

## § 310.11

## 40 CFR Ch. I (7-1-07 Edition)

### § 310.11 What costs are allowable?

(a) Reimbursement under this part does NOT supplant funds you normally provide for emergency response. Allowable costs are only those necessary for you to respond effectively to a specific incident that is beyond what you might normally respond to.

(b) Examples of allowable costs are:

(1) Disposable materials and supplies you acquired and used to respond to the specific incident;

(2) Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel);

(3) Rental or leasing of equipment you used to respond to the specific incident (for example, protective equipment or clothing, scientific and technical equipment) (Note: rental costs are only allowable for the duration of your response; once you complete the response to the specific incident, further rental costs are NOT allowable);

(4) Replacement costs for equipment you own that is contaminated or damaged beyond reuse or repair, if you can demonstrate that the equipment is a total loss and that the loss occurred during the response (for example, self-contained breathing apparatus irretrievably contaminated during the response);

(5) Decontamination of equipment contaminated during the response;

(6) Special technical services specifically required for the response (for example, costs associated with the time and efforts of technical experts/specialists that are not on your staff);

(7) Other special services specifically required for the response (for example, utilities);

(8) Laboratory costs of analyzing samples that you took during the response;

(9) Evacuation costs associated with the services, supplies, and equipment that you procured for a specific evacuation; and

(10) Containerization or packaging cost and transportation and disposal of hazardous wastes.

(c) To be allowable, costs must:

(1) NOT be higher than what a careful person would spend for similar products or services in your area; and

(2) Be consistent with CERCLA and the federal cost principles outlined in OMB Circular A-87, "Cost Principles for State and Local Governments." (Copies of the circular are available from the Office of Administration, Publications Office, New Executive Office Building, 725 17th Street, NW., Room 2200, Washington, DC 20503.)

(d) EPA will make final determinations on whether your costs are reasonable.

### § 310.12 What costs are NOT allowable?

(a) Costs that are NOT allowable are expenditures you incur in providing what are traditionally local services and responsibilities. Examples include:

- (1) Routine firefighting;
- (2) Preparing contingency plans;
- (3) Training; and
- (4) Response drills and exercises.

(b) Costs that are NOT allowable also include items such as supplies, equipment, and services that you routinely purchase to maintain your ability to respond effectively to hazardous releases when they occur. Examples of other costs that are NOT allowable are:

(1) Purchase or routine maintenance of durable equipment expected to last one year or more, except when contaminated or damaged as described in § 310.11(b)(4) and (b)(5);

(2) Materials and supplies you did NOT purchase specifically for the response;

(3) Rental costs for equipment that you own or that another unit of local government owns;

(4) Employee fringe benefits;

(5) Administrative costs for filing reimbursement applications;

(6) Employee out-of-pocket expenses normally provided for in your operating budget (for example, meals or fuel);

(7) Legal expenses you may incur due to response activities, including efforts to recover costs from PRPs; and

(8) Medical expenses you incur due to response activities.

#### HOW TO GET REIMBURSED

### § 310.13 Do I need to notify anyone while the response is underway?

No. You should notify EPA, the National Response Center, or use another

## Environmental Protection Agency

## § 310.18

established response communication channel, but it is not a requirement for reimbursement. Telephone numbers for EPA regional offices and the NRC are in Appendix II to this part.

### **§ 310.14 Must I try to recover my costs from those potentially responsible for the emergency?**

Yes. Before applying for reimbursement from EPA, you must try to recover your costs from all known potentially responsible parties (PRPs). After you ask them for payment, you should give PRPs 60 days either to pay you, express their intent to pay you, or indicate willingness to negotiate. You must also try to get reimbursed by other sources (for example, your insurance company or your state). If you are not successful, you must certify on your reimbursement application that you made a good-faith, reasonable effort to recover your costs from other sources before applying to EPA. If you recover any portion of the costs from these sources after you receive reimbursement from us, you must return the recovered amount to EPA.

### **§ 310.15 How do I apply for reimbursement?**

(a) You must apply for reimbursement on EPA Form 9310-1, shown in Appendix III to this part.

(b) You must submit your request within one year of the date you complete the response for which you request reimbursement. If you submit your application late, you must include an explanation for the delay. We will consider late applications on a case-by-case basis.

(c) Your application must be signed by the highest ranking official of your local government (for example, mayor or county executive), or you must include a letter of delegation authorizing a delegate to act on his or her behalf.

(d) Mail your completed application and supporting data to the LGR Project Officer, (5401A), Office of Emergency Management, Office of Solid Waste and Emergency Response, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

[63 FR 8286, Feb. 18, 1998, as amended at 70 FR 56577, Sept. 28, 2005]

### **§ 310.16 What kind of cost documentation is necessary?**

Cost documentation must be adequate for an audit. At a minimum, you must:

(a) Include a description of the temporary emergency measures for which you request reimbursement;

(b) Specify the local agency that incurred the cost, (such as, the Town Fire Department, the County Health Department, or the City Department of Public Works);

(c) Include invoices, sales receipts, rental or leasing agreements, or other proof of costs you incurred; and

(d) Certify that all costs are accurate and that you incurred them specifically for the response for which you are requesting reimbursement.

### **§ 310.17 Are there any other requirements?**

(a) You must certify that reimbursement under this regulation does not supplant local funds that you normally provide for emergency response. This means that the reimbursement you request is for costs you would not normally incur; rather, they are for significant, unanticipated costs related to a specific incident beyond what you normally respond to.

(b) You must also certify that your response actions are not in conflict with CERCLA, the National Contingency Plan (NCP), and the local emergency response plan prepared by your Local Emergency Planning Committee, if there is one. If you need help with this requirement, contact the LGR Help line (800-431-9209) or your EPA regional office.

(c) You, as a local government, should be included in the local emergency response plan completed by your LEPC, as section 303(a) of EPCRA requires. This does not apply if your State Emergency Response Commission (SERC) has not established an LEPC responsible for the emergency planning district(s) that encompasses your geographic boundaries.

### **§ 310.18 How will EPA evaluate my application?**

(a) When we receive your application, we will make sure it meets all requirements of this section. If your request is