



**POLICY #18**  
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**Subject**        **Approved Costs beyond the \$3 Million Fiscal Year Aggregate Statutory**  
**Limit Adopted** **7/21/2006; 2/24/2006; 4/4/1997; 3/29/1996**

Colorado statute imposes a \$3 million annual limit on reimbursement to an individual owner or operator:

The maximum amount of liability of the fund under this section during any fiscal year shall be... three million dollars aggregate, for tanks that are the responsibility of an individual owner or operator.... § 8-20.5-206(2) [USTs] and § 8-20.5-303(2) CRS [ASTs]

This \$3 million limitation applies only to costs approved for reimbursement. It does not apply to costs incurred or submitted for reimbursement. The Committee makes this distinction in the belief that the \$3 million limitation is intended to prevent a single owner or operator from depleting the Fund beyond \$3 million in one fiscal year. The Committee believes that interpreting the \$3 million limitation as applying either to costs incurred or submitted for reimbursement could unfairly penalize the owner/operator faced with multiple cleanups during a single fiscal year, and could also serve as a financial deterrent against proceeding expeditiously with remediation.

The following procedure will apply whenever the Committee, during one fiscal year, considers allowable costs in excess of \$3 million submitted by an individual owner or operator.

**Procedure**

1. The application(s) will proceed through normal channels: eligibility (original applications only), financial, and technical reviews. All costs submitted will be reviewed.
2. Each original application will be presented to the Committee for its review. Supplemental applications will be presented to the Committee for its review only if requested by the applicant, or as deemed necessary by the Division of Oil and Public Safety of the Department of Labor and Employment (the Division). The Division shall make the Committee aware that the potential exists for the applicant to exceed \$3 million in reimbursement for the fiscal year.
3. The Committee will determine applicant eligibility and decide which costs are documented and allowable for reimbursement without regard to the \$3 million dollar limit. However, **the Committee shall approve for reimbursement only those costs that would not cause the applicant to exceed the \$3 million reimbursement limitation.**
4. A draft of the Fund Payment Report will be prepared (describes allowable costs, unallowable costs, any percent reductions, or other deductions such as the deductible, if applicable, or costs over \$50,000 without an approved corrective action plan) and reviewed by OPS, but not finalized.
5. OPS will hold all draft Fund Payment Reports that exceed \$3 million until the new fiscal year. The statutory processing time clock will stop and no interest will be incurred.
6. As the draft Fund Payment Reports are prepared, an email will be sent to the applicant or applicant's representative stating the RAP number and amount of each Fund Payment Report that is being held.
7. At the beginning of the new fiscal year, the draft Fund Payment Reports will be finalized and processing for payment will resume.

