.00	Mini-Excavator	Half-Day	\$208.00	Half-Day	\$208.00	
Box, Flexible fiber, 1 CuYd	Each	\$9.35	Excavator - 150 type	Half-Day	\$353.90	Half-Day	\$353.90	
Pails, poly, 5 gallon (Lab Pack)	Each	\$156.00	Excavator - PC 300 type	Half-Day	\$510.00	Half-Day	\$510.00	
Overpack drums, 1A2/X427/S, 85 gallon, steel	Each	\$170.00	Loader - Bobcat type	Half-Day	\$166.25	Half-Day	\$166.25	
Overpack drums, 1H2/X340/S, 95 gallon, poly	Each	\$170.00	Loader - 3 cy bucket	Half-Day	\$353.90	Half-Day	\$353.90	
Disposal & Treatment (1) - Effective August 2009			Bobcat Attachments	Half-Day	\$145.75	Half-Day	\$145.75	
Bulk Liquid Disposal (gasoline/water)	Gallon	\$1.82	Pump Truck	Half-Day	Cost + Item	Half-Day	Cost + Item	
Bulk Liquid Disposal (fuel oil/water)	Gallon	\$0.51	(Reserved)	(Reserved)	(Reserved)	(Reserved)	(Reserved)	
Bulk Heavy Oil/Water	Gallon	\$0.69	Grass seed	Pound		Pound		
Mixed Liquid Disposal (gasoline/water)	Drum	\$260.00	Common Backfill	Ton		Ton		
Mixed Liquid Disposal (fuel oi/water)	Drum	\$128.00	Gravel/crushed stone	Ton		Ton		
VPC Soil Disposal (small amounts/in drums)	Bag	\$98.00	Flowable Fill	Yard		Yard		
Oil Debris Disposal (in bags)	Bag	\$31.00	Loam	Yard		Yard		
Bulk Oil Debris Disposal	Bag	Cost + Item	Health and Safety - Effective August 2009			Unit	NTE Rate	
VPC Soil - Thermal Treatment or Landfill >50 Tons	Ton	Minimum 2 Quotes	Level A PPE	Day/person	\$222.00	Day/person	\$222.00	
VPC Soil - Thermal Treatment or Landfill <=50 Tons	Ton	Cost + Item	Level B PPE	Day/person	\$132.50	Day/person	\$132.50	
Oily Debris/Soil Mixtures, Other Wastes	Ton/T-Pack	Minimum 2 Quotes						

(1) Transportation for disposal shall be performed at lowest cost. For landfill disposal of VPC soil, total transportation and disposal costs must be equal to or less than the thermal treatment cost. Additional disposal-related charges for waiting time, minimum loads and administrative fees will be considered on a case-by-case basis. VPC disposal in drums for small quantities is typically 3 drums or less.

(2) Cost for materials to grout the well and finish at the ground surface, such as bentonite, gravel, concrete and asphalt. A specific budget is needed for road box replacement and well decommissioning.

Labor - Effective August 2009		
Unit	NTE Rate	
Site Supervisor	Hour	\$92.00
Foreman	Hour	\$62.25
Technician	Hour	\$50.00
Equipment Operator	Hour	\$55.10
Licensed Plumber	Hour	Cost + Item
Licensed Electrician	Hour	See Note (3)
Overtime premium	Hour	See Note (3)
Per Diem	Person/day	\$110.00
Laboratory Analysis - July 2009		
VOC Full List (See Table 1A. notes regarding trip blanks.)	Each	\$120.00
VOC - Selective Ion Method (e.g., EDB)	Each	\$75.00
PAH	Each	\$150.00
TPH - DRO or GRO	Each	\$120.00
Ignitability	Each	\$35.00
VOC/TPH/Ignitability - VPC soil disposal characterization	Each	\$280.00
VOC/TPH/PAH - Soils	Each	\$395.00
VOC/TPH - Soils	Each	\$245.00
TCLP Metals	Each	\$175.00
RCRA Metals	Each	\$125.00
TCLP - VOC & Metals	Each	Cost
MtBE Only	Each	\$75.00
Metals sample preparation charge	Each	\$20.00
Individual Metals	Each	\$15.00
Alkalinity	Each	\$15.00
Nitrate	Each	\$15.00
Sulfate	Each	\$15.00
Methane	Each	\$80.00
Total Organic Carbon (TOC)	Each	\$40.00
EPA Method TO-15 Canister sampling for	Each	\$250.00

(3) The following rate schedule applies for OT work:
 Weekday - Base X 1.5, for work in excess of the contractor's standard workday;
 Saturday - Base X 1.5; and
 Sunday & Holiday - Base X 2.0.

N.H. PETROLEUM REIMBURSEMENT FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS

Table 1A. Unit-Based Costs



Leaking OPUF Tank Pump Out - 2003		\$200 per tank (1)		
Marine - Effective August 2009	Unit	Not-to-Exceed ("NTE") Rate		
Row Boat	Half-Day	\$40.80		
Power Boat, up to 16 foot		\$204.00		
Power Boat, 16 to 22 foot		\$255.00		
(Reserved)	(Reserved)	(Reserved)		
Meters/Detectors - 2003		Unit	NTE Rate	
Water level meter	Day	\$15.00		
Metal detector				
pH, Conductivity and Temperature meter		\$20.00		
Interface probe		\$25.00		
Dissolved Oxygen meter		\$30.00		
Photoionization detector (PID)		\$90.00		
Flameionization detector (FID)				
Multi-Gas Meter		\$94.00		
(Reserved)		(Reserved)	(Reserved)	
Pumps - Effective August 2009		Unit	NTE Rate	
Drum vacuum pump	Half-Day	\$39.75		
Pump, pneumatic diaphragm, 1.5 in. to 3 in. discharge		\$49.95		
Pump, electric centrifugal, 1.5 in. to 3 in. discharge		\$40.80		
Pump, trash, 2 in. to 4 in. discharge		\$104.00		
Sampling Equipment and Supplies - 2003		Unit	NTE Rate	
Data Logger Pressure Transducer	Day	\$100.00		
Field Supplies		\$25.00		
Groundwater sampling pump		\$40.00		
Hand auger		\$15.00		
Multi Channel Data Logger		\$250.00		
Low Flow Sampling System		\$175.00		
Disposable bailers		\$10.00		
Encore™ sample container for use with sampling Method 5035	Each	\$8.00		
Geoprobe core sample liners				
Groundwater sampling filter		\$20.00		
Subcontractor & Other Cost Multipliers (2) - 2003				
Project-specific administration of subcontracted services	NTE 15%			
Project-specific materials, supplies, and equipment rental; no contract and not a listed Unit-Based Cost	NTE 10%			
Project-specific inventory held more than 30 days	NTE 5%			
(Reserved)	(Reserved)			
Fuel cost (3)	Actual Incremental Cost			

Tools & Equipment - Effective August 2009		Unit	NTE Rate
Concrete Saw with blade	Day	\$234.55	
Concrete Saw Blade	Each	Cost + Item	
Blower/exhaust fan, explosion proof 1,570 CFM	Half-Day	\$16.32	
Skimmer - Duckbill, Slurp, Swiss		\$31.60	
Reciprocating saw, electric or pneumatic w/ blades		\$28.50	
Portable floodlight			
All other powered hand tools		\$20.40	
Chain Saw, gas or electric, all sizes			
Rotary percussion drill, electric or pneumatic, 1/2" to 3/4"		\$33.60	
Blower/exhaust fan, explosion proof 5,000 CFM		\$41.80	
Transit or level, tripod, rod, and tape		\$44.80	
Jackhammer with bit and hose		\$52.00	
Water Blaster - up to 3,000 psi	\$57.10		
Compactor - walk behind 20 x 28" vibrating plate	\$62.20		
Steam Cleaner - 800 psi	\$68.30		
Air Compressor 125/175 psi	\$66.25		
Generator, up to 5000 watt	\$83.60		
Concrete corer - 6" to 8" diameter			
Compactor - double drum type	\$114.20		
Light tower w/generator			
Traffic Signs Package	Incident	\$102.00	
Blower/exhaust fan, explosion proof 1,570 CFM	Week	\$93.80	
Blower/exhaust fan, explosion proof 5,000 CFM			
Heat Blanket	Day	\$25.50	
Glycol Heater			
Vehicles & Trailers - Effective August 2009			
Automobiles, 2-wheel and 4-wheel drive	Mile	IRS Rate	
Pickup Truck or Van	Half-Day	\$67.30	
Dump Trailer		\$229.50	
Flat Bed Trailers		\$104.00	
Dump Truck - 6 Wheel		\$128.00	
Rack Truck		\$130.50	
Fully equipped Emergency Response Trailer/Van		\$137.70	
Transport Tankers, 3000 gallon minimum		\$166.25	
Box Truck			
Dump Truck - 12 Wheel		\$194.80	
Lowboy/Trailer with Tractor		Hour	\$110.00

Vacuum Truck	Hour	\$67.30
Roll-Off/Frac Tank Trailer or Truck		
Unit-Based Cost Notes:		
Equipment rates include all costs of operation and maintenance exclusive of operator, unless specified otherwise.		
Laboratory analysis rates include sample preparation, analysis, and disposal, based on standard turnaround time. NHDES must approve expedited service and additional charges. For less than 4 VOC samples, trip blank cost is reimbursable up to the NTE rate. For >= 4 VOC samples, if the total cost for analysis plus trip blank is less <= analysis-only cost, then the trip blank cost is reimbursable.		
All listed rates are considered not-to-exceed. Reimbursement shall not exceed actual invoiced costs, paid or incurred less any discounts received. Cost + items are reimbursable at the firm invoiced cost plus allowable markup. No markup is allowed on any listed Unit-Based Cost that is usual and customary for a service provider. For example, an Initial Response Contractor should have a Vacuum Truck. The Board and NHDES reserve the right to negotiate markup multipliers for large or special projects.		
Drilling rates include all costs of labor, operation and maintenance for overburden drilling. NHDES must approve bedrock drilling and additional charges.		
The service provider, subcontractor or vendor invoice may be considered the corrective action report for certain services. Contact the NHDES project manager for reporting guidance.		

(1) Labor and materials to pump out a visibly-leaking heating oil storage tank.

(2) The Board/NHDES reserve the right to negotiate a project-specific markup rate.

(3) Service providers seeking compensation for increased motor fuel costs shall track fuel usage for the project using typical vehicle mileage efficiency/equipment fuel consumption, and calculate the cost differential from the January 2012 fuel price for N.E. PADD 1A, published by the U.S. Energy Information Administration http://www.eia.gov/dnav/pet/pet_pri_qnd_dcus_r1x_w.htm

N.H. PETROLEUM REIMBURSEMENT FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS

Table 1B. Unit-Based Costs



Oil Fund Disbursement Board

Point-of-Entry Treatment - Effective July 2011		Unit	Not-to-Exceed ("NTE") Rate	
Site evaluation	Each		\$464.40	
Site installations			\$300.50	
Furnish and install backwashing filter			\$1,585.80	
Service/maintain backwashing filter			\$51.30	
Furnish and install water softener (0 to 3 mg/L iron)			\$1,868.40	
Furnish and install water softener (3 to 10 mg/L iron)			\$2,561.13	
Service/maintain water softener and brine tank			\$139.50	
Furnish and install residential aerator			\$6,270.30	
Service/maintain residential aerator			\$210.60	
Furnish and install air injection unit			\$2,245.50	
Service/maintain air injection unit			\$274.50	
Furnish and install granular activated carbon contactor - 2 CF			\$1,363.50	
Furnish and install granular activated carbon contactor - 3 CF			\$2,070.00	
Furnish and install granular activated carbon contactor - 4 CF			\$2,590.20	
Service/maintain carbon contactor, no re-bed			\$51.30	
Furnish and install UV sterilizer			\$1,961.10	
Service and replace UV lamp in UV sterilizer			\$315.00	
Furnish and install water meter			\$391.50	
POE maintenance coordination and site visits			\$50.00	
Service and replace air stripper pump			\$1,345.50	
Service and re-bed, and dispose used carbon		Cubic Foot		\$515.70
Service, remove and dispose of used carbon, no re-bed				\$275.00
Service and bed carbon contactors				\$328.50
Furnish and install 2 X 10, 5 micron cartridge filter assembly		Each		\$181.80
Provide 2 X 10, 5.0 micron cartridge filter				\$4.73
Furnish and install 4 X 10, 5 micron cartridge filter assembly				\$355.50
Provide 4 X 10, 5.0 micron cartridge filter				\$25.65
Furnish and install 4 X 20, 5 micron cartridge filter assembly				\$715.50
Provide 4 X 20, 5.0 micron cartridge filter				\$53.64
Service any size cartridge filter				\$85.50
Service/maintain calcite neutralizer			\$166.50	
Water sampling without POE system maintenance, including 1-3 samples			\$234.00	
Water sampling during POE system maintenance, including 1-3 samples			\$79.65	
Remove, clean, sanitize POE component; replumb water supply to original configuration, as appropriate	Each		\$324.00	
Transport and dispose POE components			\$46.80	
Technician labor - blended rate (including clerical, treatment, project manager, principal)	Hour		\$76.50	
Additional materials and supplies	Various		Market Retail Cost	
(Reserved)	(Reserved)		(Reserved)	
(Reserved)	(Reserved)		(Reserved)	
(Reserved)	(Reserved)		(Reserved)	
(Reserved)	(Reserved)		(Reserved)	
(Reserved)	(Reserved)		(Reserved)	
Bottled-water - Effective November 2011	Unit		Not-to-Exceed ("NTE") Rate	
One gallon	Case - 6		\$4.00	

N.H. PETROLEUM REIMBURSEMENT FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS

Table 2. Project-Based Costs



Oil Fund Disbursement Board

Investigation, Remedial Action, Or Groundwater Monitoring - Effective January 2012	Phase Code (1)	Not-To-Exceed ("NTE") Budget
Initial Response Action Report Standard Form - Completed by Contractors (or by Consultants at Contractor rates)	IRR	\$600
Initial Response Action Report Complex Site - Completed by Consultants		\$1,400
Dig Safe Pre-Marking	DPM	\$550
Off-Site Access Agreements	OAA	\$460
Initial Site Characterization	ISC	\$4,900
Level I Site Investigation	SIR	\$10,500
Level II Site Investigation	SLT	\$15,000
Supplemental Site Investigation	SSI	\$6,700
Project Transition-Single Project	PTS	\$1,500
Project Transition-Multiple Projects	PTM	\$1,300
Dissolved-Contaminant Plume/GMZ Delineation	DCP	\$4,700
One Round of Groundwater Monitoring (1-5 MWs)	GMP	\$1,500
+ Wellhead Elevation Re-Survey		\$520
+ Off-Site Private Water Supply Sampling (initial event per well)		\$600
+ Off-site Private Water Supply Sampling (2nd round per well)		\$325
Annual Summary Report	GAS	\$2,350
Groundwater Management Permit Application	GMA	\$2,700
Renewal of Groundwater Management Permit	GPR	\$1,300
GMP Notification to Land Owner and Deed Recordation	GPN	\$1,500
Site Closure	RAC	\$2,600
Residential Indoor Air Sampling	RIA	\$2,650
Sub-Slab Source Investigation for Residential OPUF	OSI	\$2,650
Groundwater Quality Assessment for Residential OPUF	OGA	\$4,000
Soil Delineation Sampling	SDS	\$3,900
+Additional Day of Fieldwork		\$1,900
Electronic Transmittal Monitoring Station Location & Setup (2)	As Applicable	\$600
Electronic Transmittal of Water Quality Monitoring Field & Laboratory Data (2)		\$380

Project-Based Cost Notes:

NHDES will specify whether a Specific or Project-Based work scope is appropriate for the project. In general, if the proposed work is not listed here then a Specific work scope and budget should be assumed. The Project-Based Cost work scope budgets include all labor, materials and equipment costs to complete the work category, with the exception of certain subcontractor costs. The budget includes all report costs and electronic transmittal of the report to NHDES via OneStop. Laboratory and drilling costs shall not exceed the listed Unit-Based Costs, plus allowable markup. Reimbursement shall not exceed actual invoiced costs, paid or incurred less any discounts received. The Board expects that billed expenses will reflect the actual level-of-effort to complete the work.

The cost for an initial private water supply sampling event assumes collection from a faucet and includes coordination, access, travel, sampling and reporting.

(1) NHDES Phase Code used to track and report corrective action costs. These codes should be used to identify proposed work and when requesting reimbursement. Other codes may apply for work under Specific scopes and budgets. Contact the NHDES project manager or fund program staff

(2) Amount available for up to 6 monitoring stations as an increment to any investigation or monitoring phase for electronic data transfer to NHDES. Up to \$600 for station setup, using GPS locating with accuracy of <=20 feet. Up to \$380, including markup, for transmittal of field and laboratory data. For each additional station, the cost increases by \$75 per station for setup and \$55 for data transmittal.

N.H. PETROLEUM REIMBURSEMENT FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS

Table 3. Service Providers, Contracts & Markup



Read table across, e.g., a Consultant performing an investigation (1B.) may markup a lab, driller, and specialty engineer up to 15%, and materials/supplies, police, recovery/treatment systems, and utilities up to 10%

Contractor/Service Provider Categories	Subcontractor Services - Not-to-Exceed 15% Markup Applies	Vendor Services - Not-to-Exceed 10% Markup Applies
1.) Consultant Services A - D: A.) Initial Response Action at residential on-premise use fuel oil (OPUF) facilities (1)	Laboratory Driller Structural or Geotechnical Engineer	Project-Specific Materials & Supplies Police Detail Product Recovery & Remediation Systems Utilities
	Laboratory Driller Structural or Geotechnical Engineer Contaminated Materials Disposal Facility (2)	Project-Specific Materials & Supplies Police Detail
	Laboratory Driller Contaminated Materials Disposal Facility	Project-Specific Materials & Supplies Police Detail Product Recovery & Remediation Systems
	Laboratory Contaminated Materials Disposal Facility	Project-Specific Materials & Supplies Product Recovery & Remediation Systems Utilities
2.) Initial Response Action Contractor (1)	Laboratory Driller Structural or Geotechnical Engineer Contaminated Materials Disposal Facility Site Restoration Contractor - Not OSHA Certified (3)	Project-Specific Materials & Supplies Police Detail Product Recovery & Remediation Systems Utilities
3.) Remediation General Contractor - Soil excavation & disposal, trenching & piping, system installation, system operation & maintenance	Laboratory Driller Contaminated Materials Disposal Facility Site Restoration Contractor - Not OSHA Certified	Project-Specific Materials & Supplies Police Detail Product Recovery & Remediation Systems Utilities
4.) Water System Provider - Bottled water, point-of-entry treatment system installation, system operation/maintenance, replacement water supply well	Laboratory Structural or Geotechnical Engineer Contaminated Materials Disposal Facility Site Restoration Contractor - Not OSHA Certified	Project-Specific Materials & Supplies Utilities

Notes:

Contractors/Service providers may use subcontractors or vendors as indicated. Other subcontractor and vendor relationships may be established at the discretion of the fund-eligible party and service provider, but no markup is allowed. Reimbursement is limited to the actual cost of services, paid or incurred less any discounts received, plus markup.

Not-to-exceed (NTE) 15% markup applies for administration of subcontracted services, under a written contract. NTE 10% markup applies for certain vendor services. NTE 5% markup is also allowed for project-specific inventory held more than 30 days, and disposal facility insurance surcharges. No markup is allowed on any published Unit-Based Cost that is usual and customary for a service provider.

The Board and NHDES reserve the right to negotiate markup multipliers for large remediation projects, on a case-by-case basis.

(1) The Consultant or Initial Response Action (IRA) Contractor may coordinate IRA work at residential on-premise-use facilities, but no markup is allowed between those firms. The IRA report standard form is completed by Contractors (or by Consultants at Contractor rates). The IRA report for complex projects is completed by a licensed engineer or geologist.

(2) Contaminated materials disposal includes soils, liquids, and spent treatment media, and for consultant services, may also include drill cuttings, and well purge water.

(3) Various site restoration services including paving, structural repairs and landscaping should be performed by specialty subcontractors.

WORK SCOPE AUTHORIZATION - Odb 407.01



Use this form (s) to obtain pre-approval from NHDES for performing corrective action at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G. Contact NHDES for guidance on use of this form and the need for additional documentation to describe the proposed work, particularly for RSA 146-G work.

NOTE: You must receive prior approval even if private insurance is initially funding the work. Approval of a work scope by NHDES is *not* an authorization for reimbursement under Odb 404.03.

****REIMBURSEMENT CANNOT BE AUTHORIZED IF A COMPLETE ESTIMATE IS NOT PRE-APPROVED BY NHDES****

Facility Name: _____ NHDES No. / Project No.: _____
 Location Address: _____ UST/AST Fac. ID#: _____
 Location Town: _____ Project Type: _____
 Facility Owner: _____ Project Phase: _____
 Dates of Work: _____ Consultant: _____
 Contractor: _____

Task Summary: _____

Description	Unit Basis (1)	Rate (1)	# Units	Estimated Cost

Task total: _____

Task Summary: _____

Description	Unit Basis (1)	Rate (1)	# Units	Estimated Cost

Task total: _____

Task Summary: _____

Description	Unit Basis (1)	Rate (1)	# Units	Estimated Cost

Task total: _____

Task Summary: _____

Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost
Task total:					

Task Summary: _____

Description	Unit Basis (1)	Rate (1)	# Units		Estimated Cost
Task total:					

Task Summary: Laboratory Analysis

DES Approved 24 HR Turnaround?

Description	Unit Basis (1)	Rate (1)	# Units	Y/N	Estimated Cost	
	Each					
Task total:						
Total All Services:						

Owner's Representative: _____
(signature/date)

NHDES Approval: _____
(signature/date)

(1) Refer to Section VI of the Guidance Manual for information on applicable unit-based costs and rates.
Current rates are published on the ORCB web page in advance of Manual updates.

A report documenting the approved work must be provided to NHDES by: _____

Please note the New Hampshire Insurance Department Bulletin regarding strict liability and private insurance coverage:
http://www.nh.gov/insurance/media/bulletins/2011/documents/ins_11_009_ab.pdf

WORK SCOPE CHANGE ORDER AUTHORIZATION - Odb 407.01



Use this form(s) to obtain approval for a change order at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G. This form may be used for a Change Order to any approved work scope.

NOTE: You must receive prior approval even if private insurance is initially funding the work. Approval of a work scope by NHDES is *not* an authorization for reimbursement under Odb 404.03.

****REIMBURSEMENT CANNOT BE AUTHORIZED IF A COMPLETE ESTIMATE IS NOT PRE-APPROVED BY NHDES****

Facility Name: _____ NHDES No. / Project No.: _____
 Location Address: _____ UST/AST Fac. ID#: _____
 Location Town: _____ Project Type: _____
 Facility Owner: _____ Project Phase: _____
 Dates of Work: _____ Consultant: _____
 Contractor: _____
 Original DES Approval Date: _____
 Task Number/Summary: _____

Change Order Summary: _____

Description	Unit Basis (1)	Rate (1)	# Units		Estimated Cost
Total This Change Order:					
Original Approved Project Total + Previous Change Orders Total:					
New Project Total:					

Consultant/Contractor: _____
(signature/date)

NHDES Approval: _____
(signature/date)

(1) Refer to Section VI of the Guidance Manual for information on applicable unit-based costs and rates. Current rates are published on the ORCB web page in advance of Manual updates.

A report documenting the approved work must be provided to NHDES by: _____

Please note the New Hampshire Insurance Department Bulletin regarding strict liability and private insurance coverage:
http://www.nh.gov/insurance/media/bulletins/2011/documents/ins_11_009_ab.pdf

ENGINEER CERTIFICATION FOR PAYMENT OF CONTRACTOR WORK



The Engineer shall use this form to certify that Contractor work at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G, was completed in accordance with all Contract Documents, approved work scopes, and is acceptable for payment. This form is only for use to support a Contractor reimbursement request and does not serve as a Remedial Action Plan Implementation Report.

****CONTRACTOR WORK MUST BE CERTIFIED BY THE OVERSEEING ENGINEER****

Facility/Project Name: _____ NHDES No. / Project No.: _____
Location Address: _____ UST/AST Fac. ID#: _____
Location Town: _____ Project Type: _____
Dates of Work: _____

Description of Work including Bid Item Number/Task as appropriate:

Engineer's Name _____ Phone: _____
Company Name _____
Address _____
Town _____ State: _____ Zip: _____

Based on the Contract Documents, approved work scope(s) including change orders, site observations, and details provided in the Contractor's reimbursement (payment) request, I hereby certify the work was completed in accordance with the Contract Documents, and the quality/function/performance of the work is/was satisfactory. Therefore, the Contractor is entitled to payment in the amount requested.

Engineer: _____
(signature/date)

AFFIX NEW HAMPSHIRE PROFESSIONAL ENGINEERING LICENSE SEAL/STAMP BELOW:

FORMAT FOR COVER LETTER TO ACCOMPANY REIMBURSEMENT ELIGIBILITY DOCUMENTS

[DATE]

Fund Management Section
Oil Remediation & Compliance Bureau
NHDES Waste Management Division
P.O. Box 95, 29 Hazen Drive
Concord, NH 03302-0095

Re: [TOWN], [ADDRESS], [SITE/PROJECT NAME] [PROJECT TYPE] Request for Reimbursement Eligibility, Site No. [#####] Project No. [#####]

Attached, please find the following documents in support of reimbursement eligibility for this project:

- **Request for Reimbursement Authorization Form, September 1, 2011 version** [1ST CORRECTIVE ACTION REQUEST FROM THE OWNER OF A FUND-ELIGIBLE FACILITY OR PROPERTY, AND 1ST REQUEST FROM A TRANSFEREE OWNER. **NOTE:** Send in the original form by mail to Gretchen Wilder, Waste Management Division, NHDES, P.O. Box 95, Concord, NH 03302-0095 after making an electronic submittal. Gretchen.Wilder@des.nh.gov (603) 271-5761.
- **Private Insurance Coverage Information, Or Notarized Letter Stating There Is No Insurance** [1ST CORRECTIVE ACTION REQUEST FOR FUEL, LAST, LUST, MOST AND OPUF PROJECTS]
- **Facility Compliance Information** [NEEDED TO ESTABLISH ELIGIBILITY. FOR REGULATED FACILITIES, CONTACT THE OIL COMPLIANCE SECTION AT (603) 271-3644 TO DETERMINE COMPLIANCE STATUS]. **NOTE:** Photographs or diagrams are not acceptable to demonstrate compliance for OPUF projects. A letter certifying compliance is needed.
- **Late AST Registration Waiver Request** [MAY BE NEEDED, CONTACT PROGRAM STAFF].
- **Facility or Property Ownership Transfer Information** [1ST REQUEST FROM NEW OWNER OF FUND-ELIGIBLE FACILITY OR PROPERTY, REQUESTS FROM FORMER OWNERS WITH AGREEMENTS TO CONTINUE CORRECTIVE ACTION AFTER SALE].
- **Parent Company** [MAY BE NEEDED IF THE OWNER/RESPONSIBLE PARTY IS A SUBSIDIARY]
- **Vendor Number Information** [MAY BE NEEDED IF OWNER /RESPONSIBLE PARTY WILL SEEK PAYMENT VS. AN "APPLICANT"]

The Responsible Party for this project, identified below, [matches/does not match] the Responsible Party in NHDES records: **NOTE:** If the RP does not match NHDES records, because an ownership transfer occurred or is occurring, please indicate that we need to change our records.

[FACILITY OWNER OR PROPERTY OWNER – AS APPLICABLE]
[ADDRESS]
[TOWN/CITY, STATE ZIP]

Please call [NAME/the undersigned] at [PHONE NUMBER] if you have questions.

Sincerely,

[NAME, TITLE]
[COMPANY NAME]

REQUEST FOR REIMBURSEMENT AUTHORIZATION – RSA 146-D, RSA 146-E, RSA 146-F, Or RSA 146-G



Oil Fund Disbursement Board

A. AUTHORIZATION INFORMATION

- (1) Type of Facility (check only one): Motor Fuel AST (LAST) Motor Fuel UST (LUST)
 On-Premise-Use Fuel Oil (OPUF) Fuel Oil AST (FUEL) Motor Oil (MOST) Gasoline ETHER
- (2) Type of Authorization (check only one): Corrective Action (Site Cleanup) Third-Party Damages (Court Judgment)

B. FACILITY AND/OR PROPERTY INFORMATION

- | | |
|--|-----------|
| (1) Facility and/or property name. | (1) _____ |
| (2) Address. | (2) _____ |
| (3) Town. | (3) _____ |
| (4) Is the facility at this location active or permanently closed? | (4) _____ |
| (5) NHDES facility registration/permit number, if applicable. | (5) _____ |
| (6) NHDES site number and project number. | (6) _____ |
| (7) Date of discharge discovery. | (7) _____ |

C. OWNER/INSURANCE INFORMATION

- | | |
|--|---|
| (1) Facility and/or property owner name. | (1) _____ |
| (2) Mailing address. | (2) _____ |
| (3) Daytime phone. | (3) _____ |
| (4) Are you a new owner since last authorization? | (4) <input type="checkbox"/> Yes <i>Date of acquisition:</i> _____ <input type="checkbox"/> No |
| (5) No. of facilities/properties owned in NH (type checked above). | (5) <input type="checkbox"/> (Not applicable for OPUF or ETHER project) |
| (6) Is coverage available under private insurance? | (6) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Previously determined |

D. OWNER'S LIABILITY STATEMENT AND AFFIRMATION

I hereby certify that the facility referenced above is currently in compliance, or I am the owner of land where a compliant facility was located, or I am a duly authorized officer of the entity that owns the compliant facility or land where a compliant facility was located. I understand that a 'deductible' or deductible balance may be applied against any amounts reimbursed from the fund. If reimbursement is made to an 'Applicant', I understand that the deductible or deductible balance amount may be billed and that said amount is due within 30 days of the billing date, unless the Board approves periodic payments. I understand the funds under RSA 146-D, RSA 146-E and RSA 146-F only provide excess insurance coverage. I declare that the representations made in this reimbursement authorization are to the best of my knowledge true and correct, and agree to reimburse the fund for any payments made based upon incorrect information on this form, or incorrect reimbursement submittal information. If an officer of the owner, I affirm that I have been duly authorized by the corporation, LLC, LLP, or other corporate entity to bind the corporation, LLC, LLP, or other corporate entity, and to make the above declarations. I also affirm that the corporation, LLC, LLP, or other corporate entity has made all filings and paid all fees required by the New Hampshire Secretary of State.

 Owner or Company Officer Signature & Date Signed

E. INFORMATION AND GENERAL INSTRUCTIONS

- Complete this Request for Reimbursement Authorization form and include a copy of it, under a cover letter, with insurance information, facility compliance information, and "Alternate W-9" form, as applicable, prior to your first reimbursement request submittal. A separate authorization form is needed for corrective action costs, and for third-party damage costs. **Mail the completed and signed original form to the address on Page 2.** Contact NHDES for information/guidance. The cover letter must identify the parent company if the owner named in C(1) is a subsidiary.
- Do not submit an authorization request if the facility is not in compliance with applicable requirements, or was not closed in compliance. Contact NHDES for facility compliance information/guidance.
- Do not submit a reimbursement request for costs incurred before discharge discovery, for costs associated with discharge discovery, for costs associated with facility closure or upgrading. Work in progress must be authorized by NHDES. See the rules of the Oil Fund Disbursement Board (N.H. Admin. Rules Odb 400) and the Petroleum Reimbursement Fund Program Guidance Manual. http://des.nh.gov/organization/divisions/waste/orcb/fms/prfp/documents/ofdb_manual.pdf.
- Electronic submittal of reimbursement authorizations and reimbursement requests is preferred. Paper reimbursement request submittals will be accepted, but payment may be delayed. If you are not familiar with the reimbursement program submittal process, contact NHDES for information/guidance to avoid rejection due to incompleteness.

INSTRUCTIONS CONTINUED ON PAGE 2

E. GENERAL INSTRUCTIONS – CONTINUED

- (5) If you are the new owner of a facility/property, for which the previous owner was reimbursed, you must also complete this form and submit it prior to your first reimbursement request, checking the box labeled "Yes" under C(4), and indicating the date of acquisition of a facility/property. You should determine that NHDES records such as facility ownership/registration, groundwater permit holder, and responsible party are correct. If you are a former owner that previously submitted this form and received reimbursement, you do not need to re-submit the form if you transfer ownership to another party and continue corrective action under the terms of a facility/property transfer (indemnification) agreement. However, you must include a copy of the indemnification agreement with all reimbursement requests submitted after the effective date of the ownership transfer. The agreement must state the former owner has an obligation to continue corrective action after transfer to a new owner.
- (6) By law, the funds under RSA 146-D, RSA 146-E and RSA 146-F, only provide excess insurance. Private insurance for cleanup costs and/or third-party damages must be exhausted before State reimbursement is available. The initial reimbursement authorization request for coverage under the State funds for a discharge must include documents to demonstrate there is no private insurance coverage. Private insurance coverage determinations must be sought from all carriers of policies on the facility and/or property. If there is no insurance maintained on the facility and/or property, then a notarized letter must be provided stating so. Coverage determinations from insurance agents interpreting policies are not acceptable. The coverage determination must be from the insurance company or an authorized adjuster. For groundwater and surface water contamination, see N.H. Insurance Department Bulletin INS NO. 11-009-AB.

http://www.nh.gov/insurance/media/bulletins/2011/documents/ins_11_009_ab.pdf

Attach the following documents to the initial reimbursement authorization request, as applicable:

(Check)

A. A copy of the claim or request for coverage filed with all private insurance carriers for the facility and/or property.

B. Copies of all responses from private insurance carriers regarding coverage determinations under the policies.

C. Copies of Declaration of Coverage sheets and other information regarding policy coverage, policy limits and payments received from private insurance.

If coverage under private insurance is available you must check the box labeled "Yes" under C(6). If the information provided (see above C.) indicates that the limits of coverage were reached, your reimbursement request(s) will be processed.

You may check the box labeled "No" under C(6) if the information provided (see above A. and B.) indicates coverage was denied. Your reimbursement request(s) will be processed.

If the information provided indicates insurance coverage issues are not resolved, the Oil Fund Disbursement Board must approve a waiver for your reimbursement request(s) to be processed. Contact NHDES for further information regarding insurance coverage.

- (7) Requests for reimbursement authorization for third-party damage awards or settlements are subject to pre-notification procedures and submittal requirements specified in Odb 400.

Submit completed form(s) and documents to:

Fund Management Section
NHDES – WMD
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

If you have questions, email Timothy.Denison@des.nh.gov or call (603) 271-2570.

NOTE: INCOMPLETE SUBMITTALS WILL BE RETURNED

**FORMAT FOR COVER LETTER TO ACCOMPANY ORIGINAL OR RE-SUBMITTAL 'ONESTOP'
UPLOAD OR PAPER REIMBURSEMENT REQUEST (NOTE: WEB-BASED REQUESTS DO NOT NEED
A COVER LETTER, BUT DO NEED SUPPORTING INFORMATION)**

[DATE]

Fund Management Section
Oil Remediation & Compliance Bureau
NHDES Waste Management Division
P.O. Box 95, 29 Hazen Drive
Concord, NH 03302-0095

Re: [TOWN], [ADDRESS], [SITE/PROJECT NAME] [PROJECT TYPE] Request for Reimbursement
No. [NUMBER], [DOLLAR AMOUNT], Site No. [#####] Project No. [#####]

The [WORK DESCRIPTION] at the above referenced site is complete. Attached, please find the following documents in support of this reimbursement request:

- **Copy of "Notice of Reimbursement" For Request No. [NUMBER] Indicating the Invoices Being Re-submitted** [NEEDED FOR RE-SUBMITTAL OF PREVIOUS REQUEST WHERE PAYMENT WAS LESS THAN THE REQUESTED AMOUNT AND ADDITIONAL PAYMENT IS ELIGIBLE].
- **Explanation for Re-Submittal** [NEEDED FOR A RE-SUBMITTAL]
- **Documents In Support of Re-Submittal As Follows:** [NEEDED FOR RE-SUBMITTAL, LIST THE DOCUMENTS]
- **Applicant Contract Including Waiver of Claims** [NEEDED FOR ALL ORIGINAL REQUESTS FOR PAYMENT TO AN "APPLICANT"].
- **Listing of Invoices** [NEEDED FOR ALL ORIGINAL UPLOAD AND PAPER REQUESTS].
- **NHDES Work Scope/Change Order Authorizations** [NEEDED FOR ALL ORIGINAL REQUESTS].
- **Contractor Invoices** [NEEDED FOR ALL REQUESTS] **and Subcontractor Invoices** [MAY BE NEEDED].
- **Contractor Timesheets or Timesheet Summary** [NEEDED FOR ALL ORIGINAL REQUESTS].
- **Activity Reports Not Previously Submitted to NHDES** [MAY BE NEEDED].
- **Employee Payroll, Benefits, and Equipment Operating Cost Data for Work Performed by the Facility Owner** [MAY BE NEEDED IF OWNER PERFORMS WORK].
- **Waiver Request** [MAY BE NEEDED, CONTACT PROGRAM STAFF].

The payment should be directed to:

**[OWNER or "APPLICANT" – AS APPLICABLE]
[REMIT ADDRESS]
[TOWN/CITY, STATE ZIP]**

Please call [NAME/the undersigned] at [PHONE NUMBER] if you have questions.

Sincerely,

[NAME, TITLE]
[COMPANY NAME]

OIL FUND DISBURSEMENT BOARD POLICY STATEMENTS

1.) DELEGATION OF CERTAIN AUTHORITY - November 21, 2005

Item 1.

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services (“NHDES”) to pay uncontested Odb 400 first-party reimbursement requests that meet all of the Board regulatory criteria and do not involve a waiver, appeal, or reconsideration of a previous Board decision. NHDES shall submit a monthly report to the Board listing all requests approved during the previous month. NHDES shall consult with the Board, Board Chairman or designated Board members, on projects with significant facility compliance or corrective action circumstances.

Item 2.

The Oil Fund Disbursement Board hereby authorizes NHDES to pay first-party reimbursement requests under Odb 400, based on the total site-specific or project-based budget approved for each class, as follows:

- (a) Contaminated soil treatment, disposal, and restoration services
- (b) Contractor Services
- (c) Design & Construction Engineering (Gasoline Ether Fund)
- (d) Engineering and hydrogeology services;
- (e) Groundwater treatment and product recovery equipment, operation and maintenance services;
- (f) Laboratory services;
- (g) Other services
- (h) Point-of-Entry treatment
- (i) Subsurface exploration services; and
- (j) Water main/water well construction (Gasoline Ether Fund)

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE April 30, 2007
(Original 1/25/99, revised 8/25/03)

FROM Frederick J. McGarry, P.E., DEE
Assistant Director

AT (OFFICE) Waste
Management Division (“DES”)

SUBJECT Limitations on Potential Bidders That Seek N.H. Petroleum Reimbursement
Fund Program Reimbursement

TO Kevin A. Sheppard, P.E., Chairman
Oil Fund Disbursement Board

Situation

DES currently works with several consulting firms who regularly design remediation systems, and prepare plans and specifications for the installation of the systems. Many of these design firms are also remediation system installers, so they expect to be able to bid on this work themselves. In addition, these consulting firms also expect DES to approve their firm as the construction oversight engineer, for whoever the contractor might be, including themselves. DES believes this situation can lead to a conflict of interest for the consulting firm and we have adopted an informal policy to disallow such practices. The purpose of this memorandum is to apprise the Board of the situation and seek an opinion regarding our position.

Discussion

Under a normal owner-engineer-contractor relationship, the engineer:

- a. Prepares the design plans and specifications for the work,
- b. Solicits bids on behalf of the owner,
- c. Recommends to the owner, and in this case DES, award of the contract to the lowest responsive and responsible bidder; and
- d. Oversees the work of the contractor, ensuring the work is in accordance with the design plans and specifications.

The engineer is expected to be an impartial third party, making sure the contractor provides a completed project in accordance with the bid documents, but not requiring the contractor to provide more than called for in the documents. In a situation where the design consultant is also allowed to be the contractor, there are numerous opportunities from bid preparation to construction oversight, for the consultant to be in a conflict of interest situation. Some of these situations are described below:

Bidding Process - The consultant, in preparing the bidding documents, is most familiar with the site and the bidding documents. He knows which items in the bid are of primary concern and those that are of lesser importance. Contractors, knowing the consultant's intention to be a bidder on the project, are less likely to spend the time and effort in preparing a bid knowing the engineer as a bidder is far more familiar with the work.

In preparing the bid, the engineer could include bid items that, based on his knowledge of the site, he is fairly certain will never be used. Consequently, when placed in the position as bidder on the work, he can bid \$0.00 or \$0.01 on those items. A contractor not as familiar with the site would likely place a realistic value for the item and consequently have a higher bid price than the engineer.

Evaluating the Bids - Assuming three bids are received, including that of the engineer, the engineer is then required to evaluate the three bids and recommend to DES to whom the contract should be awarded. This clearly is a conflict of interest. If there are any evaluations of the bidder other than price, i.e., experience and capabilities of the contractor and his subcontractors, the engineer's evaluation would be highly suspect if he recommended the contract be self-awarded. Although some consulting firms have a construction group separate from their engineering group, it is highly questionable that the engineer could be sufficiently insulated to be able to recommend to the client that they not hire his own company's construction group.

Construction Oversight - During construction oversight, the engineer is required to ensure the work is constructed in accordance with the plans and specifications and to review and approve change orders. If the engineer is now inspecting the work of his own firm, there is little to prevent the engineer from approving the use of marginal or substandard equipment or materials. The engineer would be hard pressed to reject work performed by his company's own forces, knowing the rejection of the work will mean extra cost to his firm and could result in punishment to the engineer.

Conversely, should a contractor other than the engineer be the successful low bidder, the engineer is in a position to "punish" the contractor for being successful on a bid the engineer attempted to obtain. The engineer could enforce an absolute literal interpretation of the specifications, costing the contractor money and likely delaying the work.

Current Status

Currently, DES has adopted an informal policy of prohibiting the engineer and any subsidiary of his company from bidding on work he has designed, or bidding on work where the engineer will also provide construction oversight. We have had several consultants object to this position, but none have sought to appeal the decision to either the Waste Management Council or the Board.

The only exception to this policy is for the installation of certain components of a remedial system that will be operated and maintained by the engineer. In such cases, the engineer is often best qualified to install specified (standard) components acquired from vendors, where no field fabrication is involved. An example of this would be a free product recovery system installation project where all the earthwork, electrical, equipment enclosure, recovery wells, or recovery trench work are bid, but standard product pump(s) and controls are installed by the engineer on a

“time and materials basis”. DES requires that the engineer solicit vendor quotes for the recovery pumps and controls to demonstrate equipment cost control.

Recommendation

DES believes we have adopted the correct ethical policy with regard to this issue. To reduce the likelihood of appeals from consultants interested in bidding on their own designs, we request that the Board formerly adopt the DES position as standard policy. Under such a policy, a work scope for remedial system construction or oversight, based on a list of bidders that included the design consultant, would be rejected without review. Therefore, the costs associated with the construction of the system would not be reimbursable. Reimbursement for remedial equipment installed by the engineer on a time and materials basis would be limited to the actual cost of the equipment with not-to-exceed 10% mark-up allowed to cover carrying costs, subject to other applicable provisions of Board rules or policy.

Comment

In design-build construction, the engineer and the contractor work together in designing and building a remediation system. Selection of the design-build team is also subject to competitive bidding. The bidding process generally would occur upon the completion and approval of the Remedial Action Plan. We have not had many projects where a strict design-build concept has been adopted. The aforementioned policy would not preclude a design-build approach to site remediation, which may be of benefit in some situations.

STANDARD PUBLIC REQUEST FORM FOR REPLACEMENT PAGES

Oil Fund Disbursement Board Odb 100-600

Chapter/Part _____

These rules are published in loose-leaf form in order that they may be amended as frequently as necessary. If you wish to receive updated supplement pages, you must fill out this form and return it as indicated below. In this way you will automatically be added to the agency's list of permanent subscribers for this set of rules. The agency may charge the actual cost of providing the copy pursuant to RSA 541-A:11, VI and RSA 91-A:4, IV and may require payment before the copy is sent.

If you wish to receive updated pages in electronic format as a **substitute** for the loose-leaf, hard copy format, please check off the appropriate space below and complete. Please note that not all rules may be available in the electronic format requested.

Name _____

Phone #: _____

Street Address _____

I want rules by fax. Fax #: _____

City/Town _____

I want rules by e-mail. Email: _____

State _____ Zip _____

I want rules in another format (specify): _____

Send this sheet to:

Agency Name: Oil Fund Disbursement Board
Address: c/o N.H. Dept. of Env. Services
Waste Management Division
P.O. Box 95
Concord, N.H. 03302-0095

Phone #: (603) 271-2570 TTY/TDD Access
Fax #: (603) 271-2181 Relay NH 1-800-735-2964
E-mail: or dial 711 (in N.H.)
Timothy.Denison@des.nh.gov

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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Oil Fund Disbursement Board
Department Of Environmental Services
Waste Management Division
29 Hazen Drive
Concord, NH 03302-0095

CHAPTER Odb 100 OIL FUND DISBURSEMENT BOARD

Statutory Authority: RSA 541-A:16, I(a)

REVISION NOTE:

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 100. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 100 include the following documents:

#4759, eff 2-13-90
#5115, eff 4-16-91

PART Odb 101 DEFINITIONS

Odb 101.01 "Board" means the oil fund disbursement board established by RSA 146-D:4.

Source. (See Revision Note at chapter heading for Odb 100)
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456,
eff 10-25-05

Odb 101.02 "Confidential business information (CBI)" means information that is exempt from disclosure under RSA 91-A:5, IV, or information used in business that provides an advantage over competitors who do not know of or use it.

Source. (See Revision Note at chapter heading for Odb 100)
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456,
eff 10-25-05

PART Odb 102 BOARD ORGANIZATION

Odb 102.01 Responsibilities. The board shall administer the provisions of RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

Source. #8456, eff 10-25-05

Odb 102.02 Chairman and Vice Chairman.

(a) The board shall elect a chairman and vice chairman from among its members at the first meeting of each calendar year.

(b) The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

Source. #8456, eff 10-25-05

Odb 102.03 Office Hours, Office Location, Mailing Address and Telephone Number.

(a) The board's office location shall be at the:

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New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire

(b) The board's office shall be open to the public Monday through Friday, 8:00 am to 4:00 pm, excluding holidays.

(c) Correspondence shall be addressed to the board at:

Oil Fund Disbursement Board
New Hampshire Department of Environmental Services
Waste Management Division
P.O. Box 95
Concord, N.H. 03302-0095

(d) The board's telephone number shall be (603) 271-3644.

Source. #8456, eff 10-25-05

PART Odb 103 MEETINGS AND DELIBERATIONS

Odb 103.01 Meetings. The chairman shall establish the date, time and location of meetings. Each member of the board shall be notified in writing of the date, time, location and agenda for meetings. Notice of meetings shall be posted at the board office, through the General Court calendar, on the department of environmental services website and in the Rulemaking Register, as applicable.

Source. #8456, eff 10-25-05

Odb 103.02 Agenda and Meeting Record. The board shall, through the department of environmental services, prepare a written agenda in advance of a meeting, record the proceedings, and prepare a written summary of proceedings.

Source. #8456, eff 10-25-05

Odb 103.03 Procedures. Robert's Rules of Order Newly Revised, 10th Edition shall govern the procedures of the board.

Source. #8456, eff 10-25-05

PART Odb 104 INFORMATION MANAGEMENT

Odb 104.01 Availability of Records.

(a) All board records of meetings and official actions shall be public records unless deemed confidential under RSA 91-A:3, II or RSA 91-A:5.

(b) Board records of official actions under Odb 400 shall be available for public inspection on the internet through the department of environmental services One Stop Web Site <http://www2.des.state.nh.us/DESOnestop/BasicSearch.aspx> or successor systems. For all other official actions, meetings, and for the public without internet access, records shall be available through the department of environmental services during regular office hours, and with at least 48 hours notice.

(c) Persons desiring copies of board records shall request the information being sought as clearly as possible.

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(d) Persons desiring a verbatim transcript of a board meeting recording shall agree to pay the costs incurred by the board for transcription.

Source. #8456, eff 10-25-05; ss by #9917, eff 4-28-11

Odb 104.02 Records Retention.

(a) The board shall, through the department of environmental services, maintain records of activity conducted under its authority as follows:

- (1) Requests for reimbursement submitted under Odb 400 shall be maintained for 2 years after processing;
- (2) Notices of reimbursement issued under Odb 404.03(d) shall be maintained for 100 years after closure of the file; and
- (3) Records of activity under Odb 200 and records of board meetings shall be maintained for 3 years after the action date or meeting.

(b) The board shall, through the department of environmental services, maintain electronic records of activity conducted under its authority to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Source. #8456, eff 10-25-05; ss by #9917, eff 4-28-11

PART Odb 105 CLAIMS OF CONFIDENTIALITY

Odb 105.01 Procedure for Making a Claim of Confidentiality.

(a) Any person claiming that information submitted to the board under Odb 200 or Odb 400 is CBI, shall assert that claim at the time the information is initially submitted by stamping or otherwise marking each page of such information with the notation “confidential” or “confidential business information”. If the claimant believes that only part of the information on a page is CBI, the claimant shall identify all portions to which the claim applies at the time of submission, and shall designate only that portion of the page as “confidential” or “confidential business information”.

(b) If the board receives information from another agency of the state or federal government that is designated as CBI, the board shall exercise the same degree of confidentiality for the information as is exercised by the sending agency to the extent authorized by New Hampshire law.

(c) If a claim of confidentiality is made for any information that falls within any category identified in Odb 105.02, the information shall not be treated as confidential.

Source. #8456, eff 10-25-05

Odb 105.02 Non-Confidential Information.

(a) Any information for which no claim of confidentiality was made at the time of the initial submission shall not be considered confidential.

(b) Comments submitted by any person during the public comment period of any administrative proceeding shall not be considered confidential.

(c) Information that is in the public domain shall not be considered confidential.

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(d) Information that demonstrates a claimant violated any statute or rule administered by the board shall not be confidential.

Source. #8456, eff 10-25-05

Odb 105.03 Release of Information. The board shall release information not identified as CBI, in accordance with RSA 91-A:4, IV.

Source. #8456, eff 10-25-05

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD PROCEDURES

REVISION NOTE

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 200. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 200 include the following documents:

#4760, eff 2-13-90

#5115, eff 4-16-91

Statutory Authority: RSA 146-D:5, I, RSA 146-E:6, I, RSA 146-F:5, I, RSA 146-G:11 and RSA 541-A:16, I(b)

PART Odb 201 PURPOSE AND APPLICABILITY

Odb 201.01 Purpose.

(a) The purpose of this chapter is to provide uniform procedures for the conduct of all non-adjudicative and adjudicative proceedings, including requests for reconsideration, declaratory rulings, rulemaking petitions, and hearings in contested cases.

(b) This chapter is intended to supplement the procedures established by RSA 541-A and any procedures or criteria established under any statute implemented by the oil fund disbursement board.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

Odb 201.02 Applicability.

(a) The procedures set forth in this chapter shall apply to all proceedings conducted by the oil fund disbursement board, and shall be in addition to any applicable requirements of RSA 541-A.

(b) All board proceedings shall be subject to the provisions of RSA 91-A.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

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PART Odb 202 DEFINITIONS

Odb 202.01 Definitions.

(a) "Board" means the oil fund disbursement board established by RSA 146-D:4.

(b) "Department" means the New Hampshire department of environmental services.

(c) "Presiding officer" means the chairman of the board. In the absence of the chairman, the vice chairman shall act as the presiding officer.

Source. (See Revision Note at chapter heading Odb 200)
#5534, eff 12-21-92 , EXPIRED: 12-21-2000

New. #8490-A, eff 11-22-05

PART Odb 203 HEARINGS IN CONTESTED CASES

Odb 203.01 Waiver of Rules. Prior to the commencement of hearing procedures, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

Source. #8490-A, eff 11-22-05

Odb 203.02 Request for Hearing.

(a) Any person aggrieved by a decision of the board or the department may request a hearing within 30 days of the decision notification date. Such requests shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.

(b) The board shall establish a date and time for a hearing, and provide notice in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.03 Place of Hearings. All hearings before the board shall be held at a location designated by the board and notice shall be provided in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.04 Computation of Time. All time periods referenced in this chapter shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. #8490-A, eff 11-22-05

Odb 203.05 Extensions of Time.

(a) Any party requesting a hearing may petition the board to extend any time limit prescribed by this chapter for good cause as specified in (d) below. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved.

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(b) The department or any other party may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.

(c) If there is no opposition to the request and if the delay would not cause prejudice, the presiding officer shall grant the request. If an objection to a request is filed, the presiding officer shall consider whether good cause exists to grant the request and shall rule on the request within a reasonable time.

(d) Good cause shall include such contingencies as an accident, sudden illness, death of a family member, or other circumstances beyond the control of the party, which prevents the party from meeting the time limit.

(e) The board shall notify all parties of board actions through the department.

Source. #8490-A, eff 11-22-05

Odb 203.06 Date of Filing. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by this part, shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

Source. #8490-A, eff 11-22-05

Odb 203.07 Identification of Communications. Communications shall contain the name and address of the communicator and the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

Source. #8490-A, eff 11-22-05

Odb 203.08 Appearance Before the Board. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

Source. #8490-A, eff 11-22-05

Odb 203.09 Representatives. Any party to a hearing before the board may be represented by an individual as that party may designate, in accordance with Odb 203.08.

Source. #8490-A, eff 11-22-05

Odb 203.10 Notice of Hearings. When a hearing is scheduled, notice shall be provided in writing, to all parties or other interested persons, at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

Source. #8490-A, eff 11-22-05

Odb 203.11 Hearing Record. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties and documents of which official notice has been taken by the board.

Source. #8490-A, eff 11-22-05

Odb 203.12 Retention of Board Records of Decisions or Orders.

(a) The board shall, through the department of environmental services, maintain records of decisions or orders issued pursuant to RSA 541-A:35 for 3 years after the date of the final decision or order.

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(b) The board shall, through the department of environmental services, maintain electronic records of decisions or orders issued pursuant to RSA 541-A:35 to the extent it is technically feasible and cost-effective, and in conformance with the requirements of RSA 294-E.

Source. #8490-A, eff 11-22-05; ss by #9918-A, eff 4-28-11

Odb 203.13 Hearing Procedures.

(a) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.

(c) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

Source. #8490-A, eff 11-22-05

Odb 203.14 Burden and Standard of Proof.

(a) The party asserting a proposition or challenging a decision of the board shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

(b) For purposes of this section, “proving the truth of the proposition by a preponderance of the evidence” means what is sought to be proved is more probable than not.

Source. #8490-A, eff 11-22-05

Odb 203.15 Pre-Hearing Exchange of Information.

(a) At least 10 days prior to the commencement of a hearing, the parties involved shall provide the board with the following:

- (1) A list identifying each witness expected to be called at the hearing with a brief description of that witness’s testimony;
- (2) A list of all exhibits expected to be presented at the hearing; and
- (3) Any requests for changes to or waivers of the standard procedures as specified in this chapter or other matters concerning the conduct of the hearing.

(b) If the board requests information other than that specified in (a), above, from the parties involved, the board shall provide written notice to the parties.

(c) A party receiving a request for information pursuant to (b), above, shall provide the information requested within 10 days.

Source. #8490-A, eff 11-22-05

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Odb 203.16 Documentary Evidence.

(a) Evidence, which is relevant and material to the subject matter of the hearing, shall be admissible. Evidence, which is irrelevant, immaterial, or unduly repetitious, shall be excluded.

(b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.

(c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless the presiding officer determines that such documents or photographs are of such form, size or character as not to be reasonably suitable for reproduction.

(d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.

(e) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.

Source. #8490-A, eff 11-22-05

Odb 203.17 Exhibits.

(a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

(b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

(c) The original exhibit and 20 copies thereof shall be provided to the board and at least 1 copy shall be provided to all other parties.

Source. #8490-A, eff 11-22-05

Odb 203.18 Advance Filing of Exhibits. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

Source. #8490-A, eff 11-22-05

Odb 203.19 Signatures. Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

Source. #8490-A, eff 11-22-05

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Odb 203.20 Continuance.

(a) Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical documents.

(b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(c) If the presiding officer determines that reasonable cause exists and that no prejudice will result from the delay, the presiding officer shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.

(d) The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. #8490-A, *eff 11-22-05*

Odb 203.21 Recess and Adjournment. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

Source. #8490-A, *eff 11-22-05*

Odb 203.22 Conclusion of Hearing.

(a) Prior to the conclusion of the hearing, the presiding officer shall, upon request and at his or her discretion, direct that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing.

(b) If the presiding officer determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed.

Source. #8490-A, *eff 11-22-05*

Odb 203.23 Reopening of the Record.

(a) At any time prior to a final decision, any party to a hearing may request the presiding officer to reopen the record to consider documents or arguments not previously considered.

(b) If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the hearing, the presiding officer shall reopen the record and written notice shall be given to all parties.

Source. #8490-A, *eff 11-22-05*

Odb 203.24 Decision of Board. Following the conclusion of a hearing, or the closing of the record, the board shall issue a notice of decision to all parties through the department.

Source. #8490-A, *eff 11-22-05*

Odb 203.25 Withdrawal of a Presiding Officer.

(a) Any interested party may submit a request to the board for the withdrawal of the presiding officer from a matter for good cause.

(b) For purposes of this section, good cause for withdrawal shall be that the presiding officer has an objectively demonstrated bias for or against one or more of the parties. Good cause shall not include that the presiding officer is an employee of the department.

(c) The party requesting the withdrawal of the presiding officer shall support the request with sworn testimony or other evidence submitted with the motion.

(d) For purposes of this section, an “objectively-demonstrated bias” means that the party requesting the presiding officer to withdraw submits evidence that shows, by a preponderance of the evidence, that the presiding officer has had personal dealings with a party to the proceeding that would cause a reasonable person to believe that as a result of the dealings, the presiding officer will discount or ignore evidence and law to find in favor of or against the party.

(e) The board shall consider the request and make a determination within a reasonable time.

Source. #8490-A, eff 11-22-05

Odb 203.26 Roles in Adjudicative Proceedings. In any adjudicative hearing, department staff may be called as witnesses by the board or any party to the hearing to present testimony and evidence as requested.

Source. #8490-A, eff 11-22-05

PART Odb 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Odb 204.01 Applicability. With the exception of rulemaking hearings under Odb 205, this part shall apply to the conduct of hearings held by the board to provide information and receive public comment in any matter that is not a contested case as defined by RSA 541-A:1, IV.

Source. #8490-B, eff 11-22-05

Odb 204.02 Hearings. A non-adjudicative public hearing shall be held:

(a) To receive evidence and testimony on reimbursement determinations and other matters required by the statute or rules;

(b) For any matter for which the board is required by law or by these rules to hold a hearing that is not a contested case; and

(c) For any matter for which the law does not require the board to hold a hearing but for which the board believes a public hearing would be of benefit.

Source. #8490-B, eff 11-22-05

Odb 204.03 Record.

(a) A record of the hearing shall be kept by tape recording or other method, which will provide a verbatim record.

(b) Copies of the recording shall be provided to any person upon request and payment of the costs of the tape(s) and staff time to make the copy, or of staff time only if enough blank tapes to copy the hearing tape(s) are submitted with the request.

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(c) If any person desires a transcript of the hearing tape(s), the board shall prepare or cause to be prepared a transcript provided the cost of the transcription is paid by the person(s) requesting the transcript. If the department hires another person to prepare the transcript, the person requesting the transcript shall be billed directly by and shall directly pay the person preparing the transcript.

Source. #8490-B, eff 11-22-05

Odb 204.04 Testimony.

(a) Any individual wishing to submit written testimony or exhibit(s) at a non-adjudicative public hearing shall do so to the presiding officer, provided the individual signs and dates such testimony or exhibit(s).

(b) Any individual wishing to testify at a non-adjudicative public hearing shall submit his/her name, address, and whom s/he represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his/her testimony. The presiding officer shall encourage individuals who plan to testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(c) At the conclusion of testimony of each individual, the individual shall remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(d) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-B, eff 11-22-05

Odb 204.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing when s/he determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At a non-adjudicative public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Odb 205.04(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, s/he shall designate a specific time period for the record to remain open to receive such information.

Source. #8490-B, eff 11-22-05

Odb 204.06 Continuances.

(a) At any non-adjudicative public hearing, if anyone requests a continuance and the presiding officer determines that the public will be best served by continuing the hearing and that any prejudice caused to any person as a result of the continuance is outweighed by the benefit to the public of granting the continuance, the presiding officer shall order that the hearing be continued to a later date, time, and place.

(b) If such later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record.

(c) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.

Source. #8490-B, eff 11-22-05

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PART Odb 205 RULEMAKING HEARINGS

Odb 205.01 Public Hearing. The board shall hold a public hearing when proposing to adopt, readopt, amend or repeal rules.

Source. #8490-A, eff 11-22-05

Odb 205.02 Notice of Hearing. The board shall provide notice for a public hearing in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 205.03 Record. A record of the public hearing shall be kept by verbatim recording.

Source. #8490-A, eff 11-22-05

Odb 205.04 Hearing Procedures.

(a) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.

(c) Any person providing oral testimony shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

(d) Any person wishing to submit written testimony shall do so to the presiding officer provided the person signs and dates such testimony.

(e) The presiding officer shall call each person to present testimony and encourage persons testifying orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(f) At the conclusion of testimony of each person, the presiding officer shall encourage the person to remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(g) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-A, eff 11-22-05

Odb 205.05 Closing the Hearing and the Record.

(a) The presiding officer shall close the hearing upon determining there are no further questions or comments that are relevant to the subject of the hearing.

(b) The record shall remain open until the date specified in the notice published in the New Hampshire Rulemaking Register.

Source. #8490-A, eff 11-22-05

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PART Odb 206 RULEMAKING PETITIONS

Odb 206.01 Filing. Any person wishing to file a rulemaking petition shall file the original and one copy of the petition with the board.

Source. #8490-A, eff 11-22-05

Odb 206.02 Format and Content of Petition. A person filing a petition to adopt, amend, or repeal a rule shall provide the following information:

- (a) The exact legal name of each person requesting the adoption, amendment, or repeal of the rule, with a residence address or principal place of business of the person;
- (b) Whether the person is asking the board to adopt, amend, or repeal a rule;
- (c) If the petition is to adopt a rule:
 - (1) The chapter, part, and section, by alphanumeric code, where the person proposes the rule language to be inserted; and
 - (2) The proposed rule language;
- (d) If the petition is to amend a rule:
 - (1) The specific rule, by alphanumeric code, that is the subject of the petition; and
 - (2) The proposed rule language;
- (e) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition;
- (f) A written statement of why the petitioner wants the board to undertake the action requested and how the action is consistent with RSA 146-D, RSA 146-E, RSA 146-F, RSA 146-G or RSA 541-A, as applicable; and
- (g) Such other information the person filing the petition deems pertinent and relevant to their request, including written testimony.

Source. #8490-A, eff 11-22-05

Odb 206.03 Board Review.

- (a) Upon receipt of a petition to adopt, amend, or repeal a rule, the board shall proceed in accordance with RSA 541-A: 4, I.
- (b) The petition shall be granted and a rulemaking proceeding shall be initiated if the board determines that the proposed action is:
 - (1) Consistent with state and federal law and policy; and
 - (2) In the best interests of the state.

Source. #8490-A, eff 11-22-05

PART Odb 207 REQUESTS FOR RULE EXPLANATION

Odb 207.01 Request for Rule Explanation.

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(a) Any person may request, at any time before 30 days after the final adoption of the rule, that the board issue an explanation of a rule by filing an original and one copy of the request.

(b) The request shall include:

(1) The chapter, part or section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s) which is the subject of the request; and

(2) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents.

Source. #8490-B, eff 11-22-05

PART Odb 208 PETITION FOR DECLARATORY RULING

Odb 208.01 Applicability. Any interested person may submit a petition for a declaratory ruling on the applicability of any statute, rule, or order administered or enforced by the board. The rules in this part shall apply to any petition for such ruling.

Source. #8490-A, eff 11-22-05

Odb 208.02 Filing. The original and one copy of a petition for a declaratory ruling shall be filed with the board.

Source. #8490-A, eff 11-22-05

Odb 208.03 Format and Content of Petitions. Petitions for rulings shall include the following:

(a) The legal name of each person requesting the action, with a resident address or principal place of business of the person;

(b) The chapter, part, section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s), which is the subject of the request;

(c) The petitioner's signature and date signed;

(d) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents; and

(e) A concise and explicit statement of why the petitioner wants the board to rule on the statutory provision, rule or order.

Source. #8490-A, eff 11-22-05

Odb 208.04 Processing of Petitions.

(a) If the board determines that the petition is deficient, the board shall notify the petitioner within 30 days, in writing, of the specific deficiencies and allow the petitioner to amend the petition.

(b) The board shall take one of the following actions in response to a petition:

(1) Issue a ruling responsive to the petition within 90 days; or

(2) If deemed necessary, request the opinion of the department of justice and issue a ruling within 90 days following receipt of the department of justice opinion.

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Source. #8490-A, eff 11-22-05

PART Odb 209 WAIVER OF IMPORT FEE PENALTIES AND INTEREST

Odb 209.01 Waiver of Import Fee Penalties And Interest.

(a) A distributor as defined in RSA 146-D:2, I, may request in writing that the board waive penalties under RSA 146-D:3, III, RSA 146-E:3, II, or RSA 146-F:3 assessed by the department of safety due to late payment of import fees.

(b) The board shall:

(1) Approve a waiver of penalties no more than once in a 12-month reporting period upon finding a distributor filed timely reports for the past 11 months prior to a late report filing;

(2) Approve a waiver of penalties, and interest under RSA 146-F:3, upon finding the assessment was based on department of safety error; or

(3) Approve a waiver of penalties assessed through voluntary late reporting or department of safety audit upon finding the circumstances were beyond the reasonable knowledge or control of the distributor.

(c) The board shall provide written notice of its decision to the distributor requesting the waiver under paragraph (a) above within a reasonable time.

(d) Distributor penalties under RSA 146-D:3, III, RSA 146-E:3, II or RSA 146-F:3 reported by the department of safety totaling \$10 or less, shall be deemed waived by the board without a written request, no more than once in a 12-month distributor reporting period.

(e) A distributor that receives additional penalties totaling more than \$10 in a 12-month reporting period may seek a waiver pursuant to (a) above.

Source. #8490-B, eff 11-22-05; ss by #9918-B, eff 4-28-11

CHAPTER Odb 300 - REPEALED

Source. #4761, eff 02-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 400 RULES FOR REIMBURSEMENT UNDER RSA 146-D, RSA 146-E, RSA 146-F AND RSA 146-G

Statutory Authority: RSA 146-D:5, I; RSA 146-E:6, I, RSA 146-F:5, I, and RSA 146-G:11

PART Odb 401 PURPOSE AND SCOPE

Odb 401.01 Purpose. The purpose of this chapter is to establish procedures for reimbursement under RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

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Odb 401.02 Applicability. This chapter shall apply to reimbursement for costs incurred on or after the effective date of this chapter.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 402 DEFINITIONS

Odb 402.01 Definitions.

(a) "Applicant" means:

(1) A professional engineer or professional geologist licensed in New Hampshire performing corrective action, a corrective action contractor, or an individual or company performing Env-Ws 300 public water supply gasoline ether monitoring or notification under RSA 485:16-a, II, under contract with an owner;

(2) The New Hampshire department of transportation or political subdivisions of the State performing corrective action under a written agreement with an owner concerning management of contamination encountered during construction projects near the owner's property; or

(3) The department.

(b) "Board" means the oil fund disbursement board established by RSA 146-D:4.

(c) "Bodily injury costs" means damages proven by expert medical testimony as to diagnosable personal injury, illness, or other bodily injury, including emotional distress accompanied by physical manifestations suffered by a party other than an owner or its agents as a result of a discharge.

(d) "Capital equipment" means electronic, chemical, mechanical or structural equipment installed to perform contamination source removal or treatment, which has a long-term life greater than 2 years and has an initial value or purchase cost, either individually or as an aggregate, of \$10,000.00 or more.

(e) "Compliance" means conformance with applicable local, state and federal facility operating requirements, including the department guidance document titled, "Best Management Practices for the Installation and Upgrading of On-Premise-Use Heating Oil Tanks" (2008 edition).

(f) "Contamination" means "contamination" as defined in Env-Or 602.07.

(g) "Contract" means a formal written agreement that specifies the service performed and the terms and conditions of the service.

(h) "Corrective action" means activities performed in accordance with RSA 146-G or department rules to contain a discharge or remedy contamination including reasonable restoration of property damaged while performing corrective action, which is not covered under an owner's or corrective action service provider's insurance. Corrective action does not include restoration of property damaged by a discharge.

(i) "Corrective action contractor" means an individual or company that is primarily in the business of providing corrective action services, has the necessary equipment and facilities, and employs appropriately-trained, experienced personnel with current U.S. Occupational Safety and Health Administration certification.

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(j) "Corrective action report" means a report on site conditions or cleanup submitted in accordance with department rules.

(k) "Deductible" means initial costs incurred for which an owner is liable to the fund under RSA 146-D:6, II, RSA 146-E:6, I or RSA 146-E:6, II.

(l) "Department" means the New Hampshire department of environmental services.

(m) "Discharge" means a spill or release of oil, fuel oil, motor oil, gasoline, or gasoline ethers.

(n) "Facility" means:

(1) A "bulk storage facility" as defined in RSA 146-D:2, V or RSA 146-E:2, I;

(2) An "on-premise-use facility" as defined in RSA 146-E:2, III;

(3) A "motor oil storage facility" as defined in RSA 146-F:2, II;

(4) An "underground storage facility" as defined in RSA 146-D:2,II; or

(5) "Potential contamination sources" as defined in RSA 485-C:7, II, as applicable.

(o) "Financial statement" means a complete accounting of a facility owner's financial condition prepared in accordance with generally accepted accounting practices or standards including a statement of assets and liabilities, income statement, statement of cash flows, and statement of whether the owner is creditworthy.

(p) "Fund" means the oil discharge and disposal cleanup fund established by RSA 146-D, the fuel oil discharge cleanup fund established by RSA 146-E, the motor oil discharge cleanup fund established by RSA 146-F, or the gasoline remediation and elimination of ethers fund established by RSA 146-G, as applicable.

(q) "Other insurance" means private insurance coverage for corrective action or third-party damage costs that is valid and collectible by the owner, and includes private insurance held by the owner through either a wholly-owned or jointly-owned subsidiary in the business of providing insurance coverage to the owner or to the owner and others.

(r) "Owner" means the person having legal ownership of a facility, land under RSA 146-D:6, I, RSA 146-D:6, I-a, RSA 146-E:6, I or RSA 146-F:5, I, public water supply system, non-public water supply system, private water supply or other eligible party under RSA 146-G.

(s) "Performance standard" means the expected level of completeness, quality, and/or reduction in measurable contamination when performing corrective action based on the criteria in RSA 146-G or department rules.

(t) "Person" means any company and its parents, subsidiaries, business units and affiliates established under any legal form, an individual, group, trust, firm, joint stock company, corporation including a government corporation, partnership, association, limited liability company, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity including those wholly owned by the same individual or parent entity, and legal entities that share identical or interlocking boards of directors.

(u) "Project cost ledger" means a department-approved electronic spreadsheet, accounting software, or other electronic application or system, that itemizes all costs and charges to a fund-eligible project, and ties those costs and charges to a general ledger accounting system.

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(v) "Property damage" means physical damage to, or loss of use of, tangible property owned by a party other than the facility owner or his/her employees.

(w) "Reimbursement" means an assignment of money from the fund.

(x) "Site" means "site" as defined in Env-Or 602.28.

(y) "Third-party damages" means damages, which are an obligation of an owner as a result of a court-approved settlement or judgment in a civil action against the owner by a party who has suffered bodily injury or property damage as defined in this part.

(z) "Upload submittal" means a reimbursement request submitted via the department One Stop Data Provider web site <https://www2.des.state.nh.us/OnestopDataProviders/DESLogin.aspx>, or successor systems, in portable document format (PDF).

(aa) "Web-based submittal" means a reimbursement request submitted by an applicant via the department One Stop Data Provider web site <https://www2.des.state.nh.us/OnestopDataProviders/DESLogin.aspx>, or successor systems, using an application developed and maintained by the department for that purpose.

(ab) "Web-based submittal with expedited payment" means a web-based submittal that is processed for payment within 30 days.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 403 REIMBURSEMENT REQUEST DOCUMENTS

Odb 403.01 Invoice Summary for Paper and Upload Submittals.

(a) An owner or applicant submitting a paper or upload submittal reimbursement request shall include an invoice summary on a form provided by the department, or a facsimile, that lists each contractor invoice and includes the following information:

- (1) A page header including the department site number, project number, site/project name, and reimbursement request number;
- (2) For each invoice:
 - a. Contractor invoice number and date;
 - b. The department work scope and budget approval date, if applicable;
 - c. The department phase and class code;
 - d. Contractor name, and if applicable, subcontractor name;
 - e. Summary description of work for each phase and class;
 - f. Work scope budget amount;
 - g. Payment amount requested; and
 - h. Work scope budget balance, if any; and
- (3) The total work scope budget and budget balance, and total amount requested.

Source. #8491, eff 11-22-05; ss by #9935-B, eff 9-1-11

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Odb 403.02 Reimbursement Authorization Form.

- (a) Reimbursement authorization forms shall be those provided by the board.
- (b) An owner submitting a reimbursement authorization form shall include the following information:
 - (1) Authorization information including the type of facility or project and whether reimbursement is sought for corrective action costs or third-party damages;
 - (2) Facility, property, and project information including:
 - a. Facility, property, and project name;
 - b. Address;
 - c. Location town;
 - d. The department facility identification number if applicable;
 - e. The department project number; and
 - f. For an initial authorization, the date of discharge discovery;
 - (3) Owner and insurance information including:
 - a. Owner name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. Whether the owner is a new owner since the last authorization;
 - e. Number of facilities owned if more than one; and
 - f. If an initial authorization for a discharge, whether other insurance coverage is available; and
 - (4) The owner's or corporate officer's signature and date certifying the following liability statement and affirmation: "I hereby certify that the facility referenced above is currently in compliance, or I am the owner of land where a compliant facility was located, or I am a duly authorized officer of the entity that owns the compliant facility or land where a compliant facility was located. I understand that a 'deductible' or deductible balance may be applied against any amounts reimbursed from the fund. If reimbursement is made to an 'applicant', I understand that the deductible or deductible balance amount may be billed and that said amount is due within 30 days of the billing date, unless the board approves periodic payments. I understand the funds under RSA 146-D, RSA 146-E and RSA 146-F only provide excess insurance coverage. I declare that the representations made in this reimbursement authorization are to the best of my knowledge true and correct, and agree to reimburse the fund for any payments made based upon incorrect information on this form, or incorrect reimbursement submittal information. If an officer of the owner, I affirm that I have been duly authorized by the corporation, LLC, LLP, or other corporate entity to bind the corporation, LLC, LLP, or other corporate entity, and to make the above declarations. I also affirm that the corporation, LLC, LLP, or other corporate entity has made all filings and paid all fees required by the New Hampshire Secretary of State."

Source. #8491, eff 11-22-05; ss by #9935-B, eff 9-1-11

PART Odb 404 REIMBURSEMENT REQUEST SUBMITTAL AND BOARD REVIEW

Odb 404.01 Requests for Reimbursement.

(a) With the exception of requests submitted by the department, requests for reimbursement shall be submitted within one year of completing corrective action.

(b) Requests for reimbursement for third-party damage costs shall be submitted within 60 days of notice of a final court order or court approved settlement for bodily injury costs or property damage costs as defined in this chapter.

(c) An owner may submit a request for reimbursement for third-party damage costs only if notification was provided pursuant to Odb 408.01.

(d) An owner or applicant may submit a request for reimbursement only if the limits of coverage under other valid and collectible policies of insurance held by the owner, are reached.

(e) An applicant may only submit a request for reimbursement for services provided by the applicant, including subcontractors and suppliers.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.02 Reimbursement Submittal Requirements.

(a) Requests for reimbursement shall include the following:

(1) For an owner's initial request, a completed reimbursement authorization form which includes the information required under Odb 403.02;

(2) For paper submittals, upload submittals, or an initial web-based submittal a list or brief description of the information included in the reimbursement request submittal, in the form of a cover or transmittal letter;

(3) For paper or upload submittals a summary of invoiced expenses which includes the information required under Odb 403.01;

(4) A copy of the work scope approval notice under Odb 407.01(d), if applicable;

(5) Copies of all contractor and subcontractor invoices and contractor personnel timesheets or timesheet summary;

(6) Tabulation of bid item quantities, bid item price, bid item total cost, and total job cost for bid-based work, if applicable;

(7) A copy of the contract under Odb 406.03 if applicable;

(8) Employee payroll records, cost of employee benefits and equipment operating cost data when corrective action is performed by the owner;

(9) Other insurance information required under Odb 405.02 if applicable;

(10) A copy of the agreement stating a facility owner has a legal obligation to continue corrective action after ownership is conveyed, if applicable;

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- (11) A copy of the final court order or court approved settlement for third-party damages;
- (12) For an initial request, facility compliance information, if applicable; and
- (13) For an initial request, a completed department “Alternate W-9 Form” to obtain a vendor number, if applicable.

(b) A re-submittal of information related to a request when the approved amount was less than the requested amount shall be re-submitted within 180 days of the action date and shall include an explanation of the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 404.03(d) indicating which costs are being re-submitted.

(c) Reimbursement requests shall be submitted concurrently with the corrective action report, if applicable.

(d) No reimbursement request shall be submitted that includes costs incurred by an owner or applicant after corrective action is deemed complete by the department and a corrective action report was provided, if applicable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.03 Reimbursement Review Procedures.

(a) Upon receipt of a request for reimbursement, the board shall, through the department, determine if the request is complete pursuant to Odb 404.01 and Odb 404.02. Incomplete requests shall be returned within 30 days of receipt.

(b) Upon receipt of a complete reimbursement request, the board shall request that the department report its recommendation for reimbursement within 120 days of the date of receipt.

(c) The board shall, through the department, determine the amount of reimbursement based on the reimbursable cost criteria of Odb 407 and Odb 408 and shall authorize the state treasurer to disburse said amount from the fund.

(d) The board shall, through the department, issue a notice of reimbursement to the owner or applicant within 30 days of a reimbursement determination.

(e) If the reimbursement amount is less than the requested amount, or if no reimbursement is due, the notice of reimbursement shall indicate the reasons for a reduction in payment or non-payment.

(f) All reimbursements from the fund for corrective action performed by the department shall be paid directly to the department.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 404.04 Reimbursement Request Priority.

(a) The board shall consider requests for reimbursement from the fund as follows:

- (1) Web-based submittals with expedited payment and corrective action performed by the department first priority;
- (2) Web-based submittals second priority;
- (3) Upload submittals third priority; and

(4) Paper submittals fourth priority.

(b) The board shall consider requests for reimbursement in the chronological order received regardless of the submittal method, if the balance in the fund is not sufficient to pay all uncontested reimbursement requests.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 405 FUND AVAILABILITY AND OTHER INSURANCE

Odb 405.01 Fund Availability.

(a) The fund shall be available for reimbursement of costs incurred for corrective action, third-party damages, public water supply gasoline ether monitoring under Env-Ws 300, and providing notification under RSA 485:16-a, II.

(b) The fund shall be available to the owner of a facility for the first discharge if the facility is in compliance.

(c) The fund shall be available to the owner of a facility for subsequent discharges if the owner maintains compliance after compliance is achieved, as specified in (b) above.

(d) The fund shall be fully available to owners of on-premise-use facilities or land where on-premise-use facilities are located for corrective action cost and third-party damage cost reimbursement if the facility is in compliance by July 1, 2015.

(e) With the exception of owners qualifying under paragraph (f) below, owners of on-premise-use facilities or land where on-premise-use facilities are located, that are not in compliance by July 1, 2015, shall be subject to a reduction in corrective action cost and third-party damage cost reimbursement in the amount of \$500 for the state, political subdivisions, non-profit organizations, school districts and residences, and \$1,000 for businesses.

(f) The fund shall be available to meet the requirements of RSA 146-E:4, I and II, subject to the following:

(1) The on-premise-use facility is located at a property that is the primary residence of the owner including a single-family home, a duplex, a manufactured home, a farm, or a property where the owner also operates a small business;

(2) The owner does not hold title to, or have an interest in, any income producing property other than that specified in (1) above, including but not limited to, stocks or real property held either individually, or through a business, trust, or other related entity; and

(3) The owner's total household annual income does not exceed 24 CFR5, Title 24, U.S. Department of Housing and Urban Development, low-income criteria that apply to the county or metropolitan statistical area where the property is located.

(g) The fund shall be available to:

(1) The current facility owner;

(2) A former facility or landowner for costs incurred during ownership, including completion of work contracted prior to ownership transfer;

(3) A former facility or landowner for costs incurred under a legal indemnification agreement which obligates the former owner to continue corrective action after the facility or land is sold; or

(4) A landowner where a compliant facility was located.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 405.02 Coverage Under Other Insurance.

(a) The fund shall provide excess insurance to reimburse corrective action costs and third-party damage costs not covered within the limits of other valid and collectible insurance. The fund shall provide coverage only after any primary, excess, and umbrella coverage is exhausted.

(b) An owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F shall first submit claims to other insurance providers for purposes of a coverage determination before submitting any reimbursement requests to the board. The owner shall submit documentation regarding the findings of the coverage determination prior to, or when submitting an initial reimbursement request to the board. If coverage is denied the insurance shall be deemed not collectible by the owner.

(c) An owner may use other insurance to cover the cost of the fund deductible or for costs that are not eligible under the fund. Reimbursements from the fund shall be adjusted such that the total of payments received from the fund and other insurance does not exceed an owner's total incurred costs.

(d) The board shall not approve reimbursement to an insurer that submits a claim under a subrogation agreement with the owner or through an owner's attempted assignment of interest.

(e) The board shall be subrogated to any claims by an owner for coverage, payments, or reimbursements against any person to whom the owner has a claim.

(f) An owner who received fund reimbursement for a discharge occurrence and subsequently receives payment from an insurer for the same discharge occurrence shall immediately notify the board of such payment. The board shall determine whether the fund is entitled to full or partial repayment and shall notify the owner of such determination.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11
(formerly Odb 405.03)

PART Odb 406 OWNER AND APPLICANT RESPONSIBILITIES

Odb 406.01 Assignment and Subrogation.

(a) An owner's assignment of interest in the fund or right of subrogation claims against the fund shall not be assignable or transferable to a third party. Any attempted assignment or transfer shall not be effective against the fund and shall be considered void.

(b) If an owner's insurance coverage, or the responsibility for corrective action or third-party damages, is in dispute, and in the event of any payment from the fund, the board shall be subrogated to all the owner's rights of recovery therefor against any person or organization including other insurers. The owner shall execute and deliver instruments and do whatever else is necessary for the board to pursue such claims upon request by the board.

(c) The board shall be subrogated to any claims by an owner against any third parties and the board shall be entitled to recover any payments made by a third party to an owner for expenses previously reimbursed by the fund.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

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Odb 406.02 Liability for Deductible.

(a) The deductible amount described in RSA 146-D:6, II shall be withheld from reimbursement to an owner, but not withheld from an applicant.

(b) If a deductible is not withheld, the board shall bill the owner for the deductible amount through the department and the owner shall pay the amount within 30 days of the billing date.

(c) If the owner is financially unable to pay the entire deductible amount within 30 days of the billing date, the owner shall submit a financial statement and proposed periodic payment amount and payment schedule that is commensurate with the owner's ability to pay.

(d) The board shall approve a request for periodic payments upon determining that it is supported by the owner's financial statement, and shall issue a written notice of its decision.

(e) The deductible amount described in RSA 146-E:6, I and RSA 146-E:6, II shall be withheld from reimbursement to an owner or applicant.

(f) The deductible assessed for each facility discharge shall be based on the total number of facilities owned pursuant to RSA 146-D:6, II, RSA 146-E:6, I, or RSA 146-E:6, II as applicable. Any permanently closed facility at which no contamination is present, no corrective action is required, or no access to the fund will be sought, shall not be included in the total ownership count for purposes of determining the deductible.

(g) A separate deductible shall be applied for each discharge.

(h) The owner of an on-premise-use facility qualified under Odb 405.01(f) shall also qualify for a reduced deductible under RSA 146-E:6, II.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.03 Contracts.

(a) An owner may enter into a contract that includes provisions for direct reimbursement to an applicant.

(b) Contracts shall be executed prior to the performance of work by the applicant, and shall not provide for separate reimbursement to individual subcontractors.

(c) The applicant shall agree to waive all claims against the owner for payment of services performed within the limits of a corrective action contract.

(d) For implementation of a remedial action plan, an owner may enter into 2 separate applicant contracts, one contract with a professional engineer or professional geologist for management and oversight of the work, and another contract for construction or cleanup operation services.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.04 Right to Enter. An owner shall allow the board or its designee to enter, during reasonable hours, any facility or site location and associated structures, including offices, to inspect any activity and records related to a reimbursement request.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 406.05 Audits and Qualifications.

(a) An owner or applicant shall allow the board or its designee to conduct periodic financial audits of all records related to a reimbursement request, including project cost ledgers, contractor invoices, subcontractor and vendor invoices, expense receipts, timesheets or timesheet summaries, daily work orders, inventory records and other documents as necessary to substantiate reimbursed costs.

(b) Applicants that are professional engineers, professional geologists or corrective action contractors shall maintain a separate project cost ledger for each fund-eligible project.

(c) To qualify for web-based submittals an applicant shall complete training provided by the department.

(d) To qualify for web-based submittals with expedited payment, an applicant shall:

(1) Complete web-based submittal training provided by the department;

(2) Request qualification for expedited payment, in writing; and

(3) During the 12 months prior to requesting qualification, have submitted 6 or more reimbursement requests, of which 95% or more were complete, and no more than 2 incomplete corrective action reports.

(e) An applicant shall be disqualified from receiving expedited payment for web-based submittals for 12 months following completion of a department audit, if the audit findings are as follows:

(1) More than 5% of web-based submittals or more than 2 corrective action report submittals for the 12-month period prior to the audit were incomplete; or

(2) One or more web-based submittals included costs that are not reimbursable under Odb 407.09 and Odb 407.10.

(f) An applicant disqualified under Odb 406.05(e) seeking re-qualification shall make internal process corrections to prevent future errors and report the corrections made, in writing, prior to expiration of the 12-month disqualification period.

(g) If a periodic financial audit reveals that an owner or applicant received an overpayment for a reimbursement request, the owner or applicant shall be liable to the fund for any overpayment amount.

(h) The board shall, through the department, provide written notification to an applicant of a qualification determination under Odb 406.05(d) or re-qualification under Odb 406.05(f), within 45 days of a request.

(i) The board shall, through the department, provide written notification of disqualification under Odb 406.05(e) within 10 days of completing an audit.

(j) Nothing contained in this chapter shall relieve an owner or applicant from liability under RSA 146-D:7 or RSA 146-G:3.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 407 REIMBURSEMENT OF CORRECTIVE ACTION COSTS

Odb 407.01 Corrective Action Work Scope Requirements.

(a) With the exception of emergency response action performed under Env-Or 605.03, an owner or applicant seeking reimbursement from the fund shall submit a work scope and budget prior to performing corrective action.

(b) If applicable, the owner or applicant shall evaluate the cost-effectiveness of leasing versus purchasing capital equipment considering equipment cost, reliability, efficiency and performance over the estimated duration of the project, and shall include the evaluation data with the work scope and budget.

(c) The board shall, through the department, approve a work scope and budget upon determining the proposed work conforms to the technical criteria of Env-Ws 300, Env-Or 600, We 600, We 700 and We 800, as applicable, and the reimbursable corrective action cost criteria of this part.

(d) The board shall, through the department, issue a work scope approval notice that includes the approved budget and a description of the work pursuant to the technical criteria of Env-Ws 300, Env-Or 600, We 600, We 700 and We 800, as applicable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.02 Corrective Action Performed by Owner. An owner may perform corrective action with its own employees and equipment subject to other applicable requirements or limitations of this chapter. Reimbursement shall be limited to actual costs based on employee pay rates, cost of benefits and equipment operating costs. Costs associated with direct oversight of employees shall not be reimbursable.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.03 Interim Water Supply. Temporary supplies of potable water provided under authority of RSA 146-G, shall only be available through department contractors.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.04 Connection to Existing Public or Non-Public Water Supply System.

(a) An owner of a private water supply may request reimbursement under RSA 146-G for permanent connection to a public or non-public water supply system available at or near the owner's property boundary.

(b) The owner shall provide a letter from the water supply system owner or operator authorizing the connection when submitting a work scope and budget to the board.

(c) Connections to an existing public or non-public water supply system shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

(d) If applicable, the owner shall provide a letter from the water supply system owner or operator stating the work was inspected and meets all connection requirements, when submitting a reimbursement request to the board.

(e) Reimbursable costs shall include the installation of piping, plumbing connections and appurtenances necessary to provide a permanent connection to a public or non-public water supply system, standard one-time connection fees assessed by the water supply system owner, if any, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.05 Replacement of Private Water Supply.

(a) An owner of a private water supply may request reimbursement under RSA 146-G for the installation of a new or replacement groundwater supply well and appurtenances.

(b) A new or replacement private water supply shall be approvable if connection to a public or non-public water supply system is not available, or if the cost of connection would exceed the cost of establishing a viable new or replacement private water supply.

(c) Installations of private groundwater supply wells shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.

(d) Reimbursable costs shall include site location and development activities, construction of the supply well and pump installation, treatment systems, piping installations, plumbing connections and other necessary appurtenances, startup costs, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.06 Public and Non-Public Water Supply Systems.

(a) An owner of a public or non-public water supply system may request reimbursement under RSA 146-G for a feasibility study, the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system.

(b) The owner shall conduct a feasibility study and submit a study report prepared by a New Hampshire licensed professional engineer, describing the proposed project in detail and including the following:

- (1) A discussion of the overall necessity of the project with respect to the level of contamination requiring remediation and the ability of the project to provide a long term solution to the problem;
- (2) Data regarding the extent of contamination including the number of properties and residential units or their equivalents affected;
- (3) Data regarding the number of non-contaminated properties and residential units potentially benefiting by the project compared with the number affected by the contamination;
- (4) The estimated reimbursable apportioned share of the construction costs based on the criteria given under Odb 407.07 and a statement of commitment that the owner will contribute the non-reimbursable share;
- (5) A discussion of the alternatives considered, a cost-benefit analysis of the alternatives considered, and the rationale for the selection of the proposed project; and
- (6) A detailed project cost estimate including the total amount of reimbursement ultimately sought from the fund.

(c) The board shall approve the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system upon determining the following:

- (1) The proposed project conforms to the technical criteria given under Env-Ws 300, as applicable, and the apportioning criteria of Odb 407.07, if applicable;

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(2) New distribution system storage or pumping capacity is needed for the operation of a distribution system extension;

(3) The proposed project costs and hookup fees assessed by another owner are specifically related to removing contamination, in consideration of system capacity and total safe yield of water supply wells lost or gained; and

(4) The proposed project is the most favorable alternative among those considered pursuant to (b) (5) above.

(d) Reimbursable costs shall include feasibility study, feasibility study report preparation, and preliminary design costs, whether or not a project proceeds to construction.

(e) If a project proceeds to construction, reimbursable costs shall include the costs in (d) above, and design, construction, construction oversight, startup, and hookup fee costs.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.07 Apportioned Share of Construction Costs for Public or Non-Public Water Supply System Extensions. Water supply system extension costs reimbursable under RSA 146-G shall be determined by multiplying the percentage of properties serviced that are contaminated by the total project engineering and construction costs attributable to the installation of the distribution mains and appurtenances, to which shall be added 100% of the connection costs and the costs required to abandon the existing water supply for each contaminated property.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.08 Construction Financing. If the balance in the gasoline remediation and elimination of ethers fund plus projected revenues is not sufficient to pay all current uncontested reimbursement claims, current obligations of the department, and estimated future reimbursement claims for known projects, the board shall require that construction projects approved under Odb 407.06 be financed through notes or bonds. In such cases, the fund shall be available for administration costs and for periodic payments of principle and interest due under the note or bond, subject to the other limitations of this chapter.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.09 Reimbursable Corrective Action Costs.

(a) Reimbursable corrective action costs shall be the usual and customary market rates or costs for labor, equipment, capital equipment startup, operation, maintenance and relocation pursuant to (d)(3) below, materials and supplies, goods, services or task, administration of subcontracted services, fuel and insurance cost surcharge, inventory holding time, procurement of materials and supplies, and markup.

(b) The costs for the installation or use of capital equipment shall be reimbursable at the lease rate, or if purchased, at the vendor cost as established by the firm invoiced cost to the owner.

(c) If the capital equipment is purchased, the fund shall retain all rights for any salvage value of the equipment.

(d) When the project is at or near completion the board, in consultation with the owner regarding its intentions for the disposition of purchased capital equipment, shall:

(1) Withhold from reimbursement an amount equal to the actual or calculated salvage value;

(2) Require that the actual salvage value be repaid to the fund if the equipment is repossessed or sold; or

(3) Permit the use of the equipment for corrective action at another of the owner's facilities or properties.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 407.10 Reimbursement Limitations for Corrective Action Costs.

(a) Reimbursement shall not exceed actual invoiced costs paid or incurred less any discounts received.

(b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.

(c) Legal costs shall not be reimbursable.

(d) An owner's administrative, fiduciary management or supervisory costs shall not be reimbursable.

(e) Interest charges on unpaid invoices or other obligations shall not be reimbursable.

(f) Civil penalties or double cost recovery under RSA 146-A, RSA 146-C, or RSA 146-G shall not be reimbursable.

(g) Costs associated with the discovery of a discharge shall not be reimbursable.

(h) Costs paid by insurance shall not be reimbursable.

(i) Costs in excess of approved budgets shall not be reimbursable.

(j) Reimbursable costs shall be limited to corrective action work certified as complete by the department, a New Hampshire licensed professional engineer, or New Hampshire licensed professional geologist, including measurement of quantities, and equipment installed and operational, as applicable.

(k) No reimbursement shall be approved for any work that does not meet the corrective action performance standard.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 408 REIMBURSEMENT OF THIRD-PARTY DAMAGE COSTS

Odb 408.01 Owner's Duties in the Event of Claim or Suit.

(a) If a demand for payment of third-party damages is made against an owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F, the owner shall forward such demand to the board within 30 days of receipt and shall inform the board of any attempts made to settle the matter before the filing of a writ or petition. The owner shall undertake any actions necessary to obtain a reasonable settlement, including initiating demands against other parties who may be liable to the owner for such damages.

(b) Upon service of a writ or petition filed in a court of law by a third party the owner shall provide written notice to the board within 30 days of the return date.

(c) The owner shall provide the board with a copy of all documents related to the third-party action, including those filed with the court, and shall provide timely notice of scheduled hearings, settlement conferences and other actions throughout the proceedings.

(d) The owner shall defend the claim to preserve the right to seek reimbursement for third-party damages. The owner shall cooperate fully with the board in all matters relating to defending the claim.

(e) The owner shall enforce any right to contribution or indemnity against any person or organization who may be liable to the owner or to the third party claimant and shall seek to join such person or organization in any suit brought by a third party against the owner.

(f) The owner shall submit all proposed settlements to the board before entering an agreement with the claimant and before seeking approval from the court.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.02 Board Intervention in Third-Party Action.

(a) The board shall not be responsible for the defense of the owner but shall have the right to intervene in the action as a party in interest, and shall have the right to participate in all settlement discussions related to a threatened or filed third-party action.

(b) The owner shall concur in any motions to intervene filed with the reviewing court by the board.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.03 Reimbursement of Third-Party Damages.

(a) The owner shall be eligible for reimbursement of third-party damages that are not payable by other insurance, to the extent that the court-ordered judgment or settlement consists of compensable bodily injury costs or property damage costs suffered by the claimant.

(b) If the board determines that a proposed settlement is collusive, is not legally or factually supportable or does not fairly reflect compensable third party damages, it shall so notify the owner and shall deny any subsequent request for reimbursement based upon such settlement.

(c) If an owner proceeds to seek court approval of a settlement to which the board objects under paragraph (b), the board shall notify the court of such objection.

(d) The board shall deny any request for reimbursement of third-party damages to the extent that the settlement or judgment meets the criteria for objection under paragraph (b).

(e) An owner's legal fees and costs, including contingent fees, punitive awards, statutory double damages, fines, and costs imposed by the court, shall not be reimbursable.

(f) All settlements entered into by an owner shall allocate legal fees costs, and double damages fines and costs, if any, separately from amounts payable to the plaintiffs. The owner shall request that the amount awarded for legal fees, costs, double damages, fines and costs, if any, be identified in any jury or court award or verdict.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

Odb 408.04 Reimbursement Limitations for Third-Party Damages

(a) No reimbursement shall be made from the fund for third-party damage costs until the amount of the owner's obligation to pay is finally determined either by judgment against the owner after trial on the merits or by written agreement between the owner and the claimant and entered as an order by a court of law.

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(b) Reimbursable third-party damages shall be limited to certain monetary damages as a result of a court-ordered judgment or court approved settlement entered as an order of the court. The board shall not be bound by any obligations imposed upon the owner through settlement or court-approved judgment for injunctive relief or defense and indemnity of future actions by third parties against the claimant.

(c) No reimbursement shall be made from the fund for liability attributable to any party other than the owner. In all multi-party cases, all settlements entered into by the owner shall apportion liability among the pertinent parties. The owner shall request that the court order apportion liability among the pertinent parties in any jury or court award or verdict.

(d) Where an owner's third-party damages are based on a civil judgment, the costs shall not be reimbursable if resulting from a default judgment, or a proceeding otherwise not on the merits or not litigated by the owner to secure a reasonable settlement.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

PART Odb 409 WAIVER OF RULES

Odb 409.01 Requests for Waivers.

(a) With the exception of the Odb 405.01(d) compliance date, an owner or applicant may request that the board waive the application of the rules of this chapter pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.

(b) Requests for waivers shall be submitted in writing to the board and include the following information:

- (1) A specific reference to the section of the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and
- (4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-D, RSA 146-E, RSA 146-F or RSA 146-G and this chapter.

(c) The board shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements of this chapter, and are adequate to ensure that the provisions of the statutes are met.

(d) The board shall provide written notice of its decision.

Source. #8491, eff 11-22-05; ss by #9935-A, eff 9-1-11

CHAPTER Odb 500 - REPEALED

Source. #4918, eff 8-22-90; ss by #5114, eff 4-16-91; ss by #5535, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 600 RULES FOR REIMBURSEMENT FROM THE GASOLINE REMEDIATION AND ELIMINATION OF ETHERS FUND UNDER RSA 146-G - REPEALED

Source. #7633, eff 1-29-02; rpld by #8491, eff 11-22-05

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APPENDIX

RULE	STATUTE
Odb 101.01 through 105.03	RSA 91-A:4, IV, RSA 91-A:5, IV, RSA 541-A: 16, I(a)
Odb 201.01 – Odb 201.02; Odb 202.01	RSA 146-D:5, I; RSA 146-E:6, I; RSA 146-F:5, I; RSA 146-G:11
Odb 202.01; Odb 203.01 – 203.26	RSA 541-A:16, I (b); RSA 541-A:30-a., I, VI, & VII; RSA 541-A:31; RSA 541-A:32; RSA 541-A:33; RSA 541-A:34; RSA 541-A:35; RSA 541-A:37
Odb 202.01; Odb 204.01 –204.6	RSA 541-A:29
Odb 202.01; Odb 205.01 – 205.05	RSA 541-A:3; RSA 541-A:6; RSA 541-A:11, I-VI
Odb 203.12	RSA 541-A:16, I (b); RSA 541-A:35
Odb 202.01; Odb 206.01 – 206.03	RSA 541-A:4, I; RSA 541-A:11, I-V; RSA 541-A:16, I(b)
Odb 202.01; Odb 207.01	RSA 541-A:11, VII
Odb 202.01; Odb 208.01 – 208.04	RSA 541-A:16, I (d)
Odb 202.01; Odb 209.01	RSA 146-D:3, III; RSA 146-D:5, I (f); RSA 146-E:3, II; RSA 146-F:3, II; RSA 541-A:16, I(b); RSA 541-A:38
Odb 401.01 – 402.01	RSA 146-D:1; RSA 146-D:5, I(a) – (d); RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:1; RSA 146-E:6, I – VIII; RSA 146-F:1; RSA 146-F:5, I – IX; RSA 146-G:1, I and II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 403.01- 403.02	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 404.01 – 404.04	RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 405.01	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 405.02	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5, VIII
Odb 405.03- 406.01	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5, VIII
Odb 406.02	RSA 146-D:6, III; RSA 146-E:6, III; RSA 146-F:5, III
Odb 407.03 – 407.08	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 407.09 – 407.10	RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 408.01 – 408.04	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II
Odb 409.01	RSA 146-D:6, III; RSA 146-E:6, II; RSA 146-F:5, II RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV; RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II

TITLE X
PUBLIC HEALTH
CHAPTER 146-D
OIL DISCHARGE AND DISPOSAL CLEANUP FUND
Section 146-D:1

[RSA 146-D:1 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:1 Purpose. –

The general court finds that gasoline and diesel fuel, due to their extreme fluidity and suspected carcinogenic qualities, comprise a sufficiently distinct class of property which represents a potential serious health and safety problem to the citizens of New Hampshire. In particular, gasoline and diesel fuel present a potential threat to the quality of New Hampshire's groundwater and environment because of the speed with which these products are able to flow into, and contaminate, valuable groundwater supplies. The purpose of this chapter is to establish financial responsibility for the cleanup of oil discharge and disposal, and to establish a fund to be used in addressing the costs incurred by the owners of underground storage facilities and bulk storage facilities for the cleanup of oil discharge and disposal, to protect groundwater, and for reimbursement for third party damages. An additional purpose is to provide a funding source for cleanup and reimbursement for discharges of gasoline ethers pursuant to RSA 146-G. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a, and the gasoline remediation and elimination of ethers fund established under RSA 146-G.

Source. 1988, 271:1. 1993, 40:1. 2001, 293:7, eff. July 1, 2001.

Section 146-D:2

[RSA 146-D:2 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:2 Definitions. –

In this chapter:

I. "Distributor" means any person, wherever resident or located, who imports or causes to be imported oil, as defined in this section, into the state, except those using oil pipelines, railroads, and highways to transport oil products between states other than New Hampshire, or for the international transport of oil products; provided, however, that bringing motor fuel into the state in the fuel supply tank attached to the engine of a vehicle or aircraft shall not be considered importing. "Distributor" does not mean an oil spill cleanup organization or other person acting to contain, remove, clean up, restore or take other remedial or corrective action or measures with regard to the spillage or discharge of oil, or threatened spillage or discharge of oil.

II. "Underground storage facility" means a location consisting of a system of underground storage tanks, pipes, pumps, vaults, fixed containers and appurtenant structures, singly or in any combination, which are used or designated to be used for the storage, transmission, or dispensing of oil or petroleum liquids, and which are within the size, capacity and other specifications prescribed by rules adopted by the commissioner pursuant to RSA 146-C:9, VI.

III. "Oil" means gasoline and diesel products for purposes of collection of fees under RSA 146-D:3, and shall mean "oil" as defined under RSA 146-C:1, XII, for purposes of reimbursement of costs for cleanup and third party damages resulting from a discharge. For the purposes of collecting fees under RSA 146-D:3, the term "oil" shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source, or any oil or diesel products used for heating, processing, or generating electricity.

IV. [Repealed.]

V. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of gasoline or diesel products.

VI. "Commissioner" means the commissioner of the department of environmental services.

VII. "Department" means the department of environmental services.

VIII. "Gasoline" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption of natural gasoline, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale, or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (ASTM Designation D-86) show not less than 10 percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than 95 percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade); provided that the term gasoline shall not include commercial solvents or naphthas which distill by ASTM method D-86 not more than 9 percent at 176 degrees Fahrenheit and which have a distillation range of 150 degrees Fahrenheit or less, or liquefied gases which would not exist as liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

IX. "Diesel fuel" means a liquid hydrocarbon fuel used in internal combustion high speed engines that operate with a diesel thermodynamic cycle.

Source. 1988, 271:1. 1989, 230:9. 1990, 3:99. 1991, 322:1. 1993, 40:2, 3; 294:3, 17, I. 1995, 247:1. 1996, 228:29, 110. 2001, 293:8, eff. July 1, 2001.

Section 146-D:3

[RSA 146-D:3 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:3 Fund Established; Collection. –

I. There is established an oil discharge and disposal cleanup fund. This fund shall be used, consistent with the provisions of this chapter, to reimburse costs incurred in cleaning up oil discharges and disposals in the groundwaters and surface waters and soils of the state and in paying third party damages, including administrative, technical and legal support required by the oil fund disbursement board in administering the fund. The fund shall be collected as a fee imposed on all oil imported into this state.

II. Any distributor who imports, or who causes oil to be imported into this state shall first be licensed with the department of safety. A fee of \$.015 per gallon of oil shall be assessed at the time of importation into this state. All fees shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. If the fund's balance becomes greater than \$10,000,000, the fund assessment fees provided for in this paragraph shall be discontinued and only reestablished when the fund's balance is less than \$5,000,000. Any distributor who imports or blends home heating oil which is subsequently sold as diesel fuel for the propulsion of motor vehicles shall report the fuel as required in RSA 146-D:3, III. Any person purchasing home heating oil for diesel use and not declaring this intent to the distributor at the time of purchase shall be liable in the same manner as the distributor would be.

III. The fee provided for in this section shall be collected by agents of the department of safety, in the same manner as provided for in RSA 260:38. Such funds shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. Any person who fails to obtain a license, file a report, or pay the fees established in this chapter shall be subject to the penalties and interest described in RSA 146-A:11-b. The board, pursuant to rules adopted under RSA 146-D:5, may waive all or any portion of such penalties, for good cause.

IV. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.

V. No distributor licensed under this section shall import oil into this state without paying the fee required by this section. Any distributor licensed under this section may seek and shall receive for valid claims an import credit for oil which a distributor transfers out of state during any reporting period.

VI. The fee collected on motor fuels shall be deposited in the oil discharge and disposal cleanup fund, except as provided in subparagraph (b), and divided as follows:

(a) A fee of \$.015 shall be assessed for each gallon of diesel fuel.

(b) For each gallon of gasoline for which a fee is assessed, \$.0125 shall be placed in the oil discharge

and disposal cleanup fund and \$0.0025 shall be placed in the gasoline remediation and elimination of ethers fund established under RSA 146-G.

(c) For all fees assessed on gasoline during the period from January 1, 2001 to July 1, 2001 and deposited in the account for reimbursement of owners of eligible underground storage facilities, 18 percent of those fees shall be transferred to gasoline remediation and elimination of ethers fund established under RSA 146-G.

VII. [Repealed.]

Source. 1988, 271:1. 1989, 230:10. 1990, 3:100, 101; 252:20. 1991, 322:2. 1993, 40:4, 5; 294:4-6. 1995, 247:2, 3. 2001, 293:9, eff. July 1, 2001. 2008, 249:1, 8, eff. July 1, 2008.

Section 146-D:4

[RSA 146-D:4 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:4 Oil Fund Disbursement Board Established; Membership. –

I. There is established the oil fund disbursement board, to be composed of the following members:

(a) The commissioner of environmental services, or his designee.

(b) The commissioner of safety, or designee.

(c) Three members representing petroleum dealers, distributors, and refiners, appointed by the governor with the consent of the council.

(d) Two public members, appointed by the governor with the consent of the council.

(e) Two members of the senate, appointed by the president of the senate.

(f) Two members of the house of representatives, appointed by the speaker of the house.

(g) One member, who shall be a fuel oil dealer, appointed by the governor.

II. The board shall select a chairman from among its members at its organizational meeting.

III. The board members shall serve without compensation, except that all non-legislative members shall be reimbursed for mileage incurred on board business at the state employee mileage rate. The legislative members shall be reimbursed for mileage at the legislative rate. Such reimbursements shall be a charge against the oil discharge and disposal cleanup fund established under RSA 146-D:3, I.

IV. Any member of the board having an individual interest, or an interest in another business, which may conflict with an issue under consideration by the board, shall not participate in any deliberations or vote of the board on the issue before the board.

V. The terms of the board members shall expire on January 1, 1994. Subsequent terms for state agency and legislative members shall be the same as their terms in office. New board members appointed under subparagraphs I(c) and I(d) shall have 3-year terms, except that the initial term for the member representing the petroleum dealers shall be one year, and the initial terms for the member representing the petroleum distributors and for one of the public members shall be 2 years. Upon term expiration, each appointed member shall hold office until a successor shall be appointed and qualified. Board members may be reappointed to subsequent terms, including those members whose terms expire as of January 1, 1994.

Source. 1988, 271:1. 1993, 294:7, 8, eff. July 1, 1993; 337:3, eff. Aug. 28, 1993.

Section 146-D:5

[RSA 146-D:5 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:5 Board Powers and Duties. –

I. The board shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Processing applications for compensation from the oil discharge and disposal cleanup fund.

(b) Procedures for verifying claims presented under this chapter.

(c) Specifying costs in relation to reimbursements claimed.

(d) Developing eligibility criteria in addition to the requirements of RSA 146-D:6, I and I-a.

(e) [Repealed.]

(f) Waiver of penalties due or past due under RSA 146-D:3, III.

II. The board shall submit an annual report of the status of the oil discharge and disposal cleanup fund no later than October 1, to the speaker of the house and the president of the senate. The first such report shall be submitted no later than October 1, 1993.

III. The board, with approval of the governor and council, may employ legal counsel as necessary to perform its duties in administering the oil discharge and disposal cleanup fund.

IV. The board may request that the attorney general issue subpoenas, examine witnesses, or request any other information on behalf of the board for the purposes of determining eligibility for reimbursement under this chapter, or under RSA 146-E and 146-F.

Source. 1988, 271:1. 1990, 141:1, 3, I; 252:21. 1991, 322:3. 1993, 40:6; 294:9. 1997, 39:1, eff. Jan. 1, 1998.

Section 146-D:5-a

[RSA 146-D:5-a repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:5-a Competitive Bidding Required; Rulemaking. –

I. The commissioner of environmental services shall enter into the competitive bidding process for any project undertaken by the department of environmental services under the authority of this chapter with an estimated cost of \$10,000 or more. The commissioner may enter the competitive bidding process for any such project with an estimated cost of less than \$10,000.

II. The commissioner of environmental services shall comply with RSA 21-I:22--RSA 21-I:22-d for the competitive bidding process to be used under this section.

Source. 1991, 322:7, eff. Aug. 27, 1991. 2007, 138:2, eff. Aug. 17, 2007.

Section 146-D:6

[RSA 146-D:6 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:6 Eligible Expenses. –

I. The oil discharge and disposal cleanup fund shall be available to owners of underground storage facilities which are in compliance with this chapter, RSA 146-C, and department rules, or owners of land where compliant facilities were located.

I-a. The oil discharge and disposal cleanup fund shall be available to owners of bulk storage facilities which are in compliance with this chapter and all applicable federal and state requirements, or owners of land where compliant facilities were located. Reimbursements shall only be made for costs of cleanup and third party damages associated with gasoline and diesel product spillage. For owners of bulk storage facilities to be eligible for reimbursement, the following registration requirements shall be met:

(a) The owner shall have registered the facility with the department on forms provided by the department which shall include but not be limited to the following information:

(1) Facility name, location, and address.

(2) Owner's name, mailing address and telephone number.

(3) Contact person for the facility.

(4) The storage capacity, product stored, material of construction, and age of the storage tanks and appurtenances.

(b) Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after the completion of construction. The board may waive the registration deadlines established by this subparagraph, on a case by case basis, for good cause.

II. (a) To the extent such amount is expended from the fund, or for such lesser amount as is expended,

owners shall be liable to the fund for the following:

(1) The owner of from one to 3 facilities shall be responsible for the initial \$5,000 of cleanup costs at each facility owned.

(2) The owner of from 4 to 9 facilities shall be responsible for the initial \$10,000 of cleanup costs at each facility owned.

(3) The owner of from 10 to 19 facilities shall be responsible for the initial \$20,000 of cleanup costs at each facility owned.

(4) The owner of 20 or more facilities shall be responsible for the initial \$30,000 of cleanup costs at each facility owned.

(5) The owner of land where compliant facilities were located shall be responsible for the lesser of the initial \$5,000 of cleanup costs at each location owned or the balance of the prior facility owner's initial cleanup cost liability at each such location.

(b) This amount shall not be withheld from reimbursement when the reimbursement is disbursed from the fund over to a party other than an owner liable under this paragraph, but the owner shall be liable to the fund for the amounts set forth in subparagraph II(a). The board may pursue the owner in an independent legal action, and the owner shall be liable for interest from the date that the disbursement is made and for legal fees and costs incurred by the fund in obtaining and enforcing judgment under this paragraph. All amounts recovered shall be paid into the fund.

III. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of onsite and off-site cleanup of oil discharges in amounts not to exceed a total of \$1,500,000. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.

IV. Owners of facilities or land eligible under this chapter may apply for reimbursement for costs of cleanup and third party damages incurred on or after July 1, 1988.

V. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.

VI. Notwithstanding any provision of this chapter, the department shall not be liable to any eligible party if sufficient funds are not available in the fund to meet the limits established in this chapter. Applications received by the department for which sufficient funds are not available at the time of application shall be held by the department pending availability of funds and shall be reviewed in the order in which they were received.

VII. The board shall pay all eligible costs approved by the board within 30 days of such approval. If any eligible costs are not paid within 30 days, interest on any unpaid amount shall incur to the designated recipient at the rate of 1- 1/2 percent per month. Any interest payments shall be a charge against the fund. Any application for compensation which is deemed to be incomplete by the board or the department of environmental services shall be returned to the applicant forthwith with a written explanation as to what additional information is necessary in order to process the application.

VIII. For underground storage facilities which contain fuel oil as defined in RSA 146-E:2, II or motor oil as defined in RSA 146-F:2, I or used motor oil, only those facilities at which a release was discovered prior to January 1, 1995, are eligible for reimbursement from the oil discharge and disposal cleanup fund.

IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1988, 271:1. 1990, 208:11, 13. 1991, 322:4. 1993, 40:7-9; 294:10-13; 337:6. 1995, 247:4-6; 282:2. 1996, 228:106, 108, 109. 1997, 39:2, 3. 2001, 33:1, eff. Aug. 7, 2001. 2010, 55:3-5, eff. May 18, 2010.

Section 146-D:7

[RSA 146-D:7 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:7 Penalties. –

I. Any person who violates the provisions of this chapter shall be subject to the lien provisions provided in RSA 260:63 through RSA 260:65-a.

I-a. Where any liability to a fund under RSA 146-D:6, RSA 146-E:6, or RSA 146-F:5 is not paid as prescribed by the oil fund disbursement board, the amount, including interest together with the costs that may accrue in addition thereto, shall become a lien in favor of the board upon all property and rights to property, whether real or personal, in the same manner as that prescribed in RSA 260:63 through RSA 260:65-a, which provisions shall govern the board's imposition and enforcement of the lien created by this section.

II. Any person who misrepresents any material fact or submits any false material statement, information, or certification to the board shall forfeit any right to reimbursement under this chapter.

III. Any person who recklessly or knowingly misrepresents any material fact or who recklessly or knowingly submits any false material statement, information, or certification to the board shall be guilty of a class B felony if a natural person and guilty of a felony if any other person. Notwithstanding RSA 651:2, a person may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$25,000 if found guilty of any violation under this paragraph.

Source. 1988, 271:1. 1997, 39:4. 1998, 357:3, eff. July 1, 1998.

Section 146-D:8

[RSA 146-D:8 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:8 Administrative Costs. –

I. Notwithstanding any provision of law, if the expenditure of additional funds is necessary for the costs of administration of the collection process established in RSA 146-A:11-b, II and III, upon request of the commissioner of safety, the governor and council, upon recommendation of the oil fund disbursement board and with the prior approval of the fiscal committee of the general court, may authorize the transfer of funds from the oil discharge and disposal fund established under RSA 146-D:3, I to the department of safety for such purposes.

II. [Repealed.]

III. The commissioner of safety shall file reports with the oil fund disbursement board on a quarterly basis, relative to the administrative costs of the department's collection activities under RSA 146-D:3, III. Such report shall include detailed accounting of such costs, including procedures taken to separate such costs from any other administrative costs incurred by the department relative to any other statutory responsibilities of the department.

Source. 1988, 271:1. 1990, 141:2, eff. June 18, 1990; 141:3, II, eff. June 30, 1992.

Section 146-D:9

[RSA 146-D:9 repealed by 1988, 271:9, VIII, eff. July 1, 2015.]

146-D:9 Board Administratively Attached. –

The oil fund disbursement board shall be administratively attached to the department of environmental services pursuant to RSA 21-G:10.

Source. 1988, 271:1, eff. July 1, 1988.

TITLE X
PUBLIC HEALTH
CHAPTER 146-E
FUEL OIL DISCHARGE CLEANUP FUND

Section 146-E:1

146-E:1 Purpose. – The general court finds that discharges of fuel oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of fuel oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the prevention and cleanup of fuel oil discharges.

Source. 1993, 337:1. 1999, 164:5, eff. July 1, 1999.

Section 146-E:2

146-E:2 Definitions. – In this chapter:

I. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of fuel oil.

I-a. "Department" means the department of environmental services.

II. "Fuel oil" means fuel oil products stored for on-premise heating purposes, and not for purposes of propulsion of motor vehicles, operation of machinery, or primarily used for the generation of electric power.

III. "On-premise-use facility" means a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, which is or has been used for the storage of fuel oil for on-premise-use.

Source. 1993, 337:1. 1995, 282:3. 1996, 228:30, eff. July 1, 1996.

Section 146-E:3

146-E:3 Fund Established; Collection. –

I. There is established a fuel oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the prevention and cleanup of fuel oil discharges in the waters and soils of the state, including administrative, technical, and legal support required by the oil fund disbursement board in administering the fund, and in paying third party damages.

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. A fee of \$0.0125 per gallon of fuel oil shall be assessed at the time of importation into this state.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. A fee of \$.01 per gallon of fuel oil shall be assessed at the time of importation into this state.

III. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of fuel oil fees which shall be collected and enforced in the manner described in RSA 146-D:3, III and V. All fee revenues shall be deposited in the fuel oil discharge cleanup fund. If the fund's balance becomes greater than \$2,500,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$1,500,000. Until the fund balance reaches \$2,000,000, at least 50 percent of the fees collected shall be allocated for reimbursements to on-premise-use facility owners and owners of land upon which on-premise-

use facilities are located and for the administrative, technical, and legal support associated with such reimbursements.

IV. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.

Source. 1993, 337:1. 1997, 58:1, eff. July 1, 1997 at 12:01 a.m. 1999; 164:3, 6, eff. July 1, 1999. 2009, 231:2, eff. July 16, 2009. 2010, 130:1, eff. July 1, 2010; 130:2, eff. July 1, 2012.

Section 146-E:4

146-E:4 Requirements for On-Premise-Use Facilities. –

I. On-premise-use facilities installed on or after the effective date of this act shall comply with the provisions of the National Fire Protection Association standard NFPA 31, and all applicable local codes or ordinances.

II. All on-premise-use facilities shall be equipped with a vent alarm system on or before July 1, 1995.

III. On-premise-use facilities subject to the provisions of RSA 146-C shall comply with the provisions of New Hampshire code of administrative rules Env-Ws 411.

Source. 1993, 337:1. 1995, 282:4, eff. July 1, 1995.

Section 146-E:5

146-E:5 Requirements for Bulk Storage Facilities. – The fund shall be available to owners of bulk storage facilities which are in compliance with all applicable federal and state requirements for such facilities. To be eligible for reimbursement, the following registration requirements shall be met:

I. The owner shall have registered the facility with the department on forms provided by the department. Information on the form shall include, but not be limited to, the following:

(a) Facility name, location and address.

(b) Owner's name, mailing address and telephone number.

(c) Contact person for the facility.

(d) The storage capacity, product stored, material of construction and age of the storage tanks and appurtenances.

II. Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after the completion of construction.

Source. 1993, 337:1. 1995, 247:7. 1996, 228:109, eff. July 1, 1996.

Section 146-E:6

146-E:6 Eligible Expenses. –

I. The fuel oil discharge cleanup fund shall be available to owners of on-premise-use facilities and bulk storage facilities which are in compliance with this chapter, or owners of land where compliant bulk storage facilities were located, or owners of land where compliant on-premise-use facilities are or were located. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of bulk storage facilities or land where compliant bulk storage facilities were located shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-use facilities or land where compliant on-premise-use facilities are or were located shall be liable to the fund for the lesser of the initial \$500 of cleanup costs or the balance of the prior owner's initial cost liability, to the extent such amount is expended from the fund, or for such lesser amount as is expended.

II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered

damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter who have demonstrated financial need, may apply for reimbursement of costs to meet the requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,500 and may apply for reimbursement of underground storage tank abandonment or removal costs in amounts not to exceed a total of \$2,500, incurred on or after the effective date of this paragraph. For such owners who have demonstrated financial need, the amount of initial cleanup cost liability under paragraph I of this section shall be reduced to \$100.

III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.

IV. Requests for reimbursement received by the oil fund disbursement board for which sufficient funds are not available shall be held by the board pending availability of funds and shall be reviewed in the order in which they were received.

V. Facilities which have not met the requirements of RSA 146-E:4 and RSA 146-E:5 shall not be eligible for reimbursement until compliance with such sections has been achieved. The board may waive the registration deadlines established by RSA 146-E:5, II on a case by case basis, for good cause.

VI. Costs of new bulk storage facilities or new on-premise-use facilities subject to regulation under RSA 146-C, or repairs to such existing facilities, shall not be considered eligible costs under this chapter.

VII. [Repealed.]

VIII. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1993, 337:1. 1995, 247:8. 1997, 39:5; 58:3. 1999, 164:7, 8, eff. July 1, 1999. 2005, 115:1, eff. Aug. 14, 2005. 2010, 55:6, 7, 9, I, eff. May 18, 2010.

Section 146-E:6-a

146-E:6-a Penalties. – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:6, eff. Jan. 1, 1998.

Section 146-E:7

146-E:7 Annual Report. – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the fuel oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1994.

Source. 1993, 337:1, eff. Aug. 28, 1993.

TITLE X
PUBLIC HEALTH
CHAPTER 146-F
MOTOR OIL DISCHARGE CLEANUP FUND

Section 146-F:1

146-F:1 Purpose. – The general court finds that discharges of motor oil and used motor oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of motor oil and used motor oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the cleanup of motor oil and used motor oil discharges.

Source. 1995, 282:1, eff. July 1, 1995.

Section 146-F:2

146-F:2 Definitions. – In this chapter:

I. "Motor oil" means any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box, or differential for a motor vehicle, boat, or off-highway recreational vehicle, or commercial or household power equipment.

II. "Motor oil storage facility" means a location consisting of a system of storage tanks, pipes, pumps, and appurtenant structures which is, or has been, used for the storage of motor oil or used motor oil.

Source. 1995, 282:1, eff. July 1, 1995.

Section 146-F:3

146-F:3 Fund Established; Collection. –

I. There is established a motor oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the cleanup of motor oil and used motor oil discharges in the waters and soils of the state, including administrative, technical, and legal support required by the oil fund disbursement board in administering the fund, and in paying third party damages.

II. A fee of \$.04 per gallon of motor oil shall be assessed at the time of importation into this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced by the department of safety in the manner described in RSA 146-A:11-b. The oil fund disbursement board may waive all or any portion of penalties or interest for good cause. All fee revenues shall be deposited in the motor oil discharge cleanup fund. If the fund's balance becomes greater than \$1,000,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$600,000.

III. Moneys collected for the fund shall be deposited with the state treasurer to the credit of the fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.

IV. Within 30 days after the effective date of this paragraph, the department of environmental services shall transfer \$400,000 from the oil pollution control fund to the motor oil discharge cleanup fund. This shall be a one-time only transfer of funds for the start-up of the motor oil discharge cleanup fund. Half of the \$.04 per gallon collected for motor oil storage facilities shall be deposited in the oil pollution control fund until the \$400,000 has been returned in full.

Source. 1995, 282:1, eff. July 1, 1995.

Section 146-F:4

146-F:4 Requirements for Motor Oil Storage Facilities. – The fund shall be available to owners of motor oil storage facilities which are in compliance with all applicable federal and state requirements and local codes and ordinances for such facilities.

Source. 1995, 282:1, eff. July 1, 1995.

Section 146-F:5

146-F:5 Eligible Expenses. –

I. The motor oil discharge cleanup fund shall be available to owners of motor oil storage facilities which are in compliance with this chapter, or owners of land where compliant facilities were located. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of motor oil storage facilities or land where compliant facilities were located shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II.

II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of motor oil and used motor oil discharges in amounts not to exceed \$500,000, incurred on or after the effective date of this chapter.

III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.

IV. Requests for reimbursement received by the oil fund disbursement board shall be reviewed in the order in which they are received. If sufficient funds are not available the request shall be held by the board pending availability of funds.

V. Facilities which have not met the requirements of RSA 146-F:4 shall not be eligible for reimbursement until compliance with such section has been achieved.

VI. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.

VII. The fund shall only be available for reimbursement of costs incurred for releases of motor oil or used motor oil discovered after January 1, 1995.

VIII. [Repealed.]

IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1995, 282:1. 1997, 39:7, eff. Jan. 1, 1998. 2010, 55:8, 9, II, eff. May 18, 2010.

Section 146-F:5-a

146-F:5-a Penalties. – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:8, eff. Jan. 1, 1998.

Section 146-F:6

146-F:6 Annual Report. – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the motor oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1996.

Source. 1995, 282:1, eff. July 1, 1995.

TITLE X
PUBLIC HEALTH
CHAPTER 146-G
GASOLINE REMEDIATION AND ELIMINATION OF ETHERS
Section 146-G:1

[RSA 146-G:1 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:1 Purpose. –

I. The general court finds that ethers contained in gasoline, due to their extreme fluidity, recalcitrance to natural degradation, low taste and odor thresholds, and probable carcinogenic qualities, comprise a sufficiently distinct class of property which represent a particular, present, and rapidly escalating threat to the quality of all the water of the state and, thereby, to our citizens. The general court also finds that potentially serious health, safety, and environmental problems are evidenced due to the speed with which ethers are able to flow into, contaminate, and accumulate in invaluable groundwater supplies. In addition, the cost of cleanup of gasoline ethers in groundwater and surface water is a significant economic burden for which economic assistance may otherwise not be available.

II. The purpose of this chapter is to provide procedures that will expedite the cleanup of gasoline ether spillage, mitigate the adverse affects of gasoline ether discharges, encourage preventive measures, impose a fee upon importers of neat gasoline ethers into the state and establish a fund for the remediation of groundwater and surface water contaminated by gasoline ethers. The fund may also be used to provide financial reimbursement to owners of public and private water supplies for the treatment and removal of gasoline ethers and associated contaminants when present with those ethers from those supplies. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a and is separate from the oil discharge and disposal cleanup fund established pursuant to RSA 146-D:3.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:2

[RSA 146-G:2 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:2 Definitions. –

In this chapter:

I. "Board" means the oil fund disbursement board established under RSA 146-D:4.

II. "Discharge" or "spillage" means the release or addition of any gasoline containing ethers to land, groundwater, or surface water.

III. "Distributor" means any person, wherever resident or located, who imports or causes to be imported neat gasoline ethers, as defined in this section, into the state; provided, however, that bringing gasoline into the state in the fuel supply tank attached to the engine of a vehicle or aircraft shall not be considered importing. "Distributor" does not mean a spill cleanup organization or other person acting to contain, remove, clean up, restore, or take other remedial or corrective action or measures with regard to the spillage or discharge of gasoline or neat gasoline ethers, or threatened spillage or discharge of gasoline or neat gasoline ethers.

IV. "Ethers" means organic compounds formed by the treatment of an alcohol with a dehydrating agent resulting in 2 organic radicals joined by an oxygen atom.

V. "Facility" means a location, including structures or land, at which gasoline is subjected to treatment, storage, processing, refining, pumping, transfer, or collection.

VI. "Gasoline" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption of natural gasoline, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale, or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (ASTM Designation D-86) show not less than 10 percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than 95 percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade); provided that the term gasoline shall not include commercial solvents or naphthas which distill by ASTM method D-86 not more than 9 percent at 176 degrees Fahrenheit and which have a distillation range of 150 degrees Fahrenheit or less, or liquefied gases which would not exist as liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

VII. "Gasoline ethers" means any ether added to gasoline and its by-products, including, but not limited to, methyl tertiary butyl ether (MtBE), tertiary amyl methyl ether (TAME), di-isopropyl ether (DIPE), and ethyl tertiary butyl ether (EtBE). "Gasoline ethers" shall not include prepackaged goods intended for retail consumer use including, but not limited to, starting fluid and octane booster.

VIII. "Gasoline remediation and elimination of ethers fund" means the fund established pursuant to RSA 146-G:4.

IX. "Gasoline terminal facility" means any facility of any kind and its related appurtenances located within the boundaries of this state that is used or capable of being used for pumping, handling, transferring, processing, refining, or storing gasoline.

X. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations.

XI. "Neat gasoline ethers" mean ethers intended for blending with gasoline prior to sale to the public which are imported into the state with little or no admixtures or dilution. Neat gasoline ethers shall contain a minimum of 92.1 percent by volume ether, including its impurities.

XII. "Removal costs" means the costs of containment, removal, cleanup, restoration, and remedial or corrective action or measures that are incurred after a spillage or discharge of gasoline has occurred or, in any case in which there is a threat of a spillage or discharge of gasoline, the cost to prevent, minimize, or mitigate gasoline pollution from such an incident.

XIII. "Surface water" means streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, watercourses, and other bodies of water, natural or artificial.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:3

[RSA 146-G:3 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:3 Recovery by State. –

Recovery of costs of containment cleanup, removal, or corrective measures expended under this chapter shall be in accordance with RSA 146-A:9.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:4

[RSA 146-G:4 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:4 Fund Established. –

I. There is hereby established the gasoline remediation and elimination of ethers fund which shall be administered by the board. This nonlapsing, revolving fund shall be used to pay the costs to implement the

provisions of this chapter which include, but are not limited to, the salaries and expenses of personnel, as approved by the fiscal committee, to the extent that such salaries and expenses are incurred in implementing the provisions of this chapter, testing and monitoring activities, and other costs of treatment or removal or corrective measures deemed necessary by the board as a result of an actual or potential discharge of gasoline ethers into or onto the surface water or groundwater of the state. Moneys from the fund shall be used to mitigate the adverse affects of gasoline ether discharges including, but not limited to, provision of emergency water supplies to persons affected by such pollution, and, where necessary as determined by the board, the establishment of an acceptable source of potable water to injured parties. Not more than \$150,000 shall be allocated annually for research programs dedicated to the development and improvement of preventive and cleanup measures concerning such gasoline ether discharges. Income derived from the fund shall only be used for those administrative costs needed to implement this chapter.

II. Moneys in the fund not currently needed to meet the obligations of the board under this chapter shall be deposited with the state treasurer to the credit of the fund and shall be invested as provided by law. Interest received on such investment shall also be credited to the fund. If the fund's balance becomes greater than \$2,500,000, the transfer of moneys into the fund as established in RSA 146-D:3, VI(b) shall be discontinued and only re-established when the fund's balance is below \$1,000,000. Those fees normally transferred to the gasoline remediation and elimination of ethers fund shall accumulate instead in the oil discharge and disposal cleanup fund.

III. All moneys paid to the state to reimburse costs paid out of the gasoline remediation and elimination of ethers fund by any person strictly liable to the state under RSA 146-A:3-a shall be placed in the gasoline remediation and elimination of ethers fund.

Source. 2001, 293:10, eff. July 1, 2001. 2008, 249:2, eff. July 1, 2008.

Section 146-G:5

[RSA 146-G:5 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:5 Competitive Bidding Required. –

I. Except as provided in paragraph II, the commissioner of environmental services shall enter into the competitive bidding process for any project undertaken by the department of environmental services under the authority of this chapter with an estimated cost of \$10,000 or more. The commissioner may enter the competitive bidding process for any such project with an estimated cost of less than \$10,000.

II. When procuring professional services from engineers, architects, and surveyors associated with the investigation or cleanup of contamination from gasoline ethers, the commissioner of environmental services shall procure those services in accordance with the procedures contained in RSA 21-I:22.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:6

[RSA 146-G:6 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:6 Corrective Measures Authorized. –

Corrective measures authorized by this chapter shall include but not be limited to:

I. Provision of interim water supplies to residents whose water supplies have been contaminated due to the presence of gasoline ethers above standards set by the board or a condition related to gasoline ethers determined to be hazardous by the office of community and public health and the state forensic toxicologist. This may include the supply of bottled water and the installation and operation of water supply treatment systems, approved or provided by the board.

II. The establishment of an acceptable source of potable water to injured parties, where necessary, as determined by the board. This may include but not be limited to a proportioned share of the costs of

construction of the extension of public water mains and appurtenances, the installation of replacement water supply wells and appurtenances, or the installation of water treatment processes for new or existing water supplies. The extent of reimbursement shall be determined based upon criteria established by rules adopted by the board. Such rules shall consider the overall need for the capital investment to address contamination or threatened contamination of water supplies by gasoline ethers. Operation and maintenance costs or annual user fees for new or upgraded public water supply main extensions or treatment processes shall not be eligible expenses under this paragraph.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:7

[RSA 146-G:7 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:7 License Required; Fee. –

I. Any distributor who imports or causes to be imported neat gasoline ethers into the state shall be licensed by the department of safety under this chapter. The annual fee for the license shall be \$0.10 per gallon of neat gasoline ethers imported into this state for the purpose of being mixed or blended with gasoline prior to sale to the public. The fee shall be paid monthly by such person to the department of safety and deposited by the department of safety into the gasoline remediation and elimination of ethers fund. Imposition of the fee shall be based on the records of the person and certified as accurate to the department of safety.

II. Every distributor who imports or causes to be imported neat gasoline ethers into the state shall file a monthly report for the preceding month and shall include all fees due for that reporting period with the department of safety on or before the twentieth day of the following calendar month. Failure to file by the required date or to enclose fees due shall result in the assessment of a 10 percent penalty to be added to the amount of fees due for that month. If no fees are due, a penalty of \$10 per day shall be assessed. Such penalty shall immediately accrue and thereafter the overdue fees and the penalty shall bear interest at the rate established by the Internal Revenue Service effective on the first business day of the calendar year. To this rate shall be added 2 percent. In determining the monthly rate, that figure shall be rounded off to the nearest quarter percent. The board may waive all or any portion of penalties or interest for good cause. Such cause and incident shall be recorded in the records of the gasoline remediation and elimination of ethers fund.

III. No distributor licensed under this section shall import neat gasoline ethers into this state without paying the fee required by this section.

IV. Unless otherwise provided, any distributor who violates any provision of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:8

[RSA 146-G:8 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:8 Administrative Costs. –

Notwithstanding any other provision of law, if the expenditure of additional funds is necessary for the costs of administration of the collection process established in RSA 146-D:3 and RSA 146-G:7 for funding the gasoline remediation and elimination of ethers fund, the commissioner of safety, with the prior approval of the governor and council, may draw upon the gasoline remediation and elimination of ethers fund for such purposes.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:9

[RSA 146-G:9 repealed by 2001, 293:20, II, eff. Oct. 1, 2015.]

146-G:9 Reporting by the Oil Disbursement Board. –

The board shall file annual reports of the status of the gasoline remediation and elimination of ethers fund no later than October 1, to the speaker of the house, the president of the senate and the state library. The first such report shall be submitted no later than October 1, 2002. The board shall also file interim reports on the activities of the gasoline remediation and elimination of ethers fund, including expenditures and reimbursements, and enforcement and remediation activities under RSA 146-G, by October 1, 2005 and by October 1, 2010 to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the house and senate committees having jurisdiction over water quality policy, the governor, and the state library. The board shall file a final report on the activities of the fund and enforcement and remediation activities by October 1, 2015 to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the house and senate committees having jurisdiction over water quality policy, the governor, and the state library.

Source. 2001, 293:10, eff. July 1, 2001. 2008, 249:3, eff. July 1, 2008.

Section 146-G:10

[RSA 146-G:10 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:10 Review and Report. –

Upon issuance of the interim report by the board required by RSA 146-G:9, the members of house and senate committees having jurisdiction over water quality policy shall constitute a joint committee for purposes of reviewing the effectiveness of the program implemented by this chapter. The joint committee shall review the effectiveness of the program implemented by this act, and shall report the joint committee's findings and recommendations to the full senate and house.

Source. 2001, 293:10, eff. July 1, 2001.

Section 146-G:11

[RSA 146-G:11 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:11 Rulemaking. –

The board shall adopt rules, pursuant to RSA 541-A, relative to the allocation of funds from the gasoline remediation and elimination of ethers fund authorized under this chapter. Construction costs due to contamination from gasoline ethers incurred by operators of public water supplies between May 4, 2000 and the effective date of board rules shall be considered for compensation on a case-by-case basis.

Source. 2001, 293:10, eff. July 1, 2001.

Elimination of Gasoline Ethers and TBA From Gasoline Supplies

Section 146-G:12

[RSA 146-G:12 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:12 Elimination of Gasoline Ethers and TBA From Gasoline Supplies. –

No person, as defined in RSA 146-A:2, VI, shall sell, deliver for sale, import, or cause to be imported into the state for sale any neat gasoline ethers or gasoline containing MTBE, other gasoline ethers, or tertiary butyl alcohol (TBA) in quantities greater than 1/2 of one percent by volume. Nothing in this subdivision shall be

interpreted to prohibit the transshipment of MTBE, other gasoline ethers, or TBA content fuel through the state for disposition outside of the state including storage coincident to such shipment.

Source. 2004, 175:4, eff. Jan. 1, 2007.

Section 146-G:13

[RSA 146-G:13 repealed by 2001, 293:20, I, eff. July 1, 2015.]

146-G:13 Penalties. –

Any person who violates RSA 146-G:12 shall be subject to administrative fines not to exceed \$2,000 for each violation issued by the department of environmental services and civil penalties not to exceed \$60,000 for each violation. Each day of a continuing violation shall constitute a separate violation. In addition to civil penalties, the attorney general may institute such legal or equitable action as he or she deems necessary, including an action for injunctive relief.

Source. 2004, 175:4, eff. Jan. 1, 2007.

N.H. Petroleum Reimbursement Fund Program – Quick Reference Guide



Oil Fund Disbursement Board

Program Summary

State statutes RSA 146-D, RSA 146-E & RSA 146-F provide excess insurance coverage for corrective action & third-party damages due to contamination from petroleum storage facilities. Coverage is available for ASTs and USTs storing gasoline, diesel, oil, fuel oil, motor oil, used motor oil & on-premise-use fuel oil (including residential properties).

State statute RSA 146-G provides funding for gasoline ether corrective action and contamination monitoring – typically “MtBE”.

The program is administered under N.H. Admin. Rules Odb 400. Reimbursement is available for incurred (i.e., invoiced) costs; proof of payment is not required.

Key Provisions of Statutes, Rules & Policies

NHDES determines who is responsible for petroleum and gasoline ether contamination cleanup, and who is fund-eligible. Covered petroleum storage facilities include those that are currently in use, & those that are permanently out-of-service. Facilities must be in operational compliance.

Coverage is available for current & former petroleum storage facility owners and certain property owners, gasoline ether contamination source property owners, and public or private water supply owners.

Coverage is transferable.

Direct payment to consultants & contractors is available, as an “Applicant”.

Deductibles & reimbursable cost criteria apply.

Web-based reimbursement request submittal is available and preferred.

“Corrective action” means activities performed in accordance with state statute or administrative rules to contain a petroleum discharge, or to remedy contamination. “Third-party damages” are a monetary obligation of a fund-eligible party based on a court-approved settlement or judgment in a civil action. Contamination monitoring and consumer notification is required under state statute and administrative rules, when MtBE is found in a public water supply.

Work Scope & Budget Approval

All corrective action work must be pre-approved by NHDES for scope & budget. Pre-approval is not required for public water supply monitoring and consumer notification. Forms are available for a fund-eligible party to submit proposed work scope budgets and work scope change orders.

Reimbursable Costs

Costs for NHDES-required corrective action, public water supply monitoring, and consumer notification are reimbursable.

Discharge discovery costs & facility compliance costs are not reimbursable.

“Unit-Based” & “Project-Based” Costs must conform to those published by the Oil Fund Disbursement Board.

Certain reimbursable cost restrictions apply.

Responsibilities of Owners & Applicants

Achieve & maintain facility operational compliance.

Determine the limits of private insurance coverage.

Report discharges and hire a consultant or contractor.

Follow guidance in the Manual for submitting work scopes and reimbursement requests.

Maintain records and allow periodic audits.

Common Issues That Delay Eligibility or Reimbursement Approval

A facility is not in operational compliance.

The party seeking eligibility does not match the facility owner/property owner/“Responsible Party”.

The work was not required by NHDES or was not approved for scope & budget.

Private insurance coverage information was not provided or is not complete. A notarized statement is required for un-insured properties.

Prime contractor, or Applicant, invoices were not directed to the facility owner or eligible property owner.

Contractor timesheets, or a timesheet summary, were not included.

Subcontractor invoices were not included when required.

A written contract with “Waiver of Claims Provision” was not included with an Applicant request.

Corrective action reports or related documentation were not provided, are not complete, or the corrective action work was not satisfactory.

Corrective action costs are: not reconciled against the approved budget; “lump-sum” when “time and materials” was approved; costs are in-excess of published Unit-Based Costs, Project-Based Costs, and/or an approved budget; or non-reimbursable costs are included.

Waivers are needed.



N.H. Petroleum Reimbursement Fund Program – Overview of Facility Requirements

Storage Facility Type	NHDES Project Type	Applicable Fund	Compliance Requirements	Deductible Schedules		Funding Limits
				Discharge After 7/1/95	Discharge Before 7/1/95	
USTs storing gasoline, diesel, or oil. USTs storing fuel oil, motor oil or used motor oil - prior to 1/1/95	"LUST"	Oil Discharge & Disposal Cleanup Fund (RSA 146-D)	AST & UST facilities must be registered, and owners must achieve and maintain operational compliance	1 to 3 facilities owned or landowner; \$5,000 per discharge	1 facility owned; \$5,000 per discharge	\$1,500,000 Costs incurred after 7/1/88, or date of discharge
ASTs storing less than 1,100,000 gallons of gasoline, diesel, or fuel oil for on-premise-use heating	"LAST" (gasoline/diesel)			4 to 9 facilities owned; \$10,000 per discharge		
	"FUEL" (fuel oil)	Fuel Oil Discharge Cleanup Fund (RSA 146-E)		10 to 19 facilities owned; \$20,000 per discharge	2 to 19 facilities owned; \$20,000 per discharge	\$500,000 Costs incurred after 10/1/92, or date of discharge
ASTs or USTs storing motor oil or used motor oil	"MOST"	Motor Oil Discharge Cleanup Fund (RSA 146-F)	Facility registration may be required, and owners must achieve and maintain operational compliance	20 or more owned; \$30,000 per discharge	20 or more owned; \$30,000 per discharge	\$500,000 Costs incurred after 7/1/95, or date of discharge
ASTs or USTs storing fuel oil for on-premise-use heating, including residential properties	"OPUF"	Fuel Oil Discharge Cleanup Fund (RSA 146-E)	Facility registration may be required, and owners must achieve and maintain operational compliance. All facilities must be in compliance by July 1, 2015	\$500 per discharge on or after 5/18/2010 \$100 per discharge before 5/18/2010 or if receiving "SafeTank" funding		\$500,000 Costs incurred after 10/1/92, or date of discharge
Gasoline-ether source properties. Gasoline stored in regulated containers or otherwise handled or managed	"ETHER"	Gasoline Ether Fund (RSA 146-G)	Owners must achieve and maintain operational compliance	None		Costs incurred after 1/28/02, or as provided by statute



N.H. Petroleum Reimbursement Fund Program – Information Resources

Facility Compliance, Reimbursement & Remediation Program Information Contacts

UST facilities: Matthew Jones at (603) 271-2986. Matthew.Jones@des.nh.gov

AST facilities: Robert Daniel, P.E., at (603) 271-0686. Robert.Daniel@des.nh.gov

On-premise-use heating oil facilities & “SafeTank” Program: Jack Chwasciak, at (603) 271-3577. Jack.Chwasciak@des.nh.gov

Motor Vehicle Salvage Yard facilities: Tara Albert, at (603) 271-2938. Tara.Albert@des.nh.gov

Remediation implementation work scopes, including contaminated soil excavation and disposal: Margaret Bastien, P.E., at (603) 271-7372. Margaret.Bastien@des.nh.gov

Various corrective action report and investigation work scope approval: Sarah Yuhas-Kirn, P.G., at (603) 271-6645. Sarah.Yuhas-Kirn@des.nh.gov

Fund program eligibility and reimbursement request approval: Timothy R. Denison, at (603) 271-2570 Timothy.Denison@des.nh.gov

Reimbursement Program & Oil Fund Disbursement Board Information

Timothy R. Denison, Supervisor
Fund Management Section
(603) 271-2570

Timothy.Denison@des.nh.gov

Remediation Program

Gary Lynn, P.E., Supervisor
Petroleum Remediation Section
(603) 271-8873 Gary.Lynn@des.nh.gov

Oil Facility Compliance Program

Michael Juranty, P.E., Supervisor
Oil Compliance Section
(603) 271-6058 Michael.Juranty@des.nh.gov

Public & Private Water Supplies

Talcott Hubbard, P.E.
Fund Management Section
(603) 271-2014

Talcott.Hubbard@des.nh.gov

Spill Response Program

Richard Berry, Supervisor
Spill Response & Complaint Investigation
Section (603) 271-3440

Richard.Berry@des.nh.gov

Reimbursement Submittals:

Fund Management Section
Oil Remediation and Compliance Bureau
29 Hazen Dr., P.O. Box 95
Concord, NH 03302-0095

<http://des.nh.gov/organization/divisions/waste/orcb/fms/prfp/index.htm>



Participation in Web-Based Reimbursement Request Submittal

A direct payment Applicant may participate in web-based reimbursement request submittal after completing Department of Environmental Services (DES) OneStop training. Trained Applicants with appropriate experience may request qualification for expedited payment. Web-based requests from Applicants with expedited status are processed for payment without DES review, but the Applicant is subject to periodic audits. To qualify and maintain expedited payment status the following criteria and procedure applies:

Expedited Payment Qualification

1. A qualification determination shall be conducted by DES within 45 days of receiving a written request from an Applicant that has successfully completed web-based submittal training.
2. An Applicant shall be qualified to receive expedited payment for web-based reimbursement submittals if during the 12 months prior to requesting qualification:
 - a. 6 or more reimbursement requests were submitted;
 - b. 95% of the reimbursement requests were complete; and
 - c. No more than 2 corrective action reports (a.k.a. technical documents) were incomplete.
3. Expedited payment status shall be in effect indefinitely, unless a company is disqualified.

Expedited Payment Disqualification

1. A previously qualified Applicant shall be disqualified from receiving expedited payment for web-based reimbursement submittals for 12 months following completion of a DES audit, if the audit findings are as follows:
 - a. More than 5% of web-based reimbursement submittals were incomplete; or
 - b. More than 2 corrective action reports were incomplete; or
 - c. 1 or more web-based reimbursement submittals included costs that are not reimbursable under the fund program rules.
2. DES shall notify the Applicant of disqualification, in writing, within 10 days of completing an audit.
3. The Applicant shall be liable to the State fund for any overpayments.

Expedited Payment Re-Qualification

1. A disqualified Applicant seeking re-qualification shall make internal process corrections to prevent future errors and report the corrections made to DES, in writing, prior to expiration of the 12-month disqualification period.
2. DES shall review the report and notify the Applicant of their re-qualification status within 45 days of receiving the report.
3. Expedited payment status shall be in effect indefinitely, unless the Applicant is disqualified again.

Web-Based Submittal Process

There are four status levels for web-based reimbursement requests. Requests at the **Submitted**, **Accepted** and **Approved** levels are subject to the above qualifications criteria for determining expedited payment status.

- 1.) **In-progress**. Applicants complete web-based reimbursement request data entry for corrective action work, determine costs are correct, within budget, and reimbursable, attach required backup documentation and submit the request to DES. Requests may be started and remain In-progress as needed to complete data entry, but must be submitted within 1 year of completing corrective action.
- 2.) **Submitted**. Submitted requests are reviewed for completeness and correct documentation. At this level, a request can be returned to In-progress status for addressing problems identified by DES or the Applicant.
- 3.) **Accepted**. Accepted requests are in the queue for processing/payment and are pending DES action. In normal practice, they will not be returned to In-progress. Expedited requests are the highest processing priority. Non-expedited requests are reviewed by a DES project manager and are a lower processing priority, but are still a higher priority than upload and paper requests.
- 4.) **Approved**. Approved requests have been processed by DES, and a Notice of Reimbursement issued that is viewable through OneStop. Expedited payment requests are approved in full, subject to audit. Non-expedited payment requests may be approved in full or short-paid if problems are identified. Depending on the problem, a short-paid request may be re-submitted for additional payment within 180 days.

The rules do not intend that Applicants forgo expedited payment and rely on DES to identify errors, such that requests frequently go back and forth between In-progress and Submitted status for correction. After a reasonable time period if an Applicant still has errors with web-based submittals, DES will consult with the Oil Fund Disbursement Board to consider possible sanctions. Therefore, Applicants should ensure In-progress requests are complete and costs/documentation correct *before* submitting to DES.

Contact Brett Rand at (603) 271-7379 for more information
Brett.Rand@des.nh.gov