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Reasonable Rate Schedule and Reimbursement Guidance Manual

**Petroleum Release Remedial Action Cash Fund
(Title 200 Program)**

**Petroleum Remediation Section
Monitoring and Remediation Division**

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SECTION 1 – PROGRAM OVERVIEW

1. GENERAL INFORMATION

On May 27, 1989, the Nebraska Legislature passed the Petroleum Release Remedial Action Act (Neb. Rev. Stat. §66-1501 to §66-1531) in response to concerns about the increasing number of leaking petroleum storage tanks and their potential threat to health, safety, and the environment. This Act created the Petroleum Release Remedial Action Cash Fund to reimburse owners of petroleum tanks for costs to investigate and cleanup petroleum from their tank systems. The Fund also helps owners and operators of active underground storage tanks meet the federal financial responsibility requirements.

As directed by statute, the Environmental Quality Council has promulgated rules and regulations (Title 200, Nebraska Administrative Code) regarding procedures of the application and reimbursement process. NDEE's Petroleum Remediation Section uses the Title 200 regulations to reimburse applicants for a portion of their actual, eligible, and reasonable expenses incurred during a remedial action.

A. Process Overview

The process begins when a petroleum release is discovered and reported to the department. NDEE evaluates the initial information provided about the release. If more work is needed, a NDEE project manager (PM) is assigned. The PM contacts the responsible person (RP) to discuss what remedial actions are needed. Then the RP hires a consultant to do the work. The RP will be asked to have their consultant provide a work plan and a cost estimate for the proposed remedial actions. The PM reviews this information and, if acceptable, sends an approval letter. The work is performed, and a report is submitted to the Department. After the initial deductible has been met, the RP can apply for reimbursement of the costs for the work performed.

It is important to understand that the approval letter **does not pre-approve** the cost of the work effort. The actual reimbursement will be determined only after documentation of the work effort has been received and a Title 200 application has been submitted and evaluated. The cost estimate is a budget tool to ensure that the costs of approved work do not exceed the funds available for reimbursement when the application is received.

B. Eligibility Requirements

An RP may receive reimbursement under Title 200 for costs incurred for remedial action, when the following eligibility criteria are met.

Eligibility Issues Relating to the Original Release

- ✓ The remedial action is performed in response to a petroleum release from an underground or aboveground storage tank system.
- ✓ The tank from which the release occurred was in substantial compliance with any applicable rules and regulations of the United States Environmental Protection Agency (EPA), State Fire Marshal, and NDEE.
- ✓ The release was first reported to the NDEE or the State Fire Marshal after July 17, 1983, and on or before June 30, 2028.
- ✓ The State Fire Marshal or the NDEE was notified of the release in substantial compliance with applicable rules and regulations.

- ✓ The RP cooperated with the NDEE and the State Fire Marshal in responding to the release.

Cost Issues Relating to the Remediation Process

- ✓ The RP incurred the costs for the remedial action after May 27, 1989.
- ✓ The costs incurred during the remediation were actual and reasonable according to NDEE guidelines.
- ✓ The RP has paid the initial deductible and co-payment amounts and provides proof of payment with the application.
- ✓ The Department has received and approved all increments of remediation, work plans, and reports whose costs have been submitted for reimbursement.
- ✓ The application was submitted to the NDEE in a timely fashion (within one year of the compliance date or actual completion date of the phase, whichever is later) pursuant to Title 200, Chapter 1, Section 006.

C. Deductible and Co-payment

Deductible Amount

The first application needs to exceed the initial deductible amount. Most responsible persons (RPs) pay a \$10,000 per release deductible with a 25% co-payment of up to \$15,000. After the RP has met the \$25,000 deductible and co-payment obligation, 100% reimbursement of all eligible expenses is made. The maximum reimbursement for remedial actions is \$975,000 per release.

Is this a Low Volume Facility?

Low Volume Classification

Some RPs may qualify for a lower deductible and co-payment. The Low Volume Classification is determined by the volume of petroleum that flowed through **all** facilities owned by the RP in Nebraska.

- Petroleum marketer: an RP who sold a combined total of more than 2,000 but less than 250,000 gallons of petroleum **at all facilities owned** during the calendar year preceding the first report of the release.

OR

- An RP who stores petroleum for personal or business use, who stored a combined total of less than 10,000 gallons of petroleum at all facilities owned during the calendar year preceding the first report of the release.

RPs who meet the low volume criterion must submit an Application for Low Volume Classification. If classified as low volume by the NDEE, the RP has a \$5,000 deductible with a 25% co-payment of up to \$10,000. After the RP has met the \$15,000 deductible and co-payment obligation, 100% reimbursement of all eligible expenses is made. The maximum reimbursement for remedial actions is \$985,000 per release.

D. Voluntary Responsible Person

When determining responsibility for the investigation and cleanup of petroleum releases, the Department typically looks to the individual(s) or business entity that owned and/or operated the tanks at the time of the release. RPs select and hire an environmental consultant to do NDEE-required remedial actions. They then apply for reimbursement from the Title 200 Program for their eligible expenses. (This is an RP-lead site.)

When the Department determines that no RP exists (the owner/operator is unknown, deceased, or insolvent), the facility will be placed on the Priority List, a dynamic list of contaminated sites that need future work by NDEE. When the site is activated, the cleanup will proceed under NDEE direction using NDEE-hired environmental consultants. (This is a State-lead or orphan site.)

The Department does not consider subsequent purchasers of contaminated property to be liable for contamination when they did not use the tanks that leaked. If the true RP is unwilling or unable or fails to comply with a required remedial action, these subsequent property owners may become a voluntary RP. They voluntarily step into the RP role to do an approved phase of remediation. Once the work is completed, the costs incurred by the voluntary RP may be submitted for reimbursement. In most cases, voluntary RPs have the same deductible and co-payment obligation as applicants who meet the low-volume classification level. To receive this lower deductible and co-payment, however, they must complete an Application for Classification as Voluntary Responsible Person.

E. Voluntary Remedial Actions (VRA)

There may be times when RPs want to do remedial action work at their sites that is not currently required by NDEE and still be eligible for reimbursement consideration in the future. VRA are allowed by a provision in statute, Neb. Rev. Stat. §66-1525 (2) (d).

VRA applies to sites at which the Department has not yet required remedial action. The Department will not reimburse costs for actions that would not have been approved if the site were active. Methods described in the Department's environmental guidance documents should be followed for best results.

Remedial activities performed under VRA may be eligible for reimbursement after the site is activated and the work is approved. The VRA costs will be evaluated using the rate schedule in effect at the time the work was performed. RPs may submit Title 200 applications for review as phases are completed under VRA. However, the final review and reimbursement is not done until after the activation letter is sent and the work is approved.

F. Third-Party and State Claims Board Claims

Title 200 funds may be used for payment of third-party claims. A third-party claim is a final legal judgment against an RP obtained by another party for compensation for bodily injury and/or property damage caused by a petroleum release first reported after January 1, 1990, and by June 30, 2028. The cause of action of the third-party claim must have accrued after April 26, 1991, and the Nebraska Attorney General's office must be notified within ten days of filing the action.

Title 200 funds may also be used for payment of claims approved by the State Claims Board authorized under Neb. Rev. Stat. § 66-1531. The claim is for damages to property, or a water supply caused by a release. Further information about filing claims with the State Claims Board is on their web page. [DAS Website: State Risk Management \(nebraska.gov\)](https://www.das.nebraska.gov) The total of the claims

approved by the State Claims Board and the reimbursement for third-party claims shall not exceed one million dollars per release.

2. REIMBURSEMENT PROCEDURES

A. When to Submit an Application

Application to the Fund is made after NDEE acceptance of approved phases of investigation and remediation, such as:

- Tank closure and submittal of the Closure Assessment Report;
- Site Investigation (i.e., Tier 1, Tier 2, or Free Product Delineation Report);
- Remedial Action Plan;
- Remedial System Installation;
- Monitoring Reports submitted according to a schedule established by the NDEE;
- Well abandonment, equipment removal, and other approved site closure activities; or
- Other activities approved by the NDEE.

The application should contain **all** costs incurred during the phase. In addition, applications are submitted within one year pursuant to Title 200, Chapter 1, Section 6. If an incomplete application is received, a letter will be sent describing the additional information needed to complete the application. An additional 30 days is given to complete the application. An RP's reimbursement may be reduced up to 100% if a complete application is not submitted in a timely fashion.

Typically, phases of remedial action are completed in 90 days or less. However, if a phase is projected to take more than 90 days to complete, partial payments may be requested every 60 days. Ten percent of the reimbursement will be retained until completion of the phase and all costs are submitted for review. Failure to complete a phase within the scheduled period is not an appropriate reason to receive partial payments unless the NDEE PM approves an extension. When the work is completed and the final application submitted, the total costs for the phase will be evaluated. The amount retained will then be refunded.

B. Submitting the Application for Reimbursement

An acceptable Title 200 reimbursement application contains the following information and attachments:

- A completed Title 200 application form signed by the RP and properly notarized.
- Acceptable proof that the initial deductible and co-payment amounts have been paid to the consultant/contractor. (See Acceptable Proof of Payment for more information.) Proof of payment is not required after the deductible and co-payment requirement has been met. The Expense Payable Report (EPR) will show how much of the deductible and co-payment has been met.
- Legible copies of all invoices listed on page 2 of the application. The costs on these invoices, unless competitively bid, should be presented in unit and unit-rate format such as labor hours and rates. In addition, backup documentation for some costs on these invoices may be needed (e.g., copies of laboratory or subcontractor invoices, equipment

purchase invoices, lodging receipts, etc.). Subcontractor invoices will also need unit and unit-rate format, unless competitively bid.

If an incomplete application is received, a letter or email will be sent describing the additional information needed to complete the application. An additional 30 days from receipt of the correspondence is given to submit the information to complete the application. An RP's reimbursement may be reduced up to 100% if a complete application is not submitted in a timely fashion as defined in Title 200, Chapter 1, Section 006. Applications are sent to:

*Title 200 Program – Petroleum Remediation Section
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln NE 68509-8922*

C. Acceptable Proof of Payment

Responsible Person: In order to make an application for reimbursement under Title 200, an RP must show that they have incurred and paid eligible expenses in the amount of \$10,000 (or \$5,000 for low volume RPs). They must also demonstrate that they have incurred and paid at least 25% of additional costs submitted, until the \$15,000 co-payment requirement (or \$10,000 for low volume) is met. One of the following may show proof of payment:

- An Affidavit of Costs Paid Form signed by a vendor or person who performed the remedial activity affirming that the amounts that the applicant represents as being paid were in fact paid.

OR

- Canceled checks - Copy of the canceled check. These are generally available with online banking services. Any fees assessed by your bank for this service are not reimbursable.

Consultant: There is another situation when proof of payment is needed. When a subcontractor is used, proof that the consultant paid the subcontractor prior to submittal of the application is needed for the consultant to receive the full markup. Canceled checks are acceptable. Affidavits are NOT acceptable proof of payment. More information about markups is found in Section 5.

D. Designated Representative

An RP may direct the NDEE to send reimbursement to a consultant or contractor, by completing the Designation of Representative section on the Title 200 Reimbursement Application form. The designated representative will then receive the reimbursement check or electronic payment and a copy of the EPR. The RP will also receive a copy of the EPR for their files.

While the designation of a consultant or contractor as the direct recipient of the Title 200 reimbursement check may simplify payment for the on-going expenses of a remediation, **it is vital that each RP remain involved in the remediation process.** Additionally, RPs and consultants should discuss who is liable for expenses not reimbursed by the Fund. It is suggested that this part of the any contracts or service agreements.

E. Other Forms

OTHER FORMS MAY BE NEEDED:

- ★ *State of Nebraska W-9 & ACH Enrollment Form*
 - ★ *United States Citizen Attestation*
-

There are forms required by other State agencies that may need to be completed and submitted with an application for reimbursement in the following situations.

- **State of Nebraska W-9 and ACH Enrollment Form:** This form is required by the Nebraska Department of Administrative Services to set up a vendor to receive payment from the State. This form is completed once to set up the account. It is also used when making changes to your company name, address, federal ID, or banking information.
- **United States Citizenship Attestation Form:** Any **individual** submitting any application or form that would derive public benefit from the state must complete this form. It needs to be completed once for any RP who operated the tanks as an individual or sole proprietorship. It does not need to be completed if the RP is a corporate entity or government entity. This form is available on the NDEE web page.

3. HOW THE NDEE PROCESSES THE APPLICATION FOR REIMBURSEMENT

A. Application Review and Expense Payable Report

During the application review, Title 200 staff compare information on the invoices to the technical reports submitted to the NDEE PM. This review looks at the work done, and the amounts invoiced for this work. **Any costs that are not documented by the report** (e.g., a lab invoice with no corresponding lab report) **will not be reimbursed**. In sum, reasonable and actual costs for NDEE approved remedial actions documented by a report received by the department will be eligible for reimbursement.

Upon completion of the application review process, Title 200 staff will prepare an Expense Payable Report (EPR). This report provides the applicant with information including the amount eligible for each invoice submitted, the deductible and/or co-payment amounts met, and the total amount reimbursed. If the NDEE determines that any amount is not eligible for reimbursement, the EPR will contain a brief explanation of why the costs were not reimbursed. A copy of the EPR is sent to the RP and designated representative, when applicable. The Department of Administrative Services will make the reimbursement shortly thereafter.

B. Protesting the Expense Payable Report

Formal Petition: If the applicant (i.e., person who received the reimbursement) disagrees with any items on the EPR, they have the right to formally petition the Department. This petition must be submitted to the Department's Legal Services Division in the format specified in Title 53, Chapter 4, Section 004.04. Following submittal, the petition will be heard as a contested case pursuant to Title 115. Keep in mind that Title 200, Chapter 1, Section 012 requires that formal petitions be filed **within thirty days** from receipt of the EPR.

Informal Review: Alternatively, an applicant may request that the Title 200 staff conduct an informal review of expenses determined to be ineligible. There is **no time limit for submitting** an informal review request. This is typically used when the ineligible costs can be documented by providing additional information such as a copy of a subcontractor invoice, field logs, time sheets, laboratory report, or unit and unit-rate breakout. To request an informal review, the applicant sends a brief letter or email to the Title 200 Program requesting a reevaluation of the disallowed expenses. **The request should include supporting documentation for the costs in question.** Title 200 staff will review and may make additional reimbursement.

Formal Petition vs Informal Review

Formal petitions filed with legal section within 30 days of receipt of EPR.
Informal review sent to Title 200 staff with no time limit for submittal.

When deciding which approach to take, consider the reasons for the denial of costs and the total amount. An applicant may wish to seek advice from their attorney to determine the most appropriate course of action.

C. Processing Time and Interest Applications

On receipt of an application, Title 200 staff will perform an initial review. The application is then either officially accepted or a deficiency letter is sent to the applicant for additional information, typically within five days of receipt by the NDEE. Once accepted, the processing period begins. It is NDEE's goal to process and pay every Title 200 application within 60 days.

If payment is not received within 60 days of the date the complete application was received by the Department, the applicant may apply for interest. Interest is paid at the current rate set by the Nebraska Department of Revenue on the reimbursed amount. Interest begins to accrue on the 31st day after the application was complete, subject to provisions of the Prompt Payment Act (Neb. Rev. Stat. §81-2401 to §81-2408). The applicant applies for interest on a standard Title 200 application form. A signed and notarized application form is submitted to the Department, along with a copy of the specific EPR. This application must be submitted within 150 days of the date the reimbursement application was received by the Department as noted on the EPR. Interest is typically not payable on applications received for voluntary remedial actions. Payment for these applications is not made until after the site is activated and the work is approved. Any interest is calculated based on the approval date.

D. Maintaining Proper Accounting Records

RPs and consultants should maintain detailed records of all costs incurred during the progress of a remedial action, all Title 200 applications submitted to the Department, and all reimbursements received from the Fund. At a minimum, and as specifically stated within the provisions of Title 200, recipients of reimbursements from the Fund are required to perform the following:

- Document the expenditure of all costs incurred during and/or related to the remedial action (such as deductible/co-payments, payments to contractors and/or subcontractors, registration of wells, etc.),
- Maintain proper inventory records for all equipment purchases, and

- Document and retain all necessary information needed to determine that the costs represented for reimbursement under Title 200 were actually incurred (including all invoices, bills, contracts, field logs, and time sheets).

Under the provisions of Title 200, the Department may conduct an audit or financial review of the records maintained by recipients of reimbursements under the Fund to

Random or targeted audits may be made.

assure that the RP and his/her consultants and contractors have complied with the NDEE's regulations and eligibility requirements. These reviews may be conducted either on a random basis or in situations where the Department becomes aware that inappropriate reimbursements may have been made. Recovery of costs that were previously reimbursed erroneously may be made by reducing future reimbursements from the Fund. Should the Department discover evidence of fraud or other misuse of payments received from the Fund, the NDEE may refer the matter to the Attorney General for appropriate action.

E. Withholding Reimbursement Review under Title 200

Title 200, Chapter 1, Section 009 states, "*The department may withhold action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.*" Under these circumstances, the Department will hold the Title 200 application(s) and will notify the RP in writing that no action will be taken on it. Following resolution of the matter, the Department will begin reimbursement review of the application.

F. Information Requests

Information Requests On-Line

<https://dee.nebraska.gov>

- Bottom of home page, click on Public Records Search.
- Click on Public Records Search to open the Content Management Portal.
- Enter "DEQ Facility Number" from correspondence – the NDEE ID number.

For copies or further website assistance, call NDEE Records Management Section at (402) 471-3557

Other program questions, contact Title 200 Program staff at (402) 471-2186 or email NDEE.PetroleumRemediation@Nebraska.gov

SECTION 2 - REMEDIAL ACTION EXPENSES

1. REMEDIAL ACTIONS

An RP may make application to the Petroleum Release Remedial Action Cash Fund for reimbursement of actual, eligible, and reasonable costs of remedial action following completion and Departmental acceptance of approved increments of remediation. A remedial action is defined generally under Neb. Rev. Stat. § 66-1513 as *“any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including ...site investigation, site assessment, cleanup, restoration, mitigation, and any other action ordered by the department....”*

2. ELIGIBLE EXPENSES

Eligible expenses relate directly to the performance of necessary remedial action in accordance with applicable regulations and guidance. General categories of investigative and remedial costs considered eligible for reimbursement under Title 200 include, but are not limited to, the following:

- Excavation of petroleum contaminated soils removed during the tank closure process. Additionally, during the tank closure process, remedial excavation of petroleum contaminated soils in quantities up to the limits found in the “Petroleum Underground Storage Tanks: Closure Assessment Sample Collection and Over-Excavation” guidance.
- Transportation of the contaminated soils excavated to a facility approved to accept special wastes or to other approved disposal or treatment sites.
- Disposal and treatment of the contaminated soils removed at an approved facility. Contact the NDEE’s Waste Management Section at (402) 471-4210 for more information about approved soil disposal methods and locations in Nebraska.
- Immediate remedial action necessary to protect human health or the environment, as determined by the State Fire Marshal (SFM) and/or NDEE, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release.
- Preparation of work plans and cost estimates for site assessment and other remedial actions. Any changes from methods found in NDEE environmental guidance documents must be highlighted and completely explained in the work plan. These variations must be approved before implementation to be eligible for reimbursement.
- Preparation of permits needed for other agencies or NDEE programs, such as NPDES, Underground Injection Control (UIC), NDOT right of way permit, Natural Resources Districts (NRDs), NDNR well registration fees, etc. Related permit fees may be marked up and are eligible when documented.
- Reasonable costs associated with the technical administration of subcontracts including bid document preparation, communication with subcontractors on technical matters, and technical supervision of subcontractors.
- Reasonable time for preparation of technical reports.
- Removal of free product.

- Collection and analysis of surface and subsurface soil and water, free product, and vapor samples.
- Installation and maintenance of monitoring and other approved wells.
- Removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary for the performance of the remedial action.
- Acquisition, installation, start-up, operation, and maintenance of remediation systems, including monitoring costs.
- Nebraska state sales taxes on eligible items, when applicable.
- Proper abandonment of wells, time to prepare the remediation system for removal by the State contractor, site restoration, and other approved site closure activities.
- Other reasonable costs associated with the performance of NDEE-approved remedial activities.

3. INELIGIBLE EXPENSES

Specific costs that will **not** be considered eligible for reimbursement under Title 200 include, but are not limited to, the following:

- The cost of removing and disposing of asphalt, concrete, and/or uncontaminated soils during a tank excavation, upgrade, or replacement.
- The cost of removing, transporting, and disposing of tanks, piping, pumps, dispensers, and product during a tank removal, upgrade, or replacement.
- The cost of excavating, transporting, disposing of, and replacing contaminated soils in quantities greater than those approved in the NDEE Petroleum Underground Storage Tanks: Closure Assessment Sample Collection and Over-Excavation guidance during tank excavation.
- The cost of replacing, repairing, and maintaining petroleum storage tanks and associated piping. The costs of upgrading existing petroleum storage tanks and associated piping, including but not limited to the costs of corrosion protection, release detection, spill and overfill protection, or any other upgrading required by the SFM.
- Environmental Site Assessments or Audits performed as a requirement of financial transactions, potential property purchases, or title transfers, or when not specifically approved by the NDEE.
- Costs of remedial action taken in response to the release of a substance that is not a petroleum product as defined in Neb. Rev. Stat. §66-1510.
- Costs of remedial action taken in response to a petroleum release that is not from a tank as defined in Neb. Rev. Stat. §66-1515.
- Rates that exceed the maximum rates in the schedule of reasonable rates.
- Any remedial activity not approved by the NDEE PM. Work plans and cost estimates are submitted for review and approval **before** performing the remedial activity. In addition, any changes to procedures found in NDEE environmental guidance documents must be highlighted and completely explained in the work plan and receive approval before performing the activity.

- Costs for equipment repairs or replacement that are covered by the warranty provisions pursuant to Title 200, Chapter 1, Section 013.03.
- Any remedial activity that is performed in violation of applicable local, state, and federal laws, guidelines, and rules and regulations.
- Costs related to activities **not documented** by reports or other information received by the Department (For example, charges for laboratory tests would not be reimbursable if the test results had not been submitted to the Department.). This also applies to undocumented labor or labor hours that are higher than normal for the remedial action.
- Payments to neighboring property owners for site access to drill wells or other remedial actions are generally not eligible. When access to railroad property is needed, the railroads should be informed that the remedial action is required by the NDEE. There may be agreements in place to waive some of the fees. Contact the NDEE PM to discuss the specific situation.
- The costs of upgrading or improving a facility beyond those expenses incurred as a necessary part of the remedial action.
- Excavation done to construct or expand a building will not be eligible even when contaminated soil is encountered at a current or former leaking tank site. Heavily contaminated soil transportation and disposal costs may be eligible **when a Petroleum Remediation Section member is on site to make the eligibility determination.**
- An RP's own time to administer a remedial action.
- Attorney or other legal fees.
- An RP's loss of income.
- Interest charges, service charges, or late-payment fees.
- Any costs associated with completing or filing an application for reimbursement under Title 200 or a request for re-evaluation of disallowed expenses.
- Costs associated with time spent by accounting, clerical, or management personnel to oversee the accounting or financial aspects of subcontract administration are considered indirect overhead costs.
- Office expenses considered indirect overhead costs, including faxes, postage, telephone charges, and personal computer use relative to data entry.
- Separate profit and administrative charges not included in labor rates, including line-item charges allocated to offset indirect costs and administrative, clerical, and other support staff not directly associated with the process of remediation.

When a specific cost item or activity is not eligible for reimbursement under the Fund, other activities and/or expenses associated with that cost are also ineligible. For example, for a sampling event that is not approved by the Department, all costs associated with that activity would be ineligible for reimbursement, including all labor and travel costs, sampling expenses, laboratory analysis charges, report preparation time, etc.

4. GENERAL COST INFORMATION

Under the provisions of the Petroleum Release Remedial Action Act, the Department is directed to reimburse the actual, eligible, and reasonable costs incurred during an approved remedial action. A “reasonable cost” may be defined as that amount commensurate with the most technical and cost-effective means of properly performing a remedial activity. The Department has determined that a reasonable cost for an increment of remediation may be achieved through one of two methods:

- Evaluation and reimbursement of consultant and contractor invoices presented in a time-and-material format according to the guidelines described in this document; or
- Through the process of competitive bidding.

Reasonable costs for remediation determined from:

- ◆ This document OR
 - ◆ Competitive bidding.
-

Invoices submitted for reimbursement under Title 200 for activities that were not competitively bid according to the guidelines below must be presented in a time and materials format. The invoices will be

evaluated using the reasonable rate and task information found in Sections 3, 4, and 5 of this document. The NDEE will reimburse only costs that are considered reasonable under the reasonable rate guidelines. However, applications for reimbursement may be made for costs more than the Reasonable Rates Schedule, so long as sufficient evidence is provided with the application to demonstrate that the costs incurred were actual and reasonable. Following review of the supporting documentation provided by the applicant, the Department might approve the costs as presented on the application. **NDEE acceptance of a work plan and cost estimate does not constitute pre-approval of the costs.**

Competitive Bidding

Title 200, Chapter 1, Section 008.02 states, “*The department may require competitive bidding for equipment or services.*” This will typically apply to more expensive phases of remediation, such as a system installation but can be used anytime a subcontractor is needed. **The NDEE PM may require bidding when requesting remedial actions. The competitive bidding process is required when purchasing a single item of equipment costing over \$10,000 or for subcontracted activities that exceed \$25,000.** To qualify for reimbursement under Title 200, competitive written bids must meet the following minimum criteria:

- A minimum of three written bids must be obtained;
- Bids must be for comparable items; and
- Bids must be obtained from contractors who can demonstrate adequate experience, equipment, and personnel to accomplish the scope of the bid items.

While an RP may select any of the qualified bids, the Department will reimburse only the lowest qualified bid. However, the lowest bid does not have to be accepted if there is sufficient justification for the decision. It is recommended that this decision be discussed with the NDEE PM before accepting the bid. A qualified bidder will respond completely to the bid documents in writing. A qualified bidder also holds all necessary business licenses and can demonstrate sufficient experience, personnel, and equipment to complete the project. In addition, qualified bidders will not be given an unfair advantage over others through affiliation with the RP,

consultant, or general contractor. In cases in which the lowest bidder was not selected, the RP or consultant should provide justification of the decision when submitting the costs for reimbursement under Title 200.

The cost of remedial actions obtained as the result of competitive bidding process become reasonable costs for that activity. The costs will be invoiced in the same format as the bid and not the usual detailed time-and-material breakout. However, as they are not generated through a bidding process, change orders must be presented in a time-and-materials format to be considered eligible for reimbursement under Title 200.

When making application for reimbursement for contracted or subcontracted activities, applicants should submit sufficient documentation with their Title 200 application form to demonstrate that qualified bids were sought and obtained such as the following:

- Copies of advertisements for bids or solicitation letters;
- A tabulation of bids received; and
- Copies from each bid to show the bidder, the amount of the bid, etc.

Include in applications with
bids.

When an RP or consultant cannot obtain a minimum of three qualified bids, documentation of the bidding process must be provided. This includes a copy of the bid documents and a list of the companies contacted.

The selection of the contractor is the sole responsibility of the RP and/or his or her consultant. The Department will not be involved in the evaluation or selection process. The labor costs incurred by the environmental consultant to prepare and select a bid may be considered eligible for reimbursement under Title 200 according to the appropriate labor classification presented in the Schedule of Reasonable Rates.

5. EQUIPMENT OWNERSHIP

Approved remedial activities at many sites will involve the purchase and installation of equipment designed to remove petroleum contamination from groundwater and/or soil. This remedial equipment becomes State property when reimbursement is made pursuant to Neb. Rev. Stat. § 66-1529.01(3).

A warranty on this new equipment is required by Title 200, Chapter 1, Section 013.03 that states, *“The Department will require a warranty on all new remediation equipment for a period of one year following the remediation system startup. The Department will also require a warranty that installation of all equipment, whether it be new, used or provided by the Seller, will be done in a workmanlike manner in accordance with standard procedures and will perform as designed for a period of one year following installation.”*

Routine equipment maintenance is important to keep the equipment operating. Reasonable costs for routine operations, monitoring, and maintenance will be eligible for reimbursement. If non-routine system repairs become necessary, please discuss with the PM for the release. A separate work plan and cost estimate may be necessary.

When the Department determines that the equipment is no longer needed at a site, the NDEE will evaluate and dispose of the equipment in a manner beneficial to the Fund. One of the following options may be chosen:

- Move the equipment to another site;
- Store the equipment until needed at another site;
- Sell the equipment; or
- Dispose of the equipment, if obsolete or otherwise unusable.

A list of remediation equipment available for reuse at other sites is on the department web page <https://dee.nebraska.gov>. This equipment is stored at a warehouse in Lincoln. When a consultant reuses it, reasonable costs for refurbishing it and transporting it to another site may be an eligible cost to the new site. If a Title 200-eligible site needs equipment that is listed on the web page, please contact one of the NDEE Petroleum Remediation Section staff.

Some remediation systems are mounted in a trailer. Once the trailer costs are reimbursed by the Fund, it is State property. At that time, the trailer needs to be titled to the NDEE. State license plates will be issued for the trailer once the title is transferred.

Alternatively, some remedial systems are in a building. If this building is attached to the real property, the current property owner owns it. Routine maintenance of the building may be eligible for reimbursement until site closure and restoration activities are completed. Demolition of a building, if necessary, may be eligible for reimbursement as part of the approved site closure activities. It is expected that the remedial actions will be completed, and the equipment removed before the property owner uses the building for other purposes.

6. REDUCTIONS IN REIMBURSEMENTS FOR NON-COMPLIANCE

Reimbursement reductions for not following statute or regulation may occur.

Under Neb. Rev. Stat. §66-1525, the Department can reduce reimbursements up to 100% for failure by the RP to comply with applicable statutory or regulatory requirements. Non-compliance issues for which the Department will consider reimbursement reductions include, but are not limited to, the following:

- Failure by the RP to properly register the tank(s) from which a release occurred, as required in Title 159.
- Failure to obtain the proper tank removal and/or closure permits for the tank(s) from which a release occurred, as required in Title 159.
- Improper tank design, construction, installation, and repair relative to the tank(s) from which a release occurred.
- Failure to provide adequate release detection for the tank(s) from which a release occurred, as required in Title 159.
- Failure to maintain adequate tank gauging records for the tank(s) from which a release occurred, as required in Title 159.

- Failure to immediately report a known or suspected petroleum release to the NDEE or SFM.
- Failure to have trained UST Operators at the facility with the tanks from which a release occurred as required in Title 159.
- The tank system that had the release was not compatible with the product stored as required in Title 159.
- Failure to take appropriate measures to abate or contain a known or suspected release.
- Failure to clean up documented past spills.
- Improper disposal of wastes (including tanks, sludge from tanks, contaminated soils, and contaminated wastewater).
- Failure to meet a NDEE compliance date; or
- Failure to comply with the provisions of Title 200 (e.g., not applying in a timely fashion).

When an RP submits an initial application for reimbursement under Title 200, a compliance review is done to ensure that all statutory requirements governing the affected tanks and the remediation process itself have been met. As part of the review, Department and State Fire Marshal files are reviewed. Once the review process is complete, the Department will determine if there are compliance issues that may affect the reimbursement of costs under Title 200.

When the Department determines there is non-compliance, the RP will be notified of the decision via certified letter. Reimbursements to the RP are then reduced by the specified percentage up to a maximum dollar amount based on the circumstances and extent of non-compliance. Non-compliance reduction amounts will decrease the maximum amount reimbursable for remedial actions under Neb. Rev. Stat. § 66-1523.

An RP has the right to formally petition the Department for review of the non-compliance determination. The petition must be filed within 30 days of the date of the NDEE's official notification in the format specified in Title 53, Chapter 4, Section 004.04 of the Nebraska Administrative Code. The petition will be heard as a contested case pursuant to Title 115. Title 115 is available on the department web page.

It is important to remember that, under the provisions of Title 200, reductions in reimbursement for costs associated with an entire work effort, increment, or phase may be made for failure to meet the compliance date established by the Department for completion of that remedial phase. RPs are encouraged to work with their consultant to ensure that all compliance dates are met, and applications are submitted in a timely fashion. By doing so, an RP not only assists in the completion of a timely and proactive cleanup but also safeguards their ability to receive reimbursement for all eligible expenses incurred during the process. More information is found in the Reimbursement Reduction Guidance.

SECTION 3 - TASK DESCRIPTIONS

1. PROFESSIONAL AND TECHNICIAN TASKS

The following table lists common remedial activities. The rate from Section 5 that will be reimbursed depends both on the qualifications of the individual (see Section 4) and the task performed. The number of hours invoiced should not exceed the actual hours spent on the task. Time related to administrative tasks such as preparing invoices or Title 200 applications will not be reimbursed.

Task Description Table

Labor categories: **P5** = senior level professional with Nebraska (NE) Professional Engineer (PE) or Professional Geologist (PG); **P4** = Project level professional with NE PE or PG; **P3** = Senior level professional (scientist, engineer or geologist with no NE PE or PG); **P2** = Project level professional (scientist, engineer or geologist with no NE PE or PG); **P1** = staff level professional; **T2** = Technician 2; **T1** = Technician 1.

Blank spaces show the activities that can be reimbursed at the rate for that labor category. “**No**” shows activities that are not eligible at that labor rate. “**Cmplx**” = activity may be reimbursed at that rate for unusual or complex situations only. Additional information is found in comments following the table.

Task/Remedial Activity	NE PE/PG		Professionals			Technician		Comment
	P5	P4	P3	P2	P1	T2	T1	
Office Activities:								A
Consulting Functions:								
Review of Reports and Designs						No	No	
Project Management – Coordination, Correspondence, etc.								
Scheduling Field Activities								
Meetings - Client/NDEE								
Report Preparation:								
Tank Closure Assessment Report	No		No					
Cost Estimates	Cmplx		Cmplx					
Investigation Work Plan	No		No					
Site Investigation Report	No		No					
Health and Safety Plan – one time	No		No					B
Remedial Action Work Plan	No		No					
Data Analysis, Modeling	Cmplx		Cmplx					
Remedial Action Plan								
Designs and Specifications								
Bid Documents	No		No					

Task/Remedial Activity	NE PE/PG		Professionals			Technician		Comment
	P5	P4	P3	P2	P1	T2	T1	
Subcontracting and Equipment Purchase	Cmplx		Cmplx					
As Built/Startup Report	Cmplx		Cmplx					
Monitoring Report	No		No					
Discharge Monitoring Report (NPDES or UIC)	No		No					B
Site Closure Report	No	Cmplx	No					
Permitting/Authorizations:								
Tank Closure Permit	No	No	No	No	No	No	No	C
Access Agreements	No		No					B
Air Quality	No		No					B
Misc. Local Permits	No		No					B
NDOT Right-of-Way	No		No					B
NPDES Permits	No		No					B
Special Waste Permits	No		No					B
NDNR Well forms	No		No					D
Field Activities:								A
Tank closure observation	No	No	No	No	No	No	No	C
Tank closure soil sampling	No	No	No	No	No			
Gear up / Gear down	No		No					E
Travel Time								E
Pre-Investigation Site Visit	No	No	No					
Receptor Survey	No	No	No					
Utility Locating	No	No	No					
Supervision of Drilling Activities, logging, and soil sampling	No		No					F
Drilling Activities, Well Installation	No	No	No	No	No			F
Well Development	No	No	No	No	No			
Disposal/Treatment of Waste	No	No	No	No	No			
Survey / Field Measurements	No	No	No	No	No			
Monitoring Well Sampling, Gauging, and Sample Preparation	No	No	No	No	No			
Pilot Study/Aquifer Test	No	No	No	No	Cmplx			G
Supervision of System Installation / Construction	No		No					
System Installation / Construction	No	No	No	No	Cmplx			H
System Evaluation	No	Cmplx	No	Cmplx				I
System Repairs & Maintenance	No	No	No	No	Cmplx			
Well Decommissioning	No	No	No	No	No			

Comments:

(A) Overall task expectations: Technicians (T1, T2) will do most of the fieldwork and their office time will relate to field preparation, scheduling, ordering supplies, compiling field logs or notes, with some report preparation. Staff and project level professionals (P1, P2, and P4) may do field supervision activities and be primary authors for most routine reports. The expectation for senior level professionals (P3 & P5) project management, limited senior review for routine reports, with focus on more complex tasks such as system design or evaluation.

(B) The preparation of these routine reports and permit forms is expected to take one to two hours of staff or project level professional time to complete, plus minimal secretarial time to type or copy.

(C) Tank removal, replacement, and upgrade costs are not eligible for reimbursement under Title 200. Direct tank removal activities such as time to obtain the closure permit or supervise the removal are not eligible.

(D) Reasonable time to complete the well registration forms required by the Nebraska Department of Natural Resources (NDNR) is reimbursed as part of the time to prepare the report related to the well installation or decommissioning. The NDNR well registration fees for wells approved under this program are also eligible for reimbursement, and markup may be added.

(E) Travel and gear up/gear down time is reimbursed at same rate as the field time for that person's task.

(F) During standard drilling operations, a staff or project level professional (P1, P2, or P4) is normally present to provide oversight, collect soil samples, and log the borings. Standard drilling operations include the drill rig with a two-person drill crew invoiced at the Technician 2 and Technician 1 rates. Occasionally, the addition of a third person to the drill crew at the Technician 1 rate is reasonable and will be eligible if approved by the NDEE PM. Following drilling and installation, a T2 or a two-person crew (T1 and T2) performs well development, purging, water sampling, and surveying activities.

As a reminder, water wells are to be constructed as directed under Title 178, Chapter 12. In addition, drilling and sampling methods described in the Department's environmental guidance documents such as the Risk Based Corrective Action (RBCA) Guidance Document must be followed. Water wells should also be opened in compliance with Title 178, Chapter 10. Specifically, individuals performing activities involving water wells in Nebraska must be licensed. An individual opening the well to collect the sample should be a licensed Water Well Monitoring Technician (WWMT) or be under the supervision of a licensed Pump Installation Contractor (PIC). Water well drilling activities are to be performed by or under the supervision of a licensed Well Drilling Contractor (WDC). Installation of pumps and pumping equipment into water wells and well decommissioning must be performed by or under the supervision of a licensed PIC. Please contact the Water Well Standards and Contractors' Licensing Program for more information on the NDEE web page <https://dee.nebraska.gov> or at (402) 471-4982.

(G) These are routine tests typically performed by technician(s). However, in cases of unusual or complex site conditions, a professional may be on site to set up and/or run the test. This is reviewed on a case-by-case basis and will be discussed with the NDEE PM. For complex sites, include and highlight additional information in the work plan. Also, make sure the report narrative includes information about the activity and copies of the field logs.

(H) Installation of a remediation system often involves activities needing licensure as required under Title 178, Chapter 10. This includes installation of wells; installation of pumps and pumping equipment; and connections of wells to the remediation system. Portions of the installation are often subcontracted to construction companies,). For example, many systems will have pipes connecting wells to a remediation system. Trenching and laying pipe in the trench does **not** need to be done by a company with employees licensed under Title 178, Chapter 10. However, connection to the wells may involve breaking a well seal and Title 178 provisions apply.

(I) Evaluation of the remediation system by a project or staff level professional in the office is typically invoiced as part of the report preparation time. However, there may be occasions when a site visit by the PM to evaluate the system is approved by the NDEE and may be reimbursed at a professional rate. Please contact the NDEE PM before making this visit to ensure that approval is obtained. This visit must be mentioned in the monitoring report narrative along with copies of the field logs or notes. **If this visit is not documented in the report or not approved by the PM, the time related to the visit will be reimbursed at a technician rate.**

2. SECRETARY TASKS

Secretaries and clerical staff are reimbursed for actual time directly related to remedial activities such as copying or compiling reports sent to the Department. Time related to administrative tasks such as preparing invoices or Title 200 applications will not be reimbursed.

Scenarios to clarify what rates to bill for field work.

Scenario 1: Two or three people are on site to do routine system maintenance, data collection, sampling, etc. One person is eligible at the Technician 2 rate and the other staff are eligible at the Technician 1 rate.

Scenario 2: Three or four people on site for well installation. One professional (P1, P2, or P4) is on site to supervise, log wells, etc. They will supervise the drill crew of one person at the Technician 2 rate, and the other staff at the Technician 1 rate.

Scenario 3 – Installation of a remediation system.

- 1) If a subcontractor is used, one professional (P1, P2, or P4) may supervise the subcontractor.
- 2) When all or part of the system installation is done by the consultant, staff may be on site to do distinctly separate activities in small groups or teams.
 - a) Each team can be one Professional (P1, P2, or P4), one Technician 2, and one or more Technician 1s.
 - b) Each team must have separate daily field logs in the As-Built Report. Each field log should include date, name of staff, start and end times, a description of work performed, data collected, equipment used, etc.
 - c) When requesting reimbursement, detailed information showing how the teams were invoiced must be in the application (dates, names, hours, and tasks.)

SECTION 4 - LABOR CATEGORY DEFINITIONS

The Department has adopted specific job titles and qualifications commonly used in the environmental and remediation fields to use as standards for the purpose of providing consistency in the processing of Title 200 applications. The maximum rates eligible for reimbursement under Title 200 for the services of each of the labor categories are provided in Section 5 - Schedule of Reasonable Rates. The task performed as defined in Section 3 is the other factor that will determine which rate will be reimbursed.

The following labor definitions will be used by the Department to identify and evaluate various personnel-related charges contained on applications submitted for Title 200 reimbursement review. The definitions are provided for informational purposes for use by RPs, consultants, and environmental contractors.

Additionally, compliance with all applicable rules and regulations is assumed when the remedial action is approved. This includes licensure requirements from other Nebraska state agencies such as State Fire Marshal, Board of Engineers and Architects, or Board of Geologists. The State of Nebraska's web page www.nebraska.gov contains links to all state agency web pages.

Labor Category Descriptions/Definitions

1. Professional (engineer, geologist, or scientist) – Must have a B.S. or advanced degree from a four-year, fully accredited university. In addition, the State of Nebraska may require these individuals to hold licenses. Compliance with applicable rules and regulations is required for Title 200 reimbursement.

- Engineer – Has a B.S. or advanced degree in engineering. In addition, the State of Nebraska licenses Professional Engineers under the Engineers and Architects Regulation Act (Neb. Rev Stat. § § 81-3401 to 81-3455). More information about the Nebraska Board of Engineers and Architects can be found on their web page <https://ea.nebraska.gov/>.
- Geologist– Has a B.S. or advanced degree in geology. In addition, the State of Nebraska licenses Professional Geologists under the Geologist Regulation Act (Neb. Rev. Stat. § § 81-3501 to 81-3541). More information about the Nebraska Board of Geologists can be found on their web page <https://nebog.nebraska.gov/>.
- Scientist – Has a B.S. or advanced degree in biology, chemistry, environmental science, physics, soil science, or another field of science acceptable to the NDEE.

P5 - Senior Professional Engineer or Professional Geologist – Must have a degree as stated above with an advanced degree preferred. A senior level professional must also possess an appropriate license (i.e., Nebraska Professional Engineer or Professional Geologist license) and have ten years of full time increasingly responsible professional experience and a minimum of five years' experience supervising technical personnel daily. They must have the ability to prepare planning and design documents for leaking UST projects and have experience in investigation and remediation at UST or other appropriate environmental projects. The senior professional must be aware of the wide array of investigation and corrective action options and be able to perform process design calculations, prepare cost estimates, use economic analysis for comparison of alternatives, and determine project schedules.

P4 - Project Professional Engineer or Professional Geologist – Must have a degree as stated above. A project level professional engineer or geologist must also possess an appropriate license. They must have the ability to prepare planning and design documents for leaking UST projects and have experience in investigation and remediation at sites where soil and groundwater contamination have occurred. They must also be familiar with the wide array of corrective action options, be able to select appropriate remedial alternatives for comparison and selection, and be able to perform process design calculations, prepare cost estimates, use economic analysis for comparison of alternatives, and determine project schedules.

P3 – Senior Scientist, Engineer, or Geologist - Must have a degree as stated above with an advanced degree preferred. A senior level professional must have ten years of full time increasingly responsible professional experience and a minimum of five years' experience supervising technical personnel daily. They must have the ability to prepare planning and design documents for leaking UST projects and have experience in investigation and remediation at UST or other appropriate environmental projects. The senior professional must be aware of the wide array of investigation and corrective action options and be able to perform process design calculations, prepare cost estimates, use economic analysis for comparison of alternatives, and determine project schedules.

P2 - Project Scientist, Engineer, or Geologist - Must have a degree as stated above. A project level professional may also be in the process of obtaining a license (i.e., Engineer-in-Training or Geologist – Intern) and have five years full time increasingly responsible experience. They must have the ability to prepare planning and design documents for leaking UST projects and have experience in investigation and remediation at sites where soil and groundwater contamination have occurred. They must also be familiar with the wide array of corrective action options, be able to select appropriate remedial alternatives for comparison and selection, and be able to perform process design calculations, prepare cost estimates, use economic analysis for comparison of alternatives, and determine project schedules.

P1 - Staff Scientist, Engineer, or Geologist – Must have a degree as stated above. A staff level professional may also be in the process of obtaining a license (i.e., Engineer-in-Training or Geologist – Intern). They must have the ability to conduct assessment and remedial activities and to oversee all field related activities at leaking UST sites including drilling, monitor well installation, soil borings and soil sampling. They must also be able to compile engineering data, perform aquifer testing, and prepare permit applications.

2. Technician – Must be high school graduate or have passed the General Equivalency Diploma (GED) test and must have completed a 40-hour OSHA Hazardous Waste Operations training course and kept it current with an annual eight-hour OSHA refresher course. Technicians performing tasks involving water wells must either be licensed or be supervised by someone with the appropriate license from the pursuant to Title 178, Chapter 10. More information about Nebraska's Water Well Standards and Contractors' Licensing Program can be found on the NDEE web page.

T2 - Technician 2 – Must have qualifications as stated above and have at least three years of experience working in the environmental field at hazardous waste or UST sites. Must have a thorough knowledge of sampling techniques and experience with installation and operation of remediation systems.

T1 - Technician 1 – Must have qualifications as stated above. They must have a working knowledge of sampling techniques and operation of remediation systems.

3. Environmental Specialist – Must have qualifications as stated above for a technician and have a minimum of 10 years of experience working in the environmental field at hazardous waste or UST sites. This highly experienced technician is reimbursed at the staff professional rate when performing tasks such as report preparation or drilling supervision. Routine field tasks will be reimbursed at the appropriate technician rate.

4. Secretarial/Clerical – Must be able to type, use word processor, and carry out general clerical duties.

SECTION 5 - REASONABLE RATES

The Department of Environment and Energy is charged with the responsibility to administer the assets of the Petroleum Release Remedial Action Cash Fund in an efficient, effective, and accountable manner on behalf of the citizens of Nebraska.

Nebraska Revised Statute states in §66-1518 (3): *“The Department of Environment and Energy shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.”*

To meet this statutory requirement to make available a current schedule of reasonable rates, the Department developed the following rates. To update previous rates, changes to the consumer price index (CPI) along with input from consultants was considered.

The total cost for a particular activity is a function of both rate and time factors. The Department will continue to evaluate applications for reimbursement in terms of the reasonability of the time associated with the completion of individual work efforts.

Through establishing these guidelines, the Department of Environment and Energy does not intend to influence the dynamic market forces of supply and demand within the remediation industry. Rather, the guidelines are designed to act as a tool to allow the Title 200 staff to evaluate applications in terms of reasonableness and eligibility of costs. This guidance also assists RPs and consultants in preparing applications and anticipating potential reimbursements under Title 200.

Effective date

These rates are in effect for work done August 1, 2024, and later. Work done before August 1, 2024 will be evaluated using the Department’s previous guidelines.

Schedule of Reasonable Rates

The following schedule represents the maximum rates eligible for reimbursement under Title 200 for costs associated with the performance of approved increments of remediation. Additional information about the rates for each category may be found at the end of this section.

Direct Labor

All rates for labor are per hour and include overhead and profit. Additional information on tasks and qualifications for the various labor categories is found in Sections 3 and 4. Subcontractors such as electricians, plumbers, or construction staff are unlisted. Reasonable and customary cost as documented by the subcontractor invoice plus a markup of up to 15% may be eligible with proof the subcontractor was paid. The subcontractor invoice must still be presented in a unit-rate time and material breakout unless the lump sum cost is obtained as the result of a competitive bidding process.

Category	Unit	Rates
P5 - Senior Nebraska (NE) Professional Engineer (PE) or Professional Geologist (PG)	Hour	\$170.00
P4 - Project NE PE or PG	Hour	\$150.00
P3 - Senior Scientist, Engineer, or Geologist	Hour	\$140.00
P2 - Project Scientist, Engineer, or Geologist	Hour	\$130.00
P1 - Staff Scientist, Engineer, or Geologist	Hour	\$110.00
T2 - Technician 2 / Drafter	Hour	\$95.00
T1 - Technician1	Hour	\$80.00
Environmental Specialist	Hour	\$110.00
Secretary	Hour	\$75.00

Markup (see comment A)

Category	Unit	Rate
Markup on subcontractor costs (e.g., drillers, construction contractors, electricians, plumbers, etc.) with proof of payment provided.		
Costs less than \$25,000	Percent	15%
Costs \$25,000 and greater	Percent	10%
Markup on subcontractor costs with no proof of payment	Percent	5%
Markup on other direct expenses such as equipment, system utilities, laboratory fees, well registration fees, or field materials		
Costs less than \$25,000	Percent	15%
Costs \$25,000 and greater	Percent	10%
Markup on meals and lodging	Percent	0%
Markup on goods and services provided by the RP	Percent	0%

Travel (see comment C)

Category	Unit	Rates
Drill Rig or Direct Push Rig	Mile	\$3.00
Pickup Truck	Mile	\$1.50
Passenger Vehicle – current IRS rate per mile		
Equipment, Tool, or Dump Trailer	Day	\$100.00
Meals – 70% of the current federal rate		\$41.30
Lodging – actual cost documented by receipts		
Labor – actual travel time at hourly rate for work performed		

Field Instruments and Equipment

The rate schedule below includes rates for field instruments and equipment commonly used in remediation work. When equipment is used at multiple sites during a day, the rental should be split between the various sites. In addition, when equipment is used for less than a half day including travel time, only a half day rental is eligible. Smaller items including hand tools, traffic cones, cameras, etc., not listed in the schedule are indirect overhead and not eligible. In cases where the NDEE PM approves the use of an unusual piece of equipment that is not listed on the schedule, the contractor may submit reasonable and customary costs for the equipment with supporting documentation.

Category	Unit	Rates
Air Compressor (20 Gallons or less)	Day	\$30.00
Air Flow Meter (pitot meter & velocity)	Day	\$40.00
Air Sample Pump	Day	\$35.00
Anemometer	Day	\$35.00
Combustion, Oxygen, Tox Meter	Day	\$65.00
Conductivity Meter	Day	\$25.00
Dissolved Oxygen Meter	Day	\$65.00
DO/ORP/Temp/Cond/pH multi-meter	Day	\$110.00
Electric Jackhammer	Day	\$70.00
Electronic Water Level Indicator	Day	\$30.00
Flame Ionization Detector (FID, OVA)	Day	\$110.00
Flow Cell	Day	\$40.00
Flow Meter	Day	\$45.00
Generator	Day	\$65.00
Hammer Drill	Day	\$30.00
Manometer	Day	\$35.00
Metal Detector	Day	\$35.00
Oil Water Interface Probe	Day	\$50.00
pH Temperature Meter	Day	\$30.00
Ph/Conductivity/Temperature Meter	Day	\$35.00
Photoionization Detector (PID)	Day	\$100.00

Category	Unit	Rates
Pump (for well development or aquifer testing)	Day	\$115.00
Sub-meter GPS	Day	\$50.00
Survey Equipment	Day	\$50.00
Trash Pump – any size	Day	\$40.00
Turbidity Meter	Day	\$30.00

Sampling Supplies (D)

The Water Sample Equipment & Supplies rate is intended to reimburse for the equipment used to collect the sample, such as pumps and/or bailers and for all other supplies used during the sampling process, such as gloves, rope, tubing, jars, vials, ice, coolers, etc.

Category	Unit	Rates
Water Sample Equipment & Supplies		
Well under 100 ft. deep	Sample	\$30.00
Well over 100 ft. deep	Sample	\$75.00
Soil Sample Supplies	Sample	\$5.00
Air Sample – Tedlar Bag	Each	\$15.00
Free Product Disposal <5 gallons	Gallon	\$12.00

Drilling Equipment

The drill rig with 4.25" hollow stem auger is invoiced at up to \$900.00 per day. Half-day rates apply when the rig is used for a half day or less. The actual crew field time is invoiced separately for the time documented by the report at hourly rates. Rig mileage, well materials, per diem, other equipment needed, etc. are invoiced separately.

Direct push rigs are to be invoiced the same as the drill rig at \$900/day plus crew as noted above. As with the drill rig, other costs that may be eligible include mileage, crew travel time, materials, per diem, other equipment, etc. This does not include the costs for a mobile laboratory. When use of a mobile laboratory is approved by the NDEE PM, the normal billing rate for the equipment will be eligible and may be marked up.

Category	Unit	Rates
Drill Rig (4.25" hollow stem auger (HSA)) or Direct Push Rig	Day	\$900.00
Driller (Technician 2)	Hour	\$95.00
Drillers Helper (Technician 1)	Hour	\$80.00
Decontamination Equipment (pressure washer)	Day	\$100.00
Grout Machine (pressure grouter)	Day	\$165.00
Dump Trailer	Day	\$100.00
Auger Set – 6.25" HSA	Day	\$110.00
Auger Set – 8.25" HSA	Day	\$125.00

Well Materials (D)

Category	Unit	Rates
Bentonite (granular)	50# Bag	\$15.00
Bentonite (grout)	50# Bag	\$26.00
Bentonite (pellets)	50# Pail	\$90.00
Drum – 55 gallon	Each	\$60.00
Flush Cover	Each	\$100.00
Locking Cap/J-Plug with lock – 4"	Each	\$40.00
Locking Cap/J-Pug with lock – 2"	Each	\$32.00
Portland Cement/Concrete Grout	50 # Bag	\$15.00
Redimix Concrete	50# Bag	\$15.00
Sand	50# Bag	\$14.00
SCH 40 PVC Riser Pipe 2" – 10' section	Each	\$47.00
SCH 40 PVC Riser Pipe 2" – 5' section	Each	\$35.00
SCH 40 PVC Riser Pipe 4" – 10' section	Each	\$120.00
SCH 40 PVC Riser Pipe 4" – 5' section	Each	\$80.00
SCH 40 PVC Well Screen 2" – 10' section	Each	\$58.00
SCH 40 PVC Well Screen 2" – 5' section	Each	\$47.00
SCH 40 PVC Well Screen 4" – 10' section	Each	\$153.00
SCH 40 PVC Well Screen 4" – 5' section	Each	\$105.00
Threaded Cap - 2"	Each	\$16.00
Threaded Cap - 4"	Each	\$35.00

Heavy Equipment

When equipment not listed is needed for an approved remedial action, either the bid cost or the reasonable and customary cost of the contractor will be reimbursed and may be marked up. The vacuum truck and operator rate may have a markup added when a subcontractor is used.

Category	Unit	Rates
Skid Steer Loader – attachments	Day	\$100.00
Skid Steer Loader (no operator)	Day	\$185.00
Vacuum Truck (no operator)	Day	\$800.00

Laboratory

Reasonable and actual costs as documented by the laboratory invoice plus a markup of up to 15% will be eligible for reimbursement. The invoice should show any discounts and applicable taxes. Rush charges will **not** be reimbursed unless approved by the NDEE PM. Eligible laboratory costs are for approved test methods. The laboratory report must include the chain of custody and chromatograms and be submitted to the Department. Approved test methods are found in NDEE environmental guidance documents. The Department recommends that laboratory analysis of soil, ground water, or vapor samples be performed by laboratories certified by the National Environmental Laboratory Accreditation Program (NELAP).

Any additional expenses incurred by the contractor during the sampling process (e.g., chain of custody fees) are considered part of either the miscellaneous sampling equipment and supplies rate or the laboratory markup. Laboratory rates as billed are exclusive of shipping and handling

expenses. Shipping charges are reimbursable at cost, if copies of the shipping invoices are included with the application. Undocumented shipping charges will be considered ineligible for reimbursement.

ADDITIONAL RATE COMMENTS

(A) Markup:

A markup allows a consultant or contractor who purchases equipment or hires subcontractors on behalf of an RP to be reimbursed for the use of capital and for administrative costs associated with coordinating the work of subcontractors. For costs less than \$25,000, the **New** maximum markup eligible is **15%** of the cost of equipment or subcontracted activities. For costs \$25,000 and greater, the maximum markup eligible is **10%** of the cost. The markup rate will be applied to the subcontract invoice total not on an individual line item or partial payment. For example, a new remediation system with a total cost of \$100,000 is purchased. When the invoice for a 20% down payment or \$20,000 is submitted, a 10% markup would apply.

Also, when addition of the markup causes the rate to exceed the maximum rates in the schedules in this section, the excess markup is typically **not** eligible for reimbursement. See the notes before the rates to see the exceptions to this rule.

Expenses associated with the markup of a consultant's or contractor's own internal operating expenses (such as meals and lodging) are not eligible for reimbursement. However, utility bills, well registration fees, and other direct remedial expenses incurred during the remediation may be marked up if the costs were billed to and paid by the consultant or contractor on behalf of the RP. Copies of invoices or receipts must be provided with the application to verify the actual cost and markup calculation. Costs for goods and services provided by the RP are not marked up.

Consultants or contractors who take the full allowable markup on subcontractor invoices may not be reimbursed for any hours spent by their accounting, clerical, or management personnel who may be involved in the accounting or financial aspects of subcontract administration since these costs would be covered by the markup. However, general contractors may still charge for the costs of the technical administration of subcontracts such as bid document preparation, communication with subcontractors on technical matters, and (to a limited extent) technical supervision of subcontractors.

The up to 15% subcontractor markup from the Title 200 Program will be contingent upon the consultant providing proof the subcontractor has been paid in full by the consultant. Typically, a subcontractor is paid within 30 days of the date on the subcontractor invoice. Any of the following methods are acceptable as proof of payment:

- A copy of a cancelled check from the environmental consultant.
- A copy of a bank statement from the environmental consultant with the line item showing payment clearly identified.
- A copy of a credit card statement from the environmental consultant, with the line item showing payment clearly identified.

Each method must detail full payment for the provided service, including date and amount paid. There must be a clear connection between proof of payment documents and subcontractor invoices for payment. When proof of payment is not provided, the maximum markup will be 5% not to exceed the maximum rates. Markup for items such as utilities or laboratory fees will remain at up to 15% with no proof of payment necessary.

As a reminder, if the contractor does not desire to pay the subcontractor directly, the RP may make the subcontractor a designated representative to receive payment directly from the Fund. This option should be discussed with the RP and subcontractor as part of the process of hiring the subcontractor before work is done. When this option is chosen, it means that not all costs for the remedial phase will be submitted in the same application for reimbursement. Title 200, Chapter 1, Section 004 contains a provision for the Fund to retain 10% of the costs for partial applications. This provision may become applicable if the remaining consultant costs for the phase are not submitted at the same time as the subcontractor costs. The amount retained is refunded after the phase is complete and all costs are submitted for review.

(B) Responsible Persons Costs:

Some RPs have staff that are qualified to do some remedial actions. They may also own equipment or sell materials that can be used during some phases of remedial activities. Providing or doing some of the work themselves may be a cost-effective option for limited activities. **First**, this must be discussed with the NDEE PM; this activity must be part of an approved work plan. The work must also be documented by a report received by the Department each time remedial actions are done. The RP's staff should keep detailed notes or field logs that include date, name of staff, start and end times, a description of work performed, data collected, and a signature from the staff preparing the log. Copies should be submitted to the department in the report prepared by the consultant or as a separate letter report.

When requesting reimbursement, it is **not** invoiced at the maximum rates but at the RP's actual cost such as an employee's pay and benefits per hour. If the equipment or staff used has a rate billed to the public, that billing rate may be charged up to the maximum rate for the task performed. (A copy of a billing schedule must be provided with the invoice.) As always, the invoice must be presented in a unit and unit rate format. The invoice prepared by the RP should be listed on page 2 of the application form. If the invoice is listed as a subcontractor invoice on the consultant's invoice, no markup of the cost is eligible for reimbursement. For more information about this, please contact Title 200 Staff.

(C) Travel Expenses:

Mileage charges incurred by a consultant or contractor are eligible for reimbursement on a per-mile basis for travel from office to site and for other activities directly relating to remedial activities. Daily or hourly vehicle rental or usage rates are not eligible for reimbursement. Personnel travel costs will be reimbursed at the billing rate of the individual(s) according to the task performed while on site. For companies maintaining more than one office, travel charges from the closest office with qualified staff to the site will be eligible.

The costs of meals and lodging incurred by a consultant during site visits that require an overnight stay may be reimbursable. Documentation for the lodging costs, such as hotel receipts, must be submitted with the consultant or contractor invoice. Documentation for the actual cost of meals is not required. Meals may be invoiced at \$41.30 per day (70% of the current federal rate). This percentage is set by Nebraska Department of Administrative Services to meet state statutes. Federal web pages have information on current rates www.gsa.gov or www.irs.gov. Both the percent and the federal rates are reviewed annually and may change.

Field staff should note meal breaks on the field logs and include copies of the logs in the report. The time spent on a meal break is not eligible. If field staff do not stop for a lunch break, the documented labor will be eligible.

Consultants sometimes visit several different sites in close or “on the route” locations. This efficient use of resources is encouraged. However, travel time and mileage charges need to be divided between the sites. If an overnight stay is needed when visiting multiple sites, the meal and lodging costs should also be divided between the sites visited. The per diem costs for a specific date should match the dates for travel and on-site time documented by the report. Double billing of travel charges is not eligible.

(D) Materials and Supplies

If you have material items that cost more than the listed rates, you may invoice actual cost plus 15% pursuant to Neb. Rev. Stat. §66-1518 (3)(b). To document the cost, include a copy of the purchase invoice with the application. If the invoice is a bulk purchase of multiple items, add a note or highlight items to identify the invoiced costs.

There is a free product and water disposal fee for quantities of less than five gallons. This is to encourage proper disposal of small quantities of product that are not stored at the site. This does not apply to sites where the product is stored on site in a drum or tote, then emptied when full. In that situation, the actual cost to transport and dispose of the product is reimbursed.

(E) Petroleum Contaminated Soil:

When petroleum contaminated soil is the approved remedial action and the costs are expected to be over \$25,000, the consultant will solicit bids as described on pages 13 & 14 of this document. The quantity of soil approved by the NDEE project manager will be eligible for reimbursement at the bid rates.

Additionally, when the soil is removed during tank closure process, the Department will use the volumetric guidelines found in the environmental guidance document “Petroleum Underground Storage Tanks: Closure Assessment Sample Collection and Over-Excavation” to calculate the total quantity of contaminated soil that may be eligible for reimbursement under Title 200. The costs for the contaminated soil removal must be separated from the tank system removal costs when applying for reimbursement.

Expenses relating to the disposal of contaminated soil at the nearest licensed soil disposal facility will be reimbursed at cost plus a markup of up to 15%. The actual costs must be documented by copies of landfill disposal tickets, invoice(s), or statement(s) prepared by the landfill included with the Title 200 application.

Land application of petroleum contaminated soil generated during approved remedial excavation activities may sometimes be a cost-effective option. More information is found in the environmental guidance document “Management of Petroleum-Contaminated Materials” available on the department web page <https://dee.nebraska.gov>. Approval from the Waste Management Section for the disposal location and method of treatment must be obtained **before** disposing of the soil as required by Title 132, Chapter 13. Actual cost for the land application may be eligible if it is less expensive than the cost of the closest licensed landfill. This cost may involve a one-time fee paid to the property owner for use of the land and implementation of the approved treatment method. (Fees paid to a third party or subcontractor may be marked up when documented by a copy of a receipt or invoice.)

Another situation that may arise is new construction at a former UST site that is closed. If heavily contaminated soil (green-grey and stinking) is encountered during construction, some transportation and disposal costs may be eligible. However, NDEE Petroleum Remediation Section staff must be contacted **before** the soil is excavated. If possible, NDEE staff will be on

site to determine what soil should be excavated for disposal and be eligible for reimbursement. Costs to excavate, transport and dispose of “green-grey and stinking” soil in a five-foot buffer zone around the building may also be eligible.

(F) Items from Inventory - Miscellaneous Supplies:

The Department recognizes that it is often most cost effective for consultants and contractors to purchase certain supplies and equipment in bulk quantities, store them, and then remove them from inventory upon use. To distinguish these items from materials purchased from outside vendors, such items should be identified as being “from inventory” on the consultant’s billing invoice. The rate charged for items not listed in these schedules should reflect an average of the actual purchase price plus a reasonable markup to cover warehousing costs. Copies of the consultant’s purchase invoices for inventory items are not provided with the invoice requesting reimbursement of their cost if the total cost for each item is less than \$500. However, the consultant should maintain copies of the purchase invoices in the event the Department should wish to review them later.

The use of these parts at the site must also be mentioned in the report for the phase of remedial action. This can be a brief description of repairs in the report narrative, on a table summarizing maintenance activities, or mentioned on the field logs in the report.

(G) Equipment Purchase and Rental:

When new equipment is purchased for a remediation site, a copy of the original equipment invoice and a Capital Expense Form is provided with the application. This requirement will apply to all applications containing costs to purchase equipment whether invoiced in a time and material format or competitively bid. The State owns all equipment reimbursed by the Fund pursuant to Neb. Rev. Stat. § 66-1529.01. (More information on equipment see Section 2.)

All equipment purchased for use during an approved increment of remediation whose costs have been reimbursed under Title 200 will be suitable for the use to which it is intended and meet the manufacturer’s express or implied standards of performance. The Department will consider reasonable costs of operation and maintenance to be eligible for reimbursement during the period of equipment usage. Costs associated with extensive equipment overhaul, replacement, or repair will be evaluated for NDEE approval on a case-by-case basis.

Occasionally, the long-term rental of remedial equipment, owned by a consultant, will be approved by the NDEE for use at a particular site. The consultant will be responsible for maintenance of the equipment. The field labor charged to the site should include **only** time to collect monitoring data with no time invoiced for maintenance of the rented equipment. A description of the item and rental period shall be included as part of each Title 200 application on which rental costs are submitted. Should rented equipment become inoperable during the period covered by an invoice, the monthly rental rate will be pro-rated to reimburse for only the period of actual operation. Downtime will not be reimbursed, unless such an item is on “stand-by” during a NDEE-approved increment of remediation.

If cumulative rental costs of \$5,000 or more are incurred over the life of the rental term, a Capital Expense Form and documentation of the purchase price of the equipment should be provided. An RP will be eligible for the reimbursement of long-term rental costs in an amount not to exceed its purchase price plus applicable markup. Reasonable maintenance costs will also be considered. The limitation of equipment rental charges to purchase price plus a markup is applied only on a per-site basis. Should rental equipment be reused at another remediation site, the rental period restarts for reimbursement purposes.

Another possible scenario is remedial equipment rented from a third party. This may be cost effective when the equipment is used for less than six months. However, if the estimated time is exceeded, the extra rental fees may become ineligible. It is not a reasonable use of State funds to reimburse rental fees exceeding the cost to purchase the equipment when a third party owns the equipment.

(H) Other Expenses

This guide covers costs for common labor, materials, and equipment used for remedial actions. Sometimes items not covered by this guide are part of a work plan approved by the NDEE PM. Costs for items necessary to complete an approved remedial action may be eligible for reimbursement. Additional information about the item may need to be provided with the application to show that the costs invoiced are actual and reasonable. RPs or consultants who have questions are encouraged to contact the Department. The Department will continue to refine the Reasonable Rate Schedule and Reimbursement Guidance Manual with future updates.

For further information or questions, please contact:

Petroleum Remediation Section
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922
402/471-2186
<https://dee.nebraska.gov>
NDEE.PetroleumRemediation@nebraska.gov

APPENDIX A - REFERENCES

Some of the rules, regulations, and guidance documents referenced in this document.

Nebraska Revised Statutes: (legislature web page: <https://nebraskalegislature.gov/>)

- Petroleum Release Remedial Action Act (§66-1501 to §66-1531): This act created the fund and defines how the fund may be used.
- Water Well Standards and Contractors' Practice Act (§46-1201 to §46-1241)
- Prompt Payment Act (§ 81-2401 to §81-2408)
- Petroleum Products and Hazardous Substances Storage and Handling Act (§81-15,117 to §81-15,127)
- Geologists Regulation Act (§81-3501 to §81-3541)
- Engineers and Architects Regulation Act (§81-3401 to §81-3455)

Nebraska Administrative Code: (NDEE web page: <https://dee.nebraska.gov>)

Title 200 - Petroleum Release Remedial Action Cash Fund

Title 178 – Environmental Health: Chapter 10 – Regulations Governing Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling, Pump Installation, and Water Well Monitoring Supervisors and Chapter 12 – Regulations Governing Water Well Construction, Pump Installation and Water Well Decommissioning Standards.)

Title 159 – Rules and Regulations Underground Storage Tanks – administered by the State Fire Marshal's office [Regulations | Nebraska State Fire Marshal](#)

Title 132 – Integrated Solid Waste Management Regulations. Chapter 13 – Special Wastes

Title 126 – Rules and Regulations Pertaining to Management of Waste: Chapter 18 – Releases of Oil or Hazardous Substances

Title 122 – Rules and Regulations for Underground Injection and Mineral Production Wells

Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System

Title 118 – Groundwater Quality Standards and Use Classification

Title 115 – Rules of Practice and Procedure:

Title 53 - Nebraska Department of Justice, Chapter 4 – Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency. https://www.nebraska.gov/rules-and-regs/regsearch/Rules/Attorney_General/Title-53.pdf

Guidance Documents: (NDEE web page: <https://dee.nebraska.gov>)

- Air Emissions Guidance for Petroleum Remediation Sites
- Management of Petroleum-Contaminated Materials
- Petroleum Release Remedial Action Reimbursement Fund Title 200 Reimbursement Reduction Guidance
- Petroleum Underground Storage Tanks: Closure Assessment Sample Collection and Over-Excavation
- Risk-Based Corrective Action (RBCA) At Petroleum Release Sites: Tier 1/Tier 2 Assessments & Reports Revised

APPENDIX B – ACRONYMS

AST – Aboveground Storage Tank
CAD – Computer Aided Design
EPA – United States Environmental Protection Agency
EPR – Expense Payable Report
HSA - Hollow Stem Auger
NDEE – Nebraska Department of Environment and Energy
NDNR – Nebraska Department of Natural Resources
NDOT – Nebraska Department of Transportation
NPDES – National Pollutant Discharge Elimination System
OSHA – Occupational Safety & Health Administration
PE – Professional Engineer
PG – Professional Geologist
PIC – Pump Installation Contractor
PM – Project Manager
RBCA – Risk Based Corrective Action
RP – Responsible Person
SFM – State Fire Marshal
UIC – Underground Injection Control
UST – Underground Storage Tank
VRA – Voluntary Remedial Action
WWMT – Water Well Monitoring Technician
WDC – Well Drilling Contractor