BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WHEELING/GWA AUTO SHOP,	)	
	)	
Petitioner,	)	
	)	PCB No. 10-070
v.	)	(LUST Appeal - Ninety Day Extension
	)	Granted 3/18/10, Petition Due 6/10/10)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, the **PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**, a copy of which is herewith served upon you.

JASON A. GUISINGER

CERTIFICATE OF SERVICE

I, JASON A. GUISINGER, certify that I served the foregoing Notice of Filing and **PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** upon the parties listed on the attached Service List, by the means listed on the attached Service List, before 4:30 p.m. on September 30, 2010.

JASON A. GUISINGER

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PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, Village of Wheeling ("Village") by counsel, Dennis G. Walsh and Jason A. Guisinger of Klein, Thorpe and Jenkins, Ltd., and responds to Respondent's Motion for Summary Judgment, as follows:

I. Facts

The following facts are all supported by the record in this case. On or about August 9, 1995 a release was reported at a site commonly known as the GWA Auto Shop, located at 434 S. Milwaukee Avenue, Wheeling, Cook County, Illinois ("Site"). The Illinois Emergency Management Agency assigned Incident No. 951688 to the release and the Illinois Environmental Protection Agency ("IEPA") acknowledged receipt of the notice of release and assigned LCP # 0314975175 to the Site.

The Village took title to and possession of the Site on August 9, 2002, pursuant to a Quitclaim Deed. From August 9, 2002 through the date hereof, the Site is one that had one (1) or more registered underground storage tanks that had been removed and on which corrective action has not yet resulted in the issuance of a "no further remediation letter" from the IEPA. Since August 9, 2002 through the date hereof, the Village has been, and is, the owner of the Site.

From February 11, 2003 to October 7, 2009, the Village performed appropriate corrective action activities at the site related to Incident No. 951688 and in the process, incurred reimbursable expenses, properly and lawfully payable to the Village from the Leaking Underground Storage Tank Fund ("LUST Fund") administered by the IEPA.

The Village, as owner of the Site, prepared and delivered to the IEPA a written notice dated January 23, 2006, electing to proceed as Owner in the Leaking Underground Storage Tank Program pursuant to §57.2 of the Act. The IEPA received the Village's Election to Proceed as Owner and accepted the same on March 2, 2006.

According to §57.2 of the Act, the Village is an "owner," as defined by the Act, and the Village is therefore entitled to approval of and reimbursement for reimbursable expenses from the LUST FUND for costs incurred in performing corrective action at the Site related to Incident No. 951688.

On October 13, 2009, the Village submitted its Corrective Action Plan and Budget ("CAP") related to Incident No. 951688. Moreover, on October 13, 2009, the Village submitted its Site Inspection Plan and Budget related to incident No. 951688 to the IEPA. The IEPA approved the Site Inspection Plan and Budget, except for $1,083.00 that was accidently duplicated by the Village's consultant. The IEPA's decision regarding the Site Inspection Plan and Budget is not in dispute herein.

Each of the expenses described in the CAP are lawful, proper and necessary corrective action expenses incurred by the Village in responding to Incident No. 951688 and said expenses are authorized by and reimbursable from the Leaking Underground Storage Tank Program and LUST Fund.

Significantly, on June 28, 2006, the Illinois Office of State Fire Marshall ("OSFM") determined that the Village was eligible for reimbursement of reimbursable expenses in excess of $10,000 for those expenses incurred in response to incident No. 951688.

Nevertheless, on February 2, 2010, the IEPA, in a final and appealable agency decision, granted in part and denied in part the CAP. Specifically, the IEPA approved $4,967.26 in reimbursable costs but denied $78,915.82 of reimbursable costs in the CAP, on the following grounds:

> On January 23, 2006 the Illinois EPA received the Election to Proceed as "Owner" form from the present owner pursuant to Section 57.2 of the Act. Prior to this date the present owner did not meet the definition of Owner or Operator in Section 57.2 of the Act therefore, all costs incurred prior to this date are not eligible for reimbursement from the Fund to the present "Owner." The Following [sic] costs are deducted from the Budget: $4,141.00 from Analytical Costs and $74,774.82 from Remediation and Disposal Costs.

An appeal was filed herein because the IEPA's decision was arbitrary, capricious and contrary to law. Nonetheless, the IEPA has filed a motion for summary judgment reiterating its position enunciated in its denial of the Village's application for reimbursement of costs. But the IEPA's motion for summary judgment must be denied based on the following.

I. The IEPA is not authorized to determine an "Owner's" eligibility to access the LUST Fund. Only the OSFM is authorized to determine whether the Village is an "Owner" for purposes of eligibility to access the LUST Fund. The OSFM determined that the Village is eligible for reimbursement from the fund; thus, the IEPA's motion for summary must be denied.

In this case, the IEPA has exceeded its statutorily limited authority in reviewing applications for reimbursement from the LUST Fund. The Underground Storage Tank Program was established by the Illinois General Assembly for the purposes of satisfying the financial responsibility requirements of the Federal Resource Conservation and Recovery Act (42 U.S.C.

6991 *et seq.*), and to protect Illinois' land and groundwater resources. *See* 415 ILCS 5/57. The Illinois General Assembly also provided that the OSFM and the IEPA have distinct administrative roles in the administration of the Underground Storage Tank Program. *See* 415 ILCS 5/57.3; 415 ILCS 5/57.4. Contrary to its arguments, the IEPA has no authority to determine or veto the eligibility of an applicant to the LUST Fund. Rather, the Illinois General Assembly has designated the OSFM as the only state agency with the authority to determine if an applicant is an "owner" eligible to seek reimbursement from the Underground Storage Tank Fund. 415 ILCS 5/57.8; 415 ILCS 5/58.9.

Indeed, under the Underground Storage Tank Program, owner "[e]ligibility and deductibility determinations shall be made by the Office of the State Fire Marshal." 415 ILCS 57.9(c). The Illinois Pollution Control Board (the "Board") and the Illinois Appellate Court have both recognized this authority and have consistently held that the OSFM, not the IEPA, has the authority to determine an owner's eligibility for reimbursement. In *R. P. Lumber Co. v. Office of the State Fire Marshal*, 293 Ill. App. 3d. 402, 688 N.E.2d 379 (5th Dist. 1997), the Illinois Appellate Court found that "[t]he OSFM has the authority to determine whether an owner or operator of a UST is eligible to receive compensation for corrective-action costs from the Underground Storage Tank Fund (the Fund) [citation omitted].

Similarly, in *Stroh Oil Company v. Office of the State Fire Marshal*, PCB 94-215 (UST Fund), *aff'd, Stroh Oil Co. v. State Fire Marshal,* 281 Ill. App. 3d 121, 665 N.E.2d. 540 (4th Dist. 1996), the Board analyzed the legislative history of relevant portions of the Illinois Environmental Protection Act, and held that the statute at issue here "gave the [Office of State Fire Marshal] authority to determine whether an owner or operator of a UST site is eligible to

seek reimbursement for corrective action costs from the UST Fund, and to determine the appropriate deductible to be applied to reimbursement applications."

Thus, only the OSFM has the authority to determine an owner's eligibility to access the Underground Storage Tank Fund - a fact that is recognized by the IEPA itself on its own website. On its website page entitled "An Introduction to Leaking Underground Storage Tanks," a true and correct copy of which is attached and incorporated herein as **Exhibit A** and made a part hereof, the IEPA states in relevant part:

The OSFM is authorized to:

- Certify tank installation and removal contractors.
- Monitor compliance regarding leak prevention and detection requirements.
- Administer financial responsibility requirements.
- **Determine whether tank owners and operators meet eligibility requirements and, if so, the appropriate deductible amount for payment from the UST Fund.**
- Order tank owners or operators to remove the USTs and perform initial abatement measures when UST releases threaten human health or the environment.

www.epa.state.il.us/land/lust/introduction.html. (Emphasis Added.)

To the contrary, the IEPA's website page says nothing of its authority to determine an applicant's eligibility to access the LUST Fund. Rather, the IEPA correctly describes its limited authority with regard to leaking underground storage tanks as follows:

The IEPA is authorized to:

- Review and evaluate technical plans and reports to determine if tank owners or operators are complying with environmental laws and regulations governing leaking UST site investigations and cleanups.
- Require tank owners or operators to perform corrective action when UST releases threaten human health or the environment.

- **Review and evaluate tank owners' and operators' budgets and claims for payment from the UST Fund.**

- Issue No Further Remediation (NFR) Letters to tank owners or operators once the Leaking UST Program requirements and cleanup objectives have been met.

Id. (Emphasis Added.)

According to its own website, the IEPA's authority is limited. And the representations made on its website are consistent with the IEPA's statutory authority. The IEPA's only proper authorities under the statute are: (i) to review the activities performed by the applicant and determine if those activities are consistent with the statutory purposes of the LUST Fund (to protect the environment and satisfy the financial responsibility requirements imposed by the Federal Resource Conservation and Recovery Act), and (ii) to determine if the costs reportedly incurred were reasonable from an engineering and geologic perspective. 415 ILCS 5/57.8; 35 Ill. Adm. Code Parts E and F. In other words, the IEPA is empowered to use its technical expertise in matters of environmental concern to make certain that remediation activities are scientifically sufficient and to evaluate whether remediation costs incurred were reasonably related to necessary environmental remediation. However, the IEPA has no statutory authority to make determinations as to whether an applicant is an "Owner" eligible to access the LUST Fund.

In this case, on June 28, 2006, the OSFM determined that the Village was eligible for reimbursement from the Underground Storage Tank Fund for reimbursable expenses. Therefore, based on the distinctive roles assigned to the OSFM and the IEPA, it was wholly inappropriate for the IEPA to deny Village's application for reimbursement from the LUST Fund based on the IEPA's determination that Village is not an eligible "owner" as that term is described in the recently amended statute -- especially after the OSFM unequivocally determined that Village is

an eligible "owner." Simply stated, the IEPA does not have the authority to veto OSFM's determination of Village's eligibility to access the LUST Fund.

Moreover, it is surprising that the IEPA attempts to mask its super authority argument under the guise that it has proper authority to make technical and fiscal determinations of eligible activities and costs. According to the IEPA, "when reviewing an Illinois EPA determination of ineligibility for reimbursement from the Underground Storage Tank Fund, the Board must decide whether or not the application as submitted demonstrates compliance with the Act and Board regulations. [Citation Omitted]." IEPA's Motion for Summary Judgment, p. 2 *citing Rantoul Township High School Dist. No. 193 v. Illinois Environmental Protection Agency*, PCB 03-42 (UST Appeal) dated April 17, 2003. While it is certainly accurate that the Board must satisfy itself that the "application as submitted satisfies compliance with the Act and Board regulations," it is wrong to imply that the Board must ignore the IEPA's usurpation of authority under the guise of performing a technical review of Village's application for LUST Fund reimbursement. Moreover, the authority relied upon by the IEPA to support its decision is misplaced.

Indeed, the "ineligibility determination" in *Rantoul Township High School District No. 193 v. Illinois Environmental Protection Agency*, PCB 03-42 (UST Appeal) dated April 17, 2003, cited by the IEPA, involved the IEPA's denial (on the merits) of $77,671.67 in costs reportedly incurred by that Petitioner in relocating underground utilities, backfill compaction, density testing, and like charges. The IEPA found that those costs were ineligible for reimbursement because the activities which gave rise to those costs were not appropriate corrective action activities. In that case, the IEPA had authority to make its "ineligibility determination" of those costs because it was acting within the scope of its statutorily prescribed role, i.e., determining the propriety of corrective action activities and reasonableness of the costs

thereof. But nothing in the Board's decision in *Rantoul* supports the IEPA's purported authority to determine the eligibility of an "owner" to access the LUST Fund, nor does *Rantoul* stand for the proposition that the IEPA has the authority to veto an eligibility determination made by the OSFM.

Similarly, *Rezmar Corporation v. Illinois Environmental Protection Agency*, PCB 02-91 (UST Appeal), dated April 17, 2003, also cited by the IEPA, involved the Board's review of the IEPA's determination (on the merits) that $118,877.28 of costs reportedly incurred by that Petitioner were ineligible "Early Action" costs. Nothing in that case supports the IEPA's purported authority to veto the eligibility determinations made by the OSFM. Moreover, nothing in *Rezmar* supports the IEPA's argument that the Village bears the burden of proof on the issue of the IEPA's purported exercise of extra-jurisdictional authority to make or veto an eligibility determination, especially to the extent that Village specifically denies that the IEPA has any such extra-jurisdictional authority by this appeal. Rather, the IEPA has the burden of proving that the IEPA has the authority to determine Village's eligibility to access LUST Fund after the OSFM exercised its statutory authority and deemed Village eligible pursuant to the factors described at 415 ILCS 57.9.

In sum, the IEPA's only authority in this case was to review the technical and financial aspects of Village's application to the LUST Fund, and in the process, determine if the activities performed were necessary "corrective action activities" necessary to preserve the environmental resources of this state, and that the costs incurred were reasonable (from a technical, engineering and geological, perspective). 415 ILCS 5/58. *See also* 35 Ill. Adm. Code Part 734, Subparts E, F, G and H, and Appendices A-E; 35 Ill. Adm. Code §734.625 "Eligible Corrective Action Costs"; 35 Ill. Adm. Code §734.630 "Ineligible Corrective Action Costs."

Without question, the Board must satisfy itself that the "application as submitted satisfies compliance with the Act and Board regulations." See IEPA's Motion for Summary Judgment, p. 2. *See also* 415 ILCS 5/57.8(a)(6)(A)-(E) and 35 Ill. Adm. Code §734.605(b)(1)-(10), which describe the contents of "complete application." In this case, the Board will find that Village's Reimbursement Package is in compliance with the Act and Board regulations.

Contrary to the IEPA's argument, the issue raised by the IEPA's motion for summary judgment is not whether the Village is an "owner" under the Illinois Environmental Protection Act and "therefore eligible for reimbursement under the UST FUND Program," as argued at pages 2-5 of the IEPA's motion for summary judgment. The issue here is whether the IEPA has the authority to make or veto a determination of the Village's eligibility after the OSFM has specifically found the Village eligible to access the LUST Fund. The IEPA lacks the purported authority to make any such eligibility determination, and the Board should deny the IEPA's motion for summary judgment accordingly.

II. The IEPA's claim of administrative efficiency is a red herring.

Currently and historically, the IEPA does not perform additional investigation into ownership because the OSFM makes the determination of an "owner's" eligibility. Nonetheless, the IEPA makes a curious argument for administrative convenience, suggesting that an earlier notice would negate the IEPA's purported need for further investigation, although it is difficult to understand how the timing of receipt of the notice would make any difference. If the notice is received before or after the corrective action activities are performed, the notice is the same and does not provide any corroboration or facts beyond the new owner's certificate of ownership. The IEPA performs no further investigation in any event, even though a notice received before corrective action has the same information as one received afterwards.

Furthermore, even if IEPA had the authority to make "owner" eligibility determinations, (which it does not), the IEPA is able to request additional information from the applicant before analyzing the Reimbursement Package on the merits whether or not the notice is received before or after the corrective action is performed. The information is the same, and it only must be received before reimbursement in order to protect LUST Funds from an improper distribution.

However, the IEPA is not complaining that the Village failed to cooperate by not providing additional information to corroborate the Village's ownership interest in the Site. Rather, the IEPA purports to have the authority to determine an "owner's" eligibility and to veto the OSFM's prior determination of eligibility based on the IEPA's improper contention that the date of receipt of the notice of election is jurisdictional. Even if administrative convenience was a concern, it is clear that the extra-jurisdictional and unlawful authority being exercised by the IEPA is unnecessary. Administrative efficiency is not served by the IEPA's errant and unlawful interpretation of the statute, and the Board should not be persuaded accordingly.

If the IEPA has any serious questions about an "owner's" purported eligibility, then it can demand that the putative "owner" provide additional information in the same manner that the IEPA currently seeks additional technical information from an applicant. And, in the highly unlikely event that a putative "owner" actually incurred corrective action expenses in cleaning a site where the applicant had no ownership interest, and if the IEPA determines that the applicant remediated the site simply to get reimbursed from the LUST Fund, then the IEPA may challenge the efficacy of making a payment to a total stranger based on real evidence and not an arbitrary, capricious, and unlawful usurpation of the OSFM's authority to make eligibility determinations.

III. The IEPA's position asserted in its motion for summary judgment discourages the remediation of historically contaminated sites.

Notwithstanding implausible scenarios, in this case, a real new owner performed a corrective action and incurred substantial costs at a site that had been contaminated for well over a decade by the previous owner. Here, the IEPA seeks to discourage cleanups and to punish Village for no reason. If the mirror image of this issue occurred in an enforcement action, the IEPA would certainly argue that Village's responsibilities under Title XVI are not excused because corrective action costs were incurred before the Village delivered the election to proceed to the IEPA.

The point is: Because a new owner has no regulatory responsibility for contamination associated with historic underground storage tanks **under Title XVI, and the IEPA has no authority under Title XVI to demand that the new owner follow Title XVI,** whenever a new owner submits an election to proceed as owner, the new owner accepts additional responsibility, and waives every right to revoke acceptance of that new responsibility. The net effect is that the IEPA gains a responsible person **(where none existed previously)**, who is willing to perform a corrective action under Title XVI of the Illinois Environmental Protection Act, (mandated by subchapter I of the Resource Conservation and Recovery Act, 42 U.S.C. 6991 *et* seq.,) **which includes access to the LUST Fund established in Illinois so that owners of underground storage tank systems can satisfy the stringent financial responsibility requirements of federal law.** *See* 42 U.S.C. Section 6991b(d) and 42 U.S.C. 6991(c).

That is, in order to be eligible to access the LUST Fund, the new owner must accept the responsibility to clean someone else's mess -- a responsibility that will not otherwise attach to the new owner because the new owner was not the owner of the underground storage tank system at the time of the release.

That point is clearly expressed in the form prescribed by the IEPA, where the new owner states:

> I understand that by making this election I become subject to all of the responsibilities and liabilities of an 'owner' under Title XVI of the Environmental Protection Act and the Illinois Pollution Control Board's Rules at 35 Ill. Adm. Code 734. I further understand that, once made, this election cannot be withdrawn."

To make the point even clearer, in accepting the Village's election to proceed as "owner," the IEPA made it clear to the Village that the IEPA accepted the Village into the Underground Storage Tank Program, and that the IEPA intended to enforce the law accordingly. The Village willingly accepted that responsibility, and in reliance on the statutory promise of reimbursement from the LUST Fund, the Village performed a complete corrective action at a contaminated site left abandoned by the previous owner, and in the process Village incurred in excess of $78,000 in otherwise reimbursable expenses. The IEPA's "bait and switch" tactic in this case is unlawful, arbitrary, and capricious. Therefore, its motion for summary judgment would be denied.

IV. The IEPA seeks to shift the burden of remediation costs away from the LUST Fund and onto taxpayers of the Village.

In this case, the petitioner is a municipal corporation. Thus, the negative impact of the IEPA's unlawful claim that the Village is not eligible for reimbursement for the LUST Fund is exacerbated. Indeed, not only does the IEPA's position defeat and undermine the legislative intent of the Underground Storage Tank Program, i.e., the cleanup of historically contaminated sites, it also improperly and unlawfully shifts the financial burden of environmental cleanup away from the LUST Fund and onto Village taxpayers. It is fundamentally unfair and unjust for the IEPA, a governmental entity charged with protecting the public, to unlawfully attempt to further burden Village taxpayers with environmental cleanup costs that are to be properly paid from the LUST Fund.

The Village plans on filing its own motion for summary judgment in this matter and reserves the right to further develop the arguments asserted herein in said motion. The IEPA has no objection to the Village filing a motion for summary judgment in this matter.

V. Conclusion

For the foregoing reasons, the IEPA's motion for summary judgment must be denied.

Respectfully submitted,

VILLAGE OF WHEELING

By: _____
One of its attorneys

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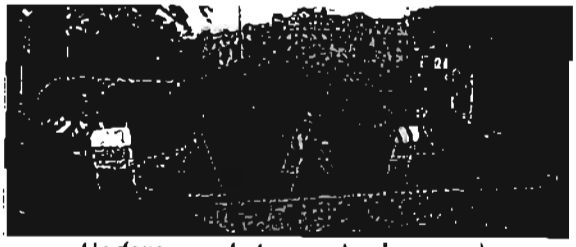
Exhibit 1

An Introduction to Leaking Underground Storage Tanks

Leaking underground storage tanks (USTs) are a significant source of environmental contamination and may pose the following threats to human health and safety:

- fire and explosion;
- inhalation of dangerous vapors;
- contamination of soil and groundwater;
- contamination of drinking water;
- contamination of streams, rivers, and lakes.



Underground storage tank upgrade

These threats are minimized when responsible parties respond quickly and efficiently after a tank release. State agencies and environmental consultants are ready to assist UST owners and operators in responding to leaking USTs.

Agencies that Deal with USTs and Leaking USTs

The Illinois Office of the State Fire Marshal (OSFM) regulates the daily operation and maintenance of UST systems. If a release occurs, tank owners or operators, or their designated representatives, must notify the Illinois Emergency Management Agency (IEMA), which then notifies the Illinois Environmental Protection Agency (Illinois EPA). The Illinois EPA's Leaking Underground Storage Tank Section begins oversight of remedial activities only after the tank release has been reported to the IEMA.

The OSFM is authorized to:

- Certify tank installation and removal contractors.
- Monitor compliance regarding leak prevention and detection requirements.
- Issue permits for tank installations, repairs, upgrades, closures, and removals.
- Administer financial responsibility requirements.
- Determine whether tank owners and operators meet eligibility requirements and, if so, the appropriate deductible amount for payment from the UST Fund.
- Order tank owners or operators to remove the USTs and perform initial abatement measures when UST releases threaten human health or the environment.

The Illinois EPA is authorized to:

- Review and evaluate technical plans and reports to determine if tank owners or operators are complying with environmental laws and regulations governing leaking UST site investigations

and cleanups.

- Require tank owners or operators to perform corrective action when UST releases threaten human health or the environment.
- Review and evaluate tank owners' and operators' budgets and claims for payment from the UST Fund.
- Issue No Further Remediation (NFR) Letters to tank owners or operators once the Leaking UST Program requirements and cleanup objectives have been met.

Act Immediately if You Suspect a Tank Release

If a release has not been confirmed but you believe free product (petroleum not dissolved in water) or product vapors pose a serious threat, take the following steps as appropriate:

- Extinguish all smoking materials or open flames that could ignite explosive vapors.
- Call the local fire department.
- Take care not to activate electrical switches or equipment that could cause sparks and ignite explosive vapors.
- Evacuate the area.

Drums of gasoline-contaminated water

- Follow the environmental regulations, as required of tank owners or operators or their designated representatives, including:
  - Call IEMA *immediately* whenever a release causes a sheen on nearby surface waters, or
  - Call IEMA within 24 hours of any other release, and
  - Stop the leak and contain the spill.

The IEMA maintains a 24-hour hotline. In Illinois, call 800-782-7860. Out of state, call 217-782-7860.

Environmental Consultants Offer Technical Expertise

Environmental consultants, including removal contractors and professional engineers and professional geologists, offer many services to help you handle your UST release in a timely and efficient manner. You will find consultants listed in the Yellow Pages of your local phone book. The Illinois EPA does not endorse or recommend consultants. Before signing a contract, make sure the consultant can perform the following activities:

- Determine the appropriate regulations to which a particular incident is subject, and conduct remediation and/or pursue closure accordingly.
- Conduct a site investigation or classification to determine if remedial actions are required.
- Follow proper sample collection protocols to assure valid and reliable results. (Deviations may result in additional sampling and expense.)
- Assure that laboratory samples are analyzed according to proper methods and procedures by an accredited laboratory to avoid costly retesting.

- Interpret laboratory results and organize this data into reports for review by the Illinois EPA's Leaking UST Section.
- Provide equipment and personnel to conduct the required remedial activities or hire subcontractors to perform such work.
- Arrange for safe and proper handling of contaminated soil and groundwater.
- Evaluate cost and liability factors resulting from interim measures, as well as from final disposal or treatment options, for contaminated soil and groundwater.
- Obtain all necessary manifests and permits before moving or disposing of contaminated materials.
- Prepare reports and provide certifications by Licensed Professional Engineers or Licensed Professional Geologists as required by environmental laws and regulations.
- Prepare budgets and submit claims for payment from the UST Fund. An Illinois Licensed Professional Engineer or Licensed Professional Geologist must certify that all regulatory requirements have been met before any budgets or claims can be reviewed. The Illinois EPA will not authorize payment of ineligible or unreasonable costs, costs from work that deviates from approved plans, or costs for site investigation or corrective action activities that exceed the minimum requirements stated in the environmental laws and regulations.

Tank Owner or Operator Requirements

Owners or operators required to report leaking UST releases to the IEMA must also meet the requirements of the Environmental Protection Act and 35 Illinois Administrative Code 731, 732, or 734. Once notified of the release by the IEMA, the Leaking UST Section mails a letter requiring compliance with Leaking UST Program regulations and the submittal of applicable technical forms.

Sampling groundwater

Tiered Approach to Corrective Action Objectives (TACO) Based on Site Conditions and Exposure Risks

TACO is the Illinois EPA's method for developing cleanup objectives for contaminated soil and groundwater. These cleanup objectives protect human health while taking into account site conditions and land use.

TACO offers tank owners and operators the following choices:

- Exclusion of exposure routes (inhalation, soil ingestion, and groundwater ingestion),
- Use of area background concentrations as screening tools or remediation objectives, and
- Three tiers for selecting remediation objectives.

In Tier 1, the tank owner or operator compares site sample analytical results to baseline cleanup objectives contained in "look-up" tables. Under Tier 2, a tank owner or operator considers data previously gathered for Tier 1, the physical and chemical properties of the contaminants, the site-specific soil and groundwater parameters, and the application of institutional controls and engineered barriers. Tank owners and operators can use Tier 3 for sites where physical barriers limit remediation, a full-scale risk assessment is performed, alternative mathematical modeling is applied, or a common-sense solution is warranted.

After establishing cleanup objectives under TACO, a tank owner or operator may:

- Reduce contaminant concentrations to meet the established objectives through active remediation (e.g., dig and haul or treatment in place),
- Restrict exposure to contaminated soil or groundwater or both by using engineered barriers or institutional controls,
- Take no action, if contaminant concentrations present at the site do not exceed remediation objectives, or
- Use any combination of the options above.

An engineered barrier, such as asphalt paving, clean soil, or a permanent structure, controls migration of and access to contamination. An institutional control imposes restrictions and conditions on land use. For example, a tank owner or operator may choose to limit the site to industrial/commercial use. When the property owner and the tank owner or operator are separate entities, the property owner must agree to any type of land use limitation.

A leaking UST site qualifies to receive an NFR Letter once the tank owner or operator meets all Leaking UST Program requirements and the applicable TACO cleanup objectives. Within 45 days, the tank owner or operator must file the NFR Letter with the county recorder of the county in which the site is located to ensure that current and future users of the property will be informed of any conditions such as engineered barriers and institutional controls that were relied upon to address contamination caused by an UST release.

Where to Direct Your UST and Leaking UST Questions

If you have questions concerning permits required for tank installations, upgrades or removals; leak prevention or detection requirements; financial responsibility requirements; or eligibility and deductible determinations for the UST Fund, contact:

Office of the State Fire Marshal

Division of Petroleum and Chemical Safety
1035 Stevenson Drive
Springfield, Illinois 62703
217-785-1020
www.state.il.us/osfm/PetroChemSaf/home.htm

If you have questions concerning the review of budget plans and technical reports, or the status of applications for payment from the UST Fund, contact:

Illinois Environmental Protection Agency

Leaking Underground Storage Tank Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
1-217-782-6762
www.epa.state.il.us/land/lust/index.html

This publication is for general information only and is not intended to replace, interpret, or modify laws, rules, or regulations.

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