BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

NOTICE OF FILING

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

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SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Additional Testimony of Douglas W. Clay in Support of the Illinois Environmental Protection Agency's Proposal and Illinois Environmental Protection Agency's Third Errata Sheet, a copy of each of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Kyle Rominger
Assistant Counsel

Date: July 30, 2004
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ADDITIONAL TESTIMONY OF DOUGLAS W. CLAY IN SUPPORT OF
THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL

Today I will be providing additional testimony in support of the Agency's proposal. The Agency reviewed the transcripts of the hearings held to date in this rulemaking, as well as the testimony filed with the Board, and has made changes to its proposal where appropriate in response to questions, comments, and recommendations that have arisen in these proceedings. The Agency would like to thank the Board for the opportunity to submit these additional changes. The Agency would like to also thank all of the parties who provided comments and recommendations during this proceeding. Although the Agency's Third Errata Sheet contains quite a few changes, we believe the changes will improve the LUST rules for all parties involved in the LUST Program.

My testimony is divided into three sections. The first contains issues from the May 25th and May 26th hearing that need to be clarified or addressed. The Second

contains testimony on several issues raised in the June 21st, June 22nd, and July 6th hearings. The final section contains testimony in support of the Agency's Third Errata Sheet, which addresses and incorporates many of the comments and recommendations that have arisen during this rulemaking.

Issues from the May 25th and 26th Hearings

1. Chris Kohrmann is listed as an Agency witness. The person providing this testimony was Chris Covert, not Chris Kohrmann.

2. Doug Oakley provided testimony, but is not listed in the transcripts as an Agency witness.

3. On page 152, line 14, of the May 25th transcript Harry Chappel's testimony reads as "you can't calculate the volume of the backfill." (emphasis added). Harry's testimony was that "you can calculate the volume of the backfill." (emphasis added).

4. The Agency was asked if the implicit price deflator for gross national product has ever been a negative number during the time it has been tracked by the Agency. The Agency has tracked this number for six years, and it has never been a negative number during that time.

5. The Agency was asked to provide, for the record, copies of the LUST Section's annual reports that have been referenced in several hearings. Copies of the annual reports for the years 2000, 2001, 2002, and 2003 will be submitted at the August 9th hearing.

6. The Agency was asked to provide information regarding the installation of wells larger than two inches in diameter. For the unit prices for large diameter wells the

Agency used historical data for the screens, risers, well boxes, bottom caps, locking caps, lock, and bailer/rope. The Agency did an extrapolation for the amount of concrete, sand, and bentonite needed for the larger diameter wells. The Agency, using the formula Area $= \pi r^2$, determined the difference in the amount of material needed in the annular space outside the well casing and screen. The differences are:

From a 2 inch to a 4 inch well the difference is 1.5.

From a 2 inch to a 6 inch well the difference is 2.

From a 6 inch to an 8 inch well the difference is 1.25.

From a 4 inch to an 8 inch well the difference is 1.67.

In developing the amounts allowed for the installation of wells, for 4 and 6 inch monitoring wells the Agency allowed twice the amount of concrete, sand, and bentonite as is needed for a 2 inch monitoring well. For an 8 inch recovery well, the Agency allowed twice the amount of material that is needed for a 4 or 6 inch recovery well.

Issues raised in the June 21st, June 22nd, and July 6th Hearings

1. PIPE submitted agendas for meetings that it had with the Agency. The Agency would like to point out that these Agendas were prepared by PIPE and reflect issues they intended to raise with the Agency, but do not necessarily reflect what was actually discussed in the meetings with the Agency.

2. Claims have been made that the Agency is revising the rules because they saw the Fund beginning to fail. This rulemaking was initiated in 2002 in response to the statutory changes passed that year. Revisions to the reimbursement process were included with the technical changes needed as a result of the statutory changes, but the reimbursement changes were not added in response to the current status of Fund. The

reimbursement revisions were included in order to streamline the preparation and review of budgets and applications for payment, allow more efficient use of consultant, Board, and Agency resources, improve consistency in Agency decisions, control cleanup costs, expedite cleanups, and ultimately allow owners and operators to be reimbursed in a more efficient and timely manner.

3. On page 117 of the June 21 transcript, Cindy Davis' testimony states that Agency came to PIPE and told them that PIPE needed to find a way to cut $125 million a year from the Fund. This appears to be an error in the transcription. The amount conveyed by the Agency was $25 million a year. The Agency raised this number to PIPE as roughly the difference between the amount of money coming into the Fund each year and the amount that is paid out through reimbursements each year. Based on information from recent years, approximately $25 million more is being paid out of the Fund each year than is coming in. If this difference is not reduced, payments will be delayed until the income to make the payment is received.

4. The Agency was asked about the expected economic savings of the Agency's proposal. The Agency has not performed a formal economic analysis to determine, in specific dollars, the savings that will be generated by its proposal. However, the Agency believes there will be significant savings in cleanups costs with the establishment of "reasonable costs" in regulations. In addition, there will be less time needed for consultants to prepare budgets and reimbursement packages, and less time required for Agency review of budgets and reimbursement packages, which will further reduce costs. Furthermore, the Agency believes that limiting reimbursement of on-site corrective action to the achievement of Tier 2 remediation objectives and requiring the

use of groundwater ordinances, when available, if the owner or operator will seek reimbursement will significantly reduce cleanup costs.

5. There have been several claims made regarding the time it takes the Agency to respond to submittals and requests to reduce the time allowed for the Agency to review submittals. First, the Act provides the Agency with 120 days to respond to submittals. Any change to that timeframe would need to be a statutory change and a reduction in this timeframe would impact the Agency's administration of the LUST Program. The greatest factor in the Agency's review time is the volume of documentation it receives. The Bureau of Land file room, where LUST documents received by the Agency are kept, measures its files by lineal feet of shelf space. On average, the Agency receives 30 lineal feet of LUST plans and reports each month, or more than seven feet each week. That translates into 120 feet of documents during the 120 day review period. LUST documents currently makes up 50% of all of the documents received per month in the Bureau of Land's file room. And, these figures do not include all of the reimbursement documentation received by the LUST Claims Unit, such as applications for payment. There must be an understanding of the time and resources needed to review all of the documents received by the LUST Section and the LUST Claims Unit. Shortening the Agency's review deadline would do nothing to help it review the many plans and reports it receives more quickly.

Secondly, statements such as the Agency's "project manager sends a letter at the end of their 120 day review period (and generally not a day before)" are inaccurate. "Testimony of Cindy S. Davis on Behalf of the Professionals of Illinois for Protection of the Environment ("PIPE"), CSD Environmental and Heartland Drilling," page 9. The

Agency looked at the review times for plans and reports from May 2003 - May 2004. The review times were as follows:

Agency Review Time	# of Reviews Conducted	% of Total Reviews
<30 days	1,119	26.3%
30-60 days	1,108	26.1%
60-90 days	839	19.7%
90-120 days	1,184	27.9%
Total	4,250	100%

These numbers show that more than half of the LUST Section's reviews are completed within 60 days, and more than a quarter are completed within 30 days. Over a quarter of the reviews were also completed within 90 to 120 days, but those would include situations where the project manager had to ask and wait for additional information to be submitted before a review could be completed. In some cases additional information that is needed can be submitted within the 120-day time frame and the submittal can be approved.

There have been many complaints that it sometimes takes up to two years to obtain Agency approval. The amount of time it takes the Agency to approve a plan or report is largely dependent upon the quality of the submittal. If the initial submittal is approvable (i.e. meets the applicable regulations), then the time frame for approval will be no more than 120 days and, as shown above, in most cases will be much less.

6. There has been at least one request to allow the submission of reimbursement requests more frequently than every 90 days. This timeframe is established in Section 57.8 of the Act, which states that "[a]n owner or operator may submit a request for partial or final payment regarding a site no more frequently than once very 90 days." However, I would like to point out that, in an effort to allow earlier

reimbursement requests, the Agency has proposed to specifically allow the submission of reimbursement requests after each stage of the site investigation under Part 734.

7. The claim was made in pre-filed testimony that PIPE's "member firms conduct or provide services on nearly all of the underground storage tank cleanups conducted in the State of Illinois." "Testimony of Cindy S. Davis on Behalf of the Professionals of Illinois for Protection of the Environment ("PIPE"), CSD Environmental and Heartland Drilling," page 9. Later, at hearing, members of PIPE presented Exhibit 58, which shows that 10 unidentified consultants are working on 893 active LUST sites. PIPE would not identify its members and could not provide a breakdown of how many members represented each of the different types of businesses involved in the remediation of LUST sites, but Cindy Davis did indicate that PIPE has a total of 20 member firms that are either consultants, laboratories, landfills, or contractors. Transcript of June 21, 2004, hearing, p. 137.

To put these numbers in perspective, the Agency would like to offer the following facts:

A. There are a total of 23,000 sites in the LUST Program. More than 10,000 sites still have to be remediated. Of the unremediated sites, over 2,300 have had some sort of activity in the last two years (e.g., submitted a plan or report to the Agency).

B. There are 375 different consultants that have worked on LUST sites in the past 5 years.

C. There are 48 landfills in the state permitted to accept LUST soils.

D. There are 668 haulers permitted to transport LUST contaminated soils.

E. There are 89 laboratories certified by the Agency to perform analyses required under the LUST Program.

F. There are 153 tank removal contractors permitted by the Office of the State Fire Marshall.

G. There are numerous drillers and excavators that work with LUST sites.

H. In addition, there are the thousands of owners and operators who are the parties responsible for complying with these rules and the parties reimbursed under these rules their corrective action costs.

The Agency appreciates PIPE's involvement in this rulemaking. It has provided many good comments and recommendations, which are included the Agency's Third Errata Sheet, and we look forward to working with PIPE's members in the future on issues relating to the LUST Program. However, while they have been very vocal in these proceedings, the Agency would like to point out that they represent only a small fraction of the persons involved in the LUST program. The Agency must administer the program for the good of the people of the State of Illinois and all persons involved in the LUST Program, not just vocal minorities. The Agency has heard, either directly or indirectly, that many consultants are happy with the rules as proposed, and, specifically, have no problems with Subpart H.

8. There have been comments about the scope of work for professional consulting services not being adequately defined in the rules. The Agency does not believe that a detailed and defined scope of work for every aspect of a leaking UST cleanup is necessary, nor should it be included in the regulations. We agree that there is some variability from site to site, but this variability has been taken into account in the amounts that the Agency has proposed in Subpart H for professional consulting services. The scope of work is the work required to perform the task being reimbursed (e.g., preparing and submitting a plan, preparing and submitting a report).

9. Several members of PIPE have commented on the Agency's proposed soil conversion factor. Testimony has been provided that typical swell factors range from 15% to 25% "PIPE Testimony of Joseph M. Kelly, P.E.," p. 9, and "Pipe Testimony of Joseph Truesday (sic), P.G., P.E.," Subpart 2. The Agency's proposal allows for a 20% swell factor for estimating the volume of soil to be transported. When looking at the Agency's proposed rate of $57 per cubic yard, please remember that the amount also includes costs for excavation and disposal. The $57 can be broken down roughly as follows: 25% is for excavation, 25% is for transportation, and approximately 50% is for disposal.

The 20% swell factor proposed by the Agency does not apply to excavation costs (25% of the $57), nor to disposal costs (50% of the $57). It applies only to transportation costs, which make up the remaining 25% of the $57. The 1.05 (or 5%) swell factor, when applied to the total for excavation, transportation, and disposal, is equivalent to applying a 20% factor to just the transportation portion of the equation. An example follows, where the amount of soil to be excavated is 100 cubic yards (cy):

		20% Swell for Transport Only		Cost	5% Swell for All Categories		Cost
Excavation	$14.25	x 100 cy	=	$1,425.00	x 105 cy	=	$1,496.25
Transportation	$14.25	x 120 cy	=	$1,710.00	x 105 cy	=	$1,496.25
Disposal	$28.50	x 100 cy	=	$2,850.00	x 105 cy	=	$2,992.50
	$57.00/cy			$5,985.00			$5,985.00

The Agency believes that a 20% swell factor is reasonable for Illinois soils.

10. Assertions have been made that the Agency has ignored the Board's 1.68 conversion factor set forth in Section 732.Appendix C, and has for some time operated in violation of that Section. Appendix C sets forth the volumes of backfill that can be

removed from around USTs during early action activities when, for purposes of reimbursement, only four feet of backfill can be removed. The Agency uses Appendix C for that purpose. However, it is proposing to change the conversion factor and amounts in Appendix C so they are consistent with the conversion factor of 1.5 proposed for the rest of the soil excavated at a site. This change is proposed so that all soil conversion factors in the rules are the same.

The conversion factor of 1.68 tons per cubic yards used in Appendix C was based upon the approximate bulk density of gravel. While this factor may be appropriate for backfill (such as pea gravel, CA6, etc.), it would not appear appropriate for clay, silty-clay type soils. The Agency believes that the proposed 1.5 tons per cubic yards conversion factor is reasonable for Illinois. Whatever conversion factor the Board determines to be appropriate, the Agency requests that it be consistent throughout the rules (i.e., in Appendix C and in all other phases of remediation).

11. At least one person presenting testimony raised the idea of allowing owners and operators to access the Fund for costs incurred after the completion of remediation and the issuance of a No Further Remediation Letter. The purpose of allowing such access would be to make owners and operator more comfortable with the TACO regulations.

The Agency opposes allowing owners or operators back into the LUST Program and the UST Fund after the issuance of an NFR letter, except as already allowed for sites with MTBE. There are over 10,000 releases from USTs that still need to be remediated. The Agency should be allowed to focus its time and resources on sites that have yet to be remediated, not on sites that have already received an NFR letter requested and agreed to

by the owner or operator. In addition, according to Exhibit 69 submitted by PIPE, most owners and operators already utilize the alternatives available under TACO as part of their remediation, so there is apparently already a good comfort level with TACO. Finally, allowing owners and operators to come back into the LUST Program and access the LUST Fund would make it even harder to get a handle on the Fund's outstanding liability.

12. Issue has been taken with the Agency reviewing plans, reports, and applications for payment that have been certified by a Licensed Professional Engineer ("LPE") or Licensed Professional Geologist ("LPG"). Some persons have asserted that the Agency should rely solely on a LPE or LPE certification, and should not question a LPE's or LPG's opinions and decisions. These assertions assume that LPE and LPG certifications have much more of a role in the LUST Program than they are given by the Act and the rules. Section 57.7(f) of the Act requires that all investigations, plans, and reports conducted or prepared under Section 57.7 (i.e., only those concerning site investigation and corrective action, not those concerning early action activities, free product removal, or applications for payment) "shall be conducted or prepared under the supervision of" a LPE or LPG. The Act speaks only of oversight of site investigation and corrective action by an LPE or LPG.

Section 57.7(f) of the Act, like the certification requirements in the rules, is designed to ensure that the work conducted at LUST sites is overseen by persons with the appropriate training and education, i.e., LPEs and LPGs. Neither Section 57.7(f) of the Act nor the certification requirements in the rules, however, are intended to grant LPEs and LPGs with a final decision making authority that supercedes the Agency's. Under

the Act the Agency is the party responsible for protecting human health and the environment and properly administering the UST Fund. Agency review of the work conducted at LUST sites is necessary to ensure that these obligations are met.

Furthermore, preventing the Agency from reviewing documentation certified by a LPE or LPG would result in unchecked access to the Fund. If nothing else, Agency review is needed to check to for human error and ensure that payments from the Fund meet the requirements of Act. The Act gives the Agency, not LPEs and LPGs, the responsibility to determine whether costs submitted for reimbursement are reasonable. Because it is responsible for administering the Fund, the Agency must be able to account for payments made from the Fund. The Agency has discovered numerous examples where an LPE or LPG has certified either technical or reimbursement submittals that were obviously not in accordance with the Act and regulations. Some examples of inaccurate or improper certifications will be presented at the August 9th hearing.

13. Members of PIPE have raised the idea of creating a new database specifically for the purpose of determining rates to adopt in the rules. The data for this new database would come from detailed documentation submissions of costs requested for reimbursement.

The Agency strongly opposes this idea. A mandated burdensome and time-consuming data collection effort sends the LUST Program in the wrong direction. First, it would greatly complicate and lengthen the preparation of budgets by consultants, thus increasing costs. It would also complicate and lengthen the time needed for the review of budgets by the Agency. Second, the data submitted would be skewed from the beginning. There is nothing to ensure that the data submitted would reflect "reasonable"

costs. An owner or operator can request any amount in a budget. A determination would still have to be made of whether the requested amount reflects prevailing market prices. Finally, there is no need for such a data collection effort because the Agency has added bidding provisions to its proposal as a means of demonstrating on a site-specific basis that costs higher than Subpart H are reasonable. Bidding will more accurately reflect prevailing market prices and will be more responsive to market changes.

14. Members of PIPE have raised the idea of requiring the Agency to provide owners and operators with a draft denial or modification letter prior to issuing a final decision denying or modifying a plan or budget. The reason for the draft denial would be to notify the owner or operator with the reasons for the denial or modification, and to provide the owner or operator with an opportunity to correct any deficiency or to meet with the Agency prior to the Agency issuing a final decision. Members of PIPE have likened this idea to Agency reviews of permits.

The Agency is opposed to requiring a draft denial or modification letter prior to the Agency issuing a final decision. Such a process would extend review times and is counterproductive to the streamlining of the LUST Program. The Agency is under a 120 day statutory deadline to issue its final decision. Unlike permit reviews, the clock on this deadline would not stop if the Agency were to issue a draft letter. The Agency would still be required to issue a final decision within 120 days. In many cases the Agency would likely end up just sending its final decision letter on the 120th day because it was waiting for a response to the draft letter. This would extend the timeframe for many reviews to 120 days when the Agency could have issued a final decision at the time it completed its review and issued the draft letter. Furthermore, the analogy to permit

reviews is not appropriate. According to the Permit Section, of the permits they issue, only RCRA Part B Permits (operating permits for hazardous waste treatment, storage or disposal facilities) require drafts prior to a final decision.

It appears that the current review process already takes care of the problems the draft letter idea is designed to address. Project managers frequently ask consultants for additional information that is necessary to complete their review. However, in some cases an initial denial, without any other communication, is appropriate.

Even if the Agency does deny or modify a submittal, the owner or operator has several options other than going through an entire appeal before the Board. One option would be to re-submit the information once the deficiencies are addressed. Another option is to file an appeal with the Board along with a request for a 90-day extension. Many situations are handled in this manner. Only about 10% of the LUST appeal cases filed with the Board actually proceed to a hearing.

15. The idea of a "peer review committee" has been raised by members of PIPE. This committee would consist of Agency supervisors as well as persons from outside the Agency who are familiar with LUST projects. The function of the committee would be to review Agency denials and modifications of submittals prior to the Agency issuing its final decision. The main focus appears to be on amounts allowed for reimbursement. The purpose of the committee, as explained in testimony, would be to maintain a link to "real-world" problems experienced at LUST sites.

The Agency is opposed to the creation of such a committee. The Act gives the Agency the authority and responsibility to oversee the LUST Program and determine the reasonableness of costs reimbursed from the UST Find. The Act does not authorize

persons outside the Agency to review submittals, and the decision of such a committee would not be appealable to the Board. Only Agency decision can be appealed to the Board. Outside influence or input on Agency final decisions is simply inappropriate. Furthermore, routing submittals through such a committee prior to the Agency issuing a final decision will lengthen the review process and is counter to streamlining of the LUST Program.

A peer review committee has been likened to a review committee used by the Illinois Department of Transportation (IDOT). With regard to IDOT, it is my understanding that the IDOT review process is for contractors hired directly by IDOT to work on IDOT projects. The LUST Program is completely different. The consultants are not working directly for the Agency on Agency projects. The Agency is not a party to contracts between owners and operators and consultants. Finally, the bidding provisions the Agency has added to its proposal should alleviate most or all of the issues the peer review committee is intended to address.

To help foster and enable greater communication between the Agency and other parties involved in the LUST Program, the Agency is proposing new Sections 732.114 and 734.145 to establish a LUST Advisory Committee. The Committee would be made up of representatives of interested parties and would meet with the Agency on a quarterly basis to discuss the LUST Program. This Committee is modeled after the Site Remediation Advisory Committee that was established for the Agency's Site Remediation Program.

16. Another idea raised by members of PIPE is to allow an alternative method to Board appeals for challenging Agency decisions. The Agency is opposed to such an

idea. First, an alternative to a Board appeal is not consistent with the Act. The Act specifically provides that final Agency decisions under Title XVI are appealable to the Board. Second, a mediation or alternative dispute resolution process would likely be more expensive to owners and operators than a Board appeal. The owner or operator would be paying for the cost of the mediation or resolution in addition to the cost of an attorney, as the payment of such costs from the Fund is not authorized by the Act. Finally, as mentioned above, only about 10% of LUST appeals proceed to hearing, which alleviates the need for an alternative system.

17. Testimony has been presented to show that, according to the LUST Section's annual report, the number of UST Fund claims processed each year has risen while the average dollar amount per claim has dropped from approximately $100,000 in early 1990s to approximately $40,000 per claim in 2002. I would like to point out that these numbers only represent the average amount of costs submitted by owners and operators in a single application for payment. They should not be confused with the total amounts reimbursed per site. Owners and operators may submit any number claims per incident, and the claims may be for any amount. For clarification, the following are the average total amounts paid per incident for incidents closed in 1997 through 2001. Please note that these are amounts paid to date. Additional claims for these sites may be submitted in the future. The Agency did not include incidents closed in later years because it assumes that many claims related to those sites have yet to be submitted.

Year incident closed	Average of total amount paid per incident
1997	$86,266
1998	$95,707
1999	$82,819

2000	$75,759
2001	$92,190

18. The use of a "rate sheet" in the Agency's development of the proposed rules was mentioned many times in testimony. There appears to be some confusion regarding the Agency's use of the rate sheet. In calculating some of the rates set forth in Subpart H, the Agency used some of the average numbers from a spreadsheet that was also used to generate a "rate sheet." As clarified by Brian Bauer at the May 26th hearing, rates used for soil borings, mobilization, and monitoring wells came from the spreadsheet. More specifically, rates for the following items came from the spreadsheet:

Hollow stem auger (HSA) drilling cost per foot,
Daily drill rig decontamination rate,
Drill rig mobilization/demobilization rate,
Monitoring well abandonment rate,
2" PVC Screen 10-foot,
2" PVC riser 10-foot,
Well box,
Bottom cap,
Locking cap,
Lock,
Bailer,
Concrete per bag,
Sand per bag,
Bentonite per bag,
Vehicle rate per day, and
PID daily rate.

When the historical data in the spreadsheet was used, the Agency compared the historical data with data that was being currently submitted. Based on this comparison the Agency determined that the historical data was still accurate and reasonable. In a few cases, such as drum disposal, the Agency determined that the historical data was not accurate, thus new data was acquired. In such cases the new data rather than the historical data was used to develop the numbers proposed in the rules.

19. A few issues have been raised regarding applications for payment. One is the requirement that applications for payment include proof of payment to subcontractors. There has been a request to strike this requirement because of a hardship in obtaining cancelled checks. Another issue that was raised concerned the proposed one-year deadline for the submission of applications for payment.

Cancelled checks are not the only proof of payment that may be submitted. The application for payment may also contain lien waivers or affidavits from the subcontractor. One of these three methods of proof of payment should be reasonably obtainable. Proof of payment to the subcontractor is necessary to show that the subcontractor was actually paid and therefore the owner or operator is entitled to reimbursement of handling charges.

The Agency does not believe that the proposed one year deadline causes an undue hardship for owners and operators. Applications for payment can be submitted throughout the remediation process. If owners and operators submit their applications for payment in a timely manner and keep them current with site activities, the only costs left to be submitted at the end of the process will be for the corrective action completion report and possibly some corrective action costs. One year is more than enough time to submit an application for payment for these final costs. There has been a request for a list of exceptions to the one-year deadline. The Agency does not have any evidence to support or justify granting an exception for any one situation over another.

20. There was an assertion that there is no mechanism in the rules to reimburse owners and operators for additional costs of drilling beyond the drilling proposed in a Stage 3 site investigation plan, if additional investigation is needed. As I

stated in earlier testimony, Stage 3 site investigation plans should be contingent in nature. They should propose additional rounds of borings that will be conducted if necessary. Once such a plan is approved, the borings will be reimbursed according to the drilling rates in the rules, as long as the borings were needed to define the extent of contamination. As an alternative, because the drilling rates are set forth in the rules, the owner or operator can have drilling conducted prior to obtaining approval of the drilling in a plan, and will know the amounts he or she will be reimbursed for the work. Under the alternative the owner or operator would still be required to submit a plan and budget, or amended plan and budget, for the drilling.

21. There was also an assertion that there are no costs provided for a corrective action plan to address groundwater contamination after a corrective action plan for soil contamination has been approved and implemented. This was pointed out because the Agency sometimes has owner and operators address soil contamination prior to addressing groundwater contamination when the proposal is to excavate below the water table, which would likely impact the design of a groundwater treatment plan.

By definition, any method of groundwater remediation is considered an alternative technology. Therefore, the costs associated with groundwater remediation, including the groundwater remediation plan, will be reimbursed on a time and materials basis.

22. Testimony was provided by CW^3M that the average rate for excavation, transportation and disposal of contaminated soil awarded for IDOT project was $99.75. We have been in contact with IDOT regarding this figure and how their projects are awarded. It is our understanding that IDOT reviews bids and awards contracts based on the total cost of the project and does not compare individual line items such as

excavation, transportation and disposal costs. The Agency will present a letter from IDOT confirming this at the August 9th hearing.

Changes Proposed in the Agency's Third Errata Sheet

1. At the July 6, 2004, hearing PIPE requested clarification on how proposed Part 734 should be applied to releases subject to Public Act 92-0554 but reported prior to the effective date of Part 734. In response, the Agency proposes a change to Section 734.100(a) that recognizes the work already performed at a site even though the work may not exactly match the requirements of Part 734. In addition, the Section is changed to provide that costs approved in a budget prior to the effective date of Part 734 will be reimbursed in accordance with the amounts approved in the budget. Both of these provisions are designed to alleviate retroactive application of the Part 734 rules to sites that have performed work prior to the effective date of Part 734.

2. Members of PIPE have recommended that "half-day" be defined as four hours rather than five hours, and that there be no limitation on the number of half-days that can be reimbursed per calendar day. In response, the Agency proposes to amend the definition of "half-day" so that one half-day equals four hours. The Agency further proposes to remove the two half-days per calendar day limitation so that more than two half-days can be reimbursed in a single calendar day. These changes are found in the "half-day" definition in Sections 732.103 and 734.115.

The adjustment of the half-day rate down to four hours will not have any impact on other rates that are based upon the number of half-days worked (e.g., one-half day of field work and field oversight allowed for every four soil borings drilled). The half-day included one hour of travel time, which is being broken out and reimbursed separately

(see below). Therefore, the rates based upon half days were already based upon four hours at the site. Without the added one-hour of travel time the half-day rates will continue to be based upon four hours at the site.

With the reduction to four hours per half-day, however, the Agency proposes to reduce the amount of soil excavated per half day from 250 cubic yards to 225 cubic yards. Subsections 732.845(a)(2)(A) and 732.845(c)(2)(A), and Sections 732.845(a)(2)(A) and 732.845(c)(2)(A), allow one half-day of field work and field oversight for each 225 cubic yards of soil removed and disposed of. According to the 2003 National Construction Cost Estimator, 51st Edition, most soils can be excavated into a truck via a 1 cubic yard backhoe at a rate of 57 cubic yards per hour. Four hours multiplied by 57 cubic yards per hour equals 228 cubic yards. The Agency rounded this number down to 225 in the rules.

3. Members of PIPE have pointed out, correctly, that much of the Agency's review of work performed at a site is based solely upon the reports it receives and not the direct observation of field activities. Much of this has to do with a lack of Agency resources to directly oversee all of the field activities that take place. In addition, however, the Agency does not receive advance notice of when field activities will be taking place. It only knows of field activities after the fact when they are reported in a site investigation or corrective action completion report. The Agency agrees that direct oversight of field activities is very valuable in certain circumstances. To help the Agency identify sites where field activities should be directly observed, and to help in planning for such oversight, the Agency proposes to add wording that would allow the Agency to require notification of field activities. This is proposed as new Sections 732.112 and

734.145. Please note that the notification requirement does not apply to early action activities or initial free product removal activities since advance notification of such activities would be difficult.

4. Members of PIPE have raised ideas about requiring the Agency to provide draft denial letters, establishing a peer review committee to oversee Agency decisions, and alternatives to appeals of Agency decisions to the Board. As discussed above, the Agency does not agree with adding these ideas to the LUST Program. However, to help foster and enable greater communication between the Agency and other parties involved in the LUST Program, the Agency proposes new Sections 732.114 and 734.145 to establish a LUST Advisory Committee. The Committee would be made up of representatives of interested parties and would meet with the Agency on a quarterly basis to discuss the LUST Program. This Committee is modeled after the Site Remediation Advisory Committee that was established for the Agency's Site Remediation Program.

5. Members of PIPE have expressed concern over the language of the professional certification proposed in Sections 732.110(d) and 734.135(d). They wanted to make it clear that Professional Engineers were not certifying to professional geology practices, and that Professional Geologists were not certifying to professional engineering practices. In response, the Agency proposes to amend the certification language as proposed in the Agency's Third Errata Sheet so that a professional is certifying only to the "standards and practices of my profession."

6. Members of PIPE requested that allowance be made for situations where early action soil samples could not be collected in the locations specified in the rules. In response, the Agency proposes to Sections 732.202(h)(1) and (2), and Sections

734.210(h)(1) and (2), to allow alternate locations for samples if circumstances require. The proposed language also allows the Agency to excuse the collection of samples if circumstances require.

7. After the Agency proposed one-eighth of an inch of free product as the amount to define when free product removal is required, members of PIPE had additional questions on the removal of free product and when it should be required. Free product removal must continue to be required in order for the Board's rules to remain consistent with federal regulations. However, to address problems where the removal of free product that exceeds one-eighth of an inch in depth is impracticable, the Agency proposes to add the language "to the maximum extent practicable" back into Sections 732.203(a) and 734.215(a).

8. There were several comments from members of PIPE and from CECI regarding the prescriptive nature of the Stage 1 site investigation. In response to their comments and recommendations, the Agency proposes to amend Section 734.315(a) so that it contains simplified sampling requirements. Basically, up to four borings may be drilled for each independent tank field, based upon early action sampling results. Two borings are allowed for piping runs. If a groundwater investigation is not required, and therefore an interior monitoring well is not installed and soil from the monitoring well boring is not sampled, an additional boring is required near each tank field and each piping run in order to investigate the depth of the contamination in the areas that are most likely to be contaminated. In addition, soil sampling from groundwater monitoring installations wells is less prescriptive. The amended Stage 1 investigation is based on CECI's Stage 1 site investigation.

9. Members of PIPE have expressed concern over knowing how many alternative technologies must be compared in a budget when an alternative technology is proposed. The Agency believes that comparison to two other alternative technologies is sufficient. Therefore, it proposes to amend Sections 732.407(b) and 734.340(b) to require that "[t]he budget shall compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology." Alternative technologies vary widely in cost, and a cost comparison is needed to help ensure that money in the UST Fund is being used in the most cost-effective manner.

10. Members of PIPE objected to requiring the submission of laboratory certifications in applications for payment. In response, the Illinois EPA proposes to delete that requirement by deleting proposed Sections 732.601(b)(11) and 734.605(b)(11).

11. In order to help ensure that UST Fund money is used in the most cost-effective manner, the Agency proposes changes that will require owners and operators that seek reimbursement to utilize certain aspects of TACO. First, the Agency proposes to limit payment from the Fund to costs that achieve cleanup to Tier 2 objectives. Owners and operators are not prohibited from remediating their site to Tier 1 objectives, but they will be reimbursed only for remediation necessary to achieve Tier 2 objectives. TACO is designed so that a cleanup to the Tier 2 objectives is as equally protective as a cleanup to the Tier 1 objectives. Therefore, a cleanup to the default Tier 1 objectives, which is generally more expensive than a cleanup to the Tier 2 objectives, is not necessary. To implement this change the Agency has proposed amendments to Sections 732.408 and 732.606(ggg), and Sections 734.410 and 734.630(ggg). In Sections 732.408

and 734.410 the Agency has specified parameters that must be determined on a site-specific basis to calculate the Tier 2 remediation objectives for the site.

The second change in the use of TACO is to require the use of a groundwater ordinance as an institutional control if an ordinance that has already been approved by the Agency is available. Again, this is only for sites seeking reimbursement. This change is proposed in Sections 732.606(hhh) and 734.630(eee), and mentioned in a proposed Board Note for Sections 732.410 and 734.408. Owners and operators would not be required to obtain an ordinance for their site if one has not already been approved by the Agency. They would only be required to use an ordinance if one already approved by the Agency for use an institutional control (e.g., already used at another site) could also be used at their own site. This change would prevent the payment of UST Fund money to clean up groundwater that cannot be used as a potable water source per the local groundwater ordinance, and to cleanup groundwater contamination under one site when groundwater contamination under other sites in the same area are allowed to remain in place.

12. In Sections 732.606(ccc) and 734.630(yy) the Agency proposed to make costs associated with sample collection, transportation, or analysis ineligible if the costs were required because one or more earlier samples were improperly collected, transported, or analyzed. CW^3M raised concerns about unintended consequences, specifically not paying consultants for collecting the second round of samples when the error was made by the laboratory. In response to these concerns, the Agency proposes to delete Sections 732.606(ccc) and 734.630(yy) from its proposal. The Agency agrees that the consultant should not be penalized if a sample is not properly analyzed by the laboratory. Likewise, the laboratory should not be penalized if a sample was not properly

collected by the consultant. Furthermore, it appears that the Agency's concerns can be addressed adequately through existing Section 732.606(q).

13. The Agency proposed Sections 732.606(eee) and 734.630(bbb) to make costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment ineligible for reimbursement. CW^{3}M raised concerns about certain routine maintenance costs being made ineligible by these Sections. In response, the Agency proposes to amend the Sections to allow routine maintenance costs to remain eligible for reimbursement if the costs are approved in a budget.

14. Members of PIPE have raised concerns over the addition of Sections 732.614 and 734.665. Their concerns appear to be centered around the auditing language repeated from Section 57.15 of the Act. As I stated at the first hearing in this rulemaking, the Agency does not intend to look at a company's financial statements. The proposed Section is intended to be used for the review of documents related to the payment from the UST Fund, such as time sheets, subcontractor's invoices, chain of custody documents, and back-up documentation for costs submitted for payment. The Agency merely needs to ensure that records related to reimbursement submittals are retained for a certain period of time so they can be reviewed if necessary. Due to the concerns raised by members of PIPE, the Agency proposes to delete the statutory auditing language from Sections 732.614 and 734.665 and retain only subsections (a) through (c). These subsections are based on the record retention provisions in other Board and Agency regulations, copies of which were submitted to the Board in Exhibit 16.

Payment of corrective action costs from the UST Fund is the distribution of public money, and the Agency must be able to properly account for such public money.

Subsections (a) through (c) will bring the LUST rules in line with other Board and Agency regulations that deal with the distribution of public money and will aid in the proper accounting of the public funds in the UST Fund. Because hundreds of millions of dollars in public funds are distributed through the UST Fund, far exceeding the amounts governed by many other Board and Agency regulations, there is an even greater need for record retention provisions in the LUST rules.

15. In its pre-filed testimony, CW^3M noted that groundwater removal system were not included in Sections 732.815(b) and 734.815(b). The Agency proposes to amend those Sections to include groundwater removal systems.

16. Members of PIPE expressed several concerns over the reimbursement amounts for personnel costs. In response, the Agency proposes the following changes to its proposal:

A. Concerns were raised over the amount of time allowed for tank pull oversight. In response, the Agency proposes to allow one half-day of field work and field oversight for each leaking underground storage tank that is removed, up to a total of 10 half-days. This change is proposed in Sections 732.845(a)(2)(A) and 734.845(a)(2)(A). If more than ten tanks are pulled or more than 10 half-days are required, the owner or operator can obtain bids for the costs (see below), or seek site-specific Agency approval of costs if unusual or extraordinary circumstances exist (see below).

B. Concerns were raised about costs for site investigation at high priority sites under Part 732. In response, the Agency proposes to add a new

Sections 732.845(d)(1) and (2). The added language is the same as for site investigations under Part 734.

C. Concerns were raised over the cost of additional well survey work required under the new rules. In response, the Agency proposes to add individual maximum payment amounts for this work. For reviewing well records (that have already been obtained) and identifying the wells, regulated recharge areas, and wellhead protection areas within a certain distance of contamination that is left in place, the Agency proposes an amount of $160.00 based upon 2 hours of personnel time. For additional well survey work that is needed due to site-specific circumstances (i.e. physical well survey, such as interviewing property owners or distributing door hangers), the Agency proposes to determine the maximum amounts on a time and materials basis. The added amounts for the well surveys are set forth in Sections 732.845(d)(3) and 734.845(b)(7).

D. Concerns were raised over the reimbursement of travel time. Members of PIPE recommended that travel time be broken out and reimbursed separately from the half-day rate due to its variability from site to site. In response, the Agency proposes to remove travel time from the half-day rate and reimburse it based on the following sliding scale. The amounts listed are the maximum amounts allowed per day for all costs associated with travel, including, but not limited to, personnel travel time, vehicles charges, per diem, and lodging. Distances are rounded to the nearest whole mile and are measured from the consultant's office that is closest to the site. Costs for travel would be allowed

only when specified. For example, the maximum allowable amount for field work and field oversight is typically a total of $390 per half-day, plus travel costs.

Distance to site (land miles)	Maximum amount per calendar day or fraction there of
0 to 29	$140.00
30 to 59	$220.00
60 or more	$300.00

To determine the above rates the Agency allowed $60.00 per day for a vehicle or mileage. This was the amount allowed for vehicles charges each day under the original half-day rate when it included transportation (2 half-days x $30.00 per half-day = $60.00). In addition, the Agency allowed $80.00 per hour for personnel travel time, with one hour allowed for sites 0 to 29 miles away, 2 hours allowed for sites 30 to 59 miles away, and 3 hours allowed for sites 60 or more miles away. These amounts are based on a one-day round trip. However, they should be sufficient to cover overnight stays because when an overnight stay is necessary two days of travel expenses would be allowed. For example, for sites 60 or more miles away, a total of $600.00 would be allowed if the consultant needed to stay overnight ($300.00 x 2 days). If the consultant needed to stay two nights, a total of $900 would be allowed ($300.00 x 3 days).

Because travel time is no longer a part of the half-day rate, the Agency has also reduced the $500.00 per half-day of field work and field oversight to $390.00. The travel costs that have been subtracted from the $500.00 are $80.00 for one hour of personnel travel time and $30.00 for vehicle charges. This leaves $390.00 per half-day of field work and field oversight. The $390.00 consists of

four hours of personnel time at $80.00 per hour ($320.00) plus $70 for equipment and supplies. Please note that these are the amounts per half-day. If the consultant works two half-days the amount allowed for equipment will be $140.00. For three half-days the amount allowed will be $210.00, and so on. These changes are made throughout Subpart H.

E. Concerns were raised about costs associated with plan revisions that are needed as a result of unforeseen circumstances that arise after a plan and budget are approved. In response, the Agency proposes to add Sections 732.845(f) and 734.845(f), which would allow $640.00 for plan and budget amendments required because of unforeseen circumstances. This amount is based upon eight hours of personnel time at $80.00 per hour. This is not intended for costs to prepare and amendment to a plan or report that is required because the original plan or report was deficient.

17. Concerns have been raised about setting maximum reimbursement amounts in the rules. In addition, the idea of bidding, which is used in several other states, has been raised as a possible method for determining reasonable amounts for reimbursement. In response, the Agency proposes to add provisions that would allow the maximum amounts set forth in the rules to be exceeded if a minimum of three bids are obtained. In such cases, the amount of the lowest bid would be the amount allowed for reimbursement purposes, unless it is lower than the maximum payment amount set forth in the rules. The bidding provisions do not specify who is to do the bidding. The Agency anticipates that in most cases the bidding will be done by the primary consultant. The bidding provisions are proposed in Sections 732.855 and 734.855.

The Agency believes that a bidding process will greatly improve the proposed rules. First, it allows an exceedance of the maximum rates set forth in the rules if the lowest of the bids (three minimum) exceed those rates. The rules will allow the rates to be responsive to site-specific conditions that cause an increase in costs, such as greater hauling distances to the landfill and higher fuel costs. Second, costs based on bids will accurately reflect market prices, making the rules immediately responsive to price fluctuations. Third, there is less of a need for Agency approval of unusual or extraordinary expenses, or a need to determine at what point a cost "substantially exceeds" the maximum payment amounts in the rules. Instead, costs can be bid out and the lowest bid will be considered reasonable. Fourth, there is no need to gather new information and establish a new database specifically for the purpose of determining maximum reimbursement amounts, which would be extremely burdensome to both consultants and the Agency, and result in a great delay in adopting the rules. Finally, bidding will help the Agency track market rates and adjust the maximum payment amounts in the rules when necessary. If the Agency sees that certain costs are continually bid out and coming in higher than the maximum amounts allowed in the rules, it will know that it is time to review the amounts in the rules to see if they need to be adjusted.

The proposed bidding provisions prohibit bids from certain parties. This is to ensure that true third party bids are obtained. However, the proposed rules also provide that the lowest bidder does not have to be used, only the amount of the lowest bid. Another person may be hired to perform the work, and the rules specifically provide that the parties prohibited from bidding may perform the work (i.e., parties in which the owner or operator, or the primary consultant, have a direct or indirect financial interest).

The only limitation is that the amount reimbursed will be limited to the amount of the lowest bid.

The bidding provisions also require that all bids be submitted to the Agency. This is to avoid situations where, for example, five bids are obtained and the three bids that are submitted are the three highest. If more than the minimum three bids are obtained, the amount allowed for reimbursement is intended to be the lowest of all the bids, not just three of them. Please note that the persons conducting the bidding must determine that the companies they choose to bid on the task are qualified and acceptable prior to receiving bids.

18. The Agency still believes there are situations where the reasonableness of costs will need to be determined on a site-specific basis due to extenuating circumstances. For example, there may be a situation where three minimum bids cannot be obtained because there are not three persons who provide the service or perform the work that is needed. Therefore, the Agency proposes to change the unusual or extraordinary expenses Section to an "unusual or extraordinary circumstances" Section. This Section has been moved to Sections 732.860 and 734.860 because of the addition of bidding in Sections 732.855 and 734.855.

CECI has provided a list of several situations that it proposes to list in the rules as "atypical" situations. It further proposes to make costs associated with the atypical situations reimbursable on a time and materials basis because the costs associated with such situations would be expected to exceed the maximum amounts set forth in the rules. The Agency has reviewed this list and believes that the situations identified by CECI are either already reimbursed on a time and materials basis, can be addressed through

bidding, or have been addressed in the proposed rules (including errata). Because all of the atypical situations identified by CECI have been addressed, the Agency does not see a need to designate certain situations as "atypical" in the rules.

19. In its original proposal the Agency proposed a requirement that the Agency review Sections 732.865 and 734.865a provision that would require it to review the rules at least every two years to ensure that the maximum payment amounts remained current with prevailing market prices. This requirement was proposed in Section 732.865 and 734.865. In its First Errata Sheet the Agency proposed to change this requirement to an automatic increase in the maximum payment amounts each year. The amount of the increase is based upon an inflation factor derived from the implicit price deflator for gross national product. The Agency now proposes to add back in a mandatory review of the rates to ensure they are keeping pace with the prevailing market rates. The requirement is now proposed as new Sections 732.875 and 734.875, and applies in addition to the automatic increase provision. The only difference between the language as originally proposed is that the review must be conducted at least every three years instead of every two years. The Agency believes that a three year minimum is sufficient because the maximum amounts will automatically be increased each year, and the Agency will be able to track market fluctuations when bidding is used.

20. Jarrett Thomas, who submitted testimony on behalf of PIPE and the Illinois Association of Environmental Laboratories, recommended that references to specific methods of BTEX and Polynuclear Aromatics PNA analysis be deleted from Sections 732.APPENDIX D and 734.APPENDIX D. In response, the Agency proposes to delete those references.

21. Based on discussions with interested parties, the Agency proposes to increase the hourly rates Engineer I, Engineer II, Geologist I, Geologist II, Geologist III, and Professional Geologist. The Agency believes the amended rates are reasonable amounts for the purposes of reimbursing costs from the UST Fund.

22. The Agency has proposed wording changes throughout Parts 732 and 734 regarding water supply well survey requirements to clarify that the water supply well survey is based on the proximity of wells to soil and groundwater contamination (measured and modeled) above the Tier 1 groundwater ingestion exposure route remediation objectives and not the most stringent Tier 1 remediation objectives. This is the appropriate objective to be used and be protective of potable wells.

In addition, wording has been changed from "contacting" to "using current information from" the Illinois State Geological Survey, the Illinois State Water Survey and Illinois Department of Public Health. The information of these entities may be available through other sources instead of only from the entities. This will allow for flexibility in how consultants collect this information.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
THIRD ERRATA SHEET

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney Kyle Rominger, and submits this Third Errata Sheet to its proposal for the amendment of 35 Ill. Adm. Code 732 and the adoption of 35 Ill. Adm. Code 734. During the course of this rulemaking many good comments and suggestions for improving the rules have been provided. After reviewing the hearing transcripts and filed testimony, the Illinois EPA incorporated these comments and suggestions into the rules where appropriate and, as a result, proposes the following changes to its proposal:

X. In response to a request for clarification on the application of Part 734 to releases subject to Public Act 92-0554 but reported prior to the effective date of Part 734, the Illinois EPA proposes to amend Section 734.100(a) by adding subsections (a)(1) and (2) as follows. The changes will allow owners and operators who conducted work prior to the effective date of Part 734 to use that work in satisfying the requirements of Part

734, and allow costs approved in a budget prior to the effective date of the Part to be reimbursed in accordance with the approved budget. Altered wording, including changes proposed in the Illinois EPA's Second Errata Sheet, is highlighted in bold lettering.

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to IEMA on or after **[effective date of rules]** in accordance with OSFM regulations. It does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act.

1) For releases reported on or after June 24, 2002, but prior to [effective date of rules], and for owners and operators electing prior to [effective date of rules] to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to [effective date of rules], even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to [effective date of rules] may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

2) Costs incurred pursuant to a budget approved prior to [effective date of rules] shall be reimbursed in accordance with the amounts approved in the budget and shall not be subject to the maximum payment amounts set forth in Subpart H of this Part.

X. In response to recommendations to reduce a "half-day" from five hours to four hours and not to limit the number of half-days that can be worked in one calendar day, the Illinois EPA proposes to amend the definition of "Half-day" in Sections 732.103 and 734.115 to the following. Altered wording is highlighted in bold lettering.

"Half-day" means **four hours, or a fraction thereof,** of billable work time. **Half-days shall be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.**

X. To assist the Illinois EPA in the observance and oversight of field activities, the Illinois EPA proposes the following new Sections 732.112 and 734.145 so the Illinois EPA can require notification of when and where field activities will be conducted. The timeframes in the last sentence of the Section mirror the timeframes set forth in Subpart B of each Part, as amended.

Section 732.112/734.145 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice shall include information prescribed by the Agency, and may include, but is not be limited to, a description of the field activities to be conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product.

X. In response to concerns regarding the Illinois EPA's administration of the LUST program, the Illinois EPA proposes the following new Sections 732.114 and 734.145.

Section 732.114/734.145 LUST Advisory Committee

Once each calendar quarter the Agency shall meet with a LUST Advisory Committee to discuss the Agency's implementation of this Part, provided that the Agency or members of the Committee raise one or more issues for discussion. The LUST Advisory Committee shall consist of the following individuals: one member designated by the Illinois Petroleum Marketers Association, one member designated by the Illinois Petroleum Council, one member designated by the American Consulting Engineers Council of Illinois, one member designated by the Illinois Society of Professional Engineers, one member designated by the Illinois Chapter of the American Institute of Professional Geologists, one member designated by the Professionals of Illinois for the Protection of the Environment, one member designated by the Illinois Association of Environmental Laboratories, one member designated by the Illinois Environmental Regulatory Group, one member designated by the Office of the State Fire Marshal, and one

member designated by the Illinois Department of Transportation. Members of the LUST Advisory Committee shall serve without compensation.

X. In response to concerns over whether the language of the Professional Engineer/Professional Geologist certification would require Professional Engineers to certify to geology practices or Professional Geologists to certify to engineering practices, the Illinois EPA proposes to amend the certification language of Sections 732.110(d) and 734.135(d) to the following to clarify that a professional is required to certify only to the standards and practices of his or her own profession. Altered wording is highlighted in bold lettering.

> I certify under penalty of law that all activities that are the subject of this plan, budget, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 734, and generally accepted **standards and practices of my profession**; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

X. In response to concerns about possible situations that would prohibit early action sample collection in the locations specified in Sections 732.202(h)(1) and (2), and Sections 734.210(h)(1) and (2), the Illinois EPA proposes to amend the Sections to the following. Altered wording is highlighted in bold lettering. Please note that additional changes to subsections of Sections 732.202(h)(1) and 734.210(h)(2) are proposed in the Illinois EPA's First and Second Errata Sheets.

Section 732.202(h)(1):

1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. **The Agency may allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.**

Section 732.202(h)(2):

2) At a minimum, for each UST that remains in place, the owner or operator shall collect and analyze soil samples as follows. **The Agency may allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.**

Section 734.210(h)(1):

1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. **The Agency may allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.**

Section 734.210(h)(2):

2) At a minimum, for each UST that remains in place, the owner or operator shall collect and analyze soil samples as follows. **The Agency may allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.**

X. In response to comments regarding the removal of free product, the Illinois EPA proposes to amend Sections 732.203(a) and 734.215(a) to the following to retain the phrase "to the maximum extent practicable," although in a different location for ease of reading. The following language also includes the changes to Sections 732.203(a) and 734.215(a) proposed in the Illinois EPA's Second Errata Sheet. Altered wording is highlighted in bold lettering.

Section 732.203(a):

a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators shall remove**, to the maximum extent practicable,** free product exceeding one-eighth of an inch in depth **as measured in a groundwater monitoring well**, or present as a sheen on groundwater in the tank removal excavation or on surface water, ~~to the maximum extent practicable~~ while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators shall:

Section 734.215(a):

a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators shall remove, **to the maximum extent practicable,** free product exceeding one-eighth of an inch in depth **as measured in a groundwater monitoring well**, or present as a sheen on groundwater in the tank removal excavation or on surface water, while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators shall:

X. As a part of the proposed changes to water supply well survey provisions (see below), the Agency proposes to amend Section 732.300(b)(1)(A)(i) to the following. Altered wording is highlighted in bold lettering.

i) One or more maps, to an appropriate scale, showing the following:

The location of the community water supply wells and other potable water supply wells identified pursuant to subsection (b)(3) of this Section, and the setback zone for each well;

The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to subsection (b)(3) of this Section;

The current extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

The modeled extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants.

X. To allow well survey information of the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health to be obtained from sources other than those offices directly, and to narrow the focus of the water supply well surveys, the Agency proposes to amend Section 732.300(b)(3) to the following. The same changes are being proposed to well survey language throughout the rules. Altered wording is highlighted in bold lettering.

3) As part of the remediation conducted under subsection (b) of this Section, owners and operators shall conduct a water supply well survey in accordance with this subsection (b)(3).

A) At a minimum, the owner or operator shall identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following:

i) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

ii) **Using current information from** the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

iii) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.

B) In addition to the potable water supply wells identified pursuant to subsection (b)(3)(A) of this Section, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742**

for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of remediation, the owner or operator leaves in place soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey shall identify the following:

i) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

ii) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants is located.

C) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (b)(3)(A) or (b)(3)(b) of this Section. The additional investigation may include, but shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.306(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

4) Groundwater contamination does not exceed **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants as a result of the release, modeling **in** accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Section 732.307(f)(2) to the following. Altered wording is highlighted in bold lettering.

2) **Using current information from** the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.309(a)(1)(C) and (D) to the following. Altered wording is highlighted in bold lettering.

C) The current extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

D) The modeled extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in the site classification completion report if modeling is not performed as part of site investigation;

X. In response to concerns about the prescriptive nature of Part 734's Stage 1 site investigation, the Illinois EPA proposes to amend Section 734.315(a) to the following. The following language replaces all changes to Section 734.315(a) proposed in the Illinois EPA's First and Second Errata Sheets. Altered wording is highlighted in bold lettering.

a) The Stage 1 site investigation shall consist of the following:

1) Soil investigation.

A) Up to four borings shall be drilled around each independent UST field where one or more UST excavation samples collected pursuant to 734.210(h), excluding backfill samples, exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring shall be drilled as close as practicable to each UST field if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings shall be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings shall be drilled below the groundwater table only if site- specific conditions warrant.

B) Up to two borings shall be drilled around each UST piping run where one or more piping run samples collected pursuant to 734.210(h) exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring shall be drilled a close as practicable to each UST piping run if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings shall be advanced through the

entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings shall be drilled below the groundwater table only if site-specific conditions warrant.

C) One soil sample shall be collected from each five-foot interval of each boring **drilled pursuant to subsections (a)(1)(A) and (B)** of this Section. Each sample shall be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample shall be collected from the center of the five-foot interval. All samples shall be analyzed for the applicable indicator contaminants.

2) Groundwater investigation.

A) A groundwater investigation is required under the following circumstances:

i) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

ii) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

iii) There is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary.

B) If a groundwater investigation is required, the owner or operator shall install five groundwater monitoring wells. One monitoring well shall be installed in the location where groundwater contamination is most likely to be present. The four remaining wells shall be installed at the property

boundary line or 200 feet from the UST system, whichever is less, in opposite directions from each other. The wells shall be installed in locations where they are most likely to detect groundwater contamination resulting from the release and provide information regarding the groundwater gradient and direction of flow.

C) **One soil sample shall be collected from each five-foot interval of each monitoring well installation boring drilled pursuant to subsection (a)(2)(B) of this Section. Each sample shall be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample shall be collected from the center of the five-foot interval. All soil samples exhibiting signs of contamination shall be analyzed for the applicable indicator contaminants. For borings that do not exhibit any signs of soil contamination, samples from the following intervals shall be analyzed for the applicable indicator contaminants, provided that the samples shall not be analyzed if other soil sampling conducted to date indicates that soil contamination does not extend to the location of the monitoring well installation boring:**

i) The five-foot **intervals** intersecting the elevations of soil **samples** collected pursuant to Section 734.210(h), **excluding backfill samples,** that **exceed** the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

ii) The five-foot interval immediately above **each** five-foot interval identified in subsection (a)(2)(C)(i) of this Section; and

iii) The five-foot interval immediately below **each** five-foot interval identified in subsection (a)(2)(C)(i) of this Section.

D) Following the installation of the groundwater monitoring wells, groundwater samples shall be collected from each well and analyzed for the applicable indicator contaminants.

E) **As a part of the groundwater investigation an in-situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test shall be performed on each such unit.**

i) **Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.**

ii) **The screen must be contained within the saturated zone.**

3) An initial water supply well survey in accordance with Section 734.445(a) of this Part.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.404(e)(1) and (2) to the following. Altered wording is highlighted in bold lettering.

1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey shall identify the following:

A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

B) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants is located.

2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.406(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

4) Groundwater contamination does not exceed the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants as a result of the release, modeling **in** accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

X. In response to questions about the number of alternative technologies that must be compared in a budget when an alternative technology is proposed, the Illinois EPA proposes to amend Sections 732.407(b) and 734.340(b) to the following. Added wording is highlighted in bold lettering.

Section 732.407(b):

b) An owner or operator intending to seek payment ~~or reimbursement~~ for costs associated with the use of an alternative technology shall submit a corresponding budget plan in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action budget plans at Section 732.404 of this Part, the budget plan must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. **The budget plan shall compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.**

Section 734.407(b):

b) An owner or operator intending to seek payment for costs associated with the use of an alternative technology shall submit a corresponding budget in accordance with Section 734.335 of this Part. In addition to the requirements for a corrective action budget at Section 734.335 of this Part, the budget must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. **The budget plan shall compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.**

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.409(a)(2)(A)(iii) and (iv) to the following. Altered wording is highlighted in bold lettering.

iii) The current extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

iv) The modeled extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Section 734.445 to the following. Altered wording is highlighted in bold lettering.

Section 734.445 Water Supply Well Survey

a) At a minimum, the owner or operator shall conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following:

1) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

2) **Using current information from** the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.

b) In addition to the potable water supply wells identified pursuant to subsection (a) of this Section, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742**

for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey shall identify the following:

1) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

2) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants is located.

c) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (a) or (b) of this Section. The additional investigation may include, but shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

d) Documentation of the water supply well survey conducted pursuant to this Section shall include, but not be limited to, the following:

1) One or more maps, to an appropriate scale, showing the following:

A) The location of the community water supply wells and other potable water supply wells identified

pursuant to this Section, and the setback zone for each well;

B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to this Section;

C) The current extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants; and

D) The modeled extent of groundwater contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in a site investigation report if modeling is not performed as part of site investigation;

2) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to this Section;

3) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

4) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of this Section and that the documentation submitted pursuant to subsection (d) of this Section includes the information obtained as a result of the survey.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 734.450(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

4) Groundwater contamination does not exceed the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants as a result of the release, modeling **in** accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the **Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742** for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 734.445 of this Part.

X. In conjunction with the proposed new Sections 732.606(ggg) and (hhh), and new Sections 734.630(ddd) and (eee) (see below), the Illinois EPA proposes to amend Sections 732.408 and 734.410 as follows. Added wording is highlighted in bold lettering.

Section 732.408 Remediation Objectives

For sites requiring High Priority corrective action or for which the owner or operator has elected to conduct corrective action pursuant to Section 732.300(b), 732.400(b) or 732.400(c) of this Part, the owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. **Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 shall determine the following parameters on a site-specific basis:**

Hydraulic conductivity (K)
Soil bulk density (ρ_b)
Soil particle density (ρ_s)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Costs associated with the following are ineligible for payment from the Fund: (1) on-site corrective action to achieve remediation objectives that are more stringent than Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742, and (2) costs associated with

groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control can be used as an institutional control for the incident being remediated. See Sections 732.606(ggg) and (hhh) of this Part.

Section 734.410 Remediation Objectives

The owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. **Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 shall determine the following parameters on a site-specific basis:**

Hydraulic conductivity (K)
Soil bulk density (ρ_b)
Soil particle density (ρ_s)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Costs associated with the following are ineligible for payment from the Fund: (1) on-site corrective action to achieve remediation objectives that are more stringent than Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742, and (2) costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control can be used as an institutional control for the incident being remediated. See Sections 734.630(ddd) and (eee) of this Part.

X. In response to objections over requiring the submission of laboratory certifications in applications for payment, the Illinois EPA proposes to delete proposed Sections 732.601(b)(11) and 734.605(b)(11).

X. The Illinois EPA proposes to delete Sections 732.606(ccc) and 734.630(yy) as a result of concern expressed over the effect of the Sections. The Illinois EPA's concern is that the costs associated with sampling and sample analysis be paid only one time in cases where re-sampling or re-analysis is necessary due to improper sample collection, transportation, or analysis. This concern is already addressed by existing Sections 732.606(q) and 734.630(q).

X. In response to concerns about the payment of routine maintenance costs necessary for the operation of equipment leased for long terms, the Illinois EPA proposes to amend Sections 732.606(eee) and 734.630(bbb) to the following. Altered wording is highlighted in bold lettering.

732.606(eee):

eee) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment**, other than costs associated with routine maintenance that are approved in a budget plan.**

734.630(bbb):

bbb) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment**, other than costs associated with routine maintenance that are approved in a budget.**

X. The Agency proposes to add the following Sections 732.606(ggg) and (hhh), and Sections 734.630(ddd) and (eee), to the list of ineligible costs to help ensure that owners and operators seeking payment from the UST Fund utilize the Tiered Approach to Corrective Action Objectives rules of 35 Ill. Adm. Code 742 ("TACO") in the most cost-effective manner.

Section 732.606(ggg) and (hhh):

(ggg) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742.

(hhh) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

Section 734.630(ddd) and (eee):

(ddd) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2

remediation objectives developed in accordance with 35 Ill. Adm. Code 742.

(eee) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

X. In response to concerns over the extent of reviews conducted pursuant to Sections 732.614 and 734.665, the Illinois EPA proposes to amend Sections 732.614 and 734.665 to the following by deleting the prefatory statutory language repeated from Section 57.15 of the Act. The following language includes changes to the Section proposed in the Illinois EPA's Second Errata Sheet.

Section 732.614/734.665 Audits and Access to Records; Records Retention

a) Owners or operators that submit **a report, plan, budget, application for payment, or other data or documents** under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify **such report, plan, budget, application for payment, data, or document,** shall maintain all books, records, documents, and other evidence directly pertinent to the **report, plan, budget, application for payment, data, or document**, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence shall be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives shall have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall provide proper facilities for such access and inspection.

c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter issued pursuant to Subpart G of this Part;

2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or

3) The expiration of any other applicable record retention period.

X. In response to comments set forth in "CW^{3}M Company, Inc.'s Prefiled Testimony and General Comments," the Illinois EPA proposes to amend Sections 732.815(b) and 734.815(b) to the following by adding a missing reference to groundwater removal systems. Added wording is highlighted in bold lettering.

Section 732.815(b):

b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part. Such costs shall include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product **and groundwater** removal systems.

Section 734.815(b):

b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part. Such costs shall include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product **and groundwater** removal systems.

X. The Illinois EPA proposes to amend Sections 732.845 and 734.845, Professional Consulting Services, as follows:

A. In response to concerns about field work and field oversight costs associated with tank removals, amend Sections 732.845(a)(2)(A) and 734.845(a)(2)(A) to allow one half-day of field work and field oversight for each leaking underground storage tank that is removed, up to a total of ten half-days.

B. In response to concerns about costs associated with site investigation at sites classified as high priority under Part 732, amend Section 732.845(d) by adding a new subsections (d)(1) and (2).

C. Add new Sections 732.845(d)(3) and 734.845(b)(7) to address costs associated with additional well surveys required under 732.404(e)(1) and (2) and 734.445(b) and (c), respectively.

D. In response to concerns about including travel costs in the half-day rate, remove travel costs from the half-day rate by reducing the half-day rate to $390.00 throughout the Section and set forth the maximum amounts allowed for travel in new Sections 732.845(e) and 734.845(e).

E. In response to concerns about costs associated with plan and budget amendments that are required as a result of unforeseen circumstances, add Sections 732.845(f) and 734.845(f) to address such costs.

F. Add Sections 732.845(g) and 734.845(g) to address costs associated with bidding when the owner or operator pays the subcontractor directly, and therefore the consultant would not be entitled to handling charges.

The following language includes the proposed changes to Sections 732.845 and 734.845 listed above as well as the changes to 734.845 proposed in the Agency's First Errata Sheet. Altered wording is highlighted in bold lettering.

Section 732.845 Professional Consulting Services

Payment for costs associated with professional consulting services shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; **vehicle charges; lodging; meals;** and the preparation, review, certification, and submission of all plans, budget plans, reports, applications for payment, and other documentation.

a) Early Action and Free Product Removal. Payment of costs for professional consulting services associated with early action and free product removal activities conducted pursuant to Subpart B of this Part shall not exceed the following amounts:

1) Payment for costs associated with preparation for the abandonment or removal of USTs shall not exceed a total of $960.00.

2) Payment for costs associated with early action field work and field oversight shall not exceed a total of **$390.00** per half-day**, plus travel costs in accordance with subsection (e) of this Section**. The number of half-days shall not exceed the following:

A) If one or more USTs are removed, one half-day **for each leaking UST that is removed, not to exceed a total of ten half-days,** plus one half-day for each **225** cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with Section 732.202(f) of this Part;

B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 732.202(h)(2) of this Part; and

C) One half-day if a UST line release is repaired.

3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including, but not limited to, field work not covered by subsection (a)(2) of this Section, shall not exceed a total of $4,800.00.

4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems shall be

determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.

5) Payment for costs associated with the field work and field oversight for free product removal shall not exceed a total of **$390.00** per half-day, **plus travel costs in accordance with subsection (e) of this Section**. The Agency shall determine the reasonable number of half-days on a site-specific basis.

6) Payment for costs associated with the preparation and submission of free product removal reports shall not exceed a total of $1,600.00 per report.

7) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 732.202(h)(3) of this Part shall not exceed a total of $500.00.

b) Site Evaluation and Classification. Payment of costs for professional consulting services associated with site evaluation and classification activities conducted pursuant to Subpart C of this Part shall not exceed the following amounts:

1) For site evaluation and classifications conducted pursuant to Section 732.307 of this Part, payment for costs associated with the preparation and submission of site classification plans, site classification preparation, field work, field oversight, and the preparation and submission of the site classification completion report shall not exceed a total of $9,870.00.

2) For site evaluation and classifications conducted pursuant to Section 732.312 of this Part, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part. For owners and operators that elect to proceed in accordance with 35 Ill. Adm. Code 734, costs incurred after the notification of election shall be payable from the Fund in accordance with that Part.

c) Low Priority Corrective Action. Payment of costs for professional consulting services associated with low priority corrective action activities conducted pursuant to Subpart D of this Part shall not exceed the following amounts:

1) Payment for costs associated with the preparation and submission of low priority groundwater monitoring plans shall not exceed a total of $3,200.00.

2) Payment for costs associated with low priority groundwater monitoring field work and field oversight shall not exceed a total of **$390.00** per half-day, up to a maximum of seven half-days, **plus travel costs in accordance with subsection (e) of this Section.**

3) Payment for costs associated with the preparation and submission of the first year groundwater monitoring report shall not exceed a total of $2,560.00.

4) Payment for costs associated with the preparation and submission of the second year groundwater monitoring report shall not exceed a total of $2,560.00.

5) Payment for costs associated with the preparation and submission of low priority groundwater monitoring completion report shall not exceed a total of $2,560.00.

d) High Priority Corrective Action. Payment of costs for professional consulting services associated with high priority corrective action activities conducted pursuant to Subpart D of this Part shall not exceed the following amounts:

1) Payment for costs associated with the preparation and submission of investigation plans for sites classified pursuant to Section 732.307 of this Part shall not exceed the following:

A) A total of $3,200.00 for plans to investigate on-site contamination.

B) A total of $3,200.00 for plans to investigate off-site contamination.

2) Payment for costs associated with field work and field oversight to define the extent of contamination resulting from the release shall not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days shall not exceed the following:

A) **One half-day for every four soil borings, or fraction thereof, drilled as part of the investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed shall be included in subsection (d)(2)(B) of this Section instead of this subsection (d)(2)(A); and**

B) **One half-day for each monitoring well installed as part of the investigation.**

3) **Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(1) of this Part shall not exceed a total of $160.00. Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(2) of this Part shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.**

4) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans shall not exceed a total of $5,120.00. For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.

5) Payment for costs associated with high priority corrective action field work and field oversight shall not exceed the following amounts:

A) For conventional technology, a total of $390.00 per half-day, not to exceed one half-day for each **225** cubic yards, or fraction thereof, of soil removed and disposed, **plus travel costs in accordance with subsection (e) of this Section.**

B) For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.

6) **Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 shall not exceed the following amounts:**

A) Payment for costs associated with field work and field oversight for the development of remediation objectives shall not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days shall not exceed the following:

i) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed shall be included in subsection (d)(6)(A)(ii) of this Section instead of this subsection (d)(6)(A)(i); and

ii) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

B) Excluding costs set forth in subsection (d)(6)(A) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives shall not exceed a total of $800.00.

7) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 shall not exceed **a total of** $800.00 per Environmental Land Use Control or Highway Authority Agreement.

8) Payment for costs associated with the preparation and submission of high priority corrective action completion reports shall not exceed a total of $5,120.00.

e) Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, shall not exceed the following amounts. Costs for travel shall be allowed only when specified elsewhere in this Part.

Distance to site (land miles)	**Maximum total amount per calendar day**
0 to 29	**$140.00**

30 to 59	$220.00
60 or more	$300.00

Distances shall be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site shall be measured from the consultant's office that is closest to the site.

f) If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget plan shall not exceed a total of $640.00.

g) Costs associated with bidding pursuant to 732.855 of this Part shall not exceed a total of $160.00 per task bid (e.g., tank removal, drilling, laboratory analysis of samples). For the purposes of this subsection (g), soil excavation, transportation, and disposal shall be considered three separate tasks. Costs for bidding shall be allowed under this subsection (g) only when the person performing the task bid is paid directly by the owner or operator.

Section 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; **vehicle charges; lodging; meals;** and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation.

a) Early Action and Free Product Removal. Payment of costs for professional consulting services associated with early action and free product removal activities conducted pursuant to Subpart B of this Part shall not exceed the following amounts:

1) Payment for costs associated with preparation for the abandonment or removal of USTs shall not exceed a total of $960.00.

2) Payment for costs associated with early action field work and field oversight shall not exceed a total of **$390.00** per half-day, **plus travel costs in accordance with subsection (e) of this Section.** The number of half-days shall not exceed the following:

A) If one or more USTs are removed, one half-day **for each leaking UST that is removed, not to exceed a total of ten half-days,** plus one half-day for each **225** cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with **Section** 734.210(f) **of this Part**;

B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 732.210(h)(2) of this Part; and

C) One half-day if a UST line release is repaired.

3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including, but not limited to, field work not covered by subsection (a)(2) of this Section, shall not exceed a total of $4,800.00.

4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part.

5) Payment for costs associated with the field work and field oversight for free product removal shall not exceed a total of **a total of $390.00** per half-day**, plus travel costs in accordance with subsection (e) of this Section**. The Agency shall determine the reasonable number of half-days on a site-specific basis.

6) Payment for costs associated with the preparation and submission of free product removal reports shall not exceed a total of $1,600.00 per report.

7) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 734.210(h)(3) of this Part shall not exceed a total of $500.00.

b) Site Investigation. Payment of costs for professional consulting services associated with site investigation activities conducted pursuant to Subpart C of this Part shall not exceed the following amounts:

1) Payment for costs associated with Stage 1 site investigation preparation shall not exceed a total of **$1,600.00**.

2) **Payment for costs associated with Stage 1 field work and field oversight shall not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days shall not exceed the following:**

   A) **One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 1 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed shall be included in subsection (b)(2)(B) of this Section instead of this subsection (b)(2)(A); and**

   B) **One half-day for each monitoring well installed as part of the Stage 1 site investigation.**

3) Payment for costs associated with the preparation and submission of Stage 2 site investigation plans shall not exceed a total of $3,200.00.

4) Payment for costs associated with Stage 2 field work and field oversight shall not exceed **a total of $390.00** per half-day**, plus travel costs in accordance with subsection (e) of this Section**. The number of half-days shall not exceed the following:

   A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 2 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed shall be included in subsection **(b)(4)(B)** of this Section instead of this subsection **(b)(4)(A)**; and

   B) One half-day for each monitoring well installed as part of the Stage 2 site investigation.

5) Payment for costs associated with the preparation and submission of Stage 3 site investigation plans shall not exceed a total of $3,200.00.

6) Payment for costs associated with Stage 3 field work and field oversight shall not exceed **a total of $390.00** per half-day, **plus travel costs in accordance with subsection (e) of this Section**. The number of half-days shall not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 3 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed shall be included in subsection **(b)(6)(B)** of this Section instead of this subsection **(b)(6)(A)**; and

B) One half-day for each monitoring well installed as part of the Stage 3 site investigation.

7) Payment for costs associated with well surveys conducted pursuant to Section 734.445(b) of this Part shall not exceed a total of $160.00. Payment for costs associated with well surveys conducted pursuant to Section 734.445(c) of this Part shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part.

8) Payment for costs associated with the preparation and submission of site investigation completion reports shall not exceed a total of $1,600.00.

c) Corrective Action. Payment of costs for professional consulting services associated with corrective action activities conducted pursuant to Subpart C of this Part shall not exceed the following amounts:

1) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans shall not exceed a total of $5,120.00. For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part.

2) Payment for costs associated with corrective action field work and field oversight shall not exceed the following amounts:

A) For conventional technology, a total of **$390.00** per half-day, not to exceed one half-day for each **225** cubic yards, or fraction thereof, of soil removed and disposed, **plus travel costs in accordance with subsection (e) of this Section.**

B) For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part.

3) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 shall not exceed **a total of** $800.00 per Environmental Land Use Control or Highway Authority Agreement.

4) Payment for costs associated with the preparation and submission of corrective action completion reports shall not exceed a total of $5,120.00.

d) Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 shall not exceed the following amounts:

1) Payment for costs associated with field work and field oversight for the development of remediation objectives shall not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days shall not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed shall be included in subsection (d)(1)(B) of this Section instead of this subsection (d)(1)(A); and

B) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

2) **Excluding costs set forth in subsection (d)(1) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives shall not exceed a total of $800.00.**

e) **Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, shall not exceed the following amounts. Costs for travel shall be allowed only when specified elsewhere in this Part.**

Distance to site (land miles)	**Maximum total amount per calendar day**
0 to 29	**$140.00**
30 to 59	**$220.00**
60 or more	**$300.00**

Distances shall be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site shall be measured from the consultant's office that is closest to the site.

f) **If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget shall not exceed a total of $640.00.**

g) **Costs associated with bidding pursuant to 734.855 of this Part shall not exceed a total of $160.00 per task bid (e.g., tank removal, drilling, laboratory analysis of samples). For the purposes of this subsection (g), soil excavation, transportation, and disposal shall be considered three separate tasks. Costs for bidding shall be allowed under this subsection (g) only when the person performing the task bid is paid directly by the owner or operator.**

X. In conjunction with re-numbering of Sections 732.855 and 734.855 to Sections 732.860 and 734.860 (see below), the Illinois EPA proposes to amend Sections 732.850(a) and 734.850(a) to the following. Altered wording is highlighted in bold lettering.

Section 732.850(a):

a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, drum disposal, or consulting fees for plans, field work, field oversight, and reports) shall not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section **732.860** of this Part.

Section 734.850(a):

a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, drum disposal, or consulting fees for plans, field work, field oversight, and reports) shall not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section **734.860** of this Part.

X. The Illinois EPA proposes to add the following new Sections 732.855 and 734.855 to allow bidding as an alternative to the maximum payment amounts set forth in Subpart H.

Section 732.855/734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid shall cover all costs included in the maximum payment amount that the bid is replacing.

a) A minimum of three written bids shall be obtained. The bids shall be based upon the same scope of work and shall remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids shall be obtained only from persons qualified and able to perform the work being bid. Bids shall not be obtained from persons in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest.

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, shall be submitted to the Agency in the associated budget. If more than the minimum three bids are

obtained, summaries and copies of all bids shall be submitted to the Agency.

c) The maximum payment amount for the work bid shall be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H shall be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

X. In conjunction with the addition of the bidding provisions above, the Illinois EPA proposes to amend current Sections 732.855 and 734.855 to 732.860 and 734.860, with the following changes to the text of the Sections. Altered wording is highlighted in bold lettering. With this change, Sections 732.860 and 734.860 should be re-numbered to 732.865 and 734.865, and Sections 732.865 and 734.865 should be re-numbered to 732.870 and 734.870.

Section **732.860** Unusual or Extraordinary **Circumstances**

If, **as a result of unusual or extraordinary circumstances,** an owner or operator incurs **or will incur eligible costs that** exceed the **maximum payment** amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking **to have the Agency determine maximum payments amounts pursuant to this Section shall demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund,** exceed the **maximum payment** amounts set forth in this Subpart H, **are the result of unusual or extraordinary circumstances,** are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. **Examples of unusual or extraordinary circumstances may include, but shall not be limited to, an inability to obtain a minimum of three bids pursuant to Section 732.855 of this Part due to a limited number of persons providing the service needed.**

Section **734.860** Unusual or Extraordinary **Circumstances**

If, **as a result of unusual or extraordinary circumstances,** an owner or operator incurs **or will incur eligible costs that** exceed the **maximum payment** amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking **to have the Agency determine maximum payments amounts pursuant to this Section shall demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund,** exceed the **maximum payment** amounts set forth in this Subpart H, **are the result of unusual or extraordinary circumstances,** are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. **Examples of unusual or extraordinary circumstances may include, but shall not be limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.**

X. To help ensure that the maximum payment amounts set forth in Subpart H reflect prevailing market rates, the Illinois EPA proposes to add Sections 732.875 and 743.875 as follows. This language is the same as originally proposed in Sections 732.865 and 734.865, except that the minimum time between reviews is changed from two years to three years.

Section 732.875/734.875 Agency Review of Payment Amounts

No less than every three years the Agency shall review the provisions of this Subpart H. As part of its review the Agency shall determine whether the amounts set forth in this Subpart H generally reflect prevailing market rates. If, as a result of the review, the Agency determines that the amounts set forth in this Subpart H no longer generally reflect prevailing market rates, it shall propose appropriate amendments to the Board.

X. In response to recommendations set forth in "Testimony of Jarrett Thomas on Behalf of the Professionals of Illinois for the Protection of the Environment and the Illinois Association of Environmental Laboratories, Inc.," the Illinois EPA proposes to amend Sections 732.APPENDIX D and 734.APPENDIX D to the following by deleting references to specific methods of analyses for the following: BTEX Soil; BTEX Water;

Polynuclear Aromatics PNA, or PAH SOIL; and Polynuclear Aromatics PNA, or PAH WATER. "(EPA 8260)" is deleted after the BTEX analyses and "EPA 8270" is deleted after the Polynuclear Aromatics analyses.

Section 732.APPENDIX D /734.APPENDIX D Sample Handling and Analysis

	Max. Total Amount per Sample
Chemical	
BETX Soil with MTBE	$85.00
BETX Water with MTBE	$81.00
COD (Chemical Oxygen Demand)	$30.00
Corrosivity	$15.00
Flash Point or Ignitability Analysis EPA 1010	$33.00
FOC (Fraction Organic Carbon)	$38.00
Fat, Oil, & Grease (FOG)	$60.00
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part	$693.00
Organic Carbon (ASTM-D 2974-87)	$33.00
Dissolved Oxygen (DO)	$24.00
Paint Filter (Free Liquids)	$14.00
PCB / Pesticides (combination)	$222.00
PCBs	$111.00
Pesticides	$140.00
PH	$14.00
Phenol	$34.00
Polynuclear Aromatics PNA, or PAH SOIL	$152.00
Polynuclear Aromatics PNA, or PAH WATER	$152.00
Reactivity	$68.00
SVOC - Soil (Semi-volatile Organic Compounds)	$313.00
SVOC - Water (Semi-volatile Organic Compounds)	$313.00
TKN (Total Kjeldahl) "nitrogen"	$44.00
TOC (Total Organic Carbon) EPA 9060A	$31.00
TPH (Total Petroleum Hydrocarbons)	$122.00
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	$175.00
VOC (Volatile Organic Compound) - Water	$169.00
Geo-Technical	
Bulk Density ASTM D4292 / D2937	$22.00
Ex-Situ Hydraulic Conductivity / Permeability	$255.00
Moisture Content ASTM D2216-90 / D4643-87	$12.00

Porosity	$30.00
Rock Hydraulic Conductivity Ex-Situ	$350.00
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	$145.00
Soil Classification ASTM D2488-90 / D2487-90	$68.00
Metals	
Arsenic TCLP Soil	$16.00
Arsenic Total Soil	$16.00
Arsenic Water	$18.00
Barium TCLP Soil	$10.00
Barium Total Soil	$10.00
Barium Water	$12.00
Cadmium TCLP Soil	$16.00
Cadmium Total Soil	$16.00
Cadmium Water	$18.00
Chromium TCLP Soil	$10.00
Chromium Total Soil	$10.00
Chromium Water	$12.00
Cyanide TCLP Soil	$28.00
Cyanide Total Soil	$34.00
Cyanide Water	$34.00
Iron TCLP Soil	$10.00
Iron Total Soil	$10.00
Iron Water	$12.00
Lead TCLP Soil	$16.00
Lead Total Soil	$16.00
Lead Water	$18.00
Mercury TCLP Soil	$19.00
Mercury Total Soil	$10.00
Mercury Water	$26.00
Selenium TCLP Soil	$16.00
Selenium Total Soil	$16.00
Selenium Water	$15.00
Silver TCLP Soil	$10.00
Silver Total Soil	$10.00
Silver Water	$12.00
Metals TCLP Soil (a combination of all RCRA metals)	$103.00
Metals Total Soil (a combination of all RCRA metals)	$94.00
Metals Water (a combination of all RCRA metals)	$119.00
Soil preparation for Metals TCLP Soil (one fee per sample)	$79.00
Soil preparation for Metals Total Soil (one fee per sample)	$16.00
Water preparation for Metals Water (one fee per sample)	$11.00

Other	
En Core® Sampler, purge-and-trap sampler, or equivalent sampling device	$10.00
Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day)	$50.00*

X. The Illinois EPA proposes to amend Sections 732.APPENDIX E and 734.APPENDIX E to the following by increasing maximum hourly rates for engineers and geologists. Altered rates are highlighted in bold lettering.

Section 734.APPENDIX E Personnel Titles and Rates

Title	Degree Required	Ill. License Req'd.	Min. Yrs. Experience	Max. Hourly Rate
Engineer I	Bachelor's in Engineering	None	0	**$75.00**
Engineer II	Bachelor's in Engineering	None	2	**$85.00**
Engineer III	Bachelor's in Engineering	None	4	$100.00
Professional Engineer	Bachelor's in Engineering	P.E.	4	$110.00
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	$130.00
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	**$70.00**
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	**$75.00**
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	**$88.00**
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	**$92.00**
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	$110.00
Scientist I	Bachelor's in a Natural or Physical Science	None	0	$60.00
Scientist II	Bachelor's in a Natural or Physical Science	None	2	$65.00
Scientist III	Bachelor's in a Natural or Physical Science	None	4	$70.00
Scientist IV	Bachelor's in a Natural or Physical Science	None	6	$75.00
Senior Scientist	Bachelor's in a Natural or Physical Science	None	8	$85.00
Project Manager	None	None	8[1]	$90.00
Senior Project Manager	None	None	12[1]	$100.00
Technician I	None	None	0	$45.00
Technician II	None	None	2[1]	$50.00
Technician III	None	None	4[1]	$55.00
Technician IV	None	None	6[1]	$60.00
Senior Technician	None	None	8[1]	$65.00
Account Technician I	None	None	0	$35.00
Account Technician II	None	None	2[2]	$40.00
Account Technician III	None	None	4[2]	$45.00
Account Technician IV	None	None	6[2]	$50.00
Senior Acct. Technician	None	None	8[2]	$55.00
Administrative Assistant I	None	None	0	$25.00
Administrative Assistant II	None	None	2[3]	$30.00

Administrative Assistant III	None	None	4[3]	$35.00
Administrative Assistant IV	None	None	6[3]	$40.00
Senior Admin. Assistant	None	None	8[3]	$45.00
Draftperson/CAD I	None	None	0	$40.00
Draftperson/CAD II	None	None	2[4]	$45.00
Draftperson/CAD III	None	None	4[4]	$50.00
Draftperson/CAD IV	None	None	6[4]	$55.00
Senior Draftperson/CAD	None	None	8[4]	$60.00

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.

[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.

[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.

[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Additional Testimony of Douglas W. Clay in Support of the Illinois Environmental Protection Agency's Proposal and Illinois Environmental Protection Agency's Third Errata Sheet upon the persons to whom they are directed by placing copies in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Overnight Mail)

Marie Tipsord
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Overnight Mail)

SEE ATTACHED SERVICE LIST
(First Class Mail)

and mailing them from Springfield, Illinois on July 30, 2004, with sufficient postage affixed as indicated above.

Cynthia R. Wolfe

SUBSCRIBED AND SWORN TO BEFORE ME

this 30th day of July, 2004.

Brenda Boehner
Notary Public

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-14-2005

[redacted]

Party Name	Role	City & State	Phone/Fax
Ogle County State's Attorney Office **Interested Party**	Ogle County Courthouse 110 South Fourth Street, P.O. Box 395 Michael C. Rock, Assistant State's Attorne	Oregon IL 61061-0395	815/732-1170 815/732-6607
IEPA **Petitioner**	1021 North Grand Avenue East P.O. Box 19276 Gina Roccaforte, Assistant Counsel Kyle Rominger, Assistant Counsel Doug Clay	Springfield IL 62794-9276	217/782-5544 217/782-9807
Hodge Dwyer Zeman **Interested Party**	3150 Roland Avenue Post Office Box 5776 Thomas G. Safley	Springfield IL 62705-5776	217/523-4900 217/523-4948
Sidley Austin Brown & Wood **Interested Party**	Bank One Plaza 10 South Dearborn Street William G. Dickett	Chicago IL 60603	312/853-7000 312/953-7036
Karaganis & White, Ltd. **Interested Party**	414 North Orleans Street Suite 810 Barbara Magel	Chicago IL 60610	312/836-1177 312/836-9083
Illinois Petroleum Marketers Association **Interested Party**	112 West Cook Street Bill Fleischi	Springfield IL 62704	217/793-1858
United Science Industries, Inc. **Interested Party**	P.O. Box 360 6295 East Illinois Highway 15 Joe Kelly, PE	Woodlawn IL 62898-0360	618/735-2411 618/735-2907
Illinois Environmental Regulatory Group **Interested Party**	3150 Roland Avenue Robert A. Messina, General Counsel	Springfield IL 62703	217/523-4942 217/523-4948
Carlson Environmental, Inc. **Interested Party**	65 E. Wacker Place Suite 1500 Kenneth James	Chicago IL 60601	
Chemical Industry Council of Illinois **Interested Party**	2250 E. Devon Avenue Suite 239 Lisa Frede	DesPlaines IL 60018-4509	
Barnes & Thornburg **Interested Party**	1 North Wacker Drive Suite 4400 Carolyn S. Hesse, Attorney	Chicago IL 60606	312/357-1313 312/759-5646
Rapps Engineering & Applied Science **Interested Party**	821 South Durkin Drive P.O. Box 7349 Michael W. Rapps	Springfield IL 62791-7349	217/787-2118 217/787-6641
Environmental Management & Technologies **Interested Party**	2012 West College Avenue Suite 208 Craig S. Gocker, President	Normal IL 61761	309/454-1717 309/454-2711
Office of the Attorney General **Interested Party**	Environmental Bureau 188 West Randolph, 20th Floor Joel J. Sternstein, Assistant Attorney Genera	Chicago IL 60601	312/814-2550 312/814-2347
Herlacher Angleton Associates, LLC **Interested Party**	8731 Bluff Road Tom Herlacher, P.E., Principal Engineer	Waterloo IL 62298	618/935-2262 618/935-2694
Illinois Pollution			

Control Board **Interested Party**	100 W. Randolph St. Suite 11-500	Chicago IL 60601	3128143956
	Dorothy M. Gunn, Clerk of the Board Marie Tipsord, Hearing Officer		
Huff & Huff, Inc. **Interested Party**	512 West Burlington Avenue Suite 100	LaGrange IL 60525	
	James E. Huff, P.E.		
Black & Veatch **Interested Party**	101 North Wacker Drive Suite 1100	Chicago IL 60606	
	Scott Anderson		
Posegate & Denes **Interested Party**	111 N. Sixth Street	Springfield IL 62701	217-522-6152
	Claire A. Manning		
Marlin Environmental, Inc. **Interested Party**	1000 West Spring Street	South Elgin IL 60177	847-468-8855
	Melanie LoPiccolo, Office Manager		
Illinois Department of Natural Resources **Interested Party**	One Natural Resources Way	Springfield IL 62702-1271	217/782-1809 217/524-9640
	Jonathan Furr, General Counsel		
Burroughs, Hepler, Broom, MacDonald, Hebrank & True **Interested Party**	103 W. Vandalia Street Suite 300	Edwardsville IL 62025	618/656-0184 618/656-1801
	Musette H. Vogel		
EcoDigital Development LLC **Interested Party**	PO Box 360 6295 East Illinois Hwy 15	Woodlawn IL 62898	(618) 735-2411
	Joe Kelly, VP Engineering		
Great Lakes Analytical **Interested Party**	1380 Busch Parkway	Buffalo Grove IL 60089	(847) 808-7766
	A.J Pavlick		
CSD Environmental Services, Inc **Interested Party**	2220 Yale Boulevard	Springfield IL 62703	217-522-4085
	Joseph W. Truesdale, P.E.		
CORE Geological Services, Inc. **Interested Party**	2621 Monetga, Suite C	Springfield Il 62704	217-787-6109
	Ron Dye, President		
Clayton Group Services Inc **Interested Party**	3140 Finley Road	Downers Grove IL 60515	630.795.3207
	Monte Nienkerk		
PDC Laboratories **Interested Party**	2231 W. Altorfer Dr.	Peoria il 61615	309-692-9688
	Kurt Stepping, Director of Client Services		
Atwell-Hicks, Inc. **Interested Party**	940 East Diehl Road Sute 100	Naperville IL 60563	630 5770800
	Thomas M. Guist, PE, Team Leader		
CW3M Company, Inc. **Interested Party**	701 South Grand Ave. West	Springfield IL 62704	217-522-8001
	Jeff Wienhoff		
Suburban Laboratories, Inc. **Interested Party**	4140 Litt Drive	Hillside IL 60162	708-544-3260
	Jarrett Thomas, V.P.		
Environmental Consulting & Engineering, Inc. **Interested Party**	551 Roosevelt Road #309	Glenn Ellyn IL 60137	
	Richard Andros, P.E.		
MACTEC Engineering &		Peoria	

Consulting, Inc. **Interested Party**	8901 N. Industrial Road Terrence W. Dixon, P.G.	IL 61615	
Illinois Department of Transportation **Interested Party**	2300 Dirksen Parkway Steven Gobelman	Springfield IL 62764	
SEECO Environmental Services, Inc. **Interested Party**	7350 Duvon Drive Collin W. Gray	Tinley Park IL 60477	
Herlacher Angleton Associates, LLC **Interested Party**	522 Belle Street Jennifer Goodman	Alton IL 62002	
United Environmental Consultants, Inc. **Interested Party**	119 East Palatin Road Suite 101 George F. Moncek	Palatine IL 60067	
McGuire Woods LLP **Interested Party**	77 W. Wacker Suite 4400 David Rieser	Chicago IL 60601	312/849-8100
Greensfelder, Hemker & Gale **Complainant**	10 S. Broadway Suite 2000 Tina Archer, Attorney	St. Louis MO 63104	314-241-9090
Midwest Engineering Services, Inc. **Interested Party**	4243 W. 166th Street Erin Curley, Env. Department Manager	Oak Forest IL 60452	708-535-9981
American Environmental Corp. **Interested Party**	3700 W. Grand Ave., Suite A Ken Miller, Regional Manager	Springfield IL 62707	(217) 585-9517
Applied Environmental Solutions, Inc. **Interested Party**	P O Box 1225 Russ Goodiel, Project Manager	Centralia IL 62801	6185335953
Secor International, Inc. **Interested Party**	400 Bruns Lane Daniel J. Goodwin	Springfield IL 62702	
Caterpillar, Inc. **Interested Party**	100 NE Adams Street Eric Minder, Sr. Environmental Engineer	Peoria IL 61629	3096751658
K-Plus Environmental **Interested Party**	Suite 1000 600 W. Van Buren Street Daniel Caplice	Chicago IL 60607	312-207-1600
Illinois Society of Professional Engineers **Interested Party**	300 West Edwards Kim Robinson Brittan Bolin	Springfield IL 62704	217-544-7424 217-525-6239

Total number of participants: 50