

# Underground Storage Tanks/Rate Establishment Guide for State Financial Assurance Funds: ASTSWMO Report



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

08/27/2024

The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) issued on August 24, Part One of a document titled:

*Rate Establishment Guide for State Financial Assurance Funds (“Guide”).*

The Guide was prepared by the Tanks Subcommittee of ASTSWMO’s Financial Responsibility Task Force.

ASTSWMO describes itself as an organization with member in the 50 states, 5 territories, and the District of Columbia whose mission is to promote effective state and territorial programs and to affect relevant national policies for waste and material management, environmentally sustainable practices, and environmental restoration.

In the mid-1980’s the United States Congress concluded that a significant percentage of the underground storage tanks (“USTs”) had or would suffer leaks or spills (often called “releases”). Congress also decided that some releases had or would cause subsurface and/or groundwater contamination. A related concern was the possibility that releases in certain areas or settings might infiltrate structures’ drinking water supplies.

The Congressional response was legislation mandating that the United States Environmental Protection Agency (“EPA”) develop a UST regulatory program adding Subtitle I to the Resource Conservation and Recovery Act (“RCRA”). Subtitle I required that EPA promulgate UST regulations mandating that petroleum USTs meet various registration, installation, design, leak detection, recordkeeping, and enclosure requirements. Such regulations were finalized in 1989.

Of particular relevance to the ASTSWMO Guide is that Congress also required that EPA mandate that UST owners and operators meet certain financial responsibility requirements. These provisions required that a UST owner or operator obtain \$1 million of financial assurance for both corrective action and compensating third party bodily injury and/or property damage claims related to petroleum releases.

Concerns regarding the ability of many UST owners and operators to comply with the federal financial responsibility requirements prompted a number of states (including Arkansas) to create financial assurance or trust funds. Such financial assurance or trust funds enabled UST owners and operators to partially or completely comply with federal financial responsibility requirements and have the resources to address UST releases. An example of a state that has successfully operated such a trust fund is Arkansas. See Ark. Code Ann. § 8-7-901 et seq.

EPA maintains oversight to ensure that the technical standards of financial responsibility are being attained in the various delegated states.

ASTSWMO states that its Financial Responsibility Task Force collected data from 38 states on their reimbursement rate establishment processes regarding cleanup costs associated with tank releases with contamination. States vary in terms of how they reimburse cleanup cost and the types of cost that are reimbursable.

The Guide notes in part:

...most, if not all, of these programs have processes in place to reimburse consultants and contractors for investigation and cleanup work. The methods for establishing reimbursement rates vary widely across programs.

By way of two examples, the Guide notes:

- Some states routinely update reimbursement rates (but don't have a prescribed process for doing so).
- Some states do not have a prescribed schedule (but do have a detailed process).

The Guide is intended to serve as a resource for states with UST financial assurance funds that are updating or establishing reimbursement rates.

Surveys were sent to 38 states asking about their reimbursement rate establishment process. 36 states are stated to have responded to the survey.

Common information reported by the states included:

- Consumer price index.
- Consultant survey responses.
- Comparing rates with neighboring states.
- Negotiation of labor and equipment rates.
- Holding stakeholder meetings.

The Guide provides detailed information including linked documents addressing:

- Who establishes rates.
- When rates are updated.
- How rates are updated.

A copy of the Guide can be downloaded [here](#).