

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ILLICO INDEPENDENT OIL CO.,)	
Petitioner,)	
v.)	PCB 17-84
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer	Melanie Jarvis
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302(d), Petitioner's Post-Hearing Brief, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 10th of October, 2018. The number of pages in the e-mail transmission is 20 pages.

Respectfully submitted,
ILLICO INDEPENDENT OIL CO.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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PETITIONER'S POST-HEARING BRIEF

NOW COMES Petitioner, ILLICO INDEPENDENT OIL CO. (hereinafter "Illico"), and for its Post-Hearing Brief states as follows:

STATEMENT OF UNDISPUTED FACTS.

On December 3, 1992, releases were reported from five underground storage tanks at the Illico Independent Oil Company site in Peoria, Illinois. (R.001) The releases were assigned Incident Number 1992-3441. (R.001) The releases were initially suspected by the Illinois Department of Transportation during road improvements at the adjoining intersection. (R.003) The cause of the release was spills and overfills, and not associated with product lines or dispensers. (R.003-R.006)

Some time thereafter, Clark Retail Enterprises, Inc. became the owner/operator of the underground storage tank operations (R.013), and Clark later changed it's name to Premcor Refining Group, Inc. (R.128) On July 24, 2015, Illico Independent Oil, Inc. (hereinafter "Illico") took over control and responsibility of the LUST remediation pursuant to a settlement with Premcor. (R.010) On October 2, 2015, Premcor's consultant submitted a Stage 2 Site Investigation Results Report (R.010 - R.128), which summarized all previous site investigation

activities (R.013 - R.016), concluded that the extent of soil and groundwater contamination exceeding Tier 1 Remediation Objectives had not yet been delineated (R.018), and proposed no further activities at this time, as Illico would be taking over responsibility from now on (R.019).

On October 6, 2015, Illico submitted a Stage 3 Site Investigation Plan through it's own consultant. (R.129 - R.173)¹ Thereafter, site investigation work was performed, and a Site Investigation Completion Report detailing the extent of contamination at the site was submitted to the Agency on December 14, 2015. (R.238-R.421)²

Also on December 14, 2015, Illico submitted a corrective action plan (R.174 - R.237)³, which proposed in relevant part to remove the tanks and contaminated soil identified during site investigation:

On-site: Removal of the four (4) 12,000-gallon capacity and one (1) 6,000-gallon capacity underground storage tanks (USTs) and related integral product piping to eliminate the source of the contaminated soils and provide the ability to access the worst soils. Conventional technology remediation of the contaminant plume in excess of the calculated site-specific Tier 2 Soil Remediation Objectives (SROs), taking into account an on-site potable well restriction and the industrial/commercial use of the property, will be excavated for transport and proper disposal. Those soils defined as impacted in excess of the Tier 1 SROs, but below the calculated Tier 2 SROs, will be left to remain in-place on-site.

(R.177 - R.178)

Off-site contamination would be addressed with a highway authority agreement and

¹ As detailed *infra*, the Stage 3 Site Investigation Plan would be conditionally approved 118 days later on February 1, 2016.

² As detailed *infra*, the Site Investigation Completion Report would be supplemented with additional information on February 18, 2016 and approved 189 days later on August 25, 2016.

³ As detailed *infra*, the Corrective Action Plan would be rejected on November 2, 2016.

access denial. (R.178) The plan also included a confirmation sampling plan to determine the effectiveness of the corrective active action activities and the long-term migration potential for the remaining contaminants. (R.182)

On December 18, 2015, Illico's consultant e-mailed the Agency project manager to explain that due to issues with the property, remediation would need to be performed by the end of February, and requested that, if at all possible, review of the pending plans and budgets be completed by February 2, 2016, in order to meet this deadline. (R.422) In the interim, Illico applied and received permission from the Office of the State Fire Marshal (hereinafter "OSFM") to remove the existing tanks. (R.423 - R.425)

On February 1, 2016, the Agency approved the Stage 3 Site Investigation Plan with the condition that certain analytical results previously reported by Premcor's consultant not be used to define soil and groundwater contamination. (R.443-R.446) In response to the condition, Illico advanced additional soil-borings, and e-mailed the laboratory results to the Agency reviewer with revised budget sheets to reflect the additional work. (R.457) On August 25, 2016, the Agency approved the Site Investigation Completion Report, as amended and clarified by subsequent e-mail exchanges. (R.556)

Meanwhile, in January of 2016, the underground storage tanks were removed in the presence of an OSFM representative. (R.561) During the removal of the tanks, the OSFM representative observed petroleum contamination around the USTs and associated piping, and directed the consultant to report Incident # 2016-0095, which was deemed a re-reporting of the previous incident. (R.561) With the removal of the USTs, soils contaminated above the applicable site remediation objectives were then removed. (R.588) Soil confirmation samples

were collected at 20-foot intervals from the excavation walls. (R.589) Also highly contaminated groundwater and groundwater exhibiting a sheen within the excavation cavity were recovered with a vacuum tanker truck and properly disposed of. (R.589) After removal of soil and analysis and modeling of the soil samples, a final round of groundwater samples will be taken to confirm that removal of the most contaminated soils will have addressed groundwater issues. (R.589)

On November 29, 2016, the Agency rejected the corrective action plan in relevant part based upon the belief that some soils proposed to be excavated were in an area of the site not demonstrated to have contamination exceeding the applicable site remediation objectives. (R.577)⁴ In a subsequent e-mail exchange, the Agency reviewer acknowledged that she had missed a Tier 2 exceedance at SB-15,⁵ but denied the request to re-review the previous decision. (R.582)

On January 16, 2017, Illico submitted a revised corrective action plan and budget that proposed the same activities previously proposed, responded to the Agency's concerns, and described the corrective action that had taken place. (R.584 - R.628)⁶ In particular, the plan summarized and addressed the reasons given for the previous denial. (R.589 - R.590) The corrective action plan included a site map, showing the location of the impacted soils to be

⁴ Specifically, the Agency stated that the only reported sampling locations showing exceedances of applicable site remediation objectives are at SB-4/MW-4, SB-17 and SB-31. (R.578) These are locations immediately to the West of the tank pit, within what will later be referred to as the blue zone. (R.489; R.598) The location of SB-4/MW-4 is shown on the Site Completion Report map. (R.251)

⁵ The site location for SB-15 is to the North of the tank pit, along the product lines and in the area subsequently identified as the green zone. (R.598)

⁶ Many submittals in the administrative record contain yellow-highlighting, strike-outs and handwritten notes that belong to the Agency project reviewer.

removed or used as backfill. (R.598) Ultimately, it will be the orange zone in which the tank pit is located that will be the primary point of disagreement.

After the submittal, Illico's consultant clarified in an e-mail to the project reviewer that removal of the USTs was not only due to the reported releases, but also necessary in order to access and remove highly contaminated soils around the tanks. (R.629) The Agency project reviewer's notes indicate that tank removal is the motivating concern:

If USTs were leaking, would you wait 23+ years to remove them?

May remove USTs, piping, visibly contaminated fill material w/in 4', and groundwater in the excavation that exhibits a sheen. May also abandon USTs as part of early action. After early action, must demonstrate that removal is necessary and get removal approved as part of a CAP.

(R.655)

The notes further indicate that the Agency "[w]ouldn't pay for UST removal [because] it was a planned removal." (R.656)

On May 17, 2017, the Illinois EPA issued its decision, modifying the corrective action plan and budget. (R.634 - R.649) While the letter contains numerous modifications, the issue raised in this appeal is modification number 12, and those modifications to the plan and budget premised on it:

12) The owner/operator shall not remove the underground storage tanks (USTs), piping, and pump islands because the owner/operator has not demonstrated that the USTs, piping, and pump islands must be removed to access backfill/ soil that contains contaminants at concentrations greater than the Tier 2 remediation objectives.

(R.637)

As a result of this decision, the Agency determined that the owner/operator could only excavate, transport and dispose of contaminated soil that was not too close to the tanks, i.e.

removal was approved in the green and blue zones, but not in the orange zone. (R.637 (Modification #13))⁷ Furthermore, the Agency reduced the amount of backfill to be purchased, transported and placed (Modification #16) and concrete to be replaced (Modification #17) as a part of disallowing corrective action in the orange zone. (R.637)

Because the “approved corrective action plan does not include removal of the underground storage tanks (USTs), piping, pump islands, or backfill/soil in the orange zone” (R.640 - R.647), thirteen items were cut from the budget, which are listed in Appendix A hereto.⁸ Each of these cuts is justified as being inconsistent with the plan as modified by the Agency. However, these budget cuts also include work to be performed in the green and blues zones, which the Agency approved. In most of the budget cuts, the Agency recognized that the work included corrective action work that it was approving, but since it was unable to determine how much of the work was performed in the orange zone, all of the costs were deducted. (R.640 - R.647 (Modifications #1, #9, #24, #26, #29, #30, #31 & #32) Consequently, the \$208,048.76 deducted from the budget, includes corrective action performed in all zones.

Illico timely appealed the Agency’s decision thereafter. (Order of July 6, 2017).

Thereafter, the Board denied Petitioner’s motion for summary judgment, stating “that there is a

⁷ The site map accompanying the corrective action plan identified three zones in which contaminated soil proposed to be treated differently. (R.598) The green and blue zones, with more limited contamination, would have some contamination removed to a landfill, while the remainder would be used as backfill. (Id.) On the other hand, impacted soil in the orange zone would be entirely removed to the landfill. (Id.)

⁸ The Agency made numerous cuts in order to reinstate the rates at the time the tank and excavation work was performed, as opposed to the rates at the time the plan was submitted. (Modifications #2, #3, #4, #5, #6, #7, #8, #10, #12, #14, #16, #18, #20, #22, #25 & #27) These are not appealed and the Agency rates are used in Appendix A hereto.

genuine issue of material fact concerning whether UST removal was necessary to remove the contaminated material exceeding the remediation objectives.” (Order of June 21, 2018, at p. 4)

At the hearing herein, Jeff Wienhoff, a licensed professional engineer for Petitioner’s consultant testified to the need to remove the tanks in order to remove soil that exceeded remediation objectives. Based upon academic, licensing and occupational background, Wienhoff was demonstrated to be an expert in remediation of leaking underground storage tanks. (Hrg. Trans. at pp. 6-8) Wienhoff certified the subject action plan, affixing his stamp, and attesting to the work being performed in accordance with generally accepted engineering standards and practices. (R.594)

He testified that the corrective action plan called for removal of contaminated soil above applicable site remediation objectives. (Hrg. Trans. at p. 12) This called for removal of soils in the orange area to 13 feet below grade, which necessitated removal of the tanks because “you can’t physically get to those soils with the tanks physically remaining in that space.” (Hrg. Trans. at p. 14) The plan also called for removal of soils in the adjacent blue area between 4 to 8 feet below grade, which required removal of portions of the piping connecting the tanks to the dispensers. (Hrg. Trans. at p. 16) Finally, the plan called for removal of soils in the green area between 5 to 8 feet below grade, which also required portions of the piping connecting the tanks to the dispensers. (Hrg. Trans. at pp. 16-17) The source of the contamination in all of these areas were the overfills of the tanks in the orange section, which were all connected by the piping run that could have acted as a migration pathway. (Hrg. Trans. at pp. 17 & 34) Also, the orange and blue sections were downgradient from the tanks. (Hrg. Trans. at p. 19; see also R.253 (Groundwater Countour & Flow Map))

In summary, Wienhoff testified in that in his professional opinion, removing the underground storage tanks was necessary to remove soil that exceeded the remediation objectives. (Hrg. Trans. at p. 20)

PROCEDURAL MATTER

I. Motion to Strike IEPA Exhibit 2.

Over Petitioner's objection, the IEPA was allowed to admit into evidence a document dated March 1, 2016 from the OSFM. (Hrg. Trans. at pp. 65-66) This document relates to confirmation sampling performed after the tank were pulled. (Hrg. Trans. at pp. 49-50) The purpose of confirmation sampling is to evaluate the effectiveness of the corrective action activities after their completion. (35 Ill. Adm. § 734.335(a)(4)) These samples indicate whether or not corrective action objectives have been achieved. (Hrg. Trans. at p. 58 (Benanti))

While the record indicates that confirmation sampling would be, and was, performed (R.182; R.589) The results are not in the Agency record. The Agency Reviewer testified that he did not rely upon IEPA Exhibit 2 or need it to make his decision. (Hrg. Trans. pp. 57-58) If he had needed it, then it would have been incumbent upon him to state so in the decision letter. (415 ILCS 5/47.7(c)(4) ("any action by the Agency to disapprove or modify a plan . . . shall be accompanied by . . . an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency . . .") The Agency's letter defines the issues on the appeal and the Board will not consider information that was not before the Agency prior to its final determination. Dickerson v. IEPA, PCB 2009-87, slip op. at 26 (Feb. 4, 2010); see also IEPA v. PCB, 86 Ill. 2d 390, 405 (1981) (Agency precluded from raising issues not framed in its

record, nor described in its decision letter)

Wherefore, Petitioner respectfully requests that IEPA Exhibit 2 be stricken.

ARGUMENT

“The Agency's denial letter frames the issues on appeal.” Dickerson Petroleum v. IEPA, PCB No. 9-87, at p. 74 (Feb. 4, 2010). The question before the Board is “whether the application, as submitted to the Agency, would not violate the Act and Board regulations.” Metropolitan Pier and Exposition Authority v. IEPA, PCB 10-73, at p. 51 (July 7, 2011). The owner/operator’s burden of proof in these proceedings is subject to the preponderance of evidence standard. Prime Location Properties v. IEPA, PCB 09-67, slip op. at 29 (Aug. 20, 2009) The Board must ultimately decide whether the petitioner’s submittal to the Agency demonstrated compliance with the Act and the Board’s regulations. Burgess v. IEPA, PCB 15-186, at p. 8 (Nov. 5, 2015).

I. THE UNDERGROUND STORAGE TANKS NEEDED TO BE REMOVED IN ORDER TO REMOVE SOILS EXCEEDING THE APPLICABLE SITE REMEDIATION OBJECTIVES.

There is no dispute that there was contamination on the property that exceeded applicable site remediation objectives, as the Agency approved the removal of soils downgradient from the source of the release. The Agency attorney sought to elicit speculative testimony about how the release could have come from the dispensing pumps and migrated along the piping that is supposed to slop downward towards the tanks. (Hrg Trans. at pp. 33-34) This theory is not supported by the record. (Hrg. Trans. at p. 56 (Benanti)) Even if it were, it is not inconsistent

with the worst contamination being around the tanks.

The releases occurred from the fill ports on top of each underground storage tank. (Hrg. Trans. at p. 11) Based upon his expertise, which follows pretty close to common sense, this is where the contamination would be the worst because:

. . . based on the fact that the material at the source is generally the worst, and as you get further away, it gets better. So, by inference, that the nearest borings in the downgradient direction were above Tier 2, I believe that the material where the petroleum first was released would also be above Tier 2.

(Hrg. Trans. at p. 31)

That boring is SB-17, which is located approximately 15 feet downgradient from the tank pit. (Hrg. Trans. at p. 19) The Agency argued that it is more like 17 feet (Id. at p. 45), but the difference is immaterial. What is material is that the Agency approved the need to remove a four foot layer of soil 15, 17, or more feet in the direction of the tank pits, stopping at the sand backfill surrounding the tanks where the release occurred. (R.0006) In its simplest terms, the Agency is asking the Board to accept a donut hole theory in which the worst contamination is distant from the source. This is not only inconsistent with common sense and expert opinion, it is inconsistent with the framework of the Part 734 regulations that require investigation to be performed in stages that explore the extent of contamination step-by-step outward from the tanks. (35 Ill. Adm. §734.315; 734.320 & 734.325) Here, the soil boring immediately downgradient from the tank field exceeded the applicable remediation objectives, meaning that real issue is how much further away from the tanks did the contamination migrate.

The submittal demonstrated that site remediation objectives were exceeded at

SB-4/MW-4, SB-17, SB-31 and SB-15. (R.589 - R.590) The first three locations are immediately to the West and downgradient from the tanks. (R.144; R.598) The last location listed (SB-15) is to the North of the tank pit along a product line connecting the tanks to the pump. (R.598) Beyond Wienhoff's testimony, Board regulations view product lines as serving as potential man-made pathways that allow for the migration of petroleum releases. (35 Ill. Adm. Code § 734.115 ("Man-made pathways" definition)).

The Agency's agenda here is transparent. It believes that this is a planned tank pull, a concept not found in statute or regulation, and solely of internal significance to the Agency. Because it does not desire to reimburse any tank removal, only contaminated soils in zones without tanks can be removed. This means the soils where the contamination originated cannot be remediated, despite the evidence during the tank removal confirming the presence of contaminated soil and groundwater surrounding the tanks. Where corrective action is taken before approval, a corrective action plan must be submitted which details the corrective action taken, which in turn becomes part of the justification for the corrective action. (415 ILCS 5/57.7(e)(1))

II. THE BOARD'S REGULATIONS ARE NOT VIOLATED BY REMOVING UNDERGROUND STORAGE TANKS WITH REPORTED RELEASES.

Nothing in the Act or Board's regulations preclude removal of tanks according to the conditions described in the Agency decision letter. Pursuant to Board regulations, eligible corrective action costs expressly include:

The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM;

(35 Ill. Adm. Code § 734.625(a)(12))⁹

A “release” means “any spilling, leaking, emitting, discharging, escaping, leaching or disposing of petroleum from an underground storage tank into groundwater, surface or subsurface soils.” (415 ILCS 5/57.2; see also 35 Ill. Adm. Code 734.115 (same))

Here, each of the conditions was met. A release of petroleum was reported to the Illinois Emergency Management Agency from all of the underground storage tanks. (R.001) Furthermore, OSFM deemed each tank eligible. (R.627) Moreover, releases were not merely reported to IEMA, but during removal of the USTs, the OSFM representative opined that a release had occurred from the USTs as well. (R.561)¹⁰ None of these conditions is challenged in the Agency decision letter.

Nor is there any time limitation for USTs to be removed once notice is given to IEMA. For example, in Prime Location Properties, USTs were removed over five years after the reported releases. PCB 09-67, slip op. at 22 (Aug. 20, 2009)

Nor has there ever been a requirement that any UST be removed only as part of early action, given that the permissive term “may” is used in Section 57.6(b) of the Act:

⁹ A UST “includ[es] underground pipes connected thereto.” (35 Ill. Adm. Code 734.115) OSFM requires pipes to be safely removed as part of tank removal. (41 Ill. Adm. Code 175.830(a)(6)) From a budgetary standpoint piping is essentially a moot issue. Reimbursement for removing USTs is based upon the number and volume of tanks and no additional reimbursement is given for piping. (35 Ill. Adm. Code 734.810)

¹⁰ See 415 ILCS 5/57.5 (“The Office of the State Fire Marshal or a designated agent shall have an inspector on site at the time of removal, abandonment, or such other times the Office of State Fire Marshal deems appropriate. At such time, the inspector shall, upon preliminary excavation of the tank site, render an opinion as to whether a release of petroleum has occurred and, if so, the owner or operator shall report the known or suspected release to the Illinois Emergency Management Agency.”)

Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.

(415 ILCS 5/57.6(b) (emphasis added); see also 35 Ill. Adm. Code 734.210(f) (similar)).¹¹

Nor do the Board regulations restrict UST removal to only certain types of releases. The USTs properly removed in Prime Location Properties were also believed to be due to overfills. The Board regulations could have specified that USTs are removable under specified conditions, but did not. The most obvious problem with such an approach is that the specific events giving rise to a release are often unknowable. See, e.g., Malone v. Ware Oil Co., 179 Ill. App. 3d 730, 732 (4th Dist. 1989) (tight USTs can leak substantial amounts of petroleum).

In summary, removing the tanks did not violate any statutory or regulatory provision and in particular, the Board's regulations specifically contemplate removal of USTs from which a release has been reported.

III. ALL OF THE BUDGET MODIFICATIONS PREMISED ON DISAPPROVAL OF REMOVING USTs AND CONTAMINATED SOIL IN THE ORANGE ZONE SHOULD BE REVERSED.

Based upon the modifications to the plan which prohibit the removal of USTs, piping, and pump islands, as well as backfill or soil in the orange zone that exceeds applicable site

¹¹ In any event, the subject releases predate Section 57.6 of the Act, which was just a small part of a large overhaul of the Leaking Underground Storage Program in 1993, which *inter alia* introduced planning requirements. See Kelley-Williamson Co. v. IEPA, PCB 95-116, slip op. at 5 (November 16, 1995).

remediation objectives, the Agency made over \$200,000 in cuts to the budget, which are listed in Appendix A. Because the justification given for these cuts are solely based upon inconsistency with the plan as modified by the Agency, these cuts should be reversed if the plan modifications are reversed. As discussed earlier, reversing these cuts would not only provide a means for payment for corrective action in the orange zone, but would also do so for corrective action costs related to approved work in the green and blue zones, which the Agency did not attempt to apportion, nor request the consultant to apportion.

It should be noted that numerous cuts were made on the basis that the budget proposed Subpart H rates applicable at the time the budget was submitted, as opposed to the time that the work was performed as required by 35 Ill. Adm. Code § 734.870(d)(2). Those cuts are not challenged herein, and the dollar figures in Appendix A utilize the Agency's corrected rates.

As an additional accounting note, modification #15 to the budget adds approximately \$1,594.82 to the budget for overburden removal and return. This addition was made in light of subtractions that Petitioner is asking the Board to reverse. Petitioner has no objection to striking this modification if it is deemed a necessary adjunct to Board reversal of other modifications.

Accordingly, Petitioner asks the Board to reverse the modifications to the budget enumerated in Appendix A.

CONCLUSION

No provision of the Act, or the Board's regulations, would be violated by removing the underground storage tanks, piping, pump islands and backfill or soil from the orange zone contaminated at concentrations greater than the Tier 2 remediation objectives. Accordingly, the related modifications to the budget premised on such modifications to the plan should also be reversed.

WHEREFORE, Petitioner, ILLICO INDEPENDENT OIL CO., prays the Board reverse the Agency's decision to modify the plan and budget, offer Petitioner an opportunity to prove its legal costs in this matter, award Petitioner its legal costs and for such other and further relief as it deems meet and just.

ILLICO INDEPENDENT OIL CO.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

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APPENDIX ABUDGET MODIFICATIONS APPEALED

<p>1. “The approved corrective action does not include removal of the underground storage tanks (USTs), piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the thirty-eight[] budgeted soil samples are associated with removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all of the budgeted soil samples. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Underground Storage Tank Fund (Fund).”</p>			
BETX Soil with MTBE EPA 8260	38 Samples	\$105.33 per Analysis	\$4,002.54
Polynuclear Aromatics PNA, or PAH SOIL EPA 8270	38 Samples	\$188.36 per Analysis	\$7,157.68
EnCore® Sampler, purge-and-trap sampler, or equivalent sampling device	38 Samples	\$12.39 per Analysis	\$470.82
<p>9. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the six budgeted soil sampling events are associated with removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted the sample shipping costs associated with all of the budgeted soil sampling events. Pursuant to Subsection 57.7(c)(3) of the /act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”</p>			
Sample Shipping per sampling event	6 Samples	\$61.96 per Analysis	\$371.76
<p>11. “The approved corrective action includes excavation, transportation, and disposal of 280 yd³ of soil. However, the Remediation & Disposal Costs Form includes costs associated with excavation, transportation, and disposal of 1,518 yd³ of soil. Therefore the Illinois EPA deducted costs associated with excavation, transportation, and disposal of 1,238 yd³ of soil. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”</p>			
Contaminated Soil	1,238 yd ³	\$70.63 per yd ³	\$87,439.94

13. “The approved corrective action includes the **purchase, transportation and placement** of 280 yd³ of clean backfill. However, the Remediation & Disposal Costs Form includes costs associated with the purchase, transportation, and placement of 1,839 yd³ of soil. Therefore, the Illinois EPA deducted costs associated with purchase, transportation, and placement of 1,159 yd³ of clean backfill. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”

Backfill	1,159 yd ³	\$24.78 per yd ³	\$28,720.02
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17. “According to the Corrective Action Plan, the contractor was able to excavate to 8' below ground surface (BGS) without making significant contact with the saturated zone. Therefore, all of the **budgeted groundwater removal and disposal costs** are associated with removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. The approved corrective action does not include the removal of the USTs, piping, pump islands, or backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all of the budgeted groundwater removal and disposal costs. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”

Contaminated Groundwater	26,700 gal	\$.84 per gal	\$22,428.00
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19. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone. Therefore, the Illinois EPA deducted the costs associated with **removal of the USTs**. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”

Removal of USTs	5 USTs	\$3,903.30 each	\$19,516.50
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21. “The approved corrective action includes replacement of 1,956 ft² of concrete. However, the Paving Demolition, and Well Abandonment Costs Form includes costs associated with the replacement of 4,626 ft² of concrete. Therefore, the Illinois EPA deducted costs associated with **replacement of 2,670 ft² of concrete**. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”

Concrete Engineered Barrier	2,670 ft ²	\$5.41 per ft ²	\$14,444.70
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24. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the one hundred five budgeted senior project manager hours are associated with the removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all one hundred five budgeted senior project manager hours . Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”			
Senior Project Manager – CA field prep and travel UST removal oversight, remediation, soil sampling, truck coordination.	105 hours	\$123.91 per hour	\$13,010.55
26. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the eighty budgeted project manager hours are associated with the removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all eighty budgeted project manager hours . Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”			
Project Manager – CA field prep and travel, soil remediation, PID screening, field coordination, site restoration	80 hours	\$111.52 per hour	\$8,921.60
29. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the seven budgeted round trips are associated with the removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all seven budgeted round trips. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”			
Field Vehicle	7 trips of 170 miles	\$0.535 per mile	\$636.65
30. “The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the budgeted field and decon equipment days are associated with removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all of the budgeted field and decon equipment days. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.”			

Consultant Field & Decon Equipment	7 days	\$32.00 per day	\$224.00
31. "The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how much of the budgeted PID costs are associated with the removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all of the budgeted PID costs. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund."			
PID	8 days	\$85.00 per day	\$680.00
32. "The approved corrective action does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone, and the Illinois EPA is unable to determine how many of the budgeted latex gloves are associated with the removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all of the budgeted latex gloves. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund."			
Consultant Latex Gloves	2 boxes	\$12.00 per box	\$24.00

TOTAL:..... \$208,048.76

NOTE:

Modifications #2, #3, #4, #5, #6, #7, #8, #10, #12, #14, #16, #18, #20, #22, #25, & #27: All purport to adjust the Subpart H rates to period when USTs were removed. Have accepted the adjusted rates herein.