

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD AUG - 3 2004

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

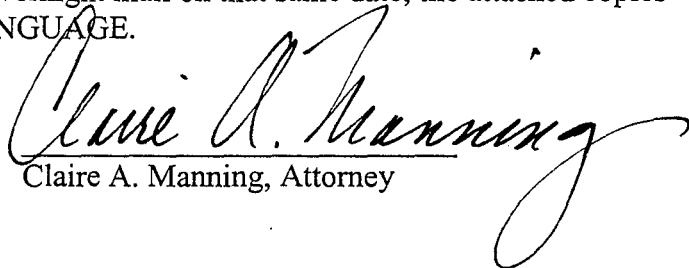
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**NOTICE OF FILING**

Now comes CLAIRE A. MANNING, on behalf of the Professionals of Illinois for the Protection of the Environment, PIPE, and files with the Board, via facsimile, with permission, on August 2, 2004, with hard copy placed in overnight mail on that same date, the attached copies of PIPE'S PROPOSED ALTERNATE LANGUAGE.

  
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## PROOF OF SERVICE

The undersigned, being duly sworn, states that a true and correct copy of the foregoing PIPE'S PROPOSED ALTERNATE LANGUAGE, was served on the individuals as listed below, by mailing via the United States postal service, Springfield, Illinois on August 3, 2004.

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PIPE'S PROPOSED ALTERNATE LANGUAGE

Now comes Professionals of Illinois for the Protection of the Environment, PIPE, by and through its attorney, CLAIRE A. MANNING, and offers the proposed alternate language for the Board's consideration in the above-referenced rulemaking.

BACKGROUND

The Professionals of Illinois for the Protection of the Environment (PIPE) has participated in the Board's rulemaking in this matter since its formation as a Not-for-Profit Association representing the interests of businesses involved in the remediation of underground storage tank sites. Additionally, PIPE, along with a workgroup of other associations, such as the American Council of Engineering Companies ("ACEC") (formerly known as the Consulting Engineers Council of Illinois, or "CECI"), the Illinois Society for Professional Engineers (ISPE) and the Illinois Petroleum Marketer's Association (IPMA), has met with the Illinois Environmental Protection Agency ("IEPA" or "Agency") in an attempt to refine the IEPA's rule proposal.

Those meetings have been positive and, to a degree, productive. It is PIPE's understanding that, as a result of the meetings, and testimony presented at hearing, the IEPA will be offering, concurrent with PIPE's filing here, a Third Errata suggesting various changes in the rule proposal. In large part, PIPE expects to be supporting the Agency's proposed changes. However, there remain serious problems with the proposed rules, and the UST program, which the consulting community asks that the Board address prior to moving forward with these rules. For the Board's convenience, PIPE offers alternative regulatory language that attempts to address those concerns. It is PIPE's understanding that this alternate language will be supported by the other members of the workgroup that has met with the Agency, the ACEA, ISPE and IPMA.

#### MERGER OF PART 732 AND PART 734

While not a serious concern of PIPE's, and not an issue discussed in any detail with the IEPA, PIPE questions the necessity of the filing of these amended rules in two separate Parts, Part 732 and Part 734. It seems that, with a certain degree of wordsmithing on the part of the Board, the rules could be merged into one set of requirements to apply accordingly. As proposed, two separate sets of regulatory requirements, which essentially mirror each other in many respects, may cause an unnecessary degree of confusion, especially as future amendments are proposed and promulgated.

#### SUBPART A: GENERAL PROVISIONS

*Applicability.* The IEPA's applicability clauses, contained in Section 732.100 and Section 734.100, appear to require an unlawful retroactive application of amendments that are just now being proposed. While the IEPA is expected to present language to address this issue, PIPE has not had the opportunity yet to view that language and ensure

that it cannot be read as an attempted retroactive application of regulatory requirements. Thus, in this filing, PIPE suggests a modification intended to clarify that the amendments, particularly those that relate to obligations and cost, do not take effect until after the proposed regulations are promulgated. PIPE would welcome any wordsmithing the Board feels appropriate to get to this end. Specifically, PIPE proposes the below changes, in bold, to the Agency's proposal:

**Section 732.100      Applicability**

- a) **This Part is intended to implement amendments to the Environmental Protection Act that were contained in P.A. 92-0554, which became law on June 24, 2002, and P.A. 92-0735, which became law on July 25, 2002. The relevant statutory amendments apply** ~~applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to IEMA on or after September 23, 1994, but prior to June 24, 2002, in accordance with regulations adopted by the OSFM. **It These amendments apply** applies to owners or operators that, prior to June 24, 2002, elected to proceed in accordance with this Part pursuant to Section 732.101 of this Part. This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release has been confirmed and required to be reported to Illinois Emergency Management Agency (IEMA) on or after September 23, 1994 in accordance with regulations adopted by the Office of State Fire Marshal (OSFM). **These amendments do 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 Environmental Protection Act (Act) [415 ILCS 5/57.5]. Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to IEMA on or before September 12, 1993, may elect to proceed in accordance with this Part pursuant to Section 732.101.~~
- c) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and, **upon their effective date**, these regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency shall not require retroactive compliance with amendments to this Part. **The Agency shall not require retroactive compliance with the amendments to this Part. Any work performed pursuant to budgets or corrective action plans that have been approved**

**prior to the effective date of these rules shall be paid in accordance with such approval.** The Agency may use its authority pursuant to the Act and Section 732.105 of this Part to expedite investigative, preventive or corrective action by an owner or operator or to initiate such action.

**Section 734.100      Applicability**

- a) This Part is intended to implement amendments to the Environmental Protection Act that were contained in P.A. 92-0554, which became law on June 24, 2002 and P.A. 92-0735, which became law on July 25, 2002. The relevant statutory amendments apply 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 June 24, 2002, in accordance with OSFM regulations. **These amendments do 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. Effective on the date of the filing of this Part, this Part applies to the owners and operators to whom the statutory amendments referenced above apply.**
- b) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.
- c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act, where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, shall conduct corrective action in accordance with this Part.
- d) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and, **upon their effective date**, these regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. **The Agency shall not require retroactive compliance with this Part. Any work performed pursuant to budgets or corrective action plans that have been approved prior to the effective date of these rules shall be paid in accordance with such approval.** The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expe-



dite investigative, preventive, or corrective action by an owner or operator or to initiate such action.

*Definitions.* PIPE proposes that the following definition be included in the definition section of both Parts, at Section 732.103 and Section 734.115:

“UST Remediation Applicant” or UST-RA” means any person seeking to perform or performing investigation or UST remedial activities under Title XVI of the Act, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site.

This definition is drawn from an almost identical provision in Board rules regarding the Site Remediation program. The Site Remediation program, which has earned an excellent, nation-wide reputation for its practical and expeditious approach to clean-up of Illinois brownfield sites, recognizes that while liability for contamination may lie with the owner of the site, responsibility for interfacing with the Agency on questions concerning the propriety of remediation almost always rests with the consultant the owner has hired to remediate the property, the Remediation Applicant.

In the UST program, it is clear that owners and operators routinely contract out the responsibility for remediating the UST site to a consultant as well and, as a practical matter, it is this professional applicant (an engineer or geologist) who deals with the Agency and who assumes the responsibility of remediating the site in a reasonable and environmentally protective manner. Instead of suggesting there is something “untoward” in the assumption of this responsibility (*Illinois Ayers Oil Company, Inc. v. Illinois Environmental Protection Agency*, PCB 04-03-214, Agency Surreply, June 6, 2004), the program would work much more effectively if the Agency simply recognizes that these consultants, like brownfields remediation applicants, are “persons authorized by law or consent [contract law and agency law] to act on behalf of or in lieu of the owners of the site.”

To the extent that the Board believes that the word UST-RA should be woven into the regulations at various places, PIPE would welcome the Board doing so.

For the same reasons expressed above, PIPE proposes amending Section 734.135

(c) to read:

- c) All plans, budgets, and reports shall be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number **and, if the owner or operator has consented to the services of an UST-RA to conduct the remediation, the forms shall so state and be signed by the UST-RA in addition to the owner or operator.**

*Data Collection and Plans, Budgets and Reports.* PIPE also proposes, for the Board's consideration, an amendment to Section 734, to be placed at Section 734.135 (a) or, alternatively, as a new Section 734.140, which would require that the IEPA gather data and develop efficiencies in its UST program. Throughout its testimony at hearing, the IEPA asserted that this rule is proposed, in large part, as a cost containment measure, to protect the UST Fund. PIPE certainly supports the Agency in its efforts to protect the fund since it the fund is the fiscal mechanism for which the State of Illinois ensures that money will be available for its intended purpose: to remediate UST sites to an environmentally acceptable level. PIPE has asserted to the IEPA, and to the Board, that this is a shared and common goal of the parties.

However, PIPE believes that the IEPA's proposal falls far short of this goal.

First, the proposal is not based upon any statistically reliable data concerning the "going rate" or "usual and customary" costs in Illinois concerning the various items for which the IEPA seeks containment and reductions. Historically, the Board does not promulgate a regulatory number that has been proposed, and justified, on the basis of "a file pulled here and there." Yet, in this rulemaking, that is what is essentially before the Board as

IEPA justification for its numbers. Indeed, the IEPA maintained at hearing that, short of the various individual remediation files, it does not keep records of cost data relevant to UST remediation (how much was spent in what areas, for what projects, for what types of remediation, for what aspects of the remediation, etc.). Nor, apparently, does it keep (or publish) detailed data relevant to how many UST sites are yet to be remediated, where they are located, and what stage or severity they may be in.

Further, while various individuals testified to the inefficiencies of the current program, with its multi-levels of review and time-consuming process of rejection and appeal, the proposal does not address those inefficiencies. While proposed Section 734.135 allows the Agency to receive forms in electronic format, which would undoubtedly result in vast efficiencies, as well as an effective data collection mechanism, the section does not commit the Agency to develop such an electronic filing system or database.

The UST Fund has collected Seventy-Eight Million Dollars (\$78,000,000.00) in revenue in Fiscal Year 04 alone, approximately a Twelve Million Dollar (\$12,000,000.00) increase from last fiscal year. During this time, there has been a steady corresponding increase in the costs of the fund's administration. (See Exhibit 76 column entitled "IEPA Operations"). Nonetheless, at the same time the fund is increasing its revenue and the costs of its administration, the monies paid out in remediation, the very *purpose* for the fund's creation, have been *decreasing*. In fact, the IEPA has paid Seven Million Dollars (\$7,000,000.00) less in reimbursement this year, even though the state collected substantially more revenue. Moreover, this rule is proposed with the assertion that further decreases (in the costs of remediation) are required to protect the fund.

While PIPE recognizes the propriety of developing reasonable rates for certain identifiable tasks related to UST remediation, PIPE also asserts that the state needs to take stock of the costs related to both the administration and implementation of this program. It can do so by a requirement, and commitment on the part of the IEPA, that it collect relevant data and promote filing and review efficiencies. Since the IEPA has money available to it, from the fund itself, as well as from the USEPA, PIPE proposes the following language be inserted either in Section 734.135 or as a new Section 734.140.

**Section 734.135      Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications**

- a) All plans, budgets, and reports shall be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. **The Agency shall create an electronic database that will allow for electronic filing of plans, budgets and reports; collect and maintain data relevant to costs and remediation of sites, including costs that are usual and customary in the clean-up of such sites, as well as data related to the number and severity of sites yet to be remediated; and provide for expeditious review and payment of claims that meet the requirements of this Part.**

This language should not only allow for a better administration of the UST program and fund, it will also allow for a comprehensive database of relevant and significant information which will be available to the Board, for its review in promulgating rules the next time the IEPA proposes that the Board adopt specific rules applicable to this program.

SUBPART B: EARLY ACTION

*Section 734.215.* PIPE has pointed out, in testimony, that various parts of the IEPA's proposal are problematic in that they provide for an over-prescriptive approach to IEPA review of the technical judgment of the remediation professional who, by statute,

must be a licensed professional engineer or licensed professional geologist and must certify that the work was required to address the contamination at the site. This is especially onerous when the IEPA review, and potential rejection of the LPE or LPG's judgment, may very well be conducted by an EPA project manager who does not have similar technical credentials.

Nonetheless, the interests of the environment, as well as the fund, are not well served by such an overly prescriptive approach. PIPE understands that the IEPA's Third Errata, which will be filed concurrently with PIPE's proposed language changes, will address some of PIPE's concerns in this regard. Nonetheless, PIPE suggests the following specific change to Section 734.215, which is intended to protect and give site-specific latitude to the remediation professional.

#### **Section 734.215 Free Product Removal**

- a) ~~Under any circumstance in which~~ **Where** conditions at a site indicate the presence of free product, owners or operators shall remove **such** free product, **as required to address the health and safety of the site, exceeding one-eighth of an inch in depth, 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.

PIPE also proposes certain changes to this section, and others like it (which are more specifically addressed below), with the intention of providing clarity, and greater efficiency, to the claims review and payment process. Thus, throughout these rules, for clarity, PIPE suggests that the IEPA phraseology "maximum payment amounts" be changed to "reimbursable costs." The first time this language appears in the text of the rules is in Section 734.215(d). Quite simply, the phraseology "maximum payment amounts" is both confusing and a misnomer, given that Sections 732.855 and 734.855

allow for the reimbursable costs to be exceeded under certain circumstances. Thus, the costs set forth in Subpart H are not always “maximum” and to denote them such is misleading. Further, the phraseology “reimbursable costs” is more consistent with the rest of the rules, and the history of the program, where “eligible corrective action costs” and “ineligible corrective action costs” have become standard vernacular.

Also for clarity, PIPE proposes that wherever the phraseology “the Agency may require” appears in the context of a phrase obligating the owner or operator to fulfill an obligation, that the Board clarify when and under what circumstances such discretionary requirements will come into play. Without such clarification, the owner or operator, or UST- RA, risks submitting a plan only to have that plan rejected because the Agency has exercised its discretion to require something further. In other words, if the Agency is going to require something as part of the submittal process, these rules ought to make such requirement clear. Again, the first time this troublesome language appears is in Section 734.215.

Thus, with the two changes referenced above, Section 734.215(d) (as well as the corresponding section in Part 732):

Any owner or operator intending to seek payment from the Fund shall, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product removal budget with the corresponding free product removal plan. The budget shall include, but shall not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed in Sections 734.625 and 734.630 of this Part and the ~~maximum payment amounts~~ **reimbursable costs** set forth in Subpart H of this Part. ~~As part of the budget the Agency may require~~ **The budget shall include** a comparison between the costs of the proposed method of free product removal and other methods of free product removal.

*Board Note.* Further, in the Early Action sections of both these parts, and throughout these rules, there is contained a “Board Note” that appears to be left over from the last Board proceeding concerning these rules. These Board notes warn the reader that full payment for all costs incurred might not be forthcoming.

Given the context of these rules, and the IEPA’s stated intention that these rules are a comprehensive set of expectations of activities and designated payment amounts for those activities, these Board notes are, for the most part, obsolete. Their retention causes confusion in the context of these new rules. In other words, the rules themselves should clearly state the IEPA’s expectations and the costs the IEPA will reimburse for fulfilling those defined expectations. If they do, as they should, there should no longer be any reason for these Board notes.

*Processing of Free Product Removal Requests.* PIPE also proposes that the Board tighten the vague language contained in this section concerning the IEPA’s approval timeframe (which is currently undefined) and the owner or operator’s payment expectation (which appears to be: clean up free product in advance of an Agency approval only at the risk of not being reimbursed). Free product may pose a significant and immediate environmental risk. The IEPA should commit to reviewing a free product submittal plan within a very short timeframe of the plan’s receipt and, if it doesn’t approve the plan within the designated timeframe, the owner and operator should be allowed to move ahead to remove the environmental hazard and expect payment for the cost of doing such.

Thus, PIPE proposes the following change in Section 734.215(e) and (g) and similar changes in the corresponding sections of Part 732, so that it reads as follows:

- e) The Agency shall expeditiously process the free product removal plan. If the Agency has not approved or rejected the plan within 21 days of its receipt, the owner and operator shall proceed with free product removal as set forth in the plan and the reasonable associated costs of such removal shall be reimbursed.
  
- g) If, following approval of any free product removal plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to complete free product removal, the owner or operator shall submit, as applicable, an amended free product removal plan or associated budget to the Agency for review. The Agency shall expeditiously review the amended free product removal plan or associated budget. If the Agency has not approved or rejected the plan or budget within 21 days of its receipt, the owner and operator shall proceed to remove the free product as set forth in the amended plan and the reasonable associated costs of such removal shall be reimbursed.

#### SUBPART E: REVIEW OF PLANS, BUDGETS, OR REPORTS

Much testimony was elicited at hearing concerning the fact that the Agency's UST review process itself is overly burdensome, too costly and unfairly balanced in favor of the Agency. PIPE and the workgroup have not been able to convince the Agency to make any efficiency or cost saving changes regarding this process in these rules. While PIPE is grateful for the Agency's agreement to create an Advisory Committee, which will include PIPE and the other associations who have been meeting with the Agency, that Advisory Committee will not be in a position to address the procedural deficiencies evident in this process but, in this proceeding, the Board is.

Heretofore, the UST review process followed closely the Agency and Board's permit review process but, as experience and history indicate, these traditional permit review processes do not provide a proper procedural overlay for the UST reimbursement review process. This is especially true given the recent statutory change that allows the IEPA's non-action within the required statutory timeline to act as a *denial* of the re-



requested approval or reimbursement, as opposed to an *approval* of the request, as it is in the permit process.

There are other distinctions as well. First, in the permit process, the permittee is generally able to operate under an existing permit. In the UST process, the applicant is essentially stymied until the Agency acts favorably upon its request or the Board reverses the Agency's position. Second, in the permit process, the Agency is required to issue a *Wells* letter prior to denying the permit request, suggesting the reasons for the intended delay and allowing the permit applicant an opportunity to respond. (See *Wells Manufacturing Co., v. Illinois E.P.A.* 552 N.E. 2d 1074, 195 Ill. App. 3d 593, 142 Ill. Dec. 333, (1<sup>st</sup> Dist. 1990). Third, the typical denial of a UST applicant's request includes the phraseology, "exceeds the minimum requirements of the Act" without any further explanation, even when the matter in dispute concerns the level of technical effort required to remediate the site properly, which level has been certified to in the application itself by a licensed professional engineer or licensed professional geologist. Thus, while standard Board law suggests that the denial letter "frames the issues" in dispute and that the petitioning applicant bears the burden of proving the IEPA wrong, in most UST cases the applicant does not even know what those issues are, because there has been no communication prior to the denial – and little or no explanation of the denial. As well, the record is often so minimal in the UST denial that it is near impossible for the petitioner to meet its burden before the Board, without incurring substantial legal costs. Finally, even if it does prevail before the Board, the costs of proceeding before the Board on a UST Reimbursement claim are, more often than not, higher than the actual dollar amount in dispute. Thus, the Agency's mantra in denying claims ("Take it to the Board") rings hollow in

most situations and, in those situations, the UST-RA or owner and operator lose, without real recourse. PIPE suggests that the procedural imbalances evident in the UST review process border on violations of due process and should, in this rulemaking, be remedied.

PIPE suggests that the following proposed amendments to Subpart E would provide such a remedy and, accordingly, PIPE respectfully requests that the Board consider those process changes that, while still based on Section 40 of the Act, recognize the uniqueness of the UST reimbursement process. While this filing only revises Part 734, similar changes, as relevant, should be made to Part 732.

**Section 734.505      Review of Plans, Budgets, or Reports**

- a) The Agency may review any or all technical or financial information, or both, filed by or relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site.
- b) The Agency shall have the authority to approve, reject, or require modification of any plan, budget, or report it reviews. Except as otherwise provided in this Part, the Agency shall notify the owner or operator in writing of its final action on any such plan, budget, or report within 120 days of its receipt. If the Agency fails to make such final decision within 120 days, the applicant can consider the Agency to have denied the submittal and can proceed to invoke the processes set forth in this Part. The Agency will have the burden of proof as to why the applicant's submittal violated the Act or these regulations or was not otherwise approvable. If the applicant prevails before the Board, the Board may authorize the payment of the applicant's legal costs, from the UST fund, to pursue such appeal.
- c) The Agency shall process claims as expeditiously as possible. Where the submittal, and attendant costs, are consistent with this Part, the Agency shall approve such submittal within 45 days of its receipt.
- d) If the Agency intends to reject the submitted plan, budget, or report, or require modifications thereto, or requests more information, it shall, within 45 days of the receipt of such submittal, provide written notification of such intention. Such written notification shall indicate:

- 1) *An explanation of the Sections of this Act which may be violated if the plans were approved;*
  - 2) *An explanation of the provisions of the regulations, promulgated under this Act, in this Part, which may be violated if the submittal were approved;*
  - 3) *An explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and*
  - 4) *A statement of specific reasons why the Act and the regulations might not be met if the plan were approved. Such explanation cannot merely state "exceeds minimum requirements of Act" but must provide sufficient detail for the applicant to understand the basis for the Agency's intended action.*
- e) If it chooses to modify the submittal in response to the Agency's written notification, the applicant shall provide such notification of modification to the Agency within 35 days of receipt of the Agency's letter of intention. The applicant's notice of modification shall not extend the applicable 120-day review period.
- f) If, at the end of the 120-day review period, the Agency deems that the submittal should be rejected, it shall provide written notification of the reasons for such rejection, which shall include one or more of those reasons delineated in Section 734.505 (d). If the applicant has modified its submittal as set forth in Section 734.505 (e), but the Agency continues to consider the submittal not approvable under the Act and these regulations, even with such modification, the Agency's rejection letter shall also include the specific reasons, as set forth in Section 734.505 (d), as to why it does not consider the submittal with modification approvable.
- g) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.
- h) The Agency shall mail notices of its intended action, pursuant to Section 734.505(d) and notices of its final action, pursuant to Section 734.505(f) on plans, budgets, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.
- i) Any final action by the Agency to reject or require modifications, or rejection by failure to act, of a plan, budget, or report, in accordance with Sec-

tion 734.505(f) shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

- 1) Where an applicant has timely filed an appeal with the Board, the Agency shall, at the applicant's request, agree to a 90 day extension as provided in Section 40 of the Act. During this period, at the applicant's request, the Agency will meet with the applicant in an effort to resolve any dispute over costs and to narrow any issues that may be appealed to the Board.
  - 2) Where the applicant prevails before the Board, the Board will authorize payment of the applicant's reasonable attorney's fees from the fund, in accordance with Section 57.7 of the Act, unless the Board finds that the appeal was not taken in good faith.
  - 3) As an alternative to a Board appeal, the parties may mutually agree, in writing, to the services of a mediator or arbitrator, who shall be paid a reasonable fee from the UST fund. The UST Advisory Committee will establish a list of acceptable neutrals who need not be lawyers and who shall not be state employees, but who shall demonstrate an understanding of issues related to costs and contracts. The UST Advisory Committee will set a limitation on the rate to be paid any such neutral.
- j) In accordance with Section 734.450 of this Part, upon the approval of any budget by the Agency, the Agency shall include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient funds to provide payment of the total costs approved in the budget.

#### **Section 734.510 Standards for Review of Plans, Budgets, or Reports**

- a) A technical review shall consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, shall include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans shall be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. The overall goal of the technical review for reports shall be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices or principles of professional geology, if the conclusions are consistent

with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied. The technical review shall be completed prior to the Agency's issuance of any letter of intention to reject or modify in accordance with Section 734/505(d) and shall be conducted by IEPA personnel who is a licensed professional engineer or geologist. The technical review shall become part of the record.

- b) A financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review shall be to assure that costs associated with materials, activities, and services are consistent with this Part or otherwise constitute reasonable costs, and work, for the proper remediation of the site. The financial review shall become a part of the record.

#### SUBPART F: PAYMENT FROM THE FUND

The expeditious processing of reimbursement payments is as crucial to good stewardship of the fund as is the expeditious and judicious processing of the applications for approval of plans, budgets and reports. As was testified to at hearing, the very purpose for the fund is to remediate properties contaminated by leaking underground storage tanks. It makes no sense whatsoever to delay payments to those who are entitled to be reimbursed for such remediation. The program should be administered, and the rules should be promulgated, in a way that promotes expeditious payment because expeditious payment will, presumably, result in more remediation. Indeed, the legislature, in crafting Section 57.8 appears to have only considered insufficiency of funds as a valid reason for delayed payment. While the Act requires that payments must be made within 120 days of the request for payment, there is no reason why the Agency cannot process this payment quicker since, as it testified, there is little or no reason to deny the payment so long as the costs requested for reimbursement have been approved in a previous submittal. These rules should proscribe that the only reason for delayed payment is an Agency declaration,

and notice to the parties, as contemplated by the Act, of insufficiency of funds. Toward these ends, PIPE suggests that the Board tighten the language contained in Subpart F to accomplish this goal.

Also, and more specifically, PIPE proposes the following changes to Section 734.630 (gg) of Subpart F, regarding eligible and ineligible costs. Additionally, PIPE suggests that 734.630(ii)(oo) and (aaa) be deleted and included as eligible costs. The rationale for such suggested changes will be presented at the Board's next hearing.

Section 734.630

(gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received, except:

- 1) costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;
- 2) monitoring well abandonment costs;
- 3) county recorder or registrar of titles and fees for recording the No Further Remediation Letter;
- 4) costs associated with seeking payment from the Fund;
- 5) incremental costs incurred by a highway authority through maintenance or improvement of the Right of Way covered by a Highway Authority Agreement
- 6) costs to investigate and remediate threats to human health and the environment caused by a previously unknown migration pathway,
- 7) costs to investigate and remediate contamination found beyond the previously defined contaminant plumes which threatens human health and the environment;
- 8) costs to investigate and remediate contamination which is discovered on properties whose owner or operator or their agent were previously denied access and the requirements of Section 734.350 were met.

Also, PIPE proposes that, in Section 734.665, the Board only include the relevant statutory language concerning the Agency's auditing authority.

SUBPART H: REIMBURSABLE COSTS

Most of the testimony at hearing concerned Subpart H. In large part, that is because Subpart H contemplates reduced costs for work traditionally performed in the

remediation of underground storage tanks – at rates that have no factual or statistical basis. Further, the Agency’s position regarding the application of these rates (some of which are unit rates, some “lump sums” and some based upon “time and material”) remains unclear.

It is now PIPE’s understanding, based upon the workgroup’s last meeting with the Agency, that so long as the plan or budget contemplates work that is within the confines of a unit or lump sum reimburseable cost set forth in Subpart H, it will be approved, and the costs will be reimbursed, without a later and subsequent, time consuming, line-by-line time and material justification. It is also PIPE’s understanding that the IEPA will be proposing a competitive bid scenario for some or all of the costs contained in Subpart H which will allow applicants, where necessary, to “opt out” of the Subpart H costs if competitive bids demonstrate the unreasonableness of the specified costs.

However, PIPE still has various concerns with the proposal, particularly in its failure to delineate “extraordinary or unusual” circumstances which require thinking (and payment) outside of the box, as well as its failure to delineate what scope of work the IEPA actually contemplates to be paid by the standard and established amounts. Accordingly, PIPE offers the following alternative language that will be supported, with testimony and, to the extent possible, proposed alternative rates, at the Board’s next hearing. Additionally, PIPE will present, in testimony at hearing, the Appendices G and H which are referred to in this proposed alternate language.

**Section 734.800      Applicability**

- a) This Subpart H divides activities conducted pursuant to this Part into tasks and sets forth the reimburseable costs that an owner and operator can expect to be paid from the Fund for costs associated with each task. In some cases, those amounts are listed a a “lump sum,” meaning that the dollar

amount set forth is presumed to be reasonable for all tasks delineated in these rules that are associated with that cost.

- b) The costs listed under a particular task identify costs associated with the task; they are not intended as an all-inclusive list of all costs associated with the task for purposes of payment from the Fund. Necessary costs not listed under a particular task may be considered to represent extenuating circumstances and, subject to adequate justification pursuant to this Part, may necessitate additional payment.
- c) Eligibility or ineligibility of a type of costs will be determined pursuant to Subpart F of this Part. This Subpart H sets forth the reimbursable costs for these eligible costs. Where lump sum or unit costs are contained in this Subpart, applicants are not required to provide a detailed time or materials breakdown for costs associated with each task, provided that the costs are at or below the specified amounts set forth in this Subpart. Costs in excess of these amounts will require separate and adequate justification.
- d) Any and all activities conducted under this Part that are required to be conducted on an emergency basis, as directed by an entity of the State of Illinois, shall be paid on a time and materials basis.

**Section 734.810 UST Removal or Abandonment Costs**

Payment for costs associated with UST removal or abandonment of each UST shall not exceed the amounts set forth in this Section. With the exception of flowable material utilized for tank abandonment, such costs shall include those associated with the excavation, removal, disposal, and abandonment of UST system. Costs associated with the flowable fill material will be reimbursed on a time and materials basis

<u>UST Volume</u>	<u>Maximum Total Amount per UST</u>
110 – 999 gallons	\$X,XXX.XX
1,000 – <del>4,999</del> 14,999 gallons	\$X,XXX.XX
<del>5,000 – 9,999</del> 15,000 or more gallons	\$X,XXX.XX
10,000 – 19,999 gallons	\$X,XXX.XX
20,000 or more gallons	\$X,XXX.XX

UST Piping: \$XX per linear foot of piping trench beyond early action extents.

**Section 734.815 Free Product or Groundwater Removal and Disposal**

Payment for costs associated with the removal and disposal of free product or groundwater shall not exceed the amounts set forth in this Section. Such costs shall include those associated with the removal, transportation, and disposal of free product or groundwater.



- a) Payment for costs associated with each round of free product or ground-water removal via hand bailing or a vacuum truck shall not exceed a total of \$XXXXX per gallon or a minimum of \$XXXXX, whichever is greater.
- b) Payment for costs associated with the removal of free product or ground-water 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, those associated with the design, construction, installation, operation, maintenance, and closure of free product removal systems.

**Section 734.820      Drilling, Well Installation, and Well Abandonment**

Payment for costs associated with drilling, well installation, and well abandonment shall not exceed the amounts set forth in this Section, excluding drilling conducted as part of free product removal or an alternative technology. Payment for costs associated with drilling conducted as part of free product removal or an alternative technology shall be determined in accordance with Section 734.850 of this Part instead of this Section.

- a) Payment for costs associated with each round of drilling shall not exceed the following amounts. Such costs shall include those associated with mobilization, drilling, labor, decontamination, and drilling for the purposes of soil sampling or well installation.

<u>Type of Drilling</u>	<u>Maximum Total Amount</u>
Hollow-stem auger	greater of \$XX.XX per foot or \$X,XXX.XX
Direct-push platform	greater of \$XX.XX per foot or \$X,XXX.XX
Bedrock drilling	greater of \$XX.XX per foot or \$X,XXX.XX
Bedrock coring	greater of \$XX.XX per foot or \$X,XXX.XX
Injection drilling	greater of \$XX.XX per foot or \$X,XXX.XX
Vacuum Extractor (utility clearance)	greater of \$XX.XX per foot or \$X.X

- b) Payment for costs associated with the installation of monitoring wells, excluding drilling, be payable at the following amounts. Such costs shall include, but not be limited to, those associated with well construction and development.

<u>Type of Borehole</u>	<u>Maximum Total Amount</u>
Hollow-stem auger	\$X/foot (well length .2"W less dia.)
<u>Or Direct-push platform</u>	\$X/foot

- c) Payment for costs associated with the abandonment of monitoring wells shall be paid at \$10.50 per foot of well length.
- d) Payment for costs associated with mobilization of personnel and equipment pursuant to Section 734.820(a)(b)(c) of this Part shall be reimbursed at a lump sum rate of \$X.

**Section 734.825      Soil Removal and Disposal**

Payment for costs associated with soil removal, transportation, and disposal shall not exceed the amounts set forth in this Section. Such costs shall include, ~~but not be limited to,~~ those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 734.210(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation.

- a) Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 732.210(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill shall not exceed a total of \$XX.XX per cubic yard.
  - 1) Except as provided in subsection (a)(2) of this Section, the volume of soil removed and disposed shall be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.015. A default conversion factor of 1.52 tons per cubic yard shall be used to convert tons to cubic yards.
  - 2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part shall be determined in accordance with Section 734.Appendix C of this Part.
- b) Payment for costs associated with the purchase, transportation, placement, and compaction of material used to backfill the excavation resulting from the removal and disposal of soil shall not exceed a total of XX.XX per cubic yard.
  - 1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material shall be determined by the following equation using the dimensions of the backfilled excavation: (Excavation

Length x Excavation Width x Excavation Depth) x 1.015. A default conversion factor of 1.52 tons per cubic yard shall be used to convert tons to cubic yards.

- 2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part shall be determined in accordance with Section 734.Appendix C of this Part.
- c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action shall be reimbursed at a lump sum rate of \$X per cubic yard of soil that can be stockpiled next to the excavation cavity. Additional expenses associated with the transportation of soil that needs to be temporarily stockpiled on or off-site shall be reimbursed at a lump sum rate of total of \$XX.XX per cubic yard. The volume of soil removed and staged on-site and returned to the excavation shall be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil: (Excavation Length x Excavation Width x Excavation Depth) x 1.15. A default conversion factor of 1.52 tons per cubic yard shall be used to convert tons to cubic yards.

#### **Section 734.830      Drum Disposal**

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing non-hazardous solids, oil dry, personal protective equipment, etc. shall be paid at \$X.XX per 55-gallon drum. A stop fee is set at \$X.X. Costs associated with the removal of the drums containing non-solids shall be actual disposal costs and time and materials. Professional, managerial, technical and administrative services and related costs, if any, associated with the work contemplated in this Section are not intended to be included in or limited by this Section.

#### **Section 734.835      Sample Handling and Analysis**

Payment for costs associated with sample handling and analysis shall be consistent with Section 734.Appendix D of this Part. Such costs shall include, but not be limited to, those associated with the transportation, delivery, preparation, and analysis of samples, and the reporting of sample results by the laboratory. For laboratory analyses not included in this Section, the Agency shall determine reasonable payment amounts on a site-specific basis.

#### **Section 734.840      Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures**

- a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, ~~other than~~ and replacement concrete, asphalt and paving shall be reimbursed at the following amounts: ~~Costs associated with the replacement of concrete, asphalt and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of subsection (a):~~

<u>Depth of Material</u>	<u>Maximum Total Amount</u>
	<u>per Square Foot</u>
Asphalt and paving – 2 inches	\$1.65
3 inches	\$1.86
4 inches	\$2.38

- b) ~~Payment for costs associated with the replacement of concrete, asphalt and paving shall not exceed the following amounts:~~

<u>Thickness of Material</u>	<u>Maximum Total Amount</u>
	<u>per Square Foot</u>
Asphalt and paving – 2 inches	<del>\$1.65</del> \$X.XX
3 inches	<del>\$1.86</del> \$X.XX
4 inches	<del>\$2.38</del> \$X.XX
Concrete – 2 inches	<del>\$2.45</del> \$X.XX
3 inches	<del>\$2.93</del> \$X.XX
4 inches	<del>\$3.41</del> \$X.XX
5 inches	<del>\$3.89</del> \$X.XX
6 inches	<del>\$4.36</del> \$X.XX
8 inches	<del>\$5.31</del> \$X.XX

For thicknesses other than those listed above, the Agency shall determine reasonable payment amounts on a site-specific basis.

- c) Payment for costs associated with the destruction or the dismantling and reassembly of above-grade structures shall not exceed the time and material amounts set forth in Section 734.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above-grade structures shall be \$10,000.00 per site.

**Section 734.845 Professional Consulting Services**

Payment for costs associated with professional consulting services shall be paid per unit task for ~~not exceed~~ the amounts set forth in this Section. Such costs shall include those associated with project planning and oversight; field work, field oversight; ~~travel; per diem; mileage; transportation;~~ and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation. The

costs associated with travel; per diem; mileage and transportation are provided in Appendix F.

- 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 each UST system shall be paid a lump sum not exceed a total of \$XXX.XX for tasks including those listed in Appendix G.
  - 2) Payment for costs associated with removal or abandonment of each UST system early action field work and field oversight shall be reimbursed at a rate of \$XXX.XX per half-day, with the number of half-days being determined by the LPE or LPG on a site-specific basis. The reimbursable costs associated with early action field work ~~The number of half-days shall include not exceed~~ the following:
    - A) ~~If one or more USTs are removed,~~ Early action activities: a rate of \$XXX per half-day per person, using two persons, plus up to one half day \$XXX for each 200 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with 734.210(f);
    - B) If one or more UST systems remain in place, ~~one half day~~ \$XXX for every two soil borings, or fraction thereof, drilled pursuant to Section 732.210(h)(2) of this Part;
  - 3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including field work not covered by subsection (a)(2) of this Section, shall be paid a lumpsum rate of \$XXX.
  - 4) Payment for costs associated with the preparation and submission of free product removal plans and reports, field work and field oversight, and the installation of free product removal systems and/or all activities conducted on an emergency or time-critical basis (as directed by a state authority) shall be determined on a time and materials basis and shall be consistent with the unit amounts set forth in Section 734.850 of this Part.
- b) Site Investigation. Payment of costs for professional consulting services associated with site investigation activities, as defined in Appendix G, and

conducted pursuant to Subpart C of this Part, shall be paid at a lump sum rate as follows:

- 1) Payment for costs associated with Stage 1 site investigation preparation, field work, and field oversight shall be paid a lump sum rate of \$X,XXX.XX plus units not exceed a total of \$3,200.00 of the following.
  - A) \$XXX One half day for every two 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)(1)(B) of this Section instead of this subsection (b)(1)(A); and
  - B) \$XXX One half day for each monitoring well installed as part of the Stage 1 site investigation.
  - C) \$XXX for every day of vacuum extractor boring clearance.
  - D) \$XXX for collecting data for hydraulic conductivity evaluation.
- 2) Payment for costs associated with the preparation and submission of Stage 2 site investigation plans shall be paid a lump sum rate of \$X,XXX.XX. The covered tasks include the Stage 1 report and the preparation of the Stage 2 plan, as defined in Appendix G.
- 3) Payment for costs associated with Stage 2 field work and field oversight shall be paid in units of the following:
  - A) \$XXX for every two 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)(3)(B) of this Section instead of this subsection (b)(3)(A); and
  - B) \$XXX One half day for each monitoring well installed as part of the Stage 2 site investigation.
  - C) \$XXX for collecting data for hydraulic conductivity evaluation if required.

- D) \$XXX for every day of vacuum extractor boring clearance
- 4) Payment for costs associated with the preparation and submission of each Stage 3 site investigation plan shall be paid on a time and materials basis.
- 5) Payment for costs associated with Stage 3 field work and field oversight shall be paid in lump sum units as follows:
- A) \$XXX One-half day for every two ~~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)(5)(B) of this Section instead of this subsection (b)(5)(A); and
- B) \$XXX One-half day for each monitoring well installed as part of the Stage 3 site investigation.
- C) \$XXX for every day of vacuum extractor boring clearance
- D) \$XXX for collecting data for hydraulic conductivity evaluation if required.
- E) a time and materials basis for each task not identified in A, B, C, or D above.
- 6) Payment for costs associated with the preparation and submission of site investigation completion reports which occur after the Stage 1 site investigation shall be paid a lump sum total of \$XXX. Payment for costs associated with the preparation and submission of site investigation completion reports which occur after Stage 2 or Stage 3 site investigation shall be paid on a time and materials basis.
- c) Corrective Action. Payment of costs for professional consulting services associated with corrective action activities conducted pursuant to Subpart C of this Part shall be paid in units of not exceed the following amounts, or time and materials, as identified below:
- 1) For conventional technology as defined in Appendix G, payment for costs associated with the preparation and submission of corrective action plans shall ~~not exceed~~ be a maximum total of \$X,XXX.XX. For a plan for any other corrective action or 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.

- A) For conventional technology, payment for costs associated with the preparation and submission of corrective action plan addenda, as defined in Appendix G shall be a lump sum total of \$0,000.00, per addendum. For alternative technologies, payment for such costs shall be determined on a time and materials basis and shall be consistent with 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 be paid in units of not exceed the following amounts, or time and materials as specified below:
- A) For conventional technology as defined in Appendix G, a lump sum total of \$XXX.XX ~~per half day, not to exceed one half day~~ for each 200 cubic yards, or fraction thereof, of soil removed and disposed.
- B) For alternative technologies, payment for costs shall be determined on a time and materials basis and shall be otherwise consistent with Section 734.850 of this Part.
- 3) Payment for costs associated with the development of remediation objectives other than Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742 shall be determined on a time and materials basis and shall be otherwise consistent with Section 734.850 of this Part. not exceed a total of \$800.00. These tasks include the preparation of Tier 2 remediation objectives, risk-based corrective action objectives and any Tier 3 analyses.
- 4) 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 be determined on a time and materials basis and shall be otherwise consistent with Section 734.850 of this Part. not exceed \$800.00 per Environmental Land Use Control or Highway Authority Agreement.
- 5) Payment for costs associated with the preparation and submission of each corrective action status report for conventional technology, as defined in Appendix G, shall be paid at a lump sum amount of \$XXXX.XX.



- 6) Payment for costs associated with the preparation and submission of each corrective action completion report for conventional technology, as defined in Appendix G, shall be paid at a lump sum amount of \$XXXX.XX.
- 7) Payment for costs associated with the preparation and submission of corrective action completion reports for alternative technology shall be paid on a time and materials basis and shall be consistent with Section 734.850 of this Part.

d) **Miscellaneous Consulting Tasks**

Payment for other consulting tasks which are required to satisfy regulatory requirements shall be paid on a time and materials basis and shall be otherwise consistent with Section 734.850 of this Part. These tasks include the categories shown below, as defined in Appendix G:

- 1) New project start-up costs
- 2) Reimbursement requests, for each of the following:  
  
Early action, each Stage of Site Investigation, and not less than every 90 days for Corrective Action activities.
- 3) Response on a time-critical basis, as directed by a state or local authority

**Section 734.850 Payment on Time and Materials Basis**

This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.

- a) Payment for costs associated with activities that have a specific 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 be reimbursed at the amounts set forth in those Sections, unless payment is made pursuant to Section 734.855 of this Part.
- b) Payments amounts for costs associated with activities that do not have a specific payment amount set forth in other sections of this Subpart H shall be determined by the Agency on a site-specific basis, provided, however, that personnel costs shall not exceed the amounts set forth in Section 734. Appendix E of this Part. Personnel costs shall be based upon the work being performed, regardless of the title of the person performing the

work. Owners and operators seeking payment shall demonstrate to the Agency that the amounts sought are reasonable.

**Section 734.855 Unusual or Atypical Conditions**

If the applicant incurs costs which are unusual or atypical, as set forth in Appendix H, and the IEPA intends to deny such costs, it shall issue a letter of intent to reject within 45 days of the submittal consistent with Subpart E and the parties shall proceed in accordance that Subpart. If the applicant demonstrates that the unusual or atypical costs are unavoidable, reasonable or necessary, the costs shall be paid.

**Section 734.860 Handling Charges**

Payment of handling charges shall be consistent with the amounts set forth in Section 734.635 of this Part and shall be reimbursable without regard to the identify of the sub-contractor.

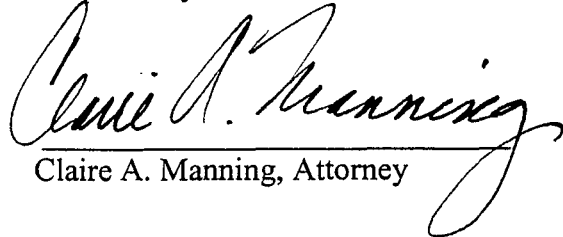
**Section 734.865 Review of Payment Amounts**

The LUST Advisory Committee shall annually review the provisions of this Subpart H. As part of its review the LUST Advisory Committee shall determine whether the amounts set forth in this Subpart H generally reflect prevailing market rates. If, as a result of the review, the LUST Advisory Committee 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, based on standardized market factors.

CONCLUSION

PIPE appreciates this opportunity to provide the Board with alternate language to the IEPA's proposal and looks forward to the Board's next hearing.

Respectfully submitted,

  
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Claire A. Manning, Attorney

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**Section 734.APPENDIX C Backfill Volumes**

Volume of Tank in Gallons	Maximum amount of backfill material to be removed:	Maximum amount of backfill material to be replaced:
	<u>Cubic yards</u>	<u>Cubic yards</u>
<285	54	56
285 to 299	55	57
300 to 559	56	58
560 to 999	67	70
1000 to 1049	81	87
1050 to 1149	89	96
1150 to 1999	94	101
2000 to 2499	112	124
2500 to 2999	128	143
3000 to 3999	143	161
4000 to 4999	175	198
5000 to 5999	189	219
6000 to 7499	198	235
7500 to 8299	206	250
8300 to 9999	219	268
10,000 to 11,999	252	312
12,000 to 14,999	286	357
>15,000	345	420

A conversion factor of 1.5 tons per cubic yard shall be used to convert tons to cubic yards.

**Section 734.APPENDIX D Sample Handling and Analysis**

	Max. Total Amount per Sample
<b>Chemical</b>	
BETX Soil with MTBE (EPA 8260)	\$92.00
BETX Water with MTBE (EPA 8260)	\$90.00
COD (Chemical Oxygen Demand)	\$40.00
Corrosivity	\$18.00
Flash Point or Ignitability Analysis EPA 1010	\$41.00
FOC (Fraction Organic Carbon)	\$52.00
Fat, Oil, & Grease (FOG)	\$84.00
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part	\$725.00
Organic Carbon (ASTM-D 2974-87)	\$48.00
Dissolved Oxygen (DO)	\$33.00
Paint Filter (Free Liquids)	\$16.00
PCB / Pesticides (combination)	\$249.00
PCBs	\$136.00
Pesticides	\$162.00
PH	\$16.00
Phenol	\$39.00
Polynuclear Aromatics PNA, or PAH SOIL EPA 8270	\$186.00
Polynuclear Aromatics PNA, or PAH WATER EPA 8270	\$186.00
Reactivity	\$75.00
SVOC - Soil (Semi-volatile Organic Compounds)	\$339.00
SVOC - Water (Semi-volatile Organic Compounds)	\$339.00
TKN (Total Kjeldahl) "nitrogen"	\$52.00
TOC (Total Organic Carbon) EPA 9060A	\$35.00
TPH (Total Petroleum Hydrocarbons)	\$158.00
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	\$190.00
VOC (Volatile Organic Compound) - Water	\$180.00
<b>Geo-Technical</b>	
Bulk Density ASTM D4292 / D2937	\$34.00
Ex-Situ Hydraulic Conductivity / Permeability	\$255.00
Moisture Content ASTM D2216-90 / D4643-87	\$13.00
Porosity	\$105.00
Rock Hydraulic Conductivity Ex-Situ	\$350.00
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	\$150.00
Soil Classification ASTM D2488-90 / D2487-90	\$68.00

<b>Metals</b>	
Arsenic TCLP Soil	\$35.00
Arsenic Total Soil	\$25.00
Arsenic Water	\$23.00
Barium TCLP Soil	\$30.00
Barium Total Soil	\$17.00
Barium Water	\$15.00
Cadmium TCLP Soil	\$35.00
Cadmium Total Soil	\$25.00
Cadmium Water	\$23.00
Chromium TCLP Soil	\$30.00
Chromium Total Soil	\$17.00
Chromium Water	\$15.00
Cyanide TCLP Soil	\$48.00
Cyanide Total Soil	\$38.00
Cyanide Water	\$38.00
Iron TCLP Soil	\$30.00
Iron Total Soil	\$17.00
Iron Water	\$15.00
Lead TCLP Soil	\$35.00
Lead Total Soil	\$25.00
Lead Water	\$23.00
Mercury TCLP Soil	\$44.00
Mercury Total Soil	\$29.00
Mercury Water	\$29.00
Selenium TCLP Soil	\$35.00
Selenium Total Soil	\$25.00
Selenium Water	\$21.00
Silver TCLP Soil	\$30.00
Silver Total Soil	\$17.00
Silver Water	\$15.00
Metals TCLP Soil (a combination of all RCRA metals listed in Appendix B of this Part)	\$158.00
Metals Total Soil (a combination of all RCRA metals listed in Appendix B of this Part)	\$145.00
Metals Water (a combination of all RCRA metals listed in Appendix B of this Part)	\$147.00
Soil preparation for Metals TCLP Soil (one fee per sample/per method)	\$79.00
Soil preparation for Metals Total Soil (one fee per sample/per method)	\$16.00
Water preparation for Metals Water (one fee per sample/per method)	\$11.00

<b>Other</b>	
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*
Soil Dry Weight Determination (one fee per soil sample)	\$11.00

**Section 732.APPENDIX E Personnel Titles and Rates**

Title	Degree Required	Ill. License Req'd.	Max. Hourly Rate
Engineer I	Bachelor's in Engineering	None	\$74.00
Engineer II	Bachelor's in Engineering	None	\$82.00
Engineer III	Bachelor's in Engineering	None	\$90.00
Engineer IV	Bachelor's in Engineering	None	\$100.00
Professional Engineer	Bachelor's in Engineering	P.E.	\$115.00
Professional Engineer II	Bachelor's in Engineering	P.E.	\$119.00
Senior Prof. Engineer or Principal	Bachelor's in Engineering	P.E.	\$137.00
Geologist I	Bachelor's in Geology or Hydrogeology	None	\$74.00
Geologist II	Bachelor's in Geology or Hydrogeology	None	\$82.00
Geologist III	Bachelor's in Geology or Hydrogeology	None	\$90.00
Geologist IV	Bachelor's in Geology or Hydrogeology	None	\$100.00
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	\$115.00
Professional Geologist II	Bachelor's in Geology or Hydrogeology	P.G.	\$119.00
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	\$137.00
Scientist I	Bachelor's in a Natural or Physical Science	None	\$60.00
Scientist II	Bachelor's in a Natural or Physical Science	None	\$65.00
Scientist III	Bachelor's in a Natural or Physical Science	None	\$70.00
Scientist IV	Bachelor's in a Natural or Physical Science	None	\$75.00
Senior Scientist	Bachelor's in a Natural or Physical Science	None	\$85.00
Project Manager I	None	None	\$90.00
Project Manager II	None	None	\$95.00
Senior Project Manager	None	None	\$100.00
Technician I	None	None	\$50.00
Technician II	None	None	\$55.00
Technician III	None	None	\$60.00
Technician IV	None	None	\$65.00
Senior Technician	None	None	\$70.00
Account Technician I	None	None	\$40.00
Account Technician II	None	None	\$45.00
Account Technician III	None	None	\$50.00
Account Technician IV	None	None	\$55.00
Senior Acct. Technician I	None	None	\$60.00
Administrative Assistant I	None	None	\$30.00
Administrative Assistant II	None	None	\$35.00
Administrative Assistant III	None	None	\$40.00
Administrative Assistant IV	None	None	\$42.50
Senior Admin. Assistant I	None	None	\$45.00
Draftperson/CAD I	None	None	\$40.00
Draftperson/CAD II	None	None	\$45.00
Draftperson/CAD III	None	None	\$50.00
Draftperson/CAD IV	None	None	\$55.00
Senior Draftperson/CAD	None	None	\$60.00

**Section 734.APPENDIX F Transportation and Mobilization Costs**

**Mobilization to and from the site for personnel shall be paid as follows:**

Outside Metropolitan Areas: 1 hour = 50 miles (per corresponding personnel rate per APPENDIX E)

Inside Metropolitan Areas: 1 hour = 25 miles (per corresponding personnel rate per APPENDIX E)

Vehicle Mileage Rate = \$0.00/mile or \$00.00/day, whichever is greater (obtain from R.S.Means).

**Per Diem:**  
(Obtain from R.S.Means)

Outside Metropolitan Areas: \$00.00/day per person

Inside Metropolitan Areas: \$000.00/day per person