



UTAH DEPARTMENT *of*  
ENVIRONMENTAL QUALITY

**ENVIRONMENTAL RESPONSE  
& REMEDIATION**

# **Petroleum Storage Tank Trust Fund Claim Information Packet**

February 27, 2017

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## **Introduction**

The Division of Environmental Response and Remediation (DERR) established the Petroleum Storage Tank Trust Fund (PST Fund) to help underground storage tank (UST) owners/operators meet U.S. Environmental Protection Agency financial assurance requirements and to help pay the costs of abatement, investigation, and remediation of releases from leaking underground storage tanks (LUSTs).

This claim information packet summarizes the procedures and requirements for obtaining PST Fund assistance for the investigation and remediation of releases from PST Fund-covered LUSTs. This claim information packet is not all-inclusive, therefore, one should review the Underground Storage Tank Act 19-6-401 and the Underground Storage Tank Rules R311 for more detailed information.

## **PST Fund Eligibility**

Known or suspected releases (leaks) from petroleum UST systems (USTs, associated piping, and dispensers) must be reported to the DERR within 24 hours of occurrence.

To be eligible for reimbursement from the PST Fund, the UST system must have a valid UST Certificate of Compliance and must be covered by the PST Fund at the time of the release.

A “PST Trust Fund Eligibility Application” or claim must be received by the DERR during the period under which the UST system was covered by the PST Fund, or within one year after the UST system was properly closed, or within six months after the end of the period under which the UST was covered by the PST Fund. Following a review of your PST Fund Eligibility Application, the DERR will provide written notification regarding eligibility for reimbursement from the PST Fund. There are time constraints provided by law that may cause an otherwise eligible release to become ineligible. Therefore, it is important to file a PST Trust Fund Eligibility Application promptly.

## **PST Fund Deductible and Coverage**

Deductible: Releases that occurred and were reported before July 1, 1994 have a \$25,000 deductible. Releases that occurred and were reported after July 1, 1994 have a \$10,000 deductible.

Coverage: For releases reported before May 11, 2010, the PST Fund may reimburse up to \$990,000 (\$490,000 for non-marketer facilities) of the investigation and remediation costs. For releases reported after May 11, 2010, the PST Fund may reimburse up to \$1,990,000 (\$990,000 for non-marketer facilities) of the investigation and remediation costs.

All costs, including the deductible amount, must be for customary, reasonable, and legitimate work as determined by the DERR. Expenses that are eligible for reimbursement from the PST Fund include costs for vapor abatement, subsurface investigation, soil and groundwater sampling, corrective action, and provision for alternative drinking water supplies.

Expenses that are not eligible for reimbursement by the PST Fund include costs to achieve compliance with UST system leak detection requirements, upgrading of an UST system, removal or installation of an UST system, loss of business, and legal fees.

If a facility has a current PST Fund-eligible release and a subsequent PST Fund-eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate only the subsequent release. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release, i.e., the maximum coverages for each release cannot be aggregated. The DERR will determine the coverage based on the magnitude of the subsequent release. In addition, a \$10,000 deductible will apply to the subsequent release.

### **Environmental Consultants and Subcontractors**

Environmental consultants overseeing and directing work at LUST sites must be DERR-Certified UST Consultants in accordance with UST Rule R311-201-2. The Certified UST Consultant must have a current and approved PST Fund Statement of Qualification (SOQ) on file with the DERR in accordance with UST Rule R311-207-3. Consulting firms must update their PST Fund SOQs each year and the SOQs must be approved by the DERR before PST Fund money is expended.

Environmental consultants must obtain a minimum of three bids from qualified subcontractors for subcontracted work (drillers, excavation contractors, etc.) in accordance with UST Rule R311-207-4(e). The requirement to obtain three bids for subcontracted work is waived if the subcontracted work is expected to cost, and actually does cost, less than \$5,000.

### **Work Plans and Budgets**

Work Plans and Budgets (WP&B) for work required to investigate and remediate a release must be pre-approved by the DERR and the PST Fund claimant. The claimant and their environmental consultant must complete, sign, and submit a Work Plan Approval Application and Agreement (WPAA&A) form for each WP&B before the work is performed.

If the claimant does not want to sign a WPAA&A form for each individual WP&B, the claimant may complete and sign one form that will cover all subsequent work plans with the same environmental consultant. However, the claimant must submit a cover letter with the form to document that this is what they want to do. This authorization will remain in effect until the claimant notifies the DERR otherwise in writing.

An approved work plan may be changed and the budget may be exceeded only after obtaining approval from the DERR. Emergency work (work that prevents or abates substantial danger to public health or the environment) can be approved verbally (with a written follow-up submitted within 48 hours requesting an amendment and explaining the need for the change in the scope-of-work and budget).

Reimbursement amounts are determined by the actual time and material costs expended for the work, up to but not exceeding the approved budget amount for each task.

### **PST Fund Reimbursement Documentation**

In accordance with UST Rule R311-207-4, all expenses must be documented on a monthly basis and submitted on the “Standardized Invoice” or equivalent. Information from invoices must be compiled on the PST Trust Fund, Request for Payment Voucher. PST Fund reimbursement requests that do not comply with UST Rule R311-207 will be returned to the claimant for correction. The costs for correction of reimbursement requests will not be reimbursable by the PST Fund. Requests for PST Fund reimbursement must be received by the DERR within one year of the date that the work was performed or reimbursement will be denied.

The following information is required for PST Fund reimbursement:

- Employee name, labor category (e.g., P102-Project Geologist or P104-Field Geologist, etc.), date of work, task or description of work (e.g., groundwater sampling, operation and maintenance, report preparation, etc.), hourly labor rate, and the number of hours spent on each task;
- Laboratory analytical costs;
- Equipment rental and materials costs;
- Utility costs;
- Other direct costs;
- Invoices from general contractors, subcontractors, and suppliers with a work description and listing of price and quantity of labor, equipment, and materials used; and,
- Proof of Payment. If reimbursement is to be made to the PST Fund claimant, proof of payment to the consultant must be provided. If reimbursement is to be made directly to the consultant, then proof of payment to the consultant’s subcontractors and suppliers is required. Proof of payment may be in the form of canceled checks, lien waivers, or affidavits from the entity that is owed the money. PST Fund claimants are primarily liable for all costs incurred and should obtain lien releases or lien waivers from the companies, contractors, and subcontractors providing materials or performing services associated with the release.

### **Third Party Claims**

If a third party claim resulting from the release is brought against a PST Fund claimant, or if any action or situation is likely to result in a third party claim, the PST Fund claimant must immediately report it to the Department of Administrative Services, Risk Manager at (801) 538-9560 and to the DERR Project Manager.

# PST Trust Fund Eligibility Application

2/24/17

Utah Department of Environmental Quality  
Division of Environmental Response and  
Remediation  
Petroleum Storage Tank Trust Fund

Were tanks in compliance when leak was detected?

Yes     No

LUST Release Number:

Facility ID Number:

Applicant Name (please print)

Signature

Date

Mailing Address

City

State

Zip

Telephone  
(     )

Applicant is a:

Tank System Owner     Facility Owner     Tank System Operator     Land Owner (Must demonstrate authority to file claim)

If the tank system owner or operator, the facility owner, or owner of the land on which the tank system is located is different than the applicant shown above, complete the appropriate spaces in this portion of the form.

Tank System Owner     Facility Owner     Tank System Operator  
 Land Owner

Mailing Address

Telephone

Dates of Ownership

From

To

Name of facility where the release occurred:

Facility Address:

Contact person at the facility:

Telephone  
(     )

Date Release occurred or was discovered:

Date release was reported to the DERR:

Number of tank systems that contributed to the release at the site (attach additional sheets if needed).

Tank Number	Tank Volume	Product	Installation/Closure Date

Is this release covered under independent insurance?  
 Yes (if yes, please submit a copy of your insurance policy)  No

Number of tank systems that were or will be removed during the course of this site cleanup?

How was the release confirmed? (Attach a brief summary that includes laboratory analysis, field instrument readings, visual observations, tank tightness test results, etc.)

Is there evidence of a previous release? If so, describe how the release was determined.

Was the release caused by a third party? If so, explain the circumstances and provide the name, address, and telephone number of the third party and the third party's insurance company.

Have you received any reimbursement or offers of reimbursement from a third party or a third party's insurance company? If so, how much and when was it received?

Have you signed a release? Utah Code Ann. 19-6-426(7) prohibits responsible parties from doing anything that may prejudice the right of the State to recover from third parties.

**Petroleum Storage Tank Trust Fund**  
**Work Plan Approval Application and Agreement**  
**Work Plan No. \_\_\_\_\_, Amendment No. \_\_\_\_\_**

Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_

Facility ID No.: \_\_\_\_\_

Release ID: \_\_\_\_\_ ("Release")

Owner/Operator, responsible party, or other person seeking PST Trust Fund Reimbursement:  
\_\_\_\_\_ ("Claimant")

Utah-Certified UST Consultant: \_\_\_\_\_ ("Contractor")

In submitting Work Plans \_\_\_\_\_ and amendments thereto for the above referenced Release \_\_\_\_\_ for approval, the Claimant and the Contractor collectively, the "Parties," represent and agree to the following:

Definitions:

"Contractor" means the person identified as such above.

"Claimant" means the person identified as such above.

"Parties" means Claimant and Contractor.

"Division Director" means the Division Director of the Division of Environmental Response and Remediation.

"PST Fund" means the Petroleum Storage Tank Trust Fund.

"Release" means the release identified above.

"State" means the State of Utah including its agencies, officers, employees, volunteers and specifically, the Division of Environmental Response and Remediation (DERR), the Division Director of the Division of Environmental Response and Remediation, and the Petroleum Storage Tank Trust Fund.

"Work Plan" means the work plan identified above.

1. The key personnel, for which qualifications are submitted under R311-207-3(c), are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The Claimant acknowledges that the Claimant is required to obtain a payment bond from the Contractor under Section 14-2-1 of the Utah Code. If the Claimant fails to do so, the Claimant is

liable to each person who performed labor or services or supplied equipment or materials ("Subcontractors") in the event the Contractor does not pay the subcontractors, even if the Claimant has paid the Contractor (Utah Code Section 14-2-2). The Claimant acknowledges and agrees that the PST Fund will not reimburse the Claimant for such Subcontractors' claims for payment against the Claimant if the PST Fund has already made payment to the Claimant or Contractor. The Claimant understands that the premium paid for a payment bond is reimbursable. Therefore, the Claimant:

- a. Has required the Contractor to obtain 100 percent payment bond through a United States Treasury-listed bonding company, and attached a copy, or;
- b. Has obtained other equivalent assurance and waives all claims and remedies against the State if the equivalent assurance does not adequately protect the Claimant. The equivalent assurance is described as follows:

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- 3. The Parties agree that the Contractor shall have no cause of action against the State for payment. The Parties acknowledge and agree that the State is not a party to any contract with the Claimant or the Contractor for reimbursement from the PST Fund in the execution of this Work Plan, except to the extent provided by a contract signed by the Division Director. Instead, the Claimant's reimbursement is governed by the Utah Underground Storage Tank Act and the Utah Underground Storage Tank Rules. The Contractor is entitled to reimbursement solely under his/her contract with the Claimant.
- 4. The Parties agree that they will use a subcontracting method consistent with the requirements of R311-207.
- 5. The Parties agree that, as a condition of performing the work under the work plan, the Contractor shall carry the insurance specified in R311-207-3(c)(4). The Contractor represents that the Certificate of Insurance documenting the required insurance is attached or that a current certificate is on file with the Division Director and has been provided to the Claimant. The Parties assume the risk and responsibility of ensuring that the appropriate insurance coverage is in place.
- 6. The Parties agree that payments from the PST Trust Fund shall be limited to amounts that are customary, legitimate, reasonable and consistent with R311-207. Unless the Parties and the Division Director have entered into a written Pay-for-Performance agreement, the Parties acknowledge that payments will be for actual time and materials expended up to, but not exceeding, the amount of the Division Director approved work plan and Division Director approved change orders, if any.
- 7. The Parties shall maintain financial and operation records in sufficient detail to document all transactions relating to PST Fund reimbursement for the execution of this work plan. The Parties shall make available for audit and inspection all such records relating to the completion of the

work plan and related services, requirements, and expenditures until all audits initiated by State auditors are completed, or for a period of five years from the date of PST Fund reimbursement related to the execution of this work plan. Records which relate to disputes, litigation, or the settlement of claims arising out of the performance of this work plan, or to cost and expenses of this work plan as to which exception has been taken by the Division Director, shall be retained by the Parties until disposition has been made of such disputes, litigation, claims, or exceptions.

8. The Parties certify that there is a contract between the Claimant and the Contractor for the performance of work under the work plan for which approval is sought ("Contract") and incorporate the provisions herein into that Contract. To the extent that the Contract or amendments thereto conflict with any provisions herein, the provisions herein govern. The Parties shall provide the Contract to the Division Director upon request.
9. The Division Director is a third party beneficiary of this Petroleum Storage Tank Trust Fund Work Plan Approval Application and Agreement and may enforce its provisions.
10. This Petroleum Storage Tank Trust Fund Work Plan Approval Application and Agreement does not limit the Division Director's rights and remedies under applicable law.

Contractor \_\_\_\_\_  
Signature, Printed Name, and Date

Claimant \_\_\_\_\_  
Signature, Printed Name, and Date







State of Utah

Department of  
Environmental Quality

Dianne R. Nielson, Ph.D.  
*Executive Director*

DIVISION OF ENVIRONMENTAL  
RESPONSE AND REMEDIATION  
Brad T Johnson  
*Director*

OLENE S. WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

ERRL-FORM-LTR

May 27, 2004

To Whom It May Concern:

Utah Petroleum Storage Tank Rule R311-207-4(d) of the Utah Admin. Code requires that: "for time and material based reimbursement, before receiving payment from the Petroleum Storage Tank Trust Fund, the responsible party must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Executive Secretary (UST), unless the Executive Secretary (UST) has agreed to other arrangements."

The Executive Secretary (UST) has determined that in lieu of providing a canceled check, the responsible party may instead provide a copy of the invoice and an affidavit from the contractor (consultant) indicating that the responsible party has executed a promissory note agreeing to pay the full amount of the invoice. The affidavit must be on the attached form and cannot be substantively altered.

If the consultant has used subcontractor services, the attached lien waiver must also be submitted with the affidavit.

Sincerely,

Brad T Johnson, Executive Secretary (UST)  
Utah Solid and Hazardous Waste Control Board

BTJ/SKA/srb

Enclosures

# Petroleum Storage Tank Trust Fund AFFIDAVIT: PROOF OF PAYMENT

This form should be used when a claimant submits an affidavit from the consultant as proof of payment for costs claimed for reimbursement. See R311-207-4(d) Utah Admin. Code

Claimant's Name \_\_\_\_\_

Site Name and Address \_\_\_\_\_  
\_\_\_\_\_

Facility Identification No. \_\_\_\_\_ Release Site \_\_\_\_\_

STATE OF UTAH )

: ss

COUNTY OF \_\_\_\_\_ )

I, being first duly sworn upon oath and being of lawful age, state that the following invoices relative to the referenced application for reimbursement from the Utah Petroleum Storage Tank Trust Fund have been paid in full through the execution of a promissory note by the claimant.

INVOICE #	INVOICE DATE	AMT. PAID	INVOICE #	INVOICE DATE	AMT. PAID

I further state that there is no relationship or affiliation between myself and the claimant.

I hereby certify that the foregoing information is correct to the best of knowledge, information, and belief. I understand there are severe civil and/or criminal penalties for any false statement or misrepresentation of a material fact, knowing it to be false, or failing to disclose a material fact with the intent to defraud.

Signature:		Date:
Print Name:	Title:	Phone:
Consultant Company Name:		
Consultant Company Mailing Address:		

Subscribed and sworn to before me in the county of \_\_\_\_\_, Utah, this \_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year). My commission expires \_\_\_\_\_.

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

**SUBCONTRACTORS'/MATERIALMENS' LIEN WAIVER**

For valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the undersigned Subcontractor/Materialman having performed services or furnished materials for that certain project known as \_\_\_\_\_, located at \_\_\_\_\_, hereby releases, relinquishes, and waives any and all mechanic's liens, materialman's liens, and all other liens of every nature and kind, and/or the right to file any such lien, against said project for labor, services, equipment, and material supplied and performed through \_\_\_\_\_, 201\_\_\_\_\_.

The undersigned certifies that:

1. Full payment, less retainage if any, has been received for all invoices submitted through \_\_\_\_\_, 201\_\_\_\_\_; and
2. The undersigned has paid all of its subcontractors for work and services performed and all of its materialmen for materials furnished to said date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
Authorized Representative of:  
\_\_\_\_\_