

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

**RECEIVED
CLERK'S OFFICE
MAR 09 2011
STATE OF ILLINOIS
Pollution Control Board**

FREEDOM OIL COMPANY,)
)
 Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB No. 1159
(UST Appeal – Petition for Review and
Hearing/Appeal)

PETITION FOR REVIEW AND HEARING/APPEAL

NOW COMES Freedom Oil Company, by its attorneys, Elias, Meginnis, Riffle & Seghetti, P.C., and as and for its Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency’s final decision with respect to the modification of the budget for a High Priority Corrective Action Plan for a certain leaking underground storage tank (LUST) site, (which denied, in part, requested budget increases) states as follows:

BACKGROUND

1. Freedom Oil Company retained Midwest Environmental Consulting & Remediation Services, Inc. (Midwest) to remediate the property located at 219 West Van Buren, Clinton, Illinois, LPC #0390050011-DeWitt County, LUST Incident No. 891808 (the Property).

2. The Property was the site of free product remediation and investigation activities to include product removal, soil borings/wells, and corrective action planning and reports. No work was performed outside the required guidelines and was within acceptable LUST Fund reimbursement requirements.

3. By letter dated November 4, 2010, Midwest submitted a reimbursement request, seeking payment of the additional amount of \$43,827.64, which was the amount reasonably and necessarily expended to complete the work on the project. A true and correct copy of that submittal is attached hereto as Exhibit A.

4. By letter dated January 31, 2011 (and delivered on February 3, 2011 by certified mail), the IEPA denied the corrective Action Plan Budget. A true and accurate copy of the January 31, 2011 letter and attachments is attached hereto as Exhibit B. That letter was designated as a final and appealable order.

ARGUMENT


The IEPA rejected the Budget based upon their findings that the costs for site investigation or corrective action costs for Consulting Fees are not reasonable as submitted pursuant Section 57.5(c)(3) of the Act and 35 Ill. Admin. Code 734.630(dd). Freedom Oil Company (and Midwest) disagree with this determination, and affirmatively states that the reimbursement amounts expended were reasonably, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on Exhibit B were actually and legitimately expended and performed. Additionally, the scope of the additional work performed was within the guidelines pre-approved by the IEPA.

CONCLUSION

For all of the foregoing reasons, Freedom Oil Company respectfully requests a hearing in this matter, which will provide it the opportunity to establish the propriety of the costs, and that the Final Decision be reversed or modified by increasing and accepting the budget as proposed in Exhibit B, thereby allowing additional reimbursement in the amount of \$43,827.64.

Respectfully submitted,

Freedom Oil Company, Petitioner

By: 

Robert M. Riffle
Its Attorney

ROBERT M. RIFFLE
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000/611-186

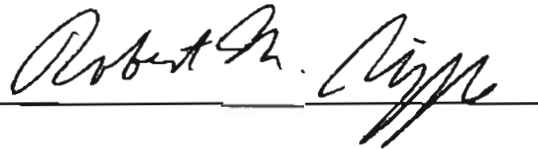
CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2011, a copy of the foregoing document was served upon each party to this case by

- Enclosing a true copy of same in an envelope addressed to the attorney of record of each party as listed below, with first class postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.
- Personal delivery to the attorney of record of each party at the address(es) listed below
- Facsimile transmission with confirmation by United States Mail
- Via Federal Express - Express Package Service - Priority Overnight

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Ave. East
Post Office Box 19276
Springfield, IL 62794-9276



Robert M. Riffle
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000
611-186

Midwest Environmental Consulting & Remediation Services Inc.

22200 Illinois Route 9 • P.O. Box 614

Tremont, IL 61568-0614

Phone: (309) 925-5551 • Fax: (309) 925-5606

November 4, 2010

Mr. Scott Rothering
Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

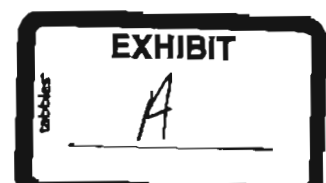
Re: LPC #0390050011 – De Witt County
Clinton/Freedom Oil Company
219 West Van Buren
LUST Incident No. 891808
LUST Technical File

Dear Mr. Rothering:

Attached please find the High Priority Corrective Action Plan Budget Amendment for the subject site. The Corrective Action Plan and Budget dated October 18, 2007 (Plan) were approved by the IEPA in a letter dated November 14, 2007. The excavation proposed in the Plan has not yet been completed due to failed negotiations with contractors who provide excavation and trucking services and the disposal companies. Significant personnel hours beyond the hours originally proposed in the October 2007 Plan were accumulated while attempting to negotiate payment arrangements for subcontractors due to the length of time between the date a reimbursement application is submitted and the date the payment is actually received from the State. At the time of this letter, two years pass before a responsible party receives payment for a reimbursement application.

In addition to negotiating with contractors, significant personnel time was use to gain access to off-site properties. Personnel time for access to off-site properties was not included in the original budget.

Personnel time was not included for monitoring for the reemergence of free product in the monitoring wells and UST sumps as requested by the IEPA.



The excavation activities as proposed in the Plan dated October 18, 2007 will be completed in the future. The additional personnel costs are requested in this budget amendment were not included in the original scope of work or the budget amendment. Please refer to the Plan for all maps, tables and all supporting documentation.

If you have any questions or comments, please contact our office.

Sincerely,

Midwest Environmental Consulting and Remediation Services, Inc.



Allan M. Green
President

PLS/glg
cc: Mr. Gene Adams
Attachments
Job No. 02-52

General Information for the Budget and Billing Forms

LPC#: 0390050011 County: DeWitt
 City: Clinton Site Name: Freedom Oil Company
 Site Address: 219 W. Van Buren
 IEMA Incident No: 891808, _____, _____, _____
 IEMA Notification Date: 9/15/1989, _____, _____, _____
 Date this form was prepared: November 1, 2010

This form is being submitted as a (check one):

- Budget Proposal
- Budget Amendment (Budget Amendments must include only the costs over the previous budget.)
- Billing Package

Please provide the name(s) and date(s) of report(s) documenting the costs as requested:

Name(s): _____, _____, _____
 Date (s): _____, _____, _____

This package is being submitted for the site activities indicated below (check one):

35 Ill. Adm. Code 734:

- Early Action
- Free Produce Removal After Early Action
- Site Investigation: Stage 1: Stage 2: Stage 3:
- Corrective Action

35 Ill. Adm. Code 732:

- Early Action
- Free Produce Removal After Early Action
- Site Classification
- Low Priority Corrective Action
- High Priority Corrective Action

35 Ill. Adm. Code 731

- Site Investigation
- Corrective Action

General Information for the Budget and Billing Forms

If eligible for reimbursement, where should reimbursement checks be sent? Please note that only owners or operators of USTs may be eligible for reimbursement. Therefore, payment can only be made to an owner or operator. The Illinois EPA is not required to and will not recognize an assignment or other delegation of payment as justification for issuing payment to anyone other than the owner or operator. The following address will be used as the mailing address for reimbursement checks and any final determination letters regarding reimbursement.

Pay to the order of: Freedom Oil Company

Send in care of: Gene Adams

Address: 814 W. Chestnut

City: Bloomington State: IL Zip: 61701

The payee is the: Owner: Operator: (Check one or both)
Gene Adams
Signature of the owner of operator of the UST(s) (required) If you have a change of address, click [here](#) to print off a W-9 Form.

Number of petroleum USTs in Illinois presently owned or operated by the owner or operator; any subsidiary, parent or joint stock company of the owner or operator; and any company owned by any parent, subsidiary or joint stock company of the owner or operator:

Fewer than 101 101 or more:

Number of USTs at the site: 5 (Number of USTs includes USTs presently at the site and USTs that have been removed).

Number of incidents reported to the IEMA for this site: 2

Incidents Numbers assigned to the site due to releases from USTs: 891808, 20060555, 0, 0,

Please list all tanks that have ever been located at the site and tanks that are presently located at the site.

Product Stored in UST	Size (gallons)	Did UST have a release?	Incident No.	Type of Release Tank Leak / Overfill / Piping Leak
Gasoline	10,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	891808, 20060555	Piping/Tank Leak, overfill
Gasoline	10,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	891808, 20060555	Piping/Tank Leak, overfill
Gasoline	10,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	891808, 20060555	Piping/Tank Leak, overfill
Diesel Fuel	4,000	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Kerosene	2,000	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		

Proposed Budget Summary and Budget Total

BUDGET SUMMARY PAGE

List the total dollar amount from each of the forms listed below as applicable. The total proposed budget will be automatically calculated.

1. Drilling and Monitoring Well Costs Form:	<u>\$0.00</u>
2. Analytical Costs Form:	<u>\$0.00</u>
3. Remediation and Disposal Costs Form:	<u>\$0.00</u>
4. UST Removal and Abandonment Costs Form:	<u>\$0.00</u>
5. Paving, Demolition, and Well Abandonment Costs Form:	<u>\$0.00</u>
6. Consulting Fee Form:	<u>\$43,827.64</u>
7. Handling Charges Form: Handling charges will be determined at the time a billing package is submitted to the Illinois EPA. The amount of allowable handling charges will be determined in accordance with the Handling Charges Form.	

Total Proposed Budget (less handling charges): \$43,827.64

Consulting Fee Form

The consulting fee includes all costs associated with professional consulting services. Personnel and materials not directly part of the professional consulting services or part of unit rates listed on the Rate Sheets must be listed in the Non-Consulting Personnel Time Summary Sheet and Materials Cost Summary Sheet. The consulting fee includes but is not limited to all personnel time for plan, budget report, and reimbursement preparation, as well as project oversight, travel time and per diem, mileage or vehicle charged, and equipment charges such as for PIDs, hand augers, cameras, gloves, and sampling equipment.

The form must be completed in its entirety. Please follow the directions on the Consulting Fees Form document for each field on the Consulting Personnel Time Costs and Consultant's Materials Costs. Please note that a separate line for each employee performing tasks in each remediation category is required.

Multiple pages of the Consulting Personnel Time Costs and Consultant's Materials Costs forms must be used if additional space is needed. The total for all Consulting Personnel Time Costs and Consultant's Materials Costs must be entered below to calculate the Total Consulting Fees.

Total Consulting Personnel Time Costs:	<u>\$43,827.64</u>
Total Consultant's Materials Costs:	<u>\$0.00</u>
Total Consulting Fees:	<u>\$43,827.64</u>

Consulting Fee Form

Consulting Personnel Time Costs:

Employee Name	Personnel Title*	Hours	Rate *	Total \$
Remediation Category	Task			
Todd Birky	Geologist III	330.18	\$98.00	\$32,357.64
CCAP	Contractor Negotiations, Off-site Access Negotiations, corrective action planning, free product monitoring checks			
Allan Green	Sr. Project Manager	115	\$98.00	\$11,270.00
CCAP	Contractor Negotiations, Off-site Access and contract negotiations, corrective action planning			
Penny Slizer	Sr. Professional Geologist	2	\$100.00	\$200.00
CCAP, CA-FPR	Plan & Budget review & Certification; Reimbursements			

Total Consulting Personnel Time Costs: \$43,827.64

Owner/Operator and Licensed Professional Engineer/Geologist Budget Certification Form

I hereby certify that I intend to seek payment from the UST Fund for costs incurred while performing corrective action activities for Leaking UST incident 891808. I further certify that the costs set forth in this budget are necessary activities and are reasonable and accurate to the best of my knowledge and belief. I also certify that the costs included in this budget are not for corrective action in excess of the minimum requirements of 415 ILCS 5/57 and no costs are included in this budget which are not described in the corrective action plan, and no costs exceed Subpart H: Maximum Payment Amounts, Appendix D Sample Handling and Analysis amounts, and Appendix E Personnel Titles and Rates of 35 Ill. Adm. Code 732 or 734. I further certify that costs ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code Section 732.606 or 734.630 are not included in the budget proposal or amendment. Such ineligible costs include but are not limited to:

- Costs associated with ineligible tanks.
- Costs associated with site restoration (e.g., pump islands, canopies).
- Costs associated with utility replacement (e.g., sewers, electrical, telephone, etc.).
- Costs incurred prior to IEMA notification.
- Costs associated with planned tank pulls.
- Legal fees or costs.
- Costs incurred prior to July 28, 1989.
- Costs associated with installation of new USTs or the repair of existing USTs.

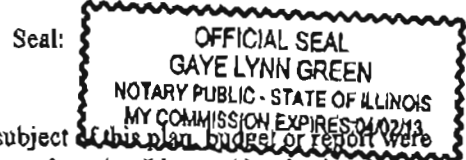
Owner/Operator: Freedom Oil Company

Authorized Representative: Gene Adams Title: Comptroller

Signature: [Signature] Date: 11-8-2010

Subscribed and sworn to before me the 8th day of November, 2010.
(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature]
(Notary Public)



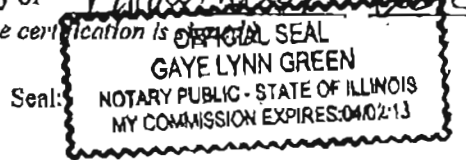
In addition, I certify under penalty of law that all activities that are the subject of this plan, budget, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 732-734, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 54 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

L.P.E./L.P.G.: Penny Silzer L.P.E./L.P.G. Seal: [Seal]

L.P.E./L.P.G. Signature: [Signature] Date: 11/10/10

Subscribed and sworn to before me the 4th day of November, 2010.
(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature]
(Notary Public)



The Illinois EPA is authorized to require this information under 415 ILCS 5/1. Disclosure of this information is required. Failure to do so may result in the delay or denial of any budget or payment requested hereunder.



Office of the Illinois
State Fire Marshal

General Office

217-785-0969

FAX

217-782-1062

Divisions

ARSON INVESTIGATION

217-782-9118

BOILER and PRESSURE

VESSEL SAFETY

217-782-2666

FIRE PREVENTION

217-785-4714

MANAGEMENT SERVICES

217-782-9689

INFIRS

217-785-5026

HUMAN RESOURCES

217-785-1028

PERSONNEL STANDARDS

and EDUCATION

217-782-4642

PETROLEUM and

CHEMICAL SAFETY

217-785-5878

PUBLIC INFORMATION

217-785-1021

WEB SITE

www.state.il.us/osfm

CERTIFIED MAIL - RECEIPT REQUESTED #7001 2510 0002 5302 5670

July 30, 2003

Freedom Oil Company
814 W. Chestnut Street
P.O. Box 3697
Bloomington, IL 61701
Attn: Gene Adams

In Re:

Facility No. 4-016553
IEMA Incident No. 89-1808
Freedom Oil Co.
219 W. Van Buren
Clinton, De Witt Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on July 29, 2003 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

- Tank 1 10,000 gallon Gasoline
- Tank 2 10,000 gallon Gasoline
- Tank 3 10,000 gallon Gasoline

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-3620

The following tanks are also listed for this site:

Tank 4 4,000 gallon Diesel
Tank 5 2,000 gallon Kerosene

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanne Lock". The signature is fluid and cursive, with the first name "Deanne" and last name "Lock" clearly distinguishable.

Deanne Lock
Administrative Assistant
Division of Petroleum and Chemical Safety

cc: IEPA
Facility File



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829;
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

JAN 31 2011

7009 2820 0001 7489 7260

Freedom Oil Company
Michael Owens
PO Box 3697
Bloomington, IL 61702

Re: LPC #0390050011 -- DeWitt County
Clinton/Freedom Oil Company
219 West Van Buren
Leaking UST Incident No. 891808
Leaking UST Technical File

Dear Mr. Owens:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated November 4, 2010, was received by the Illinois EPA on November 15, 2010. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

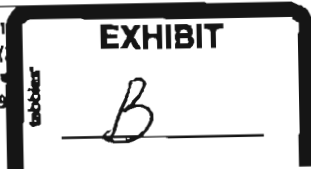
The budget is rejected for the reason(s) listed in Attachment A (Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)).

All future correspondence must be submitted to:

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

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Please be advised that, pursuant to Public Act 96-0908, effective June 8, 2010, all releases of petroleum from USTs are subject to Title XVI of the Act, as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Ill. Adm. Code 734.



Page 2

The regulations at 35 Ill. Adm. Code 732 no longer exist, and the only releases subject to 35 Ill. Adm. Code 731 are those from hazardous substance USTs.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or need further assistance, please contact Scott Rothering at 217-785-1858.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:SRR

Attachment: Appeal Rights

c: Midwest Environmental Consulting & Remediation Services, Inc.
Leaking UST Claims Unit
BOL File

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

Attachment A

Re: LPC # 0390050011 -- DeWitt County
Clinton/Freedom Oil Company
219 West Van Buren
Leaking UST Incident No. 891808
Leaking UST Technical File

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. The budget includes site investigation or corrective action costs for Consulting Fees that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).