

POLICY FOR REIMBURSEMENT OF PETROLEUM PRODUCT “IMPACTED” SOIL
(REVISED OCTOBER 27, 2022)

M.G.L. c. 21J, 503 CMR 2.00, and the Appendix 3-Reimbursement Fee Schedule provide the rules, regulations, and policies for determining the eligibility of reimbursable costs for Response Actions for eligible Releases. It is important to note that the terms used herein (e.g. Response Action, Eligible Release, Release, Petroleum Product, etc.) are defined in 503 CMR 2.02 and should not be construed to necessarily have the same meaning as defined in the Massachusetts Contingency Plan (MCP) (reference M.G.L. c.21E). Also, as a reminder, all activities required under the MCP are not necessarily eligible for reimbursement under 21J.

As noted above, only the costs for Response Actions related to an eligible Release are reimbursable. Response Actions are defined in the 21J regulations (503 CMR 2.02) as “a cost-effective, reasonable and necessary action” with regard to media (including soil) at a Petroleum Product release, including removal (excavation) actions. Also, it is important to remember that “contaminated” soils related to the Eligible Release must be distinguished from other soils that do not require a response action or if they are related to a non-eligible release(s) (e.g. waste oil, heating oil, or releases that do not have an approved Eligibility, etc.).

The long-standing interpretation of the 21J/UST Program and the UST Board is that the term “contaminated” is used to describe materials that require a MCP-defined Response Action, whereas “impacted” may not. The MCP defines “contaminated” soils as soil containing oil or hazardous materials at concentrations equal to or greater than a release notification threshold. Generally, Petroleum Product “contaminated” soil is considered to be soil exceeding 100 ppmv using MassDEP field head space screening methods or exceeding the MCP S-1 Reportable Concentrations.

The UST Board fully recognizes that during contaminated soil removal events, soil contamination conditions at a site are not always homogenous and excavation activities with large heavy equipment are not precise, which typically result in the removal of “impacted” soils along with the “contaminated” soils. Although there would appear to be an environmental and potential health risk benefit to removing “impacted” soils, the cost benefit and efficacy is debatable. Notwithstanding, as long as reasonable attempts are made to characterize the levels of contamination in accordance with the *Collection and Presentation of Data in Support of Reimbursement: Petroleum-Contaminated Soil Policy*, the UST Board believes it is reasonable to allow a portion of disposal costs for soils that are characterized as “impacted” to be eligible for reimbursement.

Consequently, on October 27, 2022 the UST Board revised its policy on the reimbursement of the disposal of “contaminated” soil to include a portion of the related “impacted” soil of up to 50% of the eligible “contaminated” soil tonnage disposed offsite.

Example: Assume 4,000 tons of soil was excavated at a site. Following the *Collection and Presentation of Data in Support of Reimbursement: Petroleum-Contaminated Soil Policy*, the soil was characterized as follows:

- “contaminated”: 2,000 tons
 - “impacted”: 1,000 tons
 - non-contaminated/non-impacted: 1,000 tons
- 4,000 tons

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In this example, 50% of the 2,000 tons, or 1,000 tons, would be the allowance for “impacted” soils that would be eligible for the reimbursement of disposal costs. In total, 3,000 tons would be eligible for reimbursement under the same task code as the “contaminated” soil for this event.

In addition, the Board notes the following conditions apply to this policy:

- 1) The allowance for “impacted” soil is only applicable for the same excavation event where “contaminated” soils were also removed and disposed. The allowance cannot be “banked” and applied to future excavations. For example, in the case above a 1,000 ton allowance was established for “impacted” soils. However, if there were only 100 tons of “impacted” soils generated, the remaining 900 tons in the allowance could not be applied to some future excavation event.
- 2) Generally, “impacted” soils are co-mingled/stockpiled with the “contaminated” soils and are shipped to the same disposal facility. If the “impacted” soils are transported to a different facility, then the same 3-bid rules apply as described in the Appendix 3-Remibursement Fee Schedule.
- 3) There is no separate task code maximum for “impacted” soils. The maximum aggregated allowance for soil disposal of 8,000 tons (combined task codes 6.3, 6.4, 6.5) applies to the aggregate of all soil disposed regardless if it is “contaminated” or “impacted”.
- 4) Soils that are not characterized as either Petroleum Product “contaminated” or Petroleum Product “impacted” are not eligible for reimbursement. In other words, soils that are free of detectable concentrations of eligible Petroleum Products are not eligible for the reimbursement of disposal costs.