

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JAYVIR, INC.,)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Division of Legal Counsel
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

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), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 1st day of May, 2017.

Respectfully submitted,
JAYVIR, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAYVIR, INC.,)	
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Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, JAYVIR, INC., pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the Agency’s final decision, authorizing partial payment for early action activities, stating as follows:

1. Petitioner is the owner or operator of a service station, known as Amstar, located in the City of Litchfield, County of Montgomery, Illinois, which has been assigned LPC #1350405064.

2. On January 21, 2016, releases from were reported from underground storage tanks on the premises, which were assigned Incident Number 2016-0065.

3. Thereafter, the tanks were abandoned in place pursuant to permit and regulations of the Office of the State Fire Marshal. Specifically, concrete and backfill above each tank was removed. The tanks were cut-open and the contents were pumped-out for disposal. After the tanks were safely vented, they were filled with flowable fill and sealed. The backfill was replaced and concrete poured over the excavation.

4. On June 20, 2016, the Petitioner’s consultants filed a 45-Day report detailing this activity, as well as analytical results from sampling that confirmed the presence of soil and groundwater contamination.

5. On August 19, 2016, the Agency approved the 45-Day Report.
6. On September 21, 2016, Petitioner's consultant submitted the application for payment, seeking reimbursement for \$43,006.20, subject to a \$5,000 deductible.
7. On January 5, 2017, the Illinois EPA e-mailed numerous questions to Petitioner's consultant about the application, seeking answers in one week or an extension of the review period.
8. Petitioner's consultant provided an extension of time and detailed answers to the questions.
9. On March 24, 2017, the Illinois EPA made its determination, cutting \$12,677.19 in costs, including costs that had not been questioned in the January 5, 2017 e-mail. A true and correct copy of the Agency decision is attached hereto as Exhibit A.
10. Petitioner's consultant had agreed prior to the Illinois EPA's determination to the first two cuts in the letter.
11. None of the legal provisions cited in support of the remaining deductions would be violated by approving the payment application.
12. All of the deductions purport to be justified by Section 57.7(c)(3) of the Act, which states in relevant part:

In approving any plan submitted pursuant to subsection (a) [site investigation] or (b) [corrective action] of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title.

(415 ILCS 5/57.7(c)(3))

13. Section 57.7(c)(3) applies to plans and budgets submitted for site investigation and corrective action. It does not apply to early action activities, which do not require any plan. (415 ILCS 5/57.6(b); 415 ILCS 5/57.8(a))

14. Similarly, most of the deductions rely on a related Board regulations only applicable to budgets. 35 Ill. Adm. Code § 807.630(dd) (“costs proposed as part of a budget that are unreasonable”); 35 Ill. Adm. Code § 807.505(a) (“Review of Plans, Budgets, or Reports”)

15. In general, these citations to inappropriate legal authorities demonstrate that the Agency erroneously sought to treat the payment application as a budget.

16. In addition to the legal issues identified, each of the deductions, other than the two conceded, are erroneous for the following reasons:

(1) Not appealed.

(2) Not appealed.

(3) Waste characterization sampling of the backfill material at a cost of \$268.00 and was performed as part of early action to identify the presence, nature and source of any contamination. This is authorized by the Board’s regulations. (35 Ill. Adm. Code § 734.210(b)(5)) The Agency pre-determination correspondence disputed any legitimate purpose was served by testing the backfill and never requested the results of the analysis, nor are these required by the Agency forms.

(4) Waste characterization sampling of that portion of the backfill material to be returned to the excavation cost \$280.39 and was required by the Board’s regulations whenever backfill is to be returned to the excavation. (35 Ill. Adm. Code § 734.210(h)(1)(D)) The Agency pre-determination correspondence disputed any

legitimate purpose was served by testing the backfill and never requested the results of the analysis, nor are these required by the Agency forms.

(5) Early action activities included the removal of five drums of contaminated soil, and the drums were supplied by the consultant as stock items, charging a reasonable rate for purchase, storage and transportation in the amount of \$367.00. Such items are stocked on a continuous basis for the convenience of all clients, and as such a particular drum is not purchased for a particular job, though if they were, the cost of a job-specific purchase in the field would be higher. None of the referenced regulations would be violated for reimbursing the requested amount.

(6) Early action activities were performed by personnel for “abandonment permit; OSFM reports; subcontractor setup; laboratory setup” for \$2,911.89. The costs were eliminated because “OSFM reports include a site assessment with an associated form and a certification of site condition. These are costs associated with OSFM requirements.” The Illinois Environmental Protection Act expressly states that early action, including tank abandonment, is to be performed “in accordance with the regulations promulgated by the Office of the State Fire Marshal.” (415 ILCS 5/57.6(b)) Those regulations require a Certificate of Site Conditions and site assessment in order to be permitted to legally abandon tanks in place. (41 Ill. Adm. Code § 175.840(d)) Furthermore, the Agency complains without breakdowns of these four tasks, it cannot distinguish eligible from ineligible costs. Since there are no ineligible costs, nor legal authority cited for the proposition that costs imposed by OSFM are ineligible, this complaint is without merit. The application for payment was complete, and requiring

further breakdowns of work performed a year after it was performed is neither required by any statute, regulation or instructions to the application form or feasible for consultants without prior notice.

(7) Early action activities were performed by personnel for “OSFM tank abandonment requirements; OSFM EDD application” for \$2,973.84. For the reasons given in (6) supra, OSFM requirements are requirements of the LUST Program, the work is eligible, and further breakdowns are not legally required or practicable almost a year after the work was performed.

(8) Early action activities were performed by personnel for the task of “SWAP database: aerial/top map creation” in the amount of \$1,363.01. The nature of this work was explained in detail to the Agency, which arbitrarily rejects payment of the entire amount for wanting breakdowns of the components of map creation. No legal provision requires such breakdowns, and requiring further breakdowns almost a year after the work is performed without notice is not practicable.

(9) Not appealed.

(10) Not appealed.

(11) Early action activities were documented with a digital camera, for which a reasonable rate of \$30 per day was charged pursuant to 35 Ill. Adm. Code 734.630(h). Such non-expendable items are not reimbursed on the basis of a purchase invoice, and the Board has previously ruled that \$30 for a digital camera did not violate the Act or Board regulations. Knapp Oil Co. v. IEPA, PCB 16-103 (Sept. 22, 2016).

(12) Early action activities were conducted with the use of a photoionization

detector (PID), for which a reasonable rate of \$135.00 per day was charged pursuant to 35 Ill. Adm. Code 734.630(h). Such non-expendable items are not reimbursed on the basis of an invoice, and the Board has previously ruled that \$142.00 per day for use of a PID was a reasonable cost for reimbursement of consultant's material costs in 1991. Malkey v. IEPA, PCB 92-104 (March 11, 1993).

(13) Early action activities included travel to and from the location for necessary personnel, materials and equipment. Such costs for mileage, transportation, vehicle charges are reimbursable under 35 Ill. Adm. Code § 734.845, and a mileage rate of \$0.57 per mile is reasonable. Imposition of a \$0.54 per mile rate constitutes an illegal rulemaking.

(14) Early action activities included travel to and from the location for necessary personnel, materials and equipment. Such costs for mileage, transportation, and vehicle charges are reimbursable under 35 Ill. Adm. Code § 734.845 (“mileage; transportation; [and] vehicle charge”), and the Agency lacks any legal authority to categorically preclude reimbursement for “vehicle charges” expressly authorized by the Board’s rules.

(15) Not appealed.

* * *

17. The application for payment was complete as a matter of law (415 ILCS 5/57.8) and any additional information being demanded was either not required by the Agency forms, not requested by the Agency prior to its determination, or irrelevant under the applicable statute and regulations.

10. The subject Illinois EPA letter was received by certified mail on March 27, 2017, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, JAYVIR, INC., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the budget as submitted, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

JAYVIR, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

BRUCE RAUNER, GOVERNOR

ALEC MESSINA, DIRECTOR

217/524-3300

RECEIVED
#T-1511001
AMstar-Litchfie

CERTIFIED MAIL #

7014 2120 0002 3285 1325

MAR 24 2017

\$12,677.19 IN
EPA denied
charges

Jayvir, Inc.
c/o Chase Environmental Group, Inc.
P.O. Box AB
Centralia, IL 62801

Re: LPC #1350405064—Montgomery County
Litchfield/ Jaydir, Inc.
101 East Union Avenue
Incident-Claim No.: 20160065—67751
Queue Date: September 27, 2016
Leaking UST Fiscal File

Dear Air or Madam:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated September 21, 2016 and was received by the Illinois EPA on September 27, 2016. The application for payment covers the period from January 21, 2016 to March 19, 2016. The amount requested is \$43,006.20.

On September 27, 2016, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$25,329.01 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$5,000 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

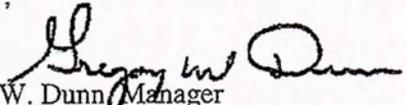
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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 require further assistance, please contact Brad Dilbaitis of my staff at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,


Gregory W. Dunn *Manager*
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

GWD:BD 

Attachment: Attachment A
Appeal Rights

c: Jayvir, Inc.
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: LPC #1350405064—Montgomery County
Litchfield/ Jayvir, Inc.
101 East Union Avenue
Incident-Claim No.: 20160065—67751
Queue Date: September 27, 2016
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$1,486.97, deduction Drilling Costs incurred before providing notification of the release of petroleum to Illinois Emergency Management Agency in accordance with 35 Ill. Adm. Code 734.210. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(k) of the Act and 35 Ill. Adm. Code 734.630(n). In addition, the request lacks supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Furthermore, the request exceeds the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Additionally, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Drilling and Monitoring Well Costs requests \$1,486.97 for drilling costs associated with the waste characterization soil boring WC-1, which was completed prior to the incident being reported to the Illinois Emergency Management Agency. In addition, the soil analysis completed on the soil sample from this soil boring was completed in response to a site assessment required by the Office of the State Fire Marshal prior to the reporting of a suspected release.

2. \$337.39, deduction for costs of corrective action associated with Analytical Costs incurred before providing notification of the release of petroleum to Illinois Emergency Management Agency in accordance with 35 Ill. Adm. Code 734.210. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(k) of the Act and 35 Ill. Adm. Code 734.630(n). In addition, these costs lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Furthermore, these

costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The Analytical Costs request \$337.39 for the analytical costs associated with the soil sample WC-1. The soil sample identified as WC-1 was collected in response to a site assessment required by the Office of the State Fire Marshal prior to the reporting of a suspected release. Please note that the laboratory chain of custody for this soil sample indicates that the sample was collected on January 21, 2016 and the soil boring log indicates that it was collected on January 16, 2016.

3. \$268.00, deduction Analytical Costs associated with the waste characterization sample for drum disposal which lack supporting technical documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, these costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Furthermore, these costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Analytical Costs request \$96.00 for BETX/MTBE soil analysis and \$172.00 for PNA analysis for the waste characterization sample used to characterize the soil waste collected from the soil borings that were advanced on March 3, 2016 and placed into 55-gallon drums for disposal. The results of the BETX/MTBE and PNA analysis were not submitted to the Illinois EPA. In addition, BETX/MTBE and PNA soil analysis is not required for soil waste characterization.

4. \$280.39, deduction for Analytical Costs associated with the soil sample collected from the backfill returned to the excavation, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The Analytical Costs requests \$96.00 for BETX/MTBE soil analysis, \$172.00 for PNA analysis and \$12.39 for a sampling device for a soil sample that was used to document the contamination concentration in the backfill that was returned to the excavation that was done to uncover the USTs. The results of the analysis have not been submitted to the Illinois EPA. Costs associated with the collection and analysis of a soil or groundwater sample cannot be paid before the results of the analysis have been received by the Illinois EPA.

5. \$367.00, deduction for Drum Disposal Costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The Drum Disposal Costs request a total of 5 drums of solid waste at a rate of \$273.40 per drum for a total cost of \$1,367.00 for the purchase, transportation and disposal of the 5 drums of contaminated soil. The invoice from Future Environmental, Inc. that was submitted indicates that Future Environmental provided the transportation and disposed of the drums. In addition, the invoice from Chase Environmental Group, Inc. to the owner to document the early action costs (Invoice #25132) indicates that the owner was charged \$1,000.00 total for the drum disposal although the invoice lists 5 drums at \$273.40 per drum. The supporting documentation indicates that the Groundwater Removal Costs were \$367.00 above what could be approved under the Subpart H rates. That amount was then transferred to the Drum Disposal Costs and presented as the cost of the 55-gallon drums. The application for payment does not include an invoice for the purchase of the 55-gallon drums. The purchase invoice for the drums is a required piece of documentation that must be submitted prior to the approval for payment of the purchase cost of the drum(s). Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

6. \$2,911.89, deduction for Consulting Personnel Costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request exceeds the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Furthermore, the request is *not reasonable as submitted*. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 23.5 hours for a Senior Project Manager for "abandonment permit; OSFM reports; subcontractor setup; laboratory setup" at a rate of \$123.91 per hour for a total of \$2,911.89. The documentation that has been reviewed indicates that the OSFM abandonment permit was completed and submitted by a representative from Earth Services, who was retained to perform the tank abandonment. The environmental consultant indicated that the OSFM reports include a site assessment with an associated form and a certification of site condition. These are costs associated with OSFM requirements. An hourly breakdown of the individual tasks within the broader hourly total was requested to determine how many of the total requested hours were assigned to ineligible tasks and to ensure that the time to complete the eligible tasks does not exceed the minimum requirement of the Act and are reasonable as submitted. No hourly breakdown was provided. Because no hourly breakdown was provided it is impossible to determine how many of the requested hours were allocated to ineligible tasks and whether the hourly requests for eligible tasks are reasonable. Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

7. \$2,973.84, deduction for Consulting Personnel Costs, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). In addition, the request lacks supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 24 hours for a Senior Project Manager for "OSFM tank abandonment requirements; OSFM EDD application" at a rate of \$123.91 per hour for a total of \$2,973.84. The consultant indicated that the "OSFM tank abandonment requirements" describes activities involved in the site assessment required by the Office of the State Fire Marshal. An hourly breakdown of the individual tasks within the broader hourly total was requested to determine how many of the total requested hours were assigned to ineligible tasks and to ensure that the time to complete the eligible tasks does not exceed the minimum requirement of the Act and are reasonable as submitted. No hourly breakdown was provided. Because no hourly breakdown was provided it is impossible to determine how many of the requested hours were allocated to ineligible tasks and whether the hourly

requests for eligible tasks are reasonable. Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

8. \$1,363.01, deduction for Consulting Personnel Costs, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). In addition, the request lacks supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 11 hours for a Senior Project Manager for "SWAP database: aerial/topo map creation" at a rate of \$123.91 per hour for a total of \$1,363.01. The topographic and aerial maps, Figure 1 and Figure 2 in the 45-Day Report, are not useable maps as the site cannot be identified on either map. It is also unclear what purpose the maps were intended to serve. An hourly breakdown of the individual tasks within the broader hourly total was requested to determine how many of the total requested hours were assigned to the SWAP documentation (pages 70-73, Figure 3 and Figure 4) and for the aerial and topographic maps to ensure that the time to complete the eligible tasks does not exceed the minimum requirement of the Act. No hourly breakdown was provided. Because no hourly breakdown was provided it is impossible to determine how many of the requested hours were allocated to the SWAP documentation and the aerial and topographic maps to determine whether the hourly requests for the tasks are reasonable. Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the

application for payment is consistent with work proposed and actually performed in conjunction with the site.

9. \$1,090.40, deduction for Consulting Personnel Costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 10 hours for a Geologist III for "soil sample collection/ screening/ mapping of SB-1 through SB-6" at a rate of \$109.04 per hour for a total of \$1,090.40. The consultant indicated that "a Geologist III mobilized to the site, completed the tasks described above and mobilized from the site. Based on the nature of field work, tasks are conducted and are intertwined, therefore to break out each task specifically by the hour would be difficult and create additional costs associated with timekeeping, time entry and input into Agency forms, and this type of detail has never been requested previously. To complete these tasks for this site, 10 hours were spent." The documentation included in the 45-Day Report indicates that all of the soil borings were collected between 8:00 and 8:52 am on March 3, 2016. The soil samples were received by the laboratory at 10:45 am on March 3, 2016, according to the laboratory chain of custody. The expected drive time between the two locations is approximately 45 minutes. For the lab to have received the samples by 10:45 am on March 3, 2016, the geologist would have had to leave the site at approximately 10:00 am, or approximately one hour after collecting the last soil sample. It is reasonable to assume that all of the soil collection, screening and mapping of the samples would take place prior to mobilizing from the site to deliver the soil samples to the laboratory.

10. \$644.32, deduction for Consulting Personnel Costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 8 hours for a Senior Technician for "documentation of ea (early action) activities." An inquiry was made as to the specifics of the request. The consultant indicated that "a Senior Technician mobilized to the site, took field notes, photographs and at this site collected, screened and packed a sample of backfill material that was returned to the excavation and mobilized back from the site." The consultant had indicated that a backfill sample was collected for the backfill material that was placed back into the excavation (BF-1) but did not indicate the date when the sample was collected. It is possible that the sample was collected on March 14, 2016 because it was received by the

laboratory on that day, as described on Teklab, Inc. Invoice No. 183931. However, the laboratory report has not been submitted to the Illinois EPA so it is unknown exactly when the sample was collected and which day these activities took place. The Paving Costs documentation provided in the application for payment indicates that the concrete that was used to cover and close the excavation was purchased, and possibly delivered to the site, on March 11, 2016. It is reasonable to assume that the soil sample that was collected from the backfill (BF-1) was collected prior to replacing the soil and paving over the excavation. The Personnel Work Sheet provided by Chase Environmental Group, Inc. to document the dates and times worked on the project during the early action activities indicates that the Senior Technician worked for 4.5 hours on March 8, 2016, 4 hours of March 9, 2016 and 1.5 hours on March 14, 2016. This would cast doubt on the explanation that indicated that these activities took place over the course of one 8-hour day.

11. \$45.00, deduction for Consultant's Materials Costs associated with the use of a digital camera which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consultant's Materials Costs requests a total of 1.5 days for the use of a digital camera at a rate of \$30.00 per day for a total of \$45.00. A request was made for documentation to substantiate and justify the \$30.00 daily rate charged for the use of a digital camera. No supporting documentation was provided for the daily rate. Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

12. \$337.50 for Consultant's Materials Costs associated with the use of a PID, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the rate requested for a PID pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination. Please note that 35 Ill. Adm. Code 734.605(b)(9) states that a complete application for payment must consist of an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. 35 Ill. Adm. Code 734.610(b) states that when conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section. 35 Ill. Adm. Code 734.610(c) states the Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

In addition, without supporting documentation for the rate requested the PID costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

13. \$21.78, deduction for Consultant's Materials Costs associated with mileage costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consultant's Materials Costs requests 726 miles at a rate of \$0.57 per mile for a total of \$413.82 for mileage costs. The Illinois EPA approved the federal mileage rate for mileage costs. The appropriate federal mileage rate for 2016 is \$0.54 per mile.

14. \$513.00 for costs for vehicle charges, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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 necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional

documentation to support the rate requested for vehicle charges pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation the rate requested for vehicle costs is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Illinois EPA will reimburse for mileage at a rate of \$0.54 per mile when sufficient documentation has not been submitted for vehicle charges. Based on the round trip mileage from the consultant's office to the site location of 150 (1 Round Trip)*** miles per trip and a total of 2 trips, a proposed allowable reimbursement amount is \$162.00. Based on this, \$513.00 is being deducted from the consultant's material costs portion of the budget.

15. \$36.70, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

The Handling Charges were adjusted to reflect the deduction in Drum Disposal Costs.

BD

Appeal Rights

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

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

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson 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