

MAY 04 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF :)	
)	
PROPOSED AMENDMENTS TO:)	R04-22
REGULATION PETROLEUM LEAKING)	(Rulemaking - UST)
UNDERGROUND STORAGE TANKS)	
35 ILL. ADM. CODE 732)	

IN THE MATTER OF :)	
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PROPOSED AMENDMENTS TO:)	R04-23
REGULATION PETROLEUM LEAKING)	(Rulemaking - UST)
UNDERGROUND STORAGE TANKS)	Consolidated
35 ILL. ADM. CODE 734)	

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James R. Thompson Center
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NOTICE OF FILING

PLEASE TAKE NOTICE that on May 4, 2004, I filed with the Clerk of the Illinois Pollution Control Board, an original and nine (9) copies of a PIPE'S PREFILED QUESTIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, copies of which are herewith served upon you.

Claire A. Manning

 Claire A. Manning, Attorney *Text*

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PROOF OF SERVICE

The undersigned, being duly sworn, states that a true and correct copy of the foregoing **STATE OF ILLINOIS Pollution Control Board** NOTICE OF FILING, together with a copy of RESPONSE OF PIPE TO AGENCY'S EMERGENCY RULEMAKING, was served on the individuals as listed below, by mailing the same via the United States postal service, Springfield, Illinois on May 5, 2004:

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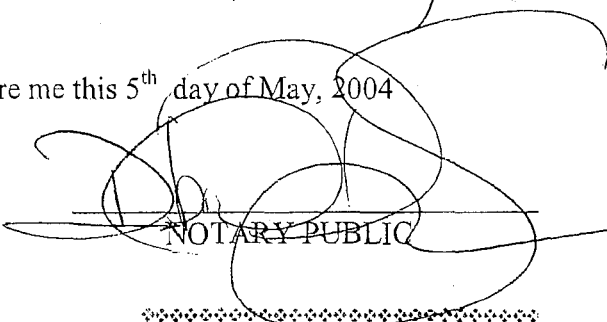
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SUBSCRIBED AND SWORN to before me this 5th day of May, 2004



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**PIPE'S PRE-FILED QUESTIONS TO
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES Claire A. Manning, attorney for the Professionals of Illinois for the Protection of the Environment ("PIPE"), and inquires of the Illinois Environmental Protection Agency the following:

1. Please produce *all* documents relied upon in justification of the development of the reimbursement rates set forth in these proposed rules. Please provide all standard rate sheets that have been utilized by Agency reviewers in the last three years in reviewing the "reasonableness" of budgets, plans and reimbursement claims sought pursuant to the Agency's LUST program. Please provide a foundation for all such documents, an explanation of all such documents, the basis for the creation of such documents, the basis of reliance upon such documents for a determination of "reasonableness" of rates. (This question is not seeking the production of any documents already put into the record by the Agency but rather seeks any and all documents that may exist, and have been utilized, but that have not yet been made a part of the record.)

2. Please produce any and all published documents, including date of publication, containing standard industry rates typical of those sought for reimbursement of LUST sites, which the Agency relied upon in creating this rule. If no such published documents were relied upon, please state such.
3. Please provide a simple, written explanation, utilizing a flow chart if readily available, of the Agency's LUST reimbursement process.
4. Please provide a written explanation of the various decision points and timeframes contained within this process.
5. Please provide examples of the various types of communication the Agency routinely sends an entity when it modifies or disapproves an entity's requested budget, plan or reimbursement request. Please explain how this communication is similar or dissimilar to a permit denial letter. Please compare the LUST reimbursement process to the permit review process.
6. Does the Agency ever deny reimbursement for items that it has at an earlier point (in a budget for example) approved? If so, for what reasons?
7. When does the Agency require the certification of a licensed professional engineer or geologist? What significance, if any, does the Agency attribute to such certifications?
8. Please provide copies of all forms and standardized documents utilized by the Agency in its LUST program.
9. Please provide copies of all memos or directives that explain or direct LUST unit staff in how to perform the various types of reviews that are performed.
10. How many employees are paid from the LUST fund? What are their various job titles? Job duties? Responsibilities? Qualifications?

11. Please provide any and all statistics and performance measures that the Agency maintains or did maintain related to the LUST program, including any statistics, goals and objectives that may have been prepared for use in the Agency's strategic planning and performance review process.
12. Does the Agency track, for example, the number of remediations successfully accomplished on a periodic basis? Does it track the number of requests that are approved, as compared to those modified or denied, on a periodic basis? If so, please provide all such statistical measures.
13. In 734.810 UST Removal or Abandonment Costs, how were rates developed for the three categories of USTs to be removed or abandoned and what specific tasks/work were included in each category?
14. In 734.815 (a) Free Product or Groundwater Removal and Disposal, how were the rates of \$.68/gallon or \$200 (whichever is greater) developed and what specific tasks/work were included in each category?
15. In Section 734.820 (a) Drilling, Well Installation, and Well Abandonment, how were the rates of "greater of \$23.00/foot or \$1,500" derived for hollow-stem auger soil sampling and "greater of \$18.00/foot or \$1,200" derived for direct-push soil sampling and what specific tasks/work were included in each rate?
16. In Section 734.820 (b) Drilling, Well Installation, and Well Abandonment, how was the rate of \$16.50/foot of well length derived for hollow-stem auger well completion and \$12.50/foot of well derived for direct-push well completion and what specific tasks/work were included in each rate?

17. In Section 734.820 (c) Drilling, Well Installation, and Well Abandonment, how was the rate of \$10.50/foot of well for well abandonment developed and what specific tasks/work were included?
18. In Section 734.825 (a) Soil Removal and Disposal, how was the rate of \$57/cubic yard for excavation, transportation, and disposal of soil of developed and what specific tasks/work were included?
19. In Section 734.825 (b) Soil Removal and Disposal, how was the rate of \$20/cubic yard for backfill developed and what specific tasks/work were included?
20. In Section 734.825 (c) Soil Removal and Disposal, how was the rate of \$6.50/cubic yard of overburden removal and backfill developed and what specific tasks/work were included?
21. In Section 734.830 Drum Disposal, how were the disposal rates of \$250/drum of solid waste, \$150/drum of liquid waste or \$500 (whichever is greater) developed and what specific tasks/work are included?
22. In Section 734.835 Sample Handling and Analysis, how was the rate of \$10.00 for "En-Core sampler, purge-and-trap sampler, or equivalent device" determined? How was the shipping rate of \$50/calendar day determined?
23. In Section 734.840 (a) Replacement of Concrete, Asphalt, or Paving, how were the rates of "\$1.51/foot for 2 inches of asphalt or paving, \$1.70/foot for 3 inches of asphalt or paving, or \$2.18/foot for 4 inches of concrete, asphalt or paving" developed and what tasks/work are included?
24. In Section 734.840 (a) Replacement of Concrete, Asphalt, or Paving; Destruction or Dismantling and Reassembly of Above Grade Structures, how was the rate of \$10,000

per site for the destruction or dismantling and reassembly of above grade structures determined and what tasks/work were included?

25. In Section 734.845 (a)(1) Professional Consulting Services, how was the rate of \$960 for payment of costs associated with the preparation for the abandonment of USTs developed and what tasks/work were included?
26. In Section 734.845 (a)(2), (a)(5), (b)(3), (b)(5) Professional Consulting Services, how was the \$500 per half day rate for professional oversight developed and what tasks/work were included? Was overtime pay for non-exempt employees per Department of Labor for hours greater than 8 per day factored into the half day rate?
27. In Section 734.845 (a)(2) (A) Professional Consulting Services, how was it determined that one half day would be sufficient for professional oversight during tank pull activities?
28. In Section 734.845 (a)(2) (B) Professional Consulting Services, how was it determined that one half day would be sufficient for professional oversight drilling of four soil borings?
29. In Section 734.845 (a)(2) (A) Professional Consulting Services, how was it determined that one half day would be sufficient for professional oversight during line release repair activities?
30. In Section 734.845 (a)(3) Professional Consulting Services, how was the rate of \$4,800 for the preparation and submittal of a 20-day certification and 45-day report determined and what tasks/work were included?
31. In Section 734.845 (a)(5) Professional Consulting Services, how was it determined that one half day would be sufficient for professional oversight during tank pull activities?

32. In Section 734.845 (a)(6) Professional Consulting Services, how was the rate of \$1,600 for the preparation and submittal of free product removal reports determined and what tasks/work were included?
33. In Section 734.845 (a)(7) Professional Consulting Services, how was the rate of \$500 for the preparation and submittal of reports pursuant to Section 734.210(h)(3) determined and what tasks/work were included?
34. In Section 734.845 (b)(1) Professional Consulting Services, how was the rate of \$3,200 for the preparation of Stage 1 site investigation, preparation, field work and field oversight determined and what tasks/work were included?
35. In Section 734.845 (b)(2) Professional Consulting Services, how was the rate of \$3,200 for the preparation of a Stage 2 Site Investigation Plan determined and what tasks/work were included?
36. In Section 734.845 (b)(3) Professional Consulting Services, how was it determined that one half day would be sufficient for each monitoring well installed and what tasks/work were included in the determination? Was overtime pay for non-exempt employees per Department of Labor for hours greater than 8 per day factored into the half day rate?
37. In Section 734.845 (b)(4) Professional Consulting Services, how was the rate of \$3,200 for the preparation of a Stage 3 Site Investigation Work Plan determined and what tasks/work were included?
38. In Section 734.845 (b)(1) Professional Consulting Services, how was the rate of \$1,600 for the preparation of a Site Investigation Completion Report determined and what tasks/work were included?

39. In Section 734.845 (c)(1) Professional Consulting Services, how was the rate of \$5,120 for the preparation of a Corrective Action Plan determined and what tasks/work were included?
40. In Section 734.845 (c)(3) Professional Consulting Services, how was the rate of \$800 for the preparation of remediation objectives other than Tier I determined and what tasks/work were included?
41. In Section 734.845 (c)(4) Professional Consulting Services, how was the rate of \$800 for the preparation of Environmental Land Use Controls and Highway Authority Agreements determined and what tasks/work were included?
42. In Section 734.845 (c)(5) Professional Consulting Services, how was the rate of \$5,120 for the preparation of a Corrective Action Completion Report determined and what tasks/work were included?
43. In Section 734.825 (a)(1) and (b)(1) Soil Removal and Disposal, how was the swell factor of 5% determined? Why was the rule of thumb that calls for a 15 to 20% expansion of swell factor depending on soil type not utilized?
44. Who at the Agency participated in the development of Subpart H?
45. To what extent, if any, do the personnel titles and rates found in Section 734.Appendix E compare to the personnel titles, rates, qualifications and backgrounds of Agency reviewers? Of Project Managers?
46. At what specific point in time did the Agency's maximum allowable reimbursement amounts become parallel with the proposed regulations?
47. Has the Agency calculated, and does the Agency have any documentation regarding the calculations, of any expected decrease in reimbursement that will result from the pro-

posed regulations? If so, please provide all relevant information related to such calculations.

48. Is there an expected annual cost savings to the LUST Fund that will result from the proposed regulations? Please explain.
49. Has the Agency ever evaluated the costs associated with the actual remediation of sites as compared with the costs of administering the program reviewing such costs?
50. What information does the Agency have regarding the number of sites successfully remediated in the last five years – on a yearly basis? Please provide. What have been the annual expenditures from the Fund directly related to those remediations?
51. What information does the Agency have concerning the estimated number of LUST sites in Illinois that still need to be remediated? Please provide.
52. Under the proposed regulations, does the Agency anticipate reimbursing a higher or lower percentage of the cost on a single project as compared to the reimbursement under historical LUST Fund reimbursement guidelines?
53. What specific projects and incident numbers were used to develop the rate schedules in Subpart H and what contaminants were present? Please give any and all site specific information regarding such projects. Explain the basis upon which the Agency chose to use those projects.
54. Under the proposed rules, does the Agency anticipate reimbursing more/less than the maximum allowable amounts and on what circumstances?
55. Why has the Agency proposed that the costs associated with amended plans/budgets/etc., are not considered reimbursable?

56. In regard to the tasks and/or group of tasks proposed in Subpart H to be reimbursed on a unit rate basis (\$/ft, \$/yd, \$/report, ½ day amount, etc.), is it the Agency's expectation that most will view the rates as flat rates and consistently charge those rates for the performance of the associated task or group of tasks.
57. Brian Bauer stated in his testimony (page 2): "Since 1989 the Agency has reviewed 18,300 applications for payment and paid more than \$565,000,000.00 from the *UST* Fund." "...reviewed over 12,800 budgets..." and "Based on this collective experience, the Agency believes that the following proposed maximum costs are reasonable and fair." and that the "amount of data used to calculate the proposed maximum payment amounts may appear small, however these averages are consistent with the Agency's historical data and the rates the Agency is presently approving in budgets and applications for payment." [734.810]
- a) Does this mean the Agency has already implemented the proposed rates?
 - b) Does the model the Agency is using match the data because the rules have already been implemented?
 - c) If the proposed rates equal what is being approved in budgets and applications for payment, is this not because the data is being forced to match? In other words, if Owners/Operators can now, and since 2001, only get certain rates and amounts approved in budgets and thus applications for payment, did the Agency not enforce these rates so that the data used for analysis match the proposed rates?
58. Subpart H, Section 734.810. This area is addressed on page 2 of Mr. Bauer's testimony. Do the proposed rates include the costs for slurry?
59. According to Mr. Bauer's testimony (page 2), twenty (20) LUST sites were evaluated and nine (9) were used for tank removal or abandonment.
- a) How many projects were in Early Action altogether at the time of this analysis?

- b) Why were twenty (20) sites selected? Why were the nine (9) selected from the twenty (20) sites?
 - c) How many of the nine (9) sites were UST removal and how many were UST abandonment?
 - d) What were the numbers and sizes of the USTs in the nine (9) sites selected?
 - e) Where were the sites located from the contractor or consultant?
 - f) Were different regions from the state selected?
 - d) Were different contractors selected?
 - e) How do we know this is representative of all removal sites?
 - f) Mr. Bauer refers to "conversations with UST removal contractors..." How many were selected and what percentage of the total population of tank contractors doing work in Illinois do they represent? Were they from one region? How many years of experience?
60. Mr. Bauer on page 4 states that rates include "all costs for mobilizing and demobilizing...to and from the site", labor, decontamination, drilling, etc.
- a) How far were the sites from the contractor?
 - b) Were any of these sites located in remote regions of the state? Were any of these remote sites included in the data set?
 - c) Were available resources reference guides such as "Means Guide for Environmental Work" utilized in compiling costs per foot and well material rates?
 - d) Does the IEPA define travel costs differently from mobilizing and demobilizing? If so, how?
61. Mr. Bauer stated on page 5 of his testimony that forty-nine (49) LUST sites were used to calculate an average \$/ft. Also, on page 6 he stated that nine (9) LUST sites were used for calculating the daily rate of direct push. On page 8 he said the Agency looked at thirty seven (37) LUST sites for monitoring well materials.
- a) Was data taken from different regions of the state?

- b) Were different drilling contractors used in the data set?
 - c) Were there different distances to sites taken into consideration?
 - d) Were various scopes of work over a range of time utilized?
 - e) Why were forty-nine (49) LUST sites used to calculate an average \$/ft and nine (9) LUST sites used for calculating the daily rate of direct push?
62. On page 6 and 7 of Mr. Bauer's testimony he stated the Agency used data "based on conversations with consultants." What consultants were present and were other consultants beside those in the CECI contacted?
63. As it pertains to Section 734.820 Drilling, Well Installation and Well Abandonment, Mr. Bauer stated the Agency evaluated seven LUST sites and extrapolated the data for 2-inch monitoring wells.
- a) How can you extrapolate 2-inch wells to larger wells?
 - b) Has the Agency been involved in installing larger wells?
 - c) Why was data not collected for larger wells?
64. On page 11 of Mr. Bauer's testimony he stated, "The average cost to abandon a groundwater-monitoring well is about \$150.00."
- a) What is this based on?
 - b) What is the distance to the wells from the contractor or consultant performing the abandonment?
 - c) How many wells and how deep are the wells used in the data set?
65. On page 12, Mr. Bauer indicated "the Agency, based on conversation with the .. CECI determined that field work would be best billed at a half-day rate. The half-day rate is 5 hours..."
- a) According to who?

- b) How far are the sites, which were evaluated, from the consultant?
 - c) Why was the CECI consulted and not other consultants?
 - d) Do these costs include travel costs (mileage, personnel time and vehicle usage).
 - e) Did the consultants indicate any costs for this should be billed separately or on a time and materials basis? If so, what were those costs?
66. On page 13 of Mr. Bauer's testimony stated "based on conversations with UST removal contractors it appears that consultants are not always present when the USTs are actually removed."
- a) Which contractors did the Agency consult?
 - b) Were these contractors referring to UST removals performed before or after the reporting of a release to IEMA?
 - c) What about contractors that do work with a consultant?
67. On page 14 of Mr. Bauer's testimony that soil excavation rates were based on reference to the 2003 National Construction Cost Estimator (page 13).
- a) Were the rates based on different sites and regions?
 - b) Were considerations given to site specific site dimensions and restrictions?
 - c) What consideration, if any, was given to distance to landfill or backfill source?
 - d) Were sites within metropolitan, urban or rural remote areas considered?
 - e) Even using an infinite number of trucks, progress can be hindered due to site restrictions. How do the revisions proposed by the Agency prevent the Owner/Operators of small stations/sites in a remote area and addressing small volumes of contaminated soil/backfill from being disadvantaged?
 - f) Why was a Construction Cost Estimating book utilized instead of an environmental remediation based book such as R.S. Means?
68. On page 14 of Mr. Bauer's testimony, he stated, "based on conversations with former members of the Agency's drill rig team..." in regard to drilling costs.

- a) Why were drilling contractors not consulted? [734.845]
 - b) The half-day rate is to allow for travel, sample collection, logging, mapping, screening, etc. What about distance to the site and documentation?
69. Referring to page 15, under the Professional Consulting Services Free Product Removal, "The number of half-days shall be determined by the Agency on a site-specific basis."
- a) How will the Agency make this determination?
 - b) How many free product removal projects has the Agency been directly involved in?
70. Also on page 15, Mr. Bauer stated, "the one half-day per sampling event allows for 1 hour for each monitoring well ... and one additional hour for of field time that should account for travel time and/or any other incidental time that is needed." [734.845]
- a) How was this determined?
 - b) What data relative to travel, packing samples, shipping, documentation, mapping, etc. was evaluated?
 - c) What consideration was given to wells located in a remote region and/or wells deeper than the average?
 - e) What if the site is over one-half hour travel time away from the consultant's office?
71. According to Mr. Bauer on page 16 of his testimony, the maximum hourly rates are based on averages the Agency has seen. The average hourly rates do not allow for different levels of engineer, geologist, scientist, and technician involvement. Does the Agency assume a one size fits all rate?
72. On page 3 of Mr. Chappel's testimony he indicated a maximum rate of \$57 per yard is reasonable for Excavation, Transportation and Disposal. [732.800]
- a) What consideration was given to Owners/Operators located in remote areas of the state? What consideration was given to Owners/Operators located in the Chicago area who have higher landfill rates and longer trucking times due to traffic?

b) Was this an average of various regions, various scopes of work, distance to land-fill and backfill sources, etc?

73. Mr. Chappel stated on page 4 of his testimony that...“Also, the conversion factor for converting tons to cubic yard has been specified.” The conversion factor is 1.5 tons per cubic yard (732.825).

- a) Where did this number come from?
- b) Were soils or engineering books referenced?
- c) Is this based on state-wide bulk density samples?

74. On page 5 of his testimony, Mr. Chappel explained that the geotechnical cost for porosity and soil classification are based on historical results from previous budgets and billing packages.

- a) How many sites were in the data set?
- b) Were different parts of the state utilized?

75. Mr. Chappel offered that the Agency developed an overall average rate for professional services of \$81.25 / hour on page 6 of his testimony. [732.845]

- a) Is it a straight line average?
- b) Why was it not a weighted average?
- c) Is Mr. Chappel implying that it is the Agency’s belief that all personnel classifications contribute equally to the performance of all required tasks?

76. On page 6 of his testimony, Mr. Chappel stated that nineteen (19) reimbursement requests were used to calculate an average rate for consultant services of \$68/hour. [732.845]

- a) Were the requests from different regions of the state?
- b) Was the data set across all consultants?

- c) Were different scopes of work taken into consideration?
77. According to Mr. Chappel (page 7) the half-day rate is to allow for project planning/oversight, travel, per diem, mileage, transportation, lodging, equipment, as well as plans, reports, applications for payment and documentation. There is no provision for additional submittals.
- a) Why was data not collected on actual consultant information?
 - b) Why were assumptions made?
 - c) Who made the assumptions and what were the criteria?
 - d) Is this to be a state wide average?
 - e) Why is there no provision for scopes of work or complexity?
78. According to the Agency, a proposed alternative technology cannot exceed costs for conventional technology or other available alternative technologies. Mr. Chappel explained that "All plans and budgets will be reviewed for reasonableness."
- a) What criteria will be used?
 - b) In the event a cost analysis indicates remediation by conventional means will exceed \$77/yd, will comparison be made to the conventional costs for that site?
 - c) In the event a cost analysis indicates a typically more affordable alternative technology is not feasible due to site restrictions, is it the Agency's intension to limit the Owner's/Operator's reimbursement of the more expensive, but feasible, technology?
79. What is the IEPA's experience in authoring reports (Site Investigation Completion Report, Site Classification Completion Report, Corrective Action Completion Report, 45 Day Report, etc.), plans (Site Investigation Work Plan, Site Classification Work Plan, Corrective Action Plan, etc.) and budgets (SIWP, SCWP, CAP, etc.)?

80. What Agency experience is there in regard to completing TACO calculations? Calculations using the various formulas in 35 IAC 734?
81. What IEPA experience was utilized in regard to considering the amount of time and money to draft a Highway Authority Agreement? Environmental Land Use Control? Off-site Access Agreements, locating offsite owner's information, and getting these agreements signed?
82. What Agency experience is there in regard to installing monitoring wells, soil sample drilling, soil screening and sample collection, groundwater sampling, well development and purging, and other site investigation activities?
83. What Agency experience is there in regard to performing corrective action?
84. A question was asked during the March 15 IPCB hearing about how the Agency will remotely monitor sites. Does the Agency expect the Owner/Operator to pay for a remote station to be placed in an Agency office or location?
85. The Agency stated that no permits would be allowed primarily because of the incident with the escalated NPDES permit rates. Has the Agency considered allowing an exemption for LUST sites with the Bureau of Water? Why has the Agency seen fit to disadvantage Owner/Operators in regard to OSFM removal permits, IDOT oversize load permits, IEPA Bureau of Air permits, and other permits to investigate or remediate a site?
86. Mr. Oakley stated on page 23 of the hearing transcripts that owners and operators were consulted in regard to proposed recommendations. Which owners and operators? Were these a cross-section across the state?
87. Mr. Bauer stated on page 26 of the hearing transcripts that the reimbursed personnel rate is based on the task performed, not necessarily the title, of the person performing the task.

What tasks are allowed? This is not indicated in the table, so how will the Owner / Operator know what is allowed?

88. Mr. Clay stated on pages 55-56 of the hearing transcripts that the rules have not been implemented but that they are using those numbers. Also, he stated that the numbers they are approving for reimbursement and budgets are consistent with the proposed rules. What is the difference between saying the rules aren't implemented, and yet using the numbers? Is it fair to say that the reason the cost containment amounts included in the Agency's proposed revisions agree with budgets and reimbursement, is because the Agency is already and has been cutting budgets so that reimbursement agrees with the numbers you are using?
89. There were a number of issues that are to be deferred to the next hearing. Will these items be addressed as testimony for the hearing or written documentation distributed?
90. What standard did the Agency use before 2001-2002 to review budgets, plans and reports? What standard was used to determine reasonableness? With 15 years of experience in reviewing documents and admittedly not basing determination on professional experience, how is the Agency now able to determine what is reasonable?
91. A LUST site has been classified as High Priority; however, additional plume identification work is required to define the degree and extent of the contamination before a Corrective Action Plan can be developed:
- a) Will the work required to develop the Plume Identification CAP be reimbursed?
 - b) How will the drilling of boreholes and installation of monitoring wells be reimbursed?
 - c) After completion of the plume identification work, how will the development of the remediation CAP be reimbursed?

- d) Does the Agency expect that the Plume Identification CAP will be a non reimbursable expense for the Owner/Operator or that the remediation CAP will be a non reimbursable expense for the Owner/Operator based upon the maximum payment amounts?
92. A LUST site is very small and requires only one round of drilling onsite (a Stage 1 site investigation as defined in Section 734.315 Stage 1 Investigation). The Stage 2 Site Investigation is not needed because the Stage 1 investigation extended to the property boundaries. The Stage 3 investigation involves up to three rounds of drilling with offsite access required for two highway authorities, and four (4) different offsite property owners. Two of the offsite properties are owned by corporations with several tiers of management and multiple application forms necessary to authorize access. The cost to identify and secure the multiple offsite access agreements exceeds the maximum payment amount as provided in Subpart H, Section 734.845 Professional Consulting Services (b)(4). The Owner/Operator is notified and billed for the work necessary to advance the Stage 3 investigation.
- a) Will the work required to obtain the multiple offsite access agreements be reimbursed?
 - b) Does the Agency expect that the site specific cost to obtain multiple offsite access agreements will be a non reimbursable expense for the Owner/Operator based upon the maximum payment amounts?
93. An Owner/Operator has proposed a CAP to remediate soil contamination by the conventional technology of excavation and disposal and to remediate the groundwater by the alternative technology of applying oxygen release compound to the floor of the excavation in order to promote bioremediation. The Agency has modified the CAP to approve the excavation and disposal; however, the alternative technology for the groundwater was denied and the CAP was modified to include only the monitoring of groundwater after

the excavation to determine the effect of the soil remediation upon the groundwater. Depending upon the post soil remediation groundwater contamination results; an Amended CAP must be submitted to complete the groundwater contamination:

- a) How will the work required to develop and write the post soil remediation groundwater Amended CAP be reimbursed to the Owner/Operator when the original CAP which was modified by the Agency has already been reimbursed?
- b) Does the Agency expect that the Amended CAP for groundwater will be a non reimbursable expense to the Owner/Operator based upon the maximum payment amounts?

94. The Owner/Operator desires to remediate a LUST site to TACO Tier 1, Class 1 Residential Objectives and a CAP was approved by the Agency for conventional technology. The conventional technology was completed; however, closure samples indicate that residual contamination remains along the property boundary and underneath a structure located on the site. This situation was not anticipated based upon the analytical results available at the time that the CAP was written. The Owner/Operator has decided to propose an engineered barrier and a Highway Authority Agreement to deal with the residual contamination. An Amended CAP and budget is necessary to propose the institutional controls and engineered barriers. Reimbursement has already been received for the cost of the original CAP.

- a) How will the work required to develop and write the Amended CAP be reimbursed?
- b) Does the Agency expect that the Amended CAP to utilize the tools of TACO will be a non reimbursable expense to the Owner/Operator based upon the maximum payment amounts?
- c) Modeling of the residual contamination was not anticipated; however, is now required by TACO. How does Subpart H address the cost to the Owner/Operator necessary to model the residual contamination?

- d) How does Subpart H address the cost to the Owner/Operator necessary to deal with this typical situation where a small amount of residual contamination must be addressed based upon closure sample analytical results? Does the Agency consider the cost non reimbursable?
95. The Owner/Operator proposes conventional technology to address the onsite soil contamination and a groundwater deed restriction to deal with the onsite groundwater contamination. The closure samples from the floor of the excavation reveal an unanticipated exceedance of the C_{sat} limit. An Amended CAP and budget must be written to investigate the vertical extent of the C_{sat} limit exceedance. After the vertical extent of the C_{sat} limit exceedance is investigated, another Amended CAP must be written and approved to remediate the C_{sat} limit exceedance.
- a) How does Subpart H address the cost to the Owner/Operator necessary to write the Amended CAP to investigate the vertical extent of the C_{sat} limit exceedance?
 - b) How does Subpart H address the cost to the Owner/Operator necessary to write the second Amended CAP to propose a remediation method for the C_{sat} limit exceedance?
 - c) Does the Agency consider the cost of the C_{sat} limit Amended CAPs to be non reimbursable based upon the maximum payment amounts?
96. An Owner/Operator proposes an alternative technology for the remediation of soil and groundwater at a site. The site is rural with ample space available for landfarming. The alternative technology of landfarming is presented in a CAP and rejected by the Agency based upon "lack of supporting documentation" and the need to collect "additional information" to validate the alternative technology. The Agency did not perform a 45 day completeness review to allow the Owner/Operator time to provide the information needed by the Agency. The Owner/Operator has already written one CAP and now is faced with the additional expense of obtaining the information requested by the Agency and writing a revised CAP.

- a) Utilizing the maximum payment amounts of Subpart H; how will the cost of obtaining the additional information and writing the revised CAP be reimbursed?
 - b) Could a proper 45 day "completeness review" by the Agency as provided in 732.505 prevent the rejection of such alternative technology CAPs?
 - c) Could the Agency offer any guidance documents designed to "standardize" the required supporting documentation for an alternative technology CAP and prevent the potential for "out of pocket" expense to the Owner/Operator that the maximum payment amounts of Subpart H will create?
97. The Owner/Operator has proposed to utilize a groundwater ordinance to exclude the groundwater ingestion migratory pathway; however, a certain amount of work must be performed by the Owner/Operator in order to educate the municipality concerning the function and advantages of a groundwater ordinance.
- a) Does the Agency expect that the cost of dealing with the municipality to obtain a groundwater ordinance will be a non reimbursable expense to the Owner/Operator?
 - b) Once the groundwater ordinance is in place, the Owner/Operator must model the groundwater contamination to predict the migration of contamination. In accordance with TACO, letters must then be sent to offsite property owners. Depending upon on site specific conditions, as many as 10 or 12 property owners may need to be contacted. Based upon the maximum payment amounts, how does Subpart H address the cost to the Owner/Operator necessary to model the contamination for a groundwater ordinance, identify the many offsite property owners, and write the offsite property owner notifications?
 - c) Does the Agency expect that the cost of modeling, identifying offsite property owners and writing the offsite property owner notifications to be a non reimbursable expense when utilizing a groundwater ordinance to exclude the groundwater ingestion pathway?
98. The Owner/Operator's LUST site has been "inactive" because a previous consultant has gone out of business. The LUST site is in the corrective action phase. Soil remediation or an alternative technology was previously approved in a CAP and the remediation was performed by the previous consultant; however, closure samples revealed that residual contamination remains. The site has been inactive for several years. The

Owner/Operator contracts a new consultant to complete the remediation process and obtain closure of the LUST site. The new consultant must FOIA all information and write an Amended CAP to deal with the residual contamination. The Amended CAP will propose to utilize the tools of TACO to obtain closure. Assume that an ELUC and a Highway authority agreement are possible remediation methods. The cost of the original CAP prepared by the previous consultant has been reimbursed several years ago.

- a) Does the Agency expect that the cost of the Amended CAP written by a new consultant will be a non reimbursable expense to the Owner/Operator?
- b) The new consultant identified in 98 above informs the Owner/Operator that the cost of professional services to write the TACO CAP will exceed the "maximum payment amounts" in Subpart H and approved by the Agency. (The cost of reviewing the FOIA information, developing an amended CAP, dealing with off-site property owners to obtain an ELUC and dealing with the highway authority will be significantly higher than the maximum payment amounts resulting in "out of the pocket" expense to the Owner/Operator.) However, since alternative technologies are reimbursed on a time and materials basis within Subpart H; a more costly alternative technology CAP would be fully reimbursed by the Agency would result in no "out of pocket" expense to the Owner/Operator.
- c) Does the Agency expect that the maximum payment amounts of Subpart H will force an Owner/Operator to bypass the far less costly TACO remediation method in favor of an alternative technology remediation method because the "out of pocket" expense to the Owner/Operator is significantly less with the alternative technology?

99. During a conventional technology corrective action excavation, an unidentified UST is discovered. Excavation work is delayed until the details about the unidentified UST are investigated. Registration of the UST is necessary and details of the EDD must be worked out. An Amended CAP and budget are required because of the revised site conditions:

- a) Under Subpart H; is any of the additional work to investigate the UST, obtain a removal permit, revise the EDD, and write an Amended CAP and Budget reimbursable when the original CAP has already been reimbursed?

- b) Does the Agency expect that the cost of dealing with the previously unidentified UST and writing an Amended CAP will be a non reimbursable expense to the Owner/Operator?
100. The Owner/Operator would like to utilize a bioremediation alternative technology to remediate a LUST site that he is now using as a business office. A biofeasibility study CAP is proposed to the Agency and approved. The biofeasibility study is performed.
- a) Assume that the results of the biofeasibility study are not favorable and that a conventional technology Amended CAP is then proposed to the Agency. Utilizing the maximum payment amounts of Subpart H; how will the biofeasibility CAP be reimbursed and how will the conventional technology Amended CAP be reimbursed?
 - b) Does the Agency expect that the cost of writing the conventional technology Amended CAP will be a non reimbursable expense to the Owner/Operator based upon the maximum payment amounts?
101. Assume that the results of the biofeasibility study in question 100 above are favorable. An Amended CAP is written to propose the alternative technology. The alternative technology CAP is rejected by the Agency for "lack of supporting documentation" and a list of additional information is requested in order to demonstrate that the alternative technology is reasonable and effective. A revised Amended CAP must be written.
- a) Utilizing the maximum payment amounts of Subpart H; how will the cost of obtaining the additional information and writing the revised Amended CAP be reimbursed?
 - b) Could a proper 45 day "completeness review" by the Agency as provided in 732.505 prevent the rejection of such alternative technology CAPs?
 - c) Why has the Agency proposed to remove the 45 day completeness review provision that would prevent the "lack of supporting documentation" rejections?
 - d) Could the Agency offer any guidance documents designed to "standardize" the required supporting documentation for an alternative technology CAP and prevent the potential for "out of pocket" expense to the Owner/Operator that the maximum payment amounts of Subpart H will create?

102. After presenting the revised Amended CAP, the Agency rejects the revised Amended CAP requesting even more information. The Owner/Operator has become frustrated with the process and the non reimbursable costs are piling up. The Owner/Operator decides that in order to move the project forward, he will close the office, demolish the buildings and use the conventional technology of excavation and disposal. Asphalt and concrete located on the site will be replaced and the site will be sold.

- a) Utilizing the maximum payment amounts of Subpart H; how will the cost of writing the second revised Amended CAP be reimbursed?
- b) Does the Agency expect that the cost of writing the conventional technology Amended CAP will be a non reimbursable expense to the Owner/Operator?

103. The Agency has provided copies of DRAFT budget and billing forms along with some examples; however, no example was provided for an alternative technology CAP budget. Can the Agency provide an example of an alternative technology CAP budget?

104. Concerning Subpart C: In 734.505 Review of Plans, Budgets, or Reports paragraph (b), the Agency has 120 days in which to review a plan, budget or report. However, in Section 734.335 Corrective Action Plan paragraph (a), the Owner/Operator only has 30 days after Agency approval of a site investigation completion report to submit a corrective action plan to the Agency. The same 30 days is also required for the presentation of a corrective action completion report in Section 734.345 Corrective Action Completion Reports paragraph (a). The same 30 days is required in Section 734.330 Site Investigation Report.

- a) Why is the Agency given 120 days for each review of a report while the Owner/Operator is only allowed 30 days to execute the approved plan and to prepare and submit a report?
- b) Why not allow the Owner/Operator a more realistic 120 days for report preparation and submittal?

105. Concerning Subpart H as it relates to Subpart C: The completeness review previously provided in 732.505 has been deleted. In recent years, the Agency has almost ignored the 45 day completeness review requirement and now proposes to drop the completeness review all together. At the same time, maximum payment amounts are being proposed in Subpart H. Without the provision for a completeness review and without enforcement of this provision, many (if not most) alternative technology CAPs and many CACRs end up in an endless rejection cycle for "lack of supporting documentation". Owner/Operators must submit multiple reports in order to provide the "supporting documentation" that the Agency could have requested in a 45 day completeness review.

- a) How can the Agency cooperate with the Owner/Operator to stop this endless cycle of rejection for 'lack of supporting documentation' in CAPs and CACRs and reduce the "out of pocket" expense that the maximum payment amounts of Subpart H will create for Owner/Operators?

106. 734.850 and 732.855, state that if an Owner/Operator incurs unusual or extraordinary expenses that cause costs to substantially exceed the amounts set forth in Subpart H, the IEPA may determine maximum payment amounts on a site-specific basis, and that the Owner/Operator seeking payment for these expenses shall demonstrate the expenses are unavoidable, reasonable and necessary.

- a) What does the IEPA consider an unusual or extraordinary expense?
- b) Who at the IEPA will be responsible for making these decisions?
- c) How will the Owner/Operator make these demonstrations?

107. In the language in 732.503(f), does the IEPA intend that an Owner/Operator will not be able to submit an amended plan if the IEPA rejects a work plan or approves a work plan with modifications?

Respectfully submitted,



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FAX TRANSMISSION

DATE: May 4, 2004

TIME: 4:00 p.m.

TO: Marie Tipsord

FAX NO: (312) 814-3669

FROM: Claire A. Manning

FAX NO: (217) 522-6184

RE: R 04-22 and R 04-23

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