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DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WASTE MANAGEMENT

UNDERGROUND STORAGE TANK BRANCH

200 FAIR OAKS LANE, 2ND FLOOR

FRANKFORT, KENTUCKY 40601

<http://waste.ky.gov/ust>

NOTICE

To: Underground Storage Tank (UST) Owners and Operators and Eligible Contractors

From: Edward Winner, UST Branch Manager

Date: April 15, 2014

Subject: Surface Material Replacement, Site Restoration Costs and Materials Selection

Issue:

Reimbursement for damage to your parking lot is limited to the amount in the restoration obligation. If you, as the petroleum storage tank owner or operator, agree with your underground storage tank (UST) contractor to proceed with facility restoration such that you resurface with asphalt, for example, as opposed to replacing the concrete that was originally removed, Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) will reimburse an amount equal to the cost of the concrete replacement in the obligation approval. PSTEAF will focus on the total cost, not the specific material.

PSTEAF is willing to allow alternatives in site restoration, that is, asphalt instead of concrete or visa, versa. Often the original pad was a 6 inch thick, reinforced concrete pad located directly over the tanks. The purpose of the pad was to protect the tanks and associated equipment. If the tanks are no longer present in a location, placing such a pad in that location would be wasteful. It is a wiser use of dollars to place appropriate materials in the most useful location, with the understanding that the cost will not exceed that which would have been necessary to replace the original pad.

Further Explanation:

The intention of the regulations is that the PSTEAF only bear those costs necessary to replace the concrete or asphalt destroyed by corrective action. Cost is the focus. If concrete is approved in the obligation but asphalt is used instead, the PSTEAF will reimburse the costs up to the costs set forth in the obligation. Your contractor must supply to PSTEAF the invoice to demonstrate that the full difference in the cost between the restoration which was approved and the restoration which occurred accrued to you in the form of facility restoration. Therefore, in our example, the area to be covered with asphalt is expected to be greater than the area of corrective action in the obligation approval because asphalt is generally less expensive than

concrete. If total costs are less than that in the obligation, PSTEAF will pay only those lower total costs.

The principle outlined would naturally extend to reseeded an area as opposed to replacing hard surface. It would also be true that if the original material destroyed by corrective action was asphalt and concrete was used to replace the damaged area. Accordingly, if rebar was originally present in the area damaged by corrective action, and the applicant no longer desires rebar, then the full value of the rebar must be accounted for either in additional surface materials or in a discounted claim submitted. PSTEAF will only pay up to the cost in the obligation and the contractor must demonstrate that the difference in the cost between restoration which was approved and the restoration which occurred accrued to you in the form of facility restoration.

The assumption in any of these alternative restoration approaches is that you, in cooperation with your contractor, have agreed to an alternative material and that you will be satisfied with the restoration. An additional assumption is that the workmanship and the quality of the materials are appropriate for the intended use. Nevertheless, short of fraud, it will be assumed that you are satisfied with the work when you sign the facility restoration form. Likewise, the applicant must recognize that PSTEAF generally does not intervene between you and your selected contractor. It is your responsibility to manage the relationship with your contractor.

Edward Winner
Branch Manager UST Branch