

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PARKER'S GAS & MORE, INC.)
Petitioner,)
v.) PCB 2019-079
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
(carol.webb@illinois.gov)

Melanie Jarvis
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(melanie.jarvis@illinois.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's Response to Illinois EPA's Cross Motion for Summary Judgment, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the documents described above, were today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 17th day of June, 2021. The number of pages of this filing, other than exhibits, is 8.

Respectfully submitted,

PARKER'S GAS & MORE, INC.
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PARKER’S GAS & MORE, INC.)
Petitioner,)
)
v.) PCB 2019-079
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

**PETITIONER’S RESPONSE TO ILLINOIS EPA’S CROSS MOTION
FOR SUMMARY JUDGMENT AND MOTION TO STRIKE**

NOW COMES Petitioner, PARKER’S GAS & MORE, INC., by its undersigned counsel, responds to Illinois EPA’s Cross Motion for Summary Judgment pursuant to Section 101.516(a) of the Board’s Procedural Rules (35 Ill. Adm. Code § 101.516(a)), stating as follows:

INTRODUCTION

Where the parties file cross-motions for summary judgment, “they agree that no issues of material fact exist and invite the court to decide the issues presented as questions of law.” Village of Oak Lawn v. Faber, 378 Ill. App. 3d 458, 462 (1st Dist. 2007). “However, the mere filing of cross-motions for summary judgment does not preclude a determination that triable issues of fact remain.” Id.

I. The Board Should Deny the Illinois EPA’s request to Strike Exhibits A and B from Petitioner’s Motion for Summary Judgment.

Exhibit A to Petitioner’s Motion for Summary Judgment contains material from the administrative record as an aid to the Board in indentifying the source of Petitioner’s

calculations. This is information that could have been inserted into the middle of the motion, but undersigned counsel felt that setting it aside as an attachment would make the motion easier to read. The Illinois EPA does not dispute the accuracy of this document, and as such the motion to strike it is without basis.

Exhibit B to Petitioner's Motion for Summary Judgment is the IEPA Instructions for the Budget and Billing Forms dated April of 2009. These are the forms that were in place in 2015 when the budget was submitted and approved. (R.004; R.215) The Illinois EPA contends that the updated version dated October of 2016 is the proper form in effect at the time of the appeal. Petitioner disagrees, as the forms relevant for payment applications must be the same as the forms in place when the budget was approved. (Ex. B, at p. 2) As the application for payment must be consistent with the approved budget, it is the instructions at the time the budget was approved that are legally relevant. In any event, the portion of the 2009 instructions cited by Petitioner is identical in the 2016 instructions, a true and correct copy of which is attached hereto as Exhibit C. Compare Ex. B, p. 8 with Ex. C, p. 9. As it would not matter which version is used, the Illinois EPA's motion should be denied.

II. The Illinois EPA Concedes that the Supporting Documentation was Provided.

The sole issue in this appeal is whether the application "lack[ed] supporting documentation." (R.486) The Agency decision letter does not identify what documentation was lacking, and the Cross Motion for Summary Judgment indicates it was in fact received:

The Illinois EPA sent an email to the consultant requesting the documentation to support their request. The consultant responded with manifests of the material and invoices and provided information that they were not charged for the

(Cross Motion, at p. 7)

When asked for supporting documentation, what was received made clear that they were asking for reimbursement for something they had received for FREE.

(Cross Motion, at pp. 8-9)

The Illinois EPA has confounded two distinct issues. The first issue is what supporting documentation must be submitted with an application for payment, or may be requested by the Illinois EPA to enable it to review the application. The second issue is what substantive legal issues, if any, are raised by said documentation.

For example, in T-Town Drive Thru v. IEPA, PCB 07-85 (April 3, 2008), the Board found that the applicant failed to provide the invoices for the lab samples. The Illinois EPA had requested the invoices in an e-mail message prior to making its decision, and when the request was ignored, the Illinois EPA denied the associated lab costs due to lack of supporting documentation, namely “any backup invoices listing the costs for lab costs.” Id. at p. 7. The Board concluded that such invoices could be requested pursuant to what is currently 35 Ill. Adm. Code § 734.605(b)(9) (an application for payment must include invoices). Id. at 29. The Board did not reach any conclusion as to the invoices, as they were none in the record, just that the Agency was justified in rejecting the costs without the opportunity to review them. Cf. T-Town Drive Thru v. IEPA, PCB 07-85 (June 19, 2008) (explaining in denying motion for reconsideration that the Board only addressed the issue raised in the decision letter as to whether the invoices could be required by the Illinois EPA)

The Agency's review of the application requires it to determine “[w]hether the application contains all of the elements and supporting documentation required by Section 734.605(b) of this

Part" (35 Ill. Adm. Code § 734.610(a)(1)) If there is any information missing, the Agency decision letter must provide "[a]n explanation of the specific type of information . . . that the Agency needs to complete the review." (35 Ill. Adm. Code § 734.610(d)(1)) The record and the Illinois EPA's argument fail to identify the supporting documentation that the Agency needed, and consequently there is no legal basis for the Board to conclude that the application for payment lacked supporting documentation.

III. The Piasa Motor Fuels Opinion is Irrelevant since the Agency Decision Letter Therein Raised Different Legal Issues.

The Illinois EPA's Cross Motion relies entirely on the Board's decision in Piasa Motor Fuels v. IEPA, PCB 18-54 (April 16, 2020). However, the rejection of backfill costs in that case was based entirely upon those backfill excavation costs not being included in the corrective action plan and budget:

Where Piasa requests reimbursement for an activity that was not approved as part of its corrective action plan, Piasa must first submit an amended corrective action plan. See 35 Ill. Adm. Code 734.605(a). In the context of considering an amended plan, the Agency may properly determine whether the cost of that activity is reasonable and whether that activity is in excess of those necessary to meet the minimum requirements of the Act. See 35 Ill. Adm. Code 734.510(b), 630(dd).

Id. slip op. at p. 13.

In Piasa, the Agency decision letter expressly denied reimbursement for costs of excavating backfill on the grounds that such costs were not approved in a budget. Id. slip op at p.

4. The Board agreed that the activity of excavating its own backfill was substantially different from purchasing backfill to require approval in a plan and budget. By means of an amended corrective action plan, the Agency would have an opportunity to determine whether the costs of

that activity were reasonable or exceed the minimum requirements of the Act. The Agency did not claim “lack of supporting documentation” in its decision letter, nor was that grounds the basis of the Board’s analysis.¹ The Agency has not disputed that the costs at issue here were approved in the budget, so the holding in Piasa is inapplicable. In fact, the Agency did raise that issue with respect to reimbursement sought for grass seed. (R.486 - R.487) However, Petitioner has not disputed the grass seed issue in this proceeding, but submitted an amended budget to the Illinois EPA instead.

The issues in this appeal are framed by the Agency’s decision letter, and that decision letter did not raise the same issues raised in Piasa.

IV. The Maximum Rates are Not Relevant at the Application for Payment Stage.

The relevant fact herein is that the application for payment was under budget. (415 ILCS 5/57.8(a)(1)(“In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.”) Petitioner does not dispute that the Illinois EPA can request certain information to assist with its review at the reimbursement stage, but it would have to start by identifying it. And while the Piasa opinion appeared to assume that an amended corrective action plan could still be submitted, it is not unusual for a project to be completed by the time reimbursement is sought and such an amendment may be a legal impossibility. Without notice in either the Agency instructions or the Board’s rules of an issue, revisiting the corrective action plan when

¹ The issue of lack of supporting documentation was not raised as to the backfill materials in Piasa, though it was raised unsuccessfully with respect to the costs of removal of contaminated soil.

reimbursement is sought can impose a severe injustice. See Petitioner’s Motion for S.J., at pp. 10-11.

The repeated emphasis on the word “FREE” in the Cross Motion points to the Illinois EPA’s policy concern, but it is entirely unmoored from any discernible rule. There are no costs for backfill material alone, and the Illinois EPA gave no consideration of whether the money saved from washout rock offset fuel, labor or other higher than expected costs. It did not give Petitioner’s consultant any such opportunity.

Would the Illinois EPA have a problem if the backfill material cost one dollar? Wash out rock is inexpensive even when not available free and it was punitive for the Illinois EPA to assess it at the cost of a superior good in order to make an arbitrary deduction from the reimbursement claim. There is nothing in the Board’s regulations that authorized the Illinois EPA to invent such a rate and the Board’s regulations are not a mere technicality.

CONCLUSION

The Cross Motion fails to meet the movant’s burden of showing that there are no disputed facts and that summary judgment should be granted as a matter of law. Moreover, the Illinois EPA should be precluded from inventing rates for washout rock unless and until it complies with the Board’s regulations at 35 Ill. Adm. Code 734.875 concerning triennial review of market rates.

WHEREFORE, Petitioner prays for an order denying the Illinois EPA’s Cross Motion for Summary Judgment, including its motion to strike exhibits, granting Petitioner’s Motion for Summary Judgment, and for such other and further relief as the Board deems meet and just.

PARKER'S GAS & MORE, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

Instructions for the Budget and Billing Forms

The Illinois Environmental Protection Agency (Illinois EPA) has revised the *Budget and Billing Forms* for payment from the Underground Storage Tank Fund (Fund). The Illinois EPA's new forms shall be used for all budgets and applications for payment for all sites subject to 35 Illinois Administrative Code (35 Ill. Adm. Code) 734, 732, or 731, except as noted below. The *Budget and Billing Forms* reflect the amendments to 35 Ill. Adm. Code 732 and the adoption of 35 Ill. Adm. Code 734. When using these forms, please follow the instructions for each particular form that pertains to your site.

Maximum Payment Amounts

The Illinois EPA will only approve payment from the Fund for corrective action costs actually incurred up to the maximum amounts listed in Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 732 or 734—unless bidding is used or the unusual or extraordinary circumstance provisions are followed. The Subpart H, Appendix D, and Appendix E maximum payment amounts will be adjusted for inflation each year on the first day of July of that year. The first adjustment was made on July 1, 2006. The maximum amounts that are applicable for costs submitted in a budget are the amounts in effect on the date the Illinois EPA receives the budget. Please note that, once the Illinois EPA approves a cost, the applicable maximum payment amount for that cost may not be increased by proposing the cost in a subsequent budget (35 Ill. Adm. Code 732.870(d) or 734.870(d)). The maximum amounts that are applicable for costs not approved in a budget by the Illinois EPA, such as early action costs, are the amounts in effect on the date the costs were incurred.

Signature Requirements

For owners and operators other than individuals, a duly authorized representative must sign the forms on behalf of the owner or operator. For the following entities, the duly authorized representative must be one of the following persons:

1. For a corporation, a principal executive officer of at least the level of vice president, or a person authorized by a resolution of the board of directors to sign the applicable document if a copy of the resolution, certified as a true copy by the secretary of the corporation, is submitted with the document.
2. For a sole proprietorship, the sole proprietor.
3. For a partnership, a general partner.
4. For a municipality, state, federal, or other public agency, the head of the agency or a ranking elected official.
5. For a limited liability company, a member for a member-managed company and either a manager or a member for a manager-managed company.
6. For a land trust, a beneficiary of the land trust who meets the definition of "operator" under 35 Ill. Adm. Code 731, 732, or 734.

Budgets

Title XVI of the Environmental Protection Act requires owners or operators to submit a budget prior to seeking payment from the Fund, except in the case of costs associated



with early action activities. Owners or operators of sites subject to 35 Ill. Adm. Code 731 are not required to submit budgets.

For owners or operators conducting site investigation pursuant to 35 Ill. Adm. Code 734, the certification that the costs of the Stage 1 investigation will not exceed the amounts set forth in Subpart H, Appendix D, and Appendix E serves as the budget for the Stage 1 site investigation. The actual costs for conducting the Stage 1 site investigation must be submitted on budget forms concurrently with the results of the Stage 1 site investigation and the next *Site Investigation Plan* and budget (submitted on its own budget forms) or with the *Site Investigation Completion Report* if the site investigation is complete. Likewise, the actual costs for conducting the Stages 2 and/or 3 site investigation must be submitted on budget forms concurrently with the results of the previous site investigation and the next *Site Investigation Plan* and budget (submitted on its own budget forms) or with the *Site Investigation Completion Report* if the site investigation is complete. When preparing budget forms, complete and submit only the pages that apply. If multiple budgets are included in one submittal, only one budget certification form is required.

Budget amendments to an approved budget must be submitted on the same forms as the original budget was submitted. Any new budgets for new activities shall be submitted on the Illinois EPA's new *Budget and Billing Forms*. These new forms should not be combined with other versions of *Budget and Billing Forms* and vice versa.

An original and one copy of the complete **budget** for sites subject to 35 Ill. Adm. Code 734 or 732 must be submitted with an associated plan. The forms may be copied; however, one form must include original signatures. The original and one copy should be mailed to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking UST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Applications for Payment

If an owner or operator has received approval of a budget on old forms, the corresponding application for payment must be submitted on the old forms. Any new budgets for new activities and corresponding applications for payment shall be submitted on the Illinois EPA's new *Budget and Billing Forms*. These new forms should not be combined with other versions of *Budget and Billing Forms* and vice versa.

When submitting an application for payment, an accounting of all costs must be provided (i.e., invoices and receipts). Invoices and receipts must contain enough documentation to support the amount requested for payment from the Fund. Any costs not substantiated by invoices or receipts will not be paid. Invoices and receipts must include the date the work was performed and a breakdown of all costs with documentation of activities conducted and materials purchased. For example, an invoice from the accredited laboratory noting the date of sample collection, number of samples analyzed, amount charged, etc. is required for payment of analytical costs. If

the invoices and receipts do not contain detailed information, additional documentation must be submitted providing the required information. Invoices and receipts must also provide adequate documentation that the work approved in the applicable plan and budget was conducted.

Proof of payment of subcontractor costs can be shown in one of three ways:

1. Cancelled checks – photocopy of fronts and backs of cancelled checks.
 - a. One payment per site to one payee for the entire amount of one invoice with a note indicating the date of the invoice and the invoice number being paid.
 - b. One payment per site to one payee for the entire amount of several invoices with a note indicating the dates of the invoices, invoice numbers, and the amounts being paid on said invoices.
 - c. Payment to one payee for multiple sites for the entire amount of several invoices with a note indicating the sites involved, including incident numbers, dates of the invoices, invoice numbers, and the amounts being paid on said invoices.
2. Lien waivers with the name of the company, invoice(s) being paid, date payment took place, and the amount(s) paid on said invoice(s) along with necessary signatures.
3. Affidavits with the name of the company, invoice(s) being paid, date payment took place, and the amount(s) paid on said invoice(s) along with necessary signatures.

Please note that an application for payment for site classification pursuant to 35 Ill. Adm. Code 732 cannot be submitted until a *Site Classification Completion Report* has been approved or approved with modifications by the Illinois EPA. Likewise, an application for payment for the previous stage of site investigation pursuant to 35 Ill. Adm. Code 734 cannot be submitted until either a *Site Investigation Plan* and budget for the next stage of investigation or a *Site Investigation Completion Report* (if further investigation is not required) has been approved or approved with modifications by the Illinois EPA.

The complete **application for payment** with original signatures for sites subject to 35 Ill. Adm. Code 734, 732, or 731 should be mailed to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking UST Claims Unit
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Pursuant to:	732 734	732 734	732 734	732 734	731 732 734	732	732	732 734	731 732 734
	Early Action Bill Package	Free Product Removal Budget	Free Product Removal Bill Package	Site Investigation or Classification Budget	Site Investigation or Classification Bill Package	Low Priority Budget	Low Priority Bill Package	Corrective Action (High Priority) Budget	Corrective Action (High Priority) Bill Package
A complete budget or application for payment must include all of the forms listed below, as applicable:									
General Information for the Budget and Billing Forms	P	B	P	B	P	B	P	B	P
Budget Summary		B		B		B		B	
Billing Summary	P		P		P		P		P
Drilling and Monitoring Well Costs Form	P	B	P	B	P			B	P
Analytical Costs Form	P	B	P	B	P	B	P	B	P
Remediation and Disposal Costs Form	P	B	P	B	P	B	P	B	P
Non-Consulting Personnel Costs Summary Sheet	P	B	P					B	P
Remediation Materials Costs Summary Sheet	P	B	P					B	P
UST Removal and Abandonment Costs Form	P		P					B	P
Paving, Demolition, and Well Abandonment Costs Form	P		P					B	P
Consulting Personnel Costs Form	P	B	P	B	P	B	P	B	P
Consultant's Materials Costs Form	P	B	P	B	P	B	P	B	P
Bid Summary and Contractor Certification Forms	P	B		B		B		B	
Handling Charges Form	P		P		P		P		P
Owner/Operator and Professional Engineer/Geologist Budget Certification Form		B		B		B		B	
Eligibility and Deductibility Determination	P	B	P	B	P	B	P	B	P
Payment Certification Form	P		P		P		P		P
Owner/Operator and Professional Engineer/Geologist Billing Certification Form	P		P		P		P		P
Private Insurance Coverage Questionnaire	P		P		P		P		P
Private Insurance Affidavit	P		P		P		P		P
W-9 Form	P		P		P		P		P
Women and Minority Business Enterprises Form	P		P		P		P		P
Copies of all bills and receipts for which payment is sought	P		P		P		P		P

P = Application for Payment only
B = Budget only

General Information for the Budget and Billing Forms

Complete the form with the requested information.

On the first page of the form, there is an area to designate the applicable regulations and the site activities for which the package is being submitted. If the site activities involved are those of a Stage 1 site investigation pursuant to 35 Ill. Adm. Code 734, the only submittal is that of actual costs. If the site activities involved are those of a Stage 2 and/or 3 site investigation pursuant to 35 Ill. Adm. Code 734, you must select from the drop-down box whether the submittal is that of actual costs (for work done during the previous stage of investigation) or a proposed budget.

On the second page of the form, include information pertaining to payment from the Fund (if eligible), such as where payment checks should be sent. Please note that only owners or operators of USTs are eligible for payment from the Fund. Therefore, payment can only be made to an owner or operator of the USTs. The Illinois EPA is not required to and will not recognize an assignment or other delegation of payment as justification for issuing payment to anyone other than the owner or operator. The address, as completed on this form, will be used as the mailing address for payment checks and any final determination letters regarding payment from the Fund.

When submitting an application for payment, you must always include a completed and signed W-9 form. In an effort to speed up review of your claim, it is suggested that the W-9 form always be submitted with every application for payment. As noted on the form, your name should be entered as shown on your income tax return.

Lastly, at the end of page 2 is a table to be completed by listing tanks that have ever been or are presently located at the site. Please note that there is only enough space for entry of one incident number. Therefore, if more than one incident number was assigned to a particular tank, multiple lines of the table must be used to list the additional incident numbers (as well as to indicate whether there was a release and, if so, the type of release associated with that incident number). For a tank with multiple incident numbers, it should somehow be indicated that the information pertains to the same tank. An example follows:

Product Stored in UST	Size (gallons)	Did UST have a release?	Incident No.	Type of Release Tank Leak / Overfill / Piping Leak
unleaded gasoline	10,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	888888	overfill
(same UST as above)		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	999999	piping leak
(same UST as above)		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	2000000	tank leak
diesel fuel	500	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	2000000	tank leak

Click, as instructed, if additional rows of the table are needed.

Budget Summary

Select the regulations (either Part 734 or Part 732) that apply to the owner or operator of the USTs for which the release was reported. The corresponding column headings will appear.

PART 734:

If Part 734 is selected, in each column, as appropriate, select from the drop-down box one of the following:

- "Proposed" if the budget is a proposed budget,
- "Actual" if the budget is a summary of actual costs incurred during the previous stage of site investigation, or
- "N/A" (not applicable) if the budget doesn't apply to that particular column heading.

Enter budget summary information in only the columns that apply to the budget at-hand. For example, if the proposed budget pertains to Stage 2 Site Investigation costs and accompanying it are actual costs of the Stage 1 Site Investigation, then "N/A" should be selected for columns labeled "Free Product," "Stage 3 Site Investigation," and "Corrective Action." Then, under the column labeled "Stage 1 Site Investigation," "Actual" should be selected from the drop-down box, and actual costs of the Stage 1 site investigation should be entered on the appropriate lines. Under the column labeled "Stage 2 Site Investigation," "Proposed" should be selected from the drop-down box, and proposed costs for Stage 2 of the site investigation should be entered on the appropriate lines. Following is an example, in part:

Choose the applicable regulation: 734 732

734	Free Product	Stage 1 Site Investigation	Stage 2 Site Investigation	Stage 3 Site Investigation	Corrective Action
	N/A	Actual	Proposed	N/A	N/A
Drilling and Monitoring Well Costs Form	\$	\$ 2,000.00	\$ 2,000.00	\$	\$
Analytical Costs Form	\$	\$ 1,000.00	\$ 1,000.00	\$	\$

Stage 1 site investigation budgets must always be submitted as actual costs incurred. The actual costs must be submitted with a proposed Stage 2 Site Investigation Plan, a Stages 2 and/or 3 Site Investigation Plan, or a Site Investigation Completion Report (if no additional site investigation is required after Stage 1).

The actual costs of Stage 2 (if Stage 2 was needed) must be submitted with the proposed Stage 3 Site Investigation Plan or Site Investigation Completion Report (if no additional work is required after Stage 2). The actual costs of Stage 3 (if Stage 3 was needed) must be submitted with a Site Investigation Completion Report. Please note that, if contingency work is proposed (to either complete a stage or carry out the next stage), costs of the contingency work must be submitted as proposed costs. See the Site Investigation Process flowchart and accompanying explanation for information about the various combinations of stages that may be encountered.

List the total dollar amount from each of the forms listed, as applicable. The "Total" will be automatically calculated.

PART 732:

If Part 732 is selected, budget summary information should be entered in only the column that applies to the budget at-hand. List the total dollar amount from each of the forms listed, as applicable. The "Total" will be automatically calculated.

Billing Summary

The total amounts from each individual form should be entered in the appropriate box. Please note that early action activities or corrective action conducted pursuant to 35 Ill. Adm. Code 731 neither requires nor allows for pre-approval of costs in a budget. Therefore, the first column of this form "\$ Amount Approved in the Budget" will not be completed for Part 731 or early action applications for payment.

Drilling and Monitoring Well Costs Form

Section 1 – Drilling

Include in the "Rate per Foot (\$)" drilling charge for advancement of a boring or the installation of a well all costs associated with advancing the boring including but not limited to all drilling labor (including driller, driller assistant or laborer, etc.), drill rig time, drill rig and operator travel time and per diem, driller mileage, mobilization, decontamination, Shelby tubes, soil boring abandonment, all remediation compound injection costs (including slurry preparation and mixing equipment), bentonite, boring surface patches, and concrete saw.

An indication must be made as to why each boring is being advanced (i.e., defining the extent of contamination, classification boring, installation of monitoring wells, investigation of migration pathways, injection of a remediation compound) and the drilling type (either hollow-stem auger/conventional [HSA], push-driven technologies [PUSH], or Injection).

If the Subpart H minimum payment amount applies, then the box should be checked indicating such. Upon doing so, the field for "Total Drilling Costs" zeroes out so that the total drilling costs can be entered manually. In addition, an asterisk appears, indicating that the total drilling costs have been adjusted to reflect one or more Subpart H minimum payment amounts. (More than one might apply if the proposed budget or actual costs budget includes more than one round of drilling.)

When the Subpart H minimum payment amount box is not checked, the "Total Drilling Costs" are automatically calculated.

Section 2 – Monitoring/Recovery Wells

Include in the "Rate per Foot (\$)" charge all costs associated with the installation of a monitoring or recovery well (excluding drilling) including but not limited to costs associated with labor to install wells, all well materials (such as well casings, risers, screens, caps and plugs, filter packs, annular seals, surface seals, sand, gravel,

bentonite, concrete, well covers, and locks), and labor and equipment (including groundwater pump) for well development done by the driller.

Analytical Costs Form

Include in the "Cost (\$)" per Analysis" charge all costs associated with sample handling and analysis of each sample including but not limited to laboratory personnel, sample handling, sample preparation, all aspects of the laboratory analysis, sample jars and other sampling containers, sample kits, sample disposal fees, and reporting of sampling results. Include the number of samples for each parameter and the actual cost per analysis (up to the maximum total amount per sample listed in Appendix D of 35 Ill. Adm. Code 732 or 734).

For laboratory analyses not included in Appendix D, the Illinois EPA will determine reasonable maximum payment amounts on a site-specific basis.

Include in the soil sampling equipment charge all costs associated with sampling equipment including but not limited to EnCore sampler, purge-and-trap sampler, or equivalent sampling device.

Include in the sample shipping charge all costs associated with sample shipping including but not limited to transportation and/or delivery of samples to the laboratory (e.g., FedEx, UPS, or any other courier service), ice, coolers, and bubble wrap. The maximum total amount per sample listed in Appendix D is the maximum total amount for shipping all samples (soil and groundwater) collected in a calendar day.

Remediation and Disposal Costs Form

Section A – Conventional Technology

Excavation, Transportation, and Disposal of contaminated soil and/or the 4-foot backfill material removal during early action activities:

Include in the "Cost per Cubic Yard (\$)" all costs associated with the excavation, transportation, and disposal of contaminated soil and/or backfill material exceeding the applicable remediation objectives including but not limited to all non-consulting personnel (subcontractors); trucker/equipment operator labor; trucker/equipment operator travel and per diems; truck charges; visqueen truck liner; backhoe charges; equipment (including concrete breaker); equipment mobilization; skid steer; concrete/asphalt excavation, transportation, and disposal; landfill charges; decontamination; barriers; cones; tape; permit fees; traffic control; and other materials and related expenses.

The volume of soil removed and disposed must be determined by the following equation using the dimensions of the resulting excavation:

Soil [(Excavation Length in feet x Excavation Width in feet x Excavation Depth in feet of contaminated soil) ÷ 27] x 1.05 bulking factor

A conversion factor of 1.5 tons/cubic yard will be used to convert tons to cubic yards.

The volume of soil removed from within four feet of the outside dimensions of the UST and disposed pursuant to early action provisions must be determined in accordance with Appendix C of 35 Ill. Adm. Code 732 or 734.

Backfilling the Excavation:

Include in the "Cost per Cubic Yard (\$)" all costs associated with the purchase, transportation, and placement of clean material used to backfill the excavation resulting from the removal and disposal of soil, including but not limited to all non-consulting personnel (subcontractors), trucker/equipment operator labor, trucker/equipment operator travel and per diems, truck charges, visqueen truck liner, backhoe charges, equipment, equipment mobilization, backfill material (clay, sand, gravel), barriers, cones, tape, permit fees, traffic control, and other materials and related expenses.

The volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation:

Soil [(Excavation Length in feet x Excavation Width in feet x Excavation Depth in feet of contaminated soil) ÷ 27] x 1.05 bulking factor

A conversion factor of 1.5 tons/cubic yard will be used to convert tons to cubic yards.

The volume of backfill material used to replace soil removed from within four feet of the outside dimensions of the UST and disposed pursuant to early action provisions must be determined in accordance with Appendix C of 35 Ill. Adm. Code 732 or 734.

Overburden Removal and Return:

Include in the "Cost per Cubic Yard (\$)" all costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action, including but not limited to all non-consulting personnel (subcontractors), trucker/equipment operator labor, trucker/equipment operator travel and per diems, truck charges, visqueen truck liner, backhoe charges, equipment, equipment mobilization, barriers, visqueen, cones, tape, permit fees, traffic control, and other materials and related expenses.

The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of soil:

Overburden Soil [(Excavation Length in feet x Excavation Width in feet x Excavation Depth in feet of non-contaminated soil) ÷ 27]

A conversion factor of 1.5 tons/cubic yard will be used to convert tons to cubic yards.

Section B – Alternative Technology

This section must be used for any remediation technology other than conventional technology. Alternative technology includes but is not limited to soil vapor extraction, land-farming, bio-piles, low-temperature thermal desorption, air sparging, bio-sparging, in-situ bioremediation, chemical oxidation, or dual-phase extraction. Other alternative technologies may be proposed.

Include a time and materials breakdown of all costs. Include in the "Total Cost of the System" all costs including but not limited to all non-consulting personnel (subcontractors), equipment, materials, construction, installation, operation and maintenance, system shutdown and closure, and other expenses of the proposed remediation system. Maximum payment amounts for costs associated with alternative technology will be determined by the Illinois EPA on a site-specific basis.

Also include the information listed in the *Remediation System Information* document.

The volume of soil to be treated in-situ must be determined by the following equation:

Soil [(Length in feet x Width in feet x Depth in feet of contaminated soil) ÷ 27]

A conversion factor of 1.5 tons/cubic yard will be used to convert tons to cubic yards.

All materials, equipment, field purchases, and subcontractor costs must be listed on the *Remediation Materials Costs Summary Sheet* and *Non-Consulting Personnel Costs Summary Sheet*, and the totals from those forms should be placed on the "Total Cost of the System" line in Section B. All professional consultant time (design time, oversight time, etc.) must be listed on the *Consulting Personnel Costs Form*.

Section C – Groundwater Remediation and/or Free Product Removal System

This section must be used if a groundwater remediation and/or free product removal system (such as pump-and-treat or dual-phase vapor extraction) is proposed in a plan.

Include a time and materials breakdown of all costs. Include in the "Total Cost of the System" all costs including but not limited to all non-consulting personnel (subcontractors), equipment, materials, construction, installation, operation and maintenance, system shutdown and closure, and other expenses of the proposed removal system. Maximum payment amounts for costs associated with the proposed removal system will be determined by the Illinois EPA on a site-specific basis.

Also include the information listed in the *Remediation System Information* document.

All materials, equipment, field purchases, and subcontractor costs must be listed on the *Remediation Materials Costs Summary Sheet* and *Non-Consulting Personnel Costs Summary Sheet*, and the totals from those forms should be placed on the "Total Cost of the System" line in Section C. All professional consultant time (design time, oversight time, etc.) must be listed on the *Consulting Personnel Costs Form*.

Section D – Groundwater and/or Free Product Removal and Disposal

This section must be used if groundwater or free product is removed via vacuum truck or other similar method from a groundwater monitoring well, recovery well, or container (such as a drum).

Include in the "Cost per Gallon (\$)" all costs associated with the removal, transportation, and disposal of free product or contaminated groundwater including but not limited to all

non-consulting personnel (subcontractors), truck driver labor, mobilization, vac truck, mileage, equipment, materials, disposal fees, and other related expenses.

If the Subpart H minimum payment amount applies, then the box should be checked indicating such. Upon doing so, the field for "Total Cost" zeroes out so that the total groundwater and/or free product removal and disposal cost can be entered manually. In addition, an asterisk appears, indicating that the total groundwater and/or free product removal and disposal cost has been adjusted to reflect the Subpart H minimum payment amount. (More than one might apply if the proposed budget or actual costs budget includes more than one round of groundwater and/or free product removal and disposal.)

When the Subpart H minimum payment amount box is not checked, the "Total Cost" is automatically calculated.

Section E – Drum Disposal

This section must be used whenever a solid or liquid waste generated as a result of corrective action (e.g., soil borings, water bailed for well development or sampling, or hand-bailed free product) is disposed in a 55-gallon drum.

Include in the "Cost per Drum (\$)" all costs associated with drum disposal including but not limited to drum purchase, drum dolly, transportation, truck charge and mobilization, truck driver labor, and disposal fees.

If the Subpart H minimum payment amount applies, then the box should be checked indicating such. Upon doing so, the field for "Total Drum Disposal Costs" zeroes out so that the total drum disposal costs can be entered manually. In addition, an asterisk appears, indicating that the total drum disposal costs have been adjusted to reflect the Subpart H minimum payment amount. (More than one might apply if the proposed budget or actual costs budget includes more than one round of drum disposal.)

When the Subpart H minimum payment amount box is not checked, the "Total Drum Disposal Costs" are automatically calculated.

Non-Consulting Personnel Costs Form

(Note: For this form to function properly, Adobe Reader 8.0 is required.)

This form should only be used to list personnel costs that are not associated with professional consulting services. Professional consulting services (that is, services performed by the primary consulting firm) must be listed separately on the Consulting Personnel Costs Form. Do not include costs that are part of maximum payment amounts listed in the *Maximum Payment Amounts* sheets.

- a. **Employee Name** – List the name of the employee (required for application for payment only).
- b. **Personnel Title** – List the title of the employee. Personnel titles must be comparable to the task being performed.

- c. **Hours** – List the number of hours worked or proposed to be worked for that particular task.
- d. **Rate (\$)** – List the hourly rate of the employee. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work.
- e. **Total Cost** – Enter the total dollar amount requested for each task (Hours X Rate).
- f. **Task** – Complete an individual line item for each task conducted. The following are some examples of tasks: remediation system installation, operation and maintenance, or alternative technology remediation construction. Provide additional details to supplement this information; for example, the details may include the number of trips for operation and maintenance, number of hours for each trip, and how often trips are proposed.
- g. **Cumulative Total of Non-Consulting Personnel Costs Summary Sheet(s)** – Enter the total non-consulting personnel costs (the sum of all tasks).

Remediation Materials Costs Summary Sheet

(Note: For this form to function properly, Adobe Reader 8.0 is required.)

Include all costs for materials, equipment, and field purchases associated with a groundwater remediation and/or free product removal system and/or alternative technology. Such costs include but are not limited to remediation compounds, nutrients for in-situ bioremediation, and soil vapor extraction equipment.

- a. **Materials, Equipment, or Field Purchase** – List all the materials, equipment, and field purchases used or proposed to be used that are not part of maximum payment amounts listed in the *Maximum Payment Amounts* sheets.
- b. **Time or Amount Used** – List, if applicable, the amount of time or the number of individual items used.
- c. **Rate (\$)** – List the rate at which an item is charged.
- d. **Unit** – List the unit of the rate charged, which may be hourly, daily, weekly, monthly, yearly, etc. or may be based upon an activity such as per foot, cubic yard, square foot, gallon, etc.
- e. **Total Cost/Item** – List the total cost of the material, equipment, or field purchase.
- f. **Subcontractor** – If a service is provided by a subcontractor, list the name of the subcontractor.
- g. **Cumulative Total of Remediation Materials Costs Summary Sheet(s)** – Enter the total cost of all materials, equipment, and field purchases.

UST Removal and Abandonment Costs Form

This section applies to UST removal, abandonment, and disposal activities.

Include in the "Cost (\$)" all costs associated with the excavation, removal, disposal, and/or abandonment of UST systems including but not limited to all non-consulting personnel (subcontractors), mobilization, equipment, materials, decontamination, barriers, cones, tape, PID, slurry, disposal fees, permit fees, and other related expenses.

Please list all tanks that have been removed from or abandoned at the site for which payment from the Fund is requested. The maximum total amount payable per UST is based on the UST volume, as prescribed in the regulations.

Paving, Demolition, and Well Abandonment Costs Form

Section A – Concrete and Asphalt Placement/Replacement

This section must be used for costs associated with concrete, asphalt, and paving installed as an engineered barrier, as well as for costs associated with the replacement of concrete, asphalt, and paving.

Include in the "Cost (\$)" per Square Foot" all costs associated with concrete, asphalt, and paving placement or replacement, including but not limited to all non-consulting personnel (subcontractors), placement or replacement labor, per diems, equipment, materials and delivery, base preparation/compaction/leveling, surface preparation and equipment, forms, and other related expenses. In addition, include in the accompanying plan or report documentation of the material (either asphalt, paving, or concrete), the depth of material, and the square footage of the asphalt, paving, or concrete being placed or replaced.

Section B – Building Destruction or Dismantling and Canopy Removal

This section must be used for costs associated with the destruction or the dismantling and reassembly of above grade structures.

Include in the "Unit Cost (\$)" all costs including but not limited to all personnel (primary consultant and subcontractors), per diems, equipment, mobilization, truck charges, backhoe charges, materials, asbestos abatement, barriers, cones, tape, permit fees, and other related expenses. Payment will be determined on a time and materials basis.

The total cost for the destruction or the dismantling and reassembly of above grade structures must not exceed \$10,000 per site. A time and materials breakdown of all costs must be submitted with the application for payment.

Section C – Well Abandonment

This section must be used for the abandonment of monitoring or recovery wells that are abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120. Please note that each monitoring well must be listed individually.

Include in the "Cost (\$)" per Foot" all costs including but not limited to all personnel (primary consultant and subcontractors), labor, per diems, transportation, equipment (including jackhammer), mobilization, bentonite, concrete, and other related expenses.

Consulting Personnel Costs Form

(Note: For this form to function properly, Adobe Reader 8.0 is required.)

Include all costs associated with professional consulting services (that is, services provided by the primary consulting firm). Personnel not directly part of the primary consulting firm must be listed on the *Non-Consulting Personnel Costs Form*.

In the "Personnel Title" fields, use the titles listed at Appendix E of 35 Ill. Adm. Code 732 or 734. The highest maximum hourly rate for each personnel title listed in Appendix E may be proposed in the budget, but the amount billed in the application for payment must be based upon the degree, licensing, and experience requirements identified in Appendix E.

Include in the "Rate (\$)" the costs associated with professional consulting services provided by the primary consulting firm including but not limited to plan, budget, and report preparation, application-for-payment preparation, certifications, project oversight, and field activities.

A separate line should be used for each employee performing tasks in each remediation category.

- a. **Employee Name** – List the name of the employee (required for application for payment only).
- b. **Personnel Title** – Select the title of the employee using the personnel titles listed in Appendix E of 35 Ill. Adm. Code 732 or 734 (also listed in the *Maximum Payment Amounts/Personnel Titles and Requirements* document). Personnel titles must be comparable to the task being performed.
- c. **Hours** – List the number of hours worked or proposed to be worked for that particular task.
- d. **Rate (\$)** – List the hourly rate of the employee. The rate may not exceed the maximum hourly rate listed in the applicable *Maximum Payment Amounts/Personnel Titles and Requirements* document. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work.
- e. **Total Cost** – Enter the total dollar amount requested for each task (Hours X Rate).
- f. **Remediation Category** – Select the appropriate remediation category abbreviation from the *Remediation Categories List* document that is applicable to each phase of corrective action that has been or is proposed to be performed.
- g. **Task** – Complete an individual line item for each task conducted. The following are some examples of tasks: preparation of CAP and budget, site investigation fieldwork, operation and maintenance, alternative technology oversight, or

alternative technology remediation design. Provide additional details to supplement this information; for example, the details may include the number of trips for operation and maintenance, number of hours for each trip, and how often trips are proposed.

- h. **Cumulative Total of Consulting Personnel Costs Form(s)** – Enter the total consulting personnel costs (the sum of all tasks).

Multiple pages of the form must be used if additional space is needed.

Consultant's Materials Costs Form

(Note: For this form to function properly, Adobe Reader 8.0 is required.)

Include on the form the costs associated with materials, subcontracted services, and fees provided by the professional consulting service (that is, the primary consulting firm) including but not limited to lodging and per diems, mileage, private utility locator, permit fees, well survey fees, NFR Letter recording fees, and other equipment and supplies (such as PID, FID, explosimeter, DO/ORP/pH meters, survey equipment, peristaltic pump, purge pump, rope, bailers, transducer, data logger, water level indicator/interface probe, and plastic tubing).

- a. **Materials, Equipment, or Field Purchase** – List all the materials, equipment, and field purchases used or proposed to be used that are not part of maximum payment amounts listed in the *Maximum Payment Amounts* sheets.
- b. **Time or Amount Used** – List, if applicable, the amount of time or the number of individual items used.
- c. **Rate (\$)** – List the rate at which an item is charged.
- d. **Unit** - List the unit of the rate at which an item is charged, if applicable. The unit may be hourly, daily, weekly, monthly, yearly, etc. The unit and unit rate may also be based on an activity such as per foot, cubic yard, square foot, gallon, etc.
- e. **Total Cost** – List the total cost of materials, equipment, or field purchase.
- f. **Remediation Category** – Enter the appropriate remediation category abbreviation from the *Remediation Categories List* document that is applicable to each phase of corrective action that has been or is proposed to be performed.
- g. **Description/Justification** – Enter a description of the materials, equipment, or field purchase and/or justification for its use.
- h. **Cumulative Total of Consultant's Materials Costs Form(s)** – Enter the total costs of all materials, equipment, and field purchases.

Multiple pages of the form must be used if additional space is needed.

Bid Summary Form

As an alternative to the maximum payment amounts set forth in Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 734 or 732, one or more payment amounts may be determined via bidding in accordance with 35 Ill. Adm. Code 734.855 or 732.855. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

The following items must be provided to the Illinois EPA with the associated budget:

1. A copy of the scope of work provided to the subcontractors requesting bids;
2. Copies of **all** bids received (a minimum of three bids is required unless unusual or extraordinary circumstances apply), accompanied by completed and signed *Contractor Certification Forms* and bid details; and
3. A completed and signed copy of the *Bid Summary Form*.

Contractor Certification Form

Whenever a job is bid, completed and signed *Contractor Certification Forms* must accompany the *Bid Summary Form*. Bid details should be attached.

Handling Charges Form

Handling charges for field purchases and subcontractor billings must be calculated based on the table below. **Handling charges do not need to be submitted in a budget.** Submit copies of invoices and/or receipts of the subcontractor charges and/or field purchase with an application for payment. Include a breakdown of the date the work was conducted, as well as documentation of all activities and materials purchases, with invoices and/or receipts. If the invoices and receipts do not contain this information, submit additional documentation providing this information.

Subcontract and Field Purchase Cost	Eligible Handling Charges as a Percentage of Cost
\$1 - \$5,000	12%
\$5,001 - \$15,000	\$600 + 10% of amt. over \$5,000
\$15,001 - \$50,000	\$1,600 + 8% of amt. over \$15,000
\$50,001 - \$100,000	\$4,400 + 5% of amt. over \$50,000
\$100,001 - \$1,000,000	\$6,900 + 2% of amt. over 100,000

Miscellaneous Forms

The following forms should be completed, signed, and submitted, as applicable:

- Owner/Operator and Licensed Professional Engineer/Geologist Budget Certification Form
- Owner/Operator and Licensed Professional Engineer/Geologist Billing Certification Form
- Payment Certification Form
- Private Insurance Coverage Questionnaire and Private Insurance Affidavit

- Federal Taxpayer Identification Number and Legal Status Disclosure Certification Requirements
- Women and Minority Business Enterprises Form
- Personnel Weekly Work Sheet
- Materials Weekly Work Sheet

Reference Documents

The following reference documents should be used, as applicable, when completing budgets and/or applications for payment:

- Personnel Title Descriptions and Duties Summary
- Remediation Categories List
- Remediation System Information
- Maximum Payment Amounts (March 1, 2006 through June 30, 2006)
- Maximum Payment Amounts (July 1, 2006 through June 30, 2007)
- Maximum Payment Amounts (July 1, 2007 through June 30, 2008)