

Site Cleanup Status Review Policy - Pilot Program

Background:

The 21J/UST Program has funded multiple Releases where the cleanup has exhausted the \$1.5 million in available funding and the sites have not yet achieved a Permanent Solution. In addition, there are several hundred Releases being funded that have expended over \$500,000 and the cleanup is ongoing and several dozen Releases being funded that have expended over \$1 million in reimbursements. According to the most recent data for 21J-funded cleanups, the median cost to achieve cleanup is \$156,004 (2017 data). This is generally consistent with the average cost for cleanup in New England at \$161,093 (note Maine did not report) and nationally at \$147,309 (source ASTSWMO – 2017 State Fund Survey – published August 24, 2018)¹.

The Board recognizes that certain sites have technical challenges, site conditions, and/or regulatory and financial constraints that may drive costs above average; however, these are not always understood nor captured under the current reporting schema. The Board has a fiduciary responsibility to ensure that all reimburse costs related to a Response Action are reasonable, appropriate, cost-effective, and necessary (reference 503 CMR 2.02, 2.11)

Under this policy and upon request by the Board, a facility Owner must submit to the Board (via the Site Cleanup Status Review Subcommittee) a summary report generally presenting the current status of the cleanup and present a schedule and cost to complete (i.e. achieve a Permanent Solution). Following a review of the status report, the Owner and its LSP and consultants may be required to appear before a Site Cleanup Status Review Subcommittee to discuss the report. A new task code will be created to reimburse the Owner for the costs incurred to prepare the report and to attend the meeting.

The purpose of the report and the meeting is to determine if reasonable steps are being taken to remediate and closeout the Release; if there are financial obstacles within the current Fee Schedule structure limiting cleanup efforts; if there are site conditions, technical challenges, or regulatory obstacles that preclude the site from reaching Permanent Solution status; etc. With this information, the Board may be able to identify:

- if changes to the Fee Schedule are needed to facilitate a more rapid and aggressive cleanup strategy;
- if reasonable costs for long-term O&M can be determined for sites that cannot achieve a PS;
- if the current definition of “substantial completion” should be revised
- if the Owner has financial constraints limiting the amount of work that can be done (capital outlay vs reimbursement schedule);
- other circumstances and patterns that may help the Board to revise existing policies/regulations or create new ones to better facilitate site cleanup

In addition, in case these discussions have not already taken place between the Owner and its LSP/Consultant, the meeting will serve to educate and alert the Owner of the remaining 21J funds, the prognosis for the ongoing cleanup, and make the Owner aware of the potential financial impacts if/when the 21J reimbursement ceiling is reached.

Report/Meeting Trigger: Costs to prepare the report and attend the meeting shall not be incurred unless specifically requested by the Board. For the purposes of the pilot stage, the Board may request a status report when the total amount reimbursed by the fund is greater than or equal to \$1,000,000, or if the site has not achieved Permanent Solution status within 7 years.

¹ These costs represent costs to the Fund and do not include other out-of-pocket costs that may have been incurred by the Owner and either not reported or were otherwise unreimbursed by the Fund.

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Meeting Attendees:

- **Subcommittee members:**
 - DOR Executive Director and technical staff – required;
 - MassDEP Board rep. – required;
 - Environmental Public Interest Group Board Rep - required;
 - NECSEMA Rep - required; and
 - Other interested Board members
- **Presenters:**
 - Owner and the Responsible Party (if the RP is not the Owner);
 - Site LSP (required);
 - Other technical/financial representatives as needed (note limitations on cost reimbursement).

Outline for the Status Summary Report, (report to be electronically submitted prior to the meeting):

SECTION 1: BACKGROUND (information in this section will be provided by the UST Program to the facility owner)

1. RTN date
 - a. Owner at time of release
 - b. Subsequent owner history to date
2. Brief description of release (product, source, extent of contamination)
3. ELIG approval date
4. First claim filed date
5. Most recent claim filed; date and number
6. Total amount reimbursed to date
7. Other RTNs allowed for reimbursement under the open/approved eligibility number

SECTION 2: CURRENT SITE CLEANUP STATUS

1. Description of Phase IV remediation plan
2. Summary of response actions to date, including a timeline when each MCP Phase was achieved up to current site status
3. History of specific technology/remediation methods (date/period used and type) (table format)
4. Summary of technology upgrades/O&M performed (cost and schedule)
5. Current remaining area impacted (including a figure)
6. Current technology/remediation method being used (brief description)
7. Other subsequent RTNs (related or unrelated), including contaminant(s) exceeding RCs, discovery date and reporting date; and impact, if any, on the primary RTN associated with this eligibility.
8. Scaled drawing/site plan showing the most current disposal site boundary

SECTION 3: CURRENT OBSTACLES/CHALLENGES TO CLOSEOUT:

1. Technology (e.g. technology limitations, aging equipment, site conditions, etc.)
2. Financial
3. Regulatory (e.g. GW-1)
4. Other (e.g. offsite property agreements, new releases, site access, public involvement, etc.)
5. Proposal/strategy to completion

SECTION 4: FORECAST TO COMPLETE

1. Approximate cost to date (separate by cost reimbursed and not reimbursed by the Fund):
 - a. Site Investigation – FS (Phase 1-3)
 - b. Remedial design (Phase IV)

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- c. Remedial Action, separate line item by event (e.g. Phase V, LRA, RAM, URAM, etc..)
2. Estimated time to completion
3. Estimated cost to completion for each of the following major activities, as applicable:
 - i. Assessment
 - ii. Remediation
 - iii. Project closeout

Enforcement for failure to comply with the request to prepare the report or attend the status review meeting:

- Board will suspend future claim payments if the Owner/RP fails to comply with preparing the report or fails to attend the meeting per 503 CMR 2.11(4)(c)²

New Task Codes:

TASKS			ITEM DESCRIPTION	UOM	MAXIMUM ALLOWED
2			REPORT PREPARATION		
2.23			Site Cleanup Status Review		
	2.23.1		Prepare & submit site status report	NTE	\$1,700
	2.23.2		Attend site status review meeting	NTE	\$1,820

Workbook Guidance Revisions for New Task Codes:

Task Code 2.23 – Site Cleanup Status Review

This task code is for the labor and other incidental direct costs required to complete the Site Status Review Report as outlined in the Board’s policy entitled **Site Cleanup Status Review Policy - Pilot Program** and to attend a Site Status Review meeting to present the findings of the report to the Board. Reimbursement for costs associated with the task will only be allowed if the Board has requested that 1) the report be prepared and 2) meeting attendance is required.

Task Code 2.23.1 - Items covered under these task codes include:

- Labor costs to prepare and electronically submit the Site Status Review report (report contents and format in accordance with Site Cleanup Status Review - Pilot Program - NTE \$1,500.00
- Incidental other direct costs required to prepare the report - NTE \$200.00

Task Code 2.23.2 - Items covered under these task codes include:

- Labor costs to attend the Site Status Review meeting - NTE 6 hours per person (2 people) - including travel time: the site LSP (\$145/hr) plus 1 project assigned Sr. Scientist/Engineer/Project Manager (\$125/hr). Total task NTE \$1,620.00.
- Travel expenses – includes mileage, tolls, parking, rental car, etc. NTE \$200.00

² 503 CMR 2.11(4)(c): “The Board reserves the right to determine allowable Reimbursements for reasonable and appropriate costs, expenses and obligations.”