

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RICHARD GOODEN,)	
)	
Petitioner,)	
)	PCB No.
vs.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy Gunn	John Kim, Esq.
Clerk of the Board	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
100 W. Randolph Street	1021 N. Grand Avenue East
Suite 11-500	P.O. Box 19276
Chicago, IL 60601	Springfield, IL 62764-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of an Entry of Appearance of Jeffrey W. Tock and Petition for Review of Illinois Environmental Protection Agency's Decision to Deny Petitioner's High Priority Corrective Action Plan Budget, copies of which are herewith served upon you.

Respectfully Submitted

RICHARD GOODEN,
Petitioner

BY: /S/
Jeffrey W. Tock

Dated: February 23, 2006

Jeffrey W. Tock
Harrington & Tock
201 W. Springfield Ave., Suite 601
P.O. Box 1550
Champaign, Illinois 61824-1550
Telephone: (217) 352-4167

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RICHARD GOODEN,)	
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Petitioner,)	
)	PCB No.
vs.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF JEFFREY W. TOCK

NOW COMES Jeffrey W. Tock, of the law firm of Harrington & Tock, and hereby enters his appearance on behalf of Petitioner, RICHARD GOODEN, in the above-referenced matter.

Respectfully Submitted

RICHARD GOODEN,
Petitioner,

By: /S/
Jeffrey W. Tock

Dated: February 23, 2006

Jeffrey W. Tock
Harrington & Tock
201 W. Springfield Ave., Suite 601
P.O. Box 1550
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Telephone: (217) 352-4167

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RICHARD GOODEN,)
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 Petitioner,)
) PCB No.
 vs.) (UST Appeal)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY'S DECISION TO DENY
PETITIONER'S HIGH PRIORITY CORRECTIVE ACTION PLAN BUDGET**

NOW COMES the Petitioner, RICHARD GOODEN (hereinafter "Petitioner"), by and through his attorney's, Harrington & Tock, and, pursuant to Sections 40 and 57.7 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40, 5/57.7), and 35 Ill. Admin. Code Part 105, hereby requests review of the decision by the Respondent, Illinois Environmental Protection Agency ("Agency"), to reject the Petitioner's High Priority Corrective Action Plan Budget. In support of this Petition, the Petitioner states as follows:

1. Petitioner is the owner of certain real property located at 149 North Railroad Avenue, Paxton, Illinois, hereinafter referred to as the "Site".
2. Petitioner is the owner of underground storage tanks ("USTs") formerly located at the Site.
3. Petitioner submitted to the Agency his Corrective Action Plan ("CAP") for the Site in April of 2004 and the Agency approved that CAP on May 5, 2004.
4. On October 6, 2005, Petitioner, through HDC Engineering, submitted to the Agency his High Priority Corrective Action Plan Budget (the "Budget"). A true

- and accurate copy of the Budget as submitted to the Agency is attached hereto and made a part hereof as Exhibit "A".
5. By letter dated January 20, 2006, the Agency rejected the Budget for the reasons listed in Attachment A to that letter. The letter was signed by Harry A. Chappel. A true and accurate copy of that letter, with attachments, is attached hereto and made a part hereof as Exhibit "B".
 6. Also attached to the Agency's January 20, 2006 letter was a page captioned "Appeal Rights" which stated that "An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board... within 35 days after the date of issuance of the final decision".
 7. This Petition to review the Agency's rejection of the Budget is filed within 35 days from January 20, 2006.
 8. Paragraph 1 of Attachment A to the Agency's letter of January 20, 2006 states that the Budget was rejected because it includes costs for per diem. The per diem amounts shown on the Budget were included in the Budget in error and the Petitioner agrees to strike any request for per diem reimbursement.
 9. Paragraph 2 of Attachment A states as follows:

"The budget includes costs that lack supporting documentation (35 Ill.Admin.Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with implementation and completion of the corrective action plan (Sections 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill.Admin.Code 732 505(c) and 732.606(o)).

The following items lack supporting documentation:

- A) Total personnel hours (The proposed costs/hours/persons for the following appear to be excessive: staff on-site for excavation and backfill activities, staff/hours required for the preparation of a CAP & Budget, CACR, HAA, and ELUC. A detailed breakdown of all hours associated with each task proposed is being required.)
- B) CAP mobilization
- C) Excavation costs (Form L-1 proposes excavation costs to be \$8,125.00; however, form I-2 proposes excavation costs of at least \$14,115.00. Please explain the discrepancies.)
- D) Excavation, transportation, disposal costs (These costs as a whole appear to be excessive. Please provide a detailed explanation for the amounts proposed for each individual task.)
- E) Six inch thick concrete (Why does the concrete need to be six inches thick?)”

10. The Agency states in paragraph 2A of Attachment A that the costs/hours/persons for the tasks identified appear to be excessive and the Agency required the Petitioner to file a detailed breakdown of all hours associated with each task.

- (a) Page G-1 of the Budget contains a detailed breakdown of the costs, hours and personnel associated with High Priority Investigation and Preliminary Costs. That category is broken down among five different personnel, a description of the specific task to be performed by each person, the number of hours attributable to each person and the hourly rate and total dollars allocated to each person.
- (b) Page G-1 of the Budget contains a detailed breakdown of the costs, hours and personnel associated with CAP Implementation (dig and haul). That category is broken down among four different personnel, a description of the specific task to be performed by each person, the number of hours attributable to each person and the hourly rate and total dollars allocated to each person.

- (c) Page G-2 of the Budget contains a detailed breakdown of the costs, hours, and personnel associated with CACR Report/Reimbursement. That category is broken down into six different personnel categories with a description of the services to be performed by each person, the number of hours allocated to each person and the hourly rate and the total cost of services for each person.
- (d) This detailed breakdown of the costs/hours/persons associated with High Priority Investigation and Preliminary Costs, CAP Implementation and CACR Report/Reimbursement is a method that has been used by the engineers for the Petitioner on numerous projects that have been approved by the Agency.
- (e) It is arbitrary and capricious of the Agency to have rejected Petitioner's Budget based upon an alleged lack of a detailed breakdown of all hours associated with each task given the level of detail stated in the Budget.
- (f) It is arbitrary and capricious of the Agency to have rejected Petitioner's Budget based upon the Agency's objection to an alleged lack of detail when the Agency has approved this same format used in proposed budgets for other projects.

11. Paragraph 2B of Attachment A requires supporting documentation for CAP mobilization.

- (a) Page I-2 of the Budget contains a line item for CAP mobilization of a lump sum dollar amount of \$250.00.

- (b) This is a standard fee that represents the cost to deliver heavy equipment to the Site.
- (c) This CAP mobilization fee is a charge that has been used by the engineers for the Petitioner on numerous projects that has been accepted by the Agency for each of those projects and has never been challenged prior to this Budget.
- (d) It is arbitrary and capricious for the Agency to recognize this standard mobilization in some budgets and reject it in others.

12. In paragraph 2C of Attachment A the Agency requires an explanation of an alleged discrepancy between excavation costs of \$8,125.00 as shown on page L-1 of the Budget and excavation costs of \$14,115.00 as shown on page I-2 of the Budget.

- (a) Page L-1 of the Budget refers to excavation of 1,769 cubic yards at \$4.59 per cubic yard for a total excavation cost of \$8,125.00. Page I-2 of the Budget under the heading of "Costs for Excavation and Backfill Activities" contains the following two line items: Excavator w/ operator \$11,875.00; Skid Loader w/ operator \$2,240.00. These two line items when added together total \$14,115.00. As noted by the caption on page I-2, these costs are for both excavation and backfill activities, not just excavation. The figure of \$8,125.00 under paragraph C on page L-1 only applies to excavation. Paragraph E on page L-2 applies to Backfill Costs. The balance of the \$14,115.00 is included in paragraph E.

- (b) Part L of the Budget is a summary of costs based on a form provided by the Agency. Any ambiguity as to the interpretation of the information completed by the Petitioner on the form provided by the Agency is a result of the Agency's form, not any fault of the Petitioner. The engineers for the Petitioner completed the Agency's budget form in the same manner as they have completed the same budget form for other projects and as directed by the Agency to obtain approval of those budgets.
- (c) It is arbitrary and capricious of the Agency to reject Petitioner's Budget due to ambiguities in the Agency's budget form and the Agency's past directions on how to complete the budget form.

13. Paragraph 2D of Attachment A states that the excavation, transportation and disposal costs appear to be excessive and requires Petitioner to provide an explanation for the amount proposed for each individual task.

- (a) As shown on page L-1 of the Budget, the Petitioner's excavation cost was \$4.59 per cubic yard, \$13.23 per cubic yard for transportation, and \$39.49 per cubic yard for disposal. This is a total cost of \$57.31 per cubic yard for excavation, transportation and disposal.
- (b) In 2004, the Agency proposed to the Illinois Pollution Control Board (the "Board") that the Board adopt certain new rules under Title 35, Subtitle G, Chapter 1, Subchapter d, Part 732 of the Illinois Administrative Code. Proposed Rule 732.825 pertained to soil removal. Section 732.825(a) as proposed by the Agency states that payment for costs associated with the removal, transportation and

disposal of contaminated soil must not exceed a total of \$57.00 per cubic yard. The difference between the \$57.31/cubic yard proposed by the Petitioner and the \$57.00 cap proposed by the Agency is insignificant. The Agency cannot claim the costs proposed by Petitioner are excessive when the Agency supported that same cost before the Board.

- (c) The Opinion And Order of the Board dated February 17, 2005 regarding the new rules proposed by the Agency contained the following testimony of Harry Chappel in support of new rule 732.825(a):

“For Section 732.825/734.825, Mr. Chappel testified that the rate for soil excavation, transportation and disposal was developed using randomly selected projects. Exh. 11 at 3. The maximum rate for the cost to excavate, transport, and dispose (ETD) is the sum of costs for each activity plus one standard of deviation rounded up to a whole dollar amount. *Id.* The result is \$57 per cubic yard.”

True and accurate copies of relevant excerpts from the February 17, 2005 Opinion And Order are attached hereto as Exhibit “C”.

- (d) The Agency, and Mr. Chappel in particular, cannot propose a rule that allows a total removal, transportation and disposal cost of \$57.00 per cubic yard starting in 2004 and then pretend two years later that the same cost appears to be excessive. To do so would be arbitrary and capricious.
- (e) The Board approved rule 732.825 on February 16, 2006.

14. In paragraph 2E of Attachment A the Agency has questioned why concrete to be poured on site needs to be six inches thick.

- (a) The approved CAP included figures indicating that the site currently consists of an office, a garage, and a concrete surface. Also included in the CAP were soil boring logs indicating the presence of concrete at the Site that is a minimum of six inches thick (borings B5, B6, B14, B15, and B16).
- (b) The Board has now approved Rule 732.605 as proposed by the Agency. That Rule states:

Section 732.605 Eligible Corrective Action Costs

a)16) Costs for destruction and replacement of concrete, asphalt, or and paving to the extent necessary to conduct corrective action and if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. The costs for destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete).

- (c) It was arbitrary and capricious for the Agency to act contrary to its proposed rule 732.605(a)(16) and reject the Petitioner's Budget to replace six inches of concrete with six inches of concrete.

15. The Agency states in paragraph 3 of Attachment A that the CAP approved by the Agency on May 5, 2004 proposed to excavate, transport and dispose of 1,684 cubic yards of contaminated soil, but the CAP Budget proposed costs for the excavation, transport and disposal of 1,769 cubic yards. The Agency concluded that the costs associated with materials, activities and services as stated in the Budget were not consistent with the approved CAP. The Agency also stated that a 1.5 conversion factor should be used when converting from cubic yards to tons.

- (a) The Corrective Action Plan (CAP) approved by the Agency on May 5, 2004 proposed to excavate, transport and dispose of 1,684 cubic yards of contaminated soil. That was the estimated quantity of contaminated soil as it existed in place (i.e. *in situ*) at the time the CAP was submitted for approval.
- (b) Once soil is removed from the ground, that soil no longer has the same compaction as when it was *in situ*. The engineer for the applicant used a factor of 5% as the increase in volume from the *in situ* material to the excavated material. 105% of 1,684 cubic yards is 1,769 cubic yards, the figure used by the Petitioner in his Budget.
- (c) In 2004, the Agency proposed that the Board adopt certain new rules under Title 35, Subtitle G, Chapter 1, Subchapter d, Part 732 of the Illinois Administrative Code. Those rules were adopted by the Illinois Pollution Control Board on February 16, 2006. Proposed Rule 732.825 pertains to soil removal. Section 732.825(a)(1) as proposed by the Agency and as now approved states as follows: “Except as provided in Subsection (a)(2) of this Section, the volume of soil removed and disposed must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05.” The Agency proposed a 5% increase in the volume as a result of removal (excavation) of the soil.
- (d) The calculation used by the Petitioner to determine the volume of contaminated soil after such soil is excavated is consistent with rule

732.825(a) as proposed by the Agency in 2004 and as adopted by the Board on February 16, 2006.

- (e) Mr. Chappel testified in favor of this 5% “fluff” factor, as he referred to it. (See Exhibit “C”.)
- (f) Petitioner has used a quantity of 2,794 tons of contaminated soil to be disposed in preparing page I-2 under the category Costs for Excavation and Backfill Activities. The figure 2,794 tons is derived by multiplying the number of yards as excavated (1,769) times a conversion factor of 1.58 tons per cubic yard. Although the Agency stated at paragraph 3 of Attachment A that the conversion should be 1.5 tons per cubic yard, the Agency approved the conversion of 1.58 tons per cubic yard as part of the Petitioner’s Corrective Action Plan (CAP) that was approved by the Agency on May 5, 2004. A copy of sec. 6.1 of the CAP contains the 1.58 conversion factor. A copy of that sec. 6.1 is attached hereto and made a part hereof as Exhibit “D”.
- (g) The Agency and the Board have approved a “fluff” factor of 5%. It was arbitrary and capricious of the Agency to have rejected Petitioner’s 5% fluff factor when the Agency had recommended it in 2004.
- (h) The Agency approved a conversion factor of 1.58 in 2004. It was arbitrary and capricious of the Agency to have rejected Petitioner’s 1.58 conversion factor when the Agency had approved it in Petitioner’s CAP.

16. Petitioner is seeking review of the Agency's January 20, 2006 rejection of the Petitioner's Budget for the CAP that was previously approved by the Agency. The Agency's rejection of the Petitioner's Budget was arbitrary, capricious and without statutory authority.

WHEREFORE, Petitioner, RICHARD GOODEN, respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that the Agency's January 20, 2006 rejection of the Petitioner's Budget was arbitrary and capricious and without statutory authority;
2. Reverse the Agency's decision rejecting the Petitioner's Budget;
3. Remand this matter to the Agency with instructions to approve the Petitioner's Budget;
4. Award the Petitioner his engineer's fees, attorney's fees and expenses incurred in bringing this action; and,
5. Award such further relief as deemed just and equitable in these premises.

RICHARD GOODEN,
Petitioner,

By: /S/
Jeffrey W. Tock

Dated: [February 23, 2006](#)

Jeffrey W. Tock
Harrington & Tock
201 W. Springfield Ave., Suite 601
P.O. Box 1550
Champaign, Illinois 61824-1550
Telephone: (217) 352-4167

EXHIBIT "A"

***** PCB 2006-139 *****

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8653 9678

JAN 20 2006

Richard Gooden
1064 Roselawn Dr.
Paxton, IL 60957

Re: LPC #0530255017 - Ford County
Paxton/Gooden, Richard
149 North Railroad Ave.
LUST Incident No. 930181
LUST Technical File

RECEIVED
JAN 23 2006
HDC ENGINEERING

Dear Mr. Gooden:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget submitted for the above-referenced incident. This budget, dated November 1, 2005, was received by the Illinois EPA on November 4, 2005. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, 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) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

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

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 Jason Donnelly at (217) 557-8764.

Sincerely,

Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Page 2

HAC:JD\930181-cap.bud.doc

Attachments: A
Appeal Rights

c: HDC Engineering, Antonia Laros
Division 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)(D) 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 # 0530255017 -- Ford County
Paxton/Gooden, Richard
149 North Railroad Ave.
LUST Incident No. 930181
LUST 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 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. The budget includes costs for per diem. These costs are for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)).

Please note per diem costs are only eligible when an overnight stay is required.

2. The budget includes costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan (Section 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

The following items lack supporting documentation:

- A) Total personnel hours (The proposed costs/hours/persons for the following appear to be excessive: staff on-site for excavation and backfill activities, staff/hours required for the preparation of a CAP & Budget, CACR, HAA, and ELUC. A detailed breakdown of all hours associated with each task proposed is being required.)
- B) CAP mobilization
- C) Excavation costs (Form L-1 proposes excavation costs to be \$8,125.00; however, form I-2 proposes excavation costs of at least \$14,115.00. Please explain the discrepancies.)
- D) Excavation, transportation, disposal costs (These costs as a whole appear to be excessive. Please provide a detailed explanation for the amounts proposed for each individual task.)
- E) Six-inch thick concrete (Why does the concrete need to be six inches thick?)

Page 2

3. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)). The budget includes costs that are inconsistent with the associated technical plan (Section 57.6(a) of the Act).

The CAP received on April 19, 2004 and approved on May 5, 2004 proposed to excavate transport, and dispose of 1,684 cubic yards of contaminated soil. The CAP Budget proposed costs for 1,769 cubic yards. Please explain the discrepancy. In addition, a 1.5 conversion factor should be used when converting from cubic yards to tons.

HAC:JD\930181-cap.bud.A

EXHIBIT "B"

The Agency is authorized to require this information under Section 4 and Title XVI of the Environmental Protection Act (415 ILCS 5/4, 5/57 - 57.17). Failure to disclose this information may result in a civil penalty of not to exceed \$50,000.00 for the violation and an additional civil penalty of not to exceed \$10,000.00 for each day during which the violation continues (415 ILCS 5/42). Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit, or license, or other document filed, maintained or used for the purpose of compliance with Title XVI commits a Class 4 felony. Any second or subsequent offense after conviction hereunder is a Class 3 felony (415 ILCS 5/57.17). This form has been approved by the Forms Management Center.

**Illinois Environmental Protection Agency
 Leaking Underground Storage Tank Program
 LUST Technical Form Cover Page**

IEMA Incident #: 930181 IEPA LPC# (10-digit): 0530255017

Site Name: R & S Auto Service

Site Address (Not a P.O. Box): 149 North Railroad Avenue

City: Paxton County: Ford ZIP Code: 60957

Please indicate below the type of plan/report that is being submitted to the Illinois EPA at this time. This form must be attached to all plans and reports submitted to the Illinois EPA pursuant to 35 Ill. Adm. Code 731, 732 and/or 415 ILCS 5/57-57.17. Please check all that apply.

20 Day Certification	_____	
45 Day Report	_____	
Free Product Removal Report	_____	
Owner/Operator Summary	_____	
Election to Proceed Under Title XVI	_____	
	Initial	Amended
	Submittal	Submittal
Site Investigation Plan	_____	_____
Site Investigation Budget	_____	_____
Site Investigation Completion Report	_____	_____
Site Classification Plan	_____	_____
Site Classification Plan Budget	_____	_____
Site Classification Completion Report	_____	_____
Groundwater Monitoring Plan (Low Priority)	_____	_____
Groundwater Monitoring Plan Budget (Low Priority)	_____	_____
Groundwater Monitoring Results (Low Priority)	_____	_____
Corrective Action Plan	_____	_____
Corrective Action Plan Budget (High Priority)	✓ _____	_____
Corrective Action Completion Report	_____	_____
Professional Engineer Certification	_____	_____
Other (specify) _____	_____	_____

**Illinois Environmental Protection Agency
Leaking Underground Storage Tank Program
High Priority Corrective Action Plan Budget**



Site Location

R & S Auto Service
149 North Railroad Avenue
Paxton, Illinois
Ford County
IEMA Incident No. 930181

Prepared For

Richard Gooden
2198 E. 200 N. Road
Paxton, Illinois 60957

Prepared by

HDC Engineering
201 West Springfield, Suite 300
Champaign, Illinois 61820
Phone: 217.352.6976
Fax: 217.356.0570

HDC Project No. 01291

October 6, 2005

ENGINEERS • SURVEYORS •
PLANNERS • ENVIRONMENTAL

LIST OF CONTENTS

Site Information Form
Proposed Budget Summary and Budget Total Form
Investigation Costs Form
Analysis Costs Form
Personnel Form
Equipment Costs Form
Field Purchases and Other Costs Form
Handling Charges Form
High Priority Corrective Action Form
Owner/Operator and Professional Engineer Budget Certification Form
Eligibility and Deductibility Determination

**BUDGET AND BILLING FORM FOR
LEAKING UNDERGROUND STORAGE
TANK SITES**

A. SITE INFORMATION

Site Name: R & S Auto Service

Site Address: 149 North Railroad Avenue City: Paxton

Zip: 60957

County: Ford IEPA Generator No.: 0530255017

IEMA Incident No.: 930181 IEMA Notification Date: 1/19/93

Date this Form was Prepared: 10/6/05

This form is being submitted as a:

Budget Proposal

Budget Amendment (Budget Amendments must include only the costs over the previous budget.)

Amendment Number: _____

Billing Package for costs incurred pursuant to 35 Illinois Administrative Code (IAC), Part 732 ("new program").

This form is being submitted for the Site Activities indicated below (check one):

Early Action

Site Classification

Low Priority Corrective Action

High Priority Corrective Action

Other (indicate activities) _____

**DO NOT SUBMIT "NEW PROGRAM" COSTS AND "OLD PROGRAM"
COSTS AT THE SAME TIME, ON THE SAME FORMS.**

IEMA No. 930181

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.

Pay to the order of: R & S Auto Service

Send in care of: Richard Gooden

Address: 2198 E. 200 N. Road

City: Paxton State: Illinois Zip: 60957

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: X 101 or more: _____

Number of USTs at the site: 2 (Number of USTs includes USTs presently at the site and USTs that have been removed.)

Number of incidents reported to IEMA: 1

Incident Numbers assigned to the site due to releases from USTs: 930181

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

Product Stored	Size (gallons)	Did UST have a release?		Incident No.	Type of Release
<u>Gasoline</u>	<u>2,000</u>	<u>Yes</u>	<u>No</u>	<u>930181</u>	<u>Tank Leak</u>
<u>Diesel</u>	<u>2,000</u>	<u>Yes</u>	<u>No</u>	<u>930181</u>	<u>Tank Leak</u>
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____
_____	_____	<u>Yes</u>	<u>No</u>	_____	_____

B. PROPOSED BUDGET SUMMARY AND BUDGET TOTAL

1. Investigation Costs: \$ 5,814.00
2. Analysis Costs: \$ 2,627.29
3. Personnel Costs: \$ 36,315.00
4. Equipment Costs: \$ 1,950.00
5. Field Purchases and Other Costs: \$ 165,677.79
6. Handling Charges: \$ 6,251.27

TOTAL PROPOSED BUDGET = \$ 218,635.35

E. INVESTIGATION COSTS

Method I _____ Method II _____ Method III _____ Not Applicable X

1. **Drilling Costs** - This includes the costs for drilling labor, drill rig usage, and other drilling equipment. Borings which are to be completed as monitoring wells should be listed here. Costs associated with disposal of cuttings should not be included here. An indication must be made as to why each boring is being conducted (i.e., classification, monitoring wells, migration pathways).

1 borings to 15 feet = 15 feet to be bored for MW13 (prior to excavation)
2 borings to 15 feet = 30 feet to be bored for replace MW1 & MW2 (post excavation)
 _____ borings to _____ feet = _____ feet to be bored for _____
 _____ borings to _____ feet = _____ feet to be bored for _____
 _____ borings to _____ feet = _____ feet to be bored for _____

Total Feet to be Bored: 45

Borings: 45 feet x \$ 14.00 per foot = \$ 630.00 (or)

Hours: _____ x \$ _____ per hour = \$ _____

_____ borings through _____ ft of bedrock = _____ Ft bedrock to be bored

_____ borings through _____ ft of bedrock = _____ Ft bedrock to be bored

Total Feet bedrock to be Bored: _____

Borings: _____ Ft bedrock x \$ _____ per ft bedrock = \$ _____ (or)

_____ Hours x \$ _____ per Hour = \$ _____

2 # of Mobilizations @ \$ 250 per mobilization = \$ 500.00

Other Costs	Number of Units	Unit Cost	Total Cost
12" concrete cores	6	50.00	300.00
Decontamination Equipment Rental w/Generator	2	190.00	380.00
Decontamination/Drumming Labor	8	40.00	320.00
Per Diem (2-man crew)	4	85.00	340.00
Well Installation - rig time	3	75.00	225.00
Well Installation (2-man crew)	3	105.00	315.00

2. **Professional Services (e.g., P.E., geologist)** - These costs must be listed in Section I, the Personnel section of the forms.
3. **Monitoring Well Installation Materials** - Costs listed here must be costs associated with well casing, well screens, filter pack, annular seal, surface seal, well covers, etc. List the items below in a time and materials format.

Material	Number of Units	Unit Cost	Total Cost
2" PVC Screen – 10 foot	3	37.00	111.00
2" PVC Riser – 5 foot	3	15.60	46.80
2" Bottom Caps	3	8.40	25.20
2" Expandable Locking Caps	3	18.50	55.50
Manways	3	86.00	258.00
Sand	21	8.50	178.50
Bentonite	6	12.50	75.00
Concrete	6	9.00	54.00

4. **Disposal Costs** - This includes the costs for disposing of boring cuttings and any water generated while performing borings or installing wells.

Disposal of Cuttings: 6 drums x \$ 250.00 per drum = \$ 1,500.00

Disposal of Water: 2 drums x \$ 250.00 per drum = \$ 500.00

Transportation Costs: \$ _____

Describe how the water/soil will be disposed: Drums will be transported and disposed by a licensed waste hauler.

Total Investigation Costs: \$ 5,814.00

F. ANALYSIS COSTS

1. Physical Soil Analysis - This must only include analysis costs for classification of soil types at the site

_____ Moisture Content samples x \$ _____ per sample = \$ _____

_____ Soil Classification samples x \$ _____ per sample = \$ _____

Indicate method to be performed: _____

_____ Soil Particle Size samples x \$ _____ per sample = \$ _____

_____ Ex-situ Hydraulic Conductivity/Permeability samples
x \$ _____ per sample = \$ _____

Indicate the method to be performed: _____

_____ Rock Hydraulic Conductivity/Permeability samples
x \$ _____ per sample = \$ _____

_____ Natural Organic Carbon Fraction (foc) samples
x \$ _____ per sample = \$ _____

Indicate the ASTM or SW-846 method to be performed: _____

_____ samples x \$ _____ per sample = \$ _____

_____ samples x \$ _____ per sample = \$ _____

_____ samples x \$ _____ per sample = \$ _____

_____ samples x \$ _____ per sample = \$ _____

_____ samples x \$ _____ per sample = \$ _____

2. Soil Analysis Costs - This must be for laboratory analysis only.

30 BTEX samples x \$ 48.75 per sample = \$ 1,462.50

_____ PNA samples x \$ _____ per sample = \$ _____

_____ LUST Pollutants samples x \$ _____ per sample = \$ _____

_____ pH Samples x \$ _____ per sample = \$ _____
_____ Paint Filter samples x \$ _____ per sample = \$ _____
_____ TCLP Lead samples x \$ _____ per sample = \$ _____
_____ Flash Point samples x \$ _____ per sample = \$ _____
_____ Lab and/or Field Bank samples x \$ _____ per sample = \$ _____
1 Landfill Profile samples x \$ 310.00 per sample = \$ 310.00
30 Dry Weight Correction samples x \$ 12.50 per sample = \$ 375.00
30 Handling and Disposal samples x \$ 3.00 per sample = \$ 90.00
_____ samples x \$ _____ per sample = \$ _____
_____ samples x \$ _____ per sample = \$ _____

3. Groundwater Analysis Costs - This must be for laboratory analysis only.

9 BTEX samples x \$ 40.31 per sample = \$ 362.79
_____ PNA samples x \$ _____ per sample = \$ _____
_____ LUST Pollutants samples x \$ _____ per sample = \$ _____
_____ pH Samples x \$ _____ per sample = \$ _____
_____ Lab and/or Field Bank samples x \$ _____ per sample = \$ _____
_____ Flash Point samples x \$ _____ per sample = \$ _____
9 Handling and Disposal samples x \$ 3.00 per sample = \$ 27.00
_____ samples x \$ _____ per sample = \$ _____
_____ samples x \$ _____ per sample = \$ _____
_____ samples x \$ _____ per sample = \$ _____
_____ samples x \$ _____ per sample = \$ _____
_____ samples x \$ _____ per sample = \$ _____

TOTAL ANALYSIS COSTS = \$ 2,627.29

G. PERSONNEL

All personnel costs that are not included elsewhere in the budget/billing form must be listed here. Costs must be listed per task, not personnel type. The following are some examples of tasks: Drafting, data collection, plan, report, or budget preparation for _____ (i.e., site classification work plan, 45 day report, or high priority corrective action budget), sampling, field oversight for _____ (i.e., drilling/well installation, corrective action, or early action), of maintenance of _____. The above list is not inclusive of all possible tasks.

High Priority Investigation and Preliminary Costs

Professional Engineer : 10 hours x \$ 95.00 per hour = \$ 950.00
(Title)

Task to be performed for the above hours: Corrective Action planning, budget review and certification

Project Manager : 36.50 hours x \$ 100.00 per hour = \$ 3,650.00
(Title)

Task to be performed for the above hours: Project review, subcontractor quotes and availability, review ELUC and Highway Authority Agreements (HAAs), Corrective Action planning

Environmental Professional IV : 14 hours x \$ 85.00 per hour = \$ 1,190.00
(Title)

Task to be performed for the above hours: Corrective Action budget preparation, railroad and IDOT correspondence, preparation of ELUCs and HAAs, Corrective Action planning

Environmental Professional III : 3.5 hours x \$ 80.00 per hour = \$ 280.00
(Title)

Task to be performed for the above hours: Corrective Action budget preparation

Environmental Professional II : 19.5 hours x \$ 70.00 per hour = \$ 1,365.00
(Title)

Task to be performed for the above hours: Corrective Action budget preparation

CAP Implementation (dig and haul)

Professional Engineer : 8 hours x \$ 95.00 per hour = \$ 760.00
(Title)

Task to be performed for the above hours: Excavation and backfill supervision

Project Manager : 2 hours x \$ 100.00 per hour = \$ 200.00
(Title)

Task to be performed for the above hours: Excavation and backfill coordination and management

IEMA No. 930181

Environmental Professional II : 110 hours x \$ 70.00 per hour = \$ 7,700.00
(Title)

Task to be performed for the above hours: Excavation and backfill supervision, manifesting, soil sampling

Environmental Technician I : 30 hours x \$ 45.00 per hour = \$ 1,350.00
(Title)

Task to be performed for the above hours: soil sampling and shipping, backfill supervision

Additional Well Monitoring/Well Replacement

Environmental Professional II : 40 hours x \$ 70.00 per hour = \$ 2,800.00
(Title)

Task to be performed for the above hours: monitoring well sampling, well replacement, development, survey and abandonment

Environmental Technician I : 40 hours x \$ 45.00 per hour = \$ 1,800.00
(Title)

Task to be performed for the above hours: monitoring well sampling, well replacement, development, survey and abandonment

CACR Report/Reimbursement

Professional Engineer : 38 hours x \$ 95.00 per hour = \$ 3,610.00
(Title)

Task to be performed for the above hours: Corrective Action Completion Report review and certification, TACO calculations, reimbursement review and certification

Project Manager : 14 hours x \$ 100.00 per hour = \$ 1,400.00
(Title)

Task to be performed for the above hours: CACR preparation and review, ELUC and HAA preparation, reimbursement preparation

Environmental Professional IV : 88 hours x \$ 85.00 per hour = \$ 7,480.00
(Title)

Task to be performed for the above hours: CACR preparation, ELUC and HAA preparation and execution, TACO calculations, reimbursement preparation and submittal

Environmental Professional II : 12 hours x \$ 70.00 per hour = \$ 840.00
(Title)

Task to be performed for the above hours: ELUC and HAA preparation, reimbursement preparation

Environmental Technician I : 12 hours x \$ 45.00 per hour = \$ 540.00
(Title)

Task to be performed for the above hours: CACR preparation

Draftsperson : 8 hours x \$ 50.00 per hour = \$ 400.00
(Title)

Task to be performed for the above hours: Site plans and revisions

TOTAL PERSONNEL COSTS: \$ 36,315.00

I. FIELD PURCHASES AND OTHER COSTS

All field purchases must be listed below in a time and materials format. **Handling charges must not be added here; use Section J, Handling Charges to calculate the handling charges.**

Field Purchases	Quantity	Price/Item	Total Cost	Do Handling Charges Apply?

Subtotal Page I-1: \$ 0

Other Costs - A listing and description of all other costs which will be/were incurred and are not specifically listed on this form should be attached. The listing should include a cost breakdown in a time and materials format.

Other Costs	Quantity	Price/Item	Total Cost	Do Handling Charges Apply?
Mileage (prior to Sept.2005)	240	0.41/mi	98.40	No
Bailers	10	10/each	100.00	No
Terra Core Samplers	10	2/each	20.00	No
Drums	8	60/each	480.00	No
Prints	20	0.50/each	10.00	No
Costs for Excavation and Backfill Activities				
Mileage (as of Sept. 2005)	790	0.485/mi	383.15	No
Plastic	39	75/roll	2,925.00	No
Terra Core Samplers	24	2/each	48.00	No
CAP Mobilization	1	Lump sum	250.00	Yes
Excavator w/operator	95	125/hr	11,875.00	Yes
Skid Loader w/operator	32	70/hr	2,240.00	Yes
Hauling - Semi trucks	312	75/hr	23,400.00	Yes
Fencing/Signs	11	40/day	440.00	No
Contaminated Soil Disposal	2,794	25/ton	69,850.00	Yes
Contaminated Water Disposal	10,000	0.38/gal	3,800.00	Yes
Contaminated Water Disposal - Svc Charge	2	250/each	500.00	Yes
Concrete (6")	3,790	5/ft ²	18,950.00	Yes
Backfill - Sand delivered	2,316	11.15/ton	25,824.64	Yes
Backfill - CA-6 delivered	227	14/ton	3,183.60	Yes
Well abandonment	13	100/well	1,300.00	No
			Subtotal Page I-2: \$165,677.79	

If you have any questions regarding the eligibility or deductibility determinations, please contact our Office.
0.00 4.00 4.00

IEMA No. 930181

Subtotal Page I-2 \$165,677.79

Total Pages I-1 and I-2 \$165,677.79

TOTAL OTHER COSTS = \$ 165,677.79

L. HIGH PRIORITY CORRECTIVE ACTION

Corrective Action at High Priority Sites may involved both soil and groundwater remediation. Below provide a summary of costs for the remediation type(s) chosen and attach the appropriate sections of the budget/billing forms to support the summary of costs.

A. Preparation of the Correction Action Plan

1. Investigation Costs: \$ 5,814.00
2. Analysis Costs: \$ 775.29
3. Personnel Costs: \$ 7,245.00
4. Equipment Costs: \$ 900.00
5. Field Purchases and Other Costs: \$ 508.40
6. Handling Charges: \$ 222.02

B. Groundwater Remediation

1. Analysis Costs: \$ _____
2. Personnel Costs: \$ _____
3. Equipment Costs: \$ _____
4. Field Purchases and Other Costs: \$ _____
5. Handling Charges: \$ _____

Of the above costs, please provide a break down of the costs associated with operation and maintenance (O&M), if applicable, as requested below:

_____ Months of O&M x \$ _____ per month = \$ _____

C. Excavation and Disposal

1. Analysis Costs: \$ 1,852.00
2. Personnel Costs: \$ 6,760.00
3. Equipment Costs: \$ 1,050.00
4. Field Purchases and Other Costs: \$ 109,187.20
5. Handling Charges: \$ 4,950.88

Of the above costs, please provide a break down of the costs associated with excavation transportation, and disposal as requested below:

Excavation: 1,769 yards³ x \$ 4.59* per yards³ = \$ 8,125.00
Transportation: 1,769 yards³ x \$ 13.23* per yards³ = \$ 23,400.00
Disposal: 1,769 yards³ x \$ 39.49* per yards³ = \$ 69,850.00

* Cost per cubic yard was rounded to nearest penny.

D. Alternate Technology, Type

1. Investigation Costs: \$ _____
2. Analysis Costs: \$ _____
3. Personnel Costs: \$ _____
4. Equipment Costs: \$ _____
5. Field Purchases and Other Costs: \$ _____
6. Handling Charges: \$ _____

Of the above costs, please provide a break down of the following costs as requested below if applicable:

Excavation: _____ yards³ x \$ _____ per yards³ = \$ _____

Transportation: _____ yards³ x \$ _____ per yards³ = \$ _____

Treatment: _____ yards³ x \$ _____ per yards³ = \$ _____

Operation and Maintenance (O&M):

_____ Months of O&M x \$ _____ per month = \$ _____

E. Backfill Costs

1. Personnel Costs: \$ 3,250.00 _____
2. Equipment Costs: \$ 0.00 _____
3. Field Purchases and Other Costs: \$ 54,418.99 _____
4. Handling Charges: \$ 1,087.16 _____

Of the above costs, please provide a break down of the following costs as requested below if applicable:

Type of Backfill: Sand _____

1,621 yards³ x \$ 19.46 per yards³ = \$ 31,544.66

Type of Backfill: CA-6 Rock _____

147 yards³ x \$ 25.13* per yards³ = \$ 3,703.60

* Cost per cubic yard was rounded to nearest penny.

RECEIVED

OCT 10 2005

Illinois Environmental Protection Agency

HDC ENGINEERING

Owner/Operator and Professional Engineer Budget Certification Form for Leaking Underground Storage Tanks Sites

In accordance with 415 ILCS 5/57, if an owner or operator intends to seek payment from the UST Fund, an owner or operator must submit to the Agency, for the Agency's approval or modification, a budget which includes an accounting of all costs associated with the implementation of the investigative, monitoring and/or corrective action plans.

I hereby certify that I intend to seek payment from the UST Fund for performing High Priority Corrective Action activities at R&S Auto Service LUST site. 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. I further certify that costs ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code Section 732.606 are not included in the budget proposal or amendment. Such ineligible costs include but are not limited to:

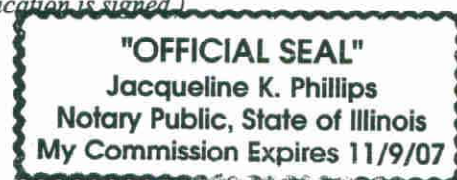
- Costs associated with ineligible tanks.
Costs associated with site restoration (e.g., pump islands, canopies).
Costs associated with utility replacement (e.g., sewers, electrical, telephone, etc.).
Costs incurred prior to IEMA notification.
Costs associated with planned tank pulls.
Legal defense costs.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

Owner/Operator: Richard Gooden Title: Owner

Signature: [Signature] Date: 10/6/05

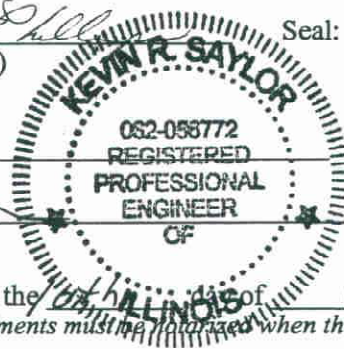
Subscribed and sworn to before me the 6th day of October, 2005. (Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature] Seal: (Notary Public)



P.E.: Kevin R. Saylor

P.E. Signature: [Signature] Date: 10.10.05



Subscribed and sworn to before me the 10th day of October, 2005. (Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature] Seal: (Notary Public)



The Agency 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. This form has been approved by the Forms Management Center.

***** PCB 2006-139 *****



Office of the Illinois
State Fire Marshal

General Office

217-785-0969

FAX

217-782-1062

Divisions

ARSON INVESTIGATION
217-782-6855BOILER and PRESSURE
VESSEL SAFETY
217-782-2696FIRE PREVENTION
217-785-4714MANAGEMENT SERVICES
217-782-9889INFIRS
217-785-1016PERSONNEL
217-785-1009PERSONNEL STANDARDS
and EDUCATION
217-782-4542PETROLEUM and
CHEMICAL SAFETY
217-785-5878PUBLIC INFORMATION
217-785-1021

CERTIFIED MAIL - RECEIPT REQUESTED #Z 207 509 522

December 5, 1994

Richard Gooden
1064 Roselawn Drive
Paxton, IL 60957

In Re:

Facility No. 4-008576
IEMA Incident No. 93-0181
R & S Auto Service
149 North Railroad Avenue
Paxton, FORD CO., IL

Dear Mr. Gooden:

The Reimbursement Eligibility and Deductible Application, received on 11-14-94 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 - 2,000 gallon gasoline
Tank #2 - 2,000 gallon diesel

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 1.10 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:

none

Your application indicates that there has not been a release from these tanks. 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.

EXHIBIT "C"

ILLINOIS POLLUTION CONTROL BOARD
February 17, 2005

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

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

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Today the Board will proceed to first notice under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et. seq.* (2002)) with a rulemaking proposed by the Illinois Environmental Agency (Agency). The Agency originally proposed amendments to the regulations concerning the leaking Underground Storage Tank (UST) program in January 2004. The Board has held seven days of hearings and received substantial comment on the Agency's proposal. The Board received comments from industry, trade groups, and professional organizations including a group formed as a result of the proposal called Professionals of Illinois for the Protection of the Environment (PIPE). The Board has evaluated the comments in this proceeding and the additional language changes suggested by both the Agency and the participants. The first-notice proposal adopted by the Board today reflects the Board's consideration of all the comments and testimony the Board has received.

During this process, which began over a year ago, the Agency has submitted three *errata* sheets reflecting changes based on the questions and comments at the hearings. In addition, PIPE and other participants have suggested changes to the proposal. Based on all the suggestions and the record of this proceeding, the Board proposes for first notice a rule that includes lump sum maximum payments for certain tasks, but not a scope of work for those tasks. The Board is proposing the maximum payment amounts proposed by the Agency in most cases. The Board is cognizant that the methods used to develop the rates by the Agency were not scientifically or statistically recognized methods. However, the Agency's experience in the UST program is also an element to be taken into consideration. In addition, the first-notice proposal will include provisions for bidding, extraordinary circumstances, and an annual inflation adjustment. The Board is convinced that the first-notice proposal, as a whole, will allow for reimbursement of reasonable remediation costs.

This section is identical to Section 732.603 except for the caps on the amounts which may be paid. R04-23Prop. at 12.

Agency Testimony

The Agency provided prefiled testimony from five Agency employees: Mr. Douglas Clay, Mr. Hernando Albarracin, Mr. Douglas Oakley, Mr. Brian Bauer, and Mr. Harry Chappel. In addition, Agency employee, Mr. Gary King was available to answer questions and comment on the proceedings. The following will summarize the testimony.

Douglas Clay

Mr. Clay offered testimony which generally discussed the proposal and specifically addressed certain rule language. Mr. Clay also provided testimony in response to testimony offered by participants. The paragraphs below will summarize his testimony.

General. Mr. Clay is the manager of the leaking UST section within the Bureau of Land and has been in his current position since 1994. Exh. 3 at 1. Mr. Clay testified in support of the amendments to both Part 732 and 734. Tr. 1 at 16. Mr. Clay stated that the amendments are the result of modifications to the Act, “the need to reform the current reimbursement procedures,” and to clarify issues that have arisen since Part 732 was last amended. Exh. 3 at 1-2.

In general, Mr. Clay stated that this proposal is intended to streamline the UST remediation process, clarify remediation requirements, and “most notably, reform the budget and reimbursement process”. Exh. 3 at 2. Mr. Clay testified that the new budget and reimbursement process would eliminate a majority of the budgets and reimbursement packages submitted to the Agency based on time and materials because the lump sum and unit rates would replace them. *Id.* Mr. Clay stated that the Agency believes this will streamline the approval of budgets and the processing of reimbursement claims. *Id.*

Mr. Clay’s testimony indicated that the Agency currently spends a tremendous amount of time reviewing budgets and reimbursement packages. Exh. 3 at 2. Further, Mr. Clay testified that a majority of plan and report denials, amendments to plans and reports submitted by consultants, and appeals to the Board are related to budget and reimbursement issues rather than technical issues. *Id.* Mr. Clay stated that the Agency believes that the proposal will allow for a more efficient use of Board and Agency resources. *Id.*

Mr. Clay testified that the costs proposed in Subpart H were developed with input from the industry and utilized nearly fifteen years of Agency experience. Exh. 3 at 2. Mr. Clay stated that the rates are “generally consistent” with the rates the Agency currently approves. *Id.*

Mr. Clay testified that in Part 734 in addition to the reimbursement changes, the Agency is proposing a new three-stage approach to site investigation. Exh. 3 at 3. Mr. Clay indicated that the consultants originally suggested this approach to site investigation. *Id.* Mr. Clay stated

For Section 732.840/734.840(b), Mr. Bauer indicated that the limit has been established at \$10,000 per occurrence. Exh. 9 at 12. For reimbursement the activities must be submitted on a time and materials basis to the Agency. *Id.*

Mr. Bauer testified concerning the rates for professional consulting services in Section 732.845/734.845. Exh. 9 at 12-15. Mr. Bauer stated that after consultation, the American Consulting Engineers Council of Illinois³ (ACECI), the Agency determined that fieldwork should be billed on a half-day rate, which is five hours billed at \$80 per hour. Exh. 9 at 12. The Agency included additional expenses for vehicles or mileage, photo ionization detector (PID), and miscellaneous supplies to develop the maximum of \$500 per half-day. Exh. 9 at 12-13. Mr. Bauer testified that maximum half-day increments had been established for oversight of UST removal, removal of contaminated soil, soil borings, line release repair, free product removal, and groundwater sampling event. Exh. 9 at 13-15.

Mr. Bauer testified that Section 732.Appendix E/734.Appendix E establishes personnel titles and rates to be used when submitting activities on a time and materials basis. Exh. 9 at 15. The titles must be used and the consultant's personnel must be able to meet the title requirements. *Id.* The rates are based on the task performed and not the title of the person performing the task. *Id.* Mr. Bauer stated that the consolidation of titles is essential to maintain consistency in Agency reviews and to expedite the review process. *Id.* Mr. Bauer indicated that the maximum hourly rates are based on the average rate the Agency has seen on budgets and reimbursement claims. Exh. 9 at 16.

Harry Chappel

Mr. Chappel is a unit manager in the leaking UST section within the Bureau of Land and has been in his current position since 2002. Exh. 11 at 1. Mr. Chappel was previously employed by the Agency from 1976 to 1995 and was in private practice from 1995 to 2002. *Id.* Since 1979, Mr. Chappel has been a registered professional engineer. *Id.* Mr. Chappel's testimony supports the proposed language in Subpart H. Mr. Chappel testified that the proposal is a result of modifications to the Act and "the need to reform the current reimbursement procedures." *Id.*

Mr. Chappel testified that Section 732.800/734.800 specifies all reimbursable tasks will be limited to the maximum amounts set forth in Subpart H. Exh. 11 at 2. The Agency grouped reimbursable activities into eleven categories. *Id.* Mr. Chappel's testimony includes several attachments in support of the proposed maximum allowable rates. Exh. 11 at 3.

For Section 732.825/734.825, Mr. Chappel testified that the rate for soil excavation, transportation and disposal was developed using randomly selected projects. Exh. 11 at 3. The maximum rate for the cost to excavate, transport, and dispose (ETD) is the sum of costs for each activity plus one standard of deviation rounded up to a whole dollar amount. *Id.* The result is \$57 per cubic yard. *Id.* Mr. Chappel indicated that the rate for backfill would be \$20 per cubic yard. *Id.* This maximum rate was developed by using the sum of the costs to backfill plus one

³ On July 1, 2004, the Consulting Engineers Council of Illinois became the American Consulting Engineers Council of Illinois. Tr.6 at 7-8.

standard of deviation. *Id.* Mr. Chappel testified that the Agency is proposing separate amounts for the two activities because the amount of soil excavated does not always equal the amount of backfill necessary. *Id.*

Mr. Chappel testified that to determine the volume of soil, a volume calculation is included in the proposal. Exh. 11 at 4. Mr. Chappel indicated that to account for the fact that in-place volume is less than excavated volume, the equation includes a “fluff” factor of five percent. *Id.*

Mr. Chappel testified that in developing the maximum rates for sampling handling and analysis (Section 732.834/734.835), the Agency contacted the Illinois Association of Environmental Laboratories, Inc. (IAEL) for assistance. Exh. 11 at 4. IAEL provided a survey of laboratories and recommended that the Agency use the highest rate reported. *Id.* Mr. Chappel testified that the Agency instead “opted to use the average amounts” provided by IAEL. Exh. 11 at 4-5.

To develop the limits for fees that consultants may be reimbursed, delineated in Section 732.845/734.845, Mr. Chappel indicated that the Agency consulted with ACECI. Exh. 11 at 5. The Agency coordinated with ACECI to determine the activities conducted by a consultant in each step of the process and the estimated personnel time required for each activity. Exh. 11 at 5-6. Mr. Chappel stated that once the hours required to perform an activity were determined, the Agency developed an average hourly rate by reviewing historical records of the Agency from prior reimbursements. Exh. 11 at 6. The Agency totaled the hourly rates for each job title and developed an average hourly rate. *Id.* The Agency selected 19 random requests to verify that the rate was reasonable. *Id.*

Mr. Chappel stated that using the \$80 rate derived, the Agency then applied that to the number of hours estimated for the various tasks to realize the maximum rate for reimbursement for an activity. Exh. 11 at 6-7. Mr. Chappel testified that a ten-hour workday was assumed and the maximum rate includes all costs incurred by a consultant for completing the specified activity. *Id.*

Mr. Chappel stated that the Agency could not develop a set fee for all activities, so the Agency proposes Section 732.850/734.850 to address those situations where the activity will be reimbursed on time and materials. Exh. 11 at 10. Also, Mr. Chappel noted that the Agency proposed Section 732.855/734.855 to provide an opportunity to an owner or operator to demonstrate that their site presents unusual or extraordinary circumstances. *Id.*

Gary King

Mr. King is the manager of the Division of Remediation Management within the Bureau of Land with the Agency. Tr.1 at 12. In his position, Mr. King is responsible for nearly all cleanup programs including the UST program. Tr.1 at 12-13. Mr. King has been a senior manager with the UST program since the establishment of the program in 1990. Tr.1 at 13. Mr. King was directly involved in every statutory change to the UST program and has testified in every UST rulemaking since 1990. *Id.*

EXHIBIT "D"

within allowable limits, it is very likely that the elevated total lead contamination detected in MW5 and MW10 can be attributed to an off-site source, not the LUST incident.

- Further evidence exists of the sporadic nature of lead concentrations in the soil of the area when looking at MW12. The soil sample retrieved from MW12 indicates TCLP lead above the SRO. Comparative soil samples retrieved from B11 and MW11 indicate non-detect TCLP lead levels or levels below Tier I standards. B11 and MW11 are each less than thirty (30) feet from MW12 and are between MW12 and the source of the UST release. This being the case, B11 and MW11 should display more substantial lead contaminant levels if the Site's USTs were acting as the source of lead contamination.

6.0 Technical Information – Corrective Action Plan

6.1 Soil Excavation

Impacted soil will be excavated from the Site and disposed at a certified landfill in Hoopeston, Illinois. The Hoopeston landfill is the closest landfill to the Site. It is approximately twenty (20) miles from the Site. Excavation of impacted soil will be performed to remove soil contamination exceeding Tier I Residential SROs for BTEX contaminants from the Site. Additionally, it is anticipated that soil excavation will serve to remove the residual sources of groundwater contamination.

The proposed extent of excavation is shown in Appendix B, Figure 12. Based upon soil investigation activities, an estimated soil density of 1.58 tons per cubic yard (ton/yd³) was determined for use in the calculations. This site-specific factor was used to estimate the amount of soil requiring disposal, in place of the IEPA default value of 1.50 tons/yd³.

The excavation will be taken to a maximum depth of twelve (12) feet bls. This depth was chosen based upon Site Classification and Corrective Action soil analytical results, soil boring log results, and PID screening of soil samples. Additionally, a twelve (12) feet depth has been dictated by the IEPA in its response letter to the Site's CAP #1 (Appendix G). In that letter, the IEPA states: "In addition, soil contamination extends to 12 feet below ground surface in boring B7; and, therefore, the depth of contamination must be at a minimum 3.65 meters."

Planned soil excavation includes excavation beyond the Site's northern property boundary into the City of Paxton's State Street ROW. To avoid interfering with traffic patterns on State Street, the actual street will not be disturbed, just the southern portion of the ROW (see Appendix B, Figure 12). Excavation of a portion of the ROW is necessary in order to remediate the high levels of contamination found in the soil of MW1, along the northern property boundary of the Site. MW1 exhibited the highest levels of BTEX soil contamination across the entire Site. If the northern wall of the excavation was halted at the property boundary, it is unlikely that the high levels of soil contamination indicated near MW1 would be removed and excavation closure sampling in that area would likely return results above Tier I SROs. Furthermore, if excavation does not progress into the ROW, the high levels of contamination left at the northern