BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

HENSON OIL COMPANY, INC.,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 2024-069
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (h), PETITIONER'S MOTION FOR SUMMARY JUDGMENT, a copy of which is herewith served upon Respondent.

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 Respondent by e-mail at the above e-mail address before 5:00 p.m. on the 12th day of May, 2026. The number of pages in the e-mail transmission is 18 pages.

HENSON OIL COMPANY, INC.,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

HENSON OIL COMPANY, INC., Petitioner,	)	
v.	)	PCB No. 2024-069 (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, HENSON OIL COMPANY, INC., by its undersigned counsel, moves for summary judgment pursuant to Section 101.516(b) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.516(b)), stating as follows:

STATEMENT OF UNDISPUTED FACTS

Henson Oil Company, Inc. owned a self-service fueling station property in Towanda, County of McLean, Illinois. (A.R.007-A.R.008) The site was assigned LPC #1131055007. (A.R.004) Currently, Kicks Bar and Grill operates at the site. (A.R.008)

On October 8, 2000, a suspected leak was reported from the three underground storage tanks at the site to the Illinois Emergency Management Agency, which was assigned Incident Number 2000-1913. (A.R.001) On December 12, 2000, all three tanks were removed. (A.R.008) Petitioner's initial consultant performed early action activities, site classification work and some corrective action work. (A.R.007-A.R.008) Petitioner's consultant submitted a corrective action plan in 2007 which was approved, but was not implemented. (A.R.012)

On May 6, 2022, Petitioner's new consultant, submitted a corrective action plan and budget amendment. (A.R.003) Prior to the submission, Petitioner's consultant visited the site to

locate and potentially resample five contaminated monitoring wells. (A.R.012) The five monitoring wells could not be resampled due to being damaged or destroyed, but sixteen of the twenty-one monitoring wells were located. (A.R.012) The new corrective action plan proposed an evaluation of current contamination levels at the site by installing five replacement monitoring wells, advancing 16 soil borings to define the soil contamination plume and obtaining a soil gas vapor sample to assess the potential for contamination via the vapor intrusion pathway. (A.R.015) The associated budget estimated this would cost $29,606.20. (A.R.117)

On September 6, 2022, the Illinois EPA approved the corrective action plan, but cut $1,083.84 from the budget. (A.R.163; A.R.165)

On September 11, 2023 and October 2, 2023, Petitioner's consultants visited the site to perform the approved corrective action activities. (A.R.176) On November 20, 2023, Petitioner's consultant submitted a corrective action plan and budget detailing these activities and the analytical results. (A.R.167 - A.R.380) The analytical results indicated that soil and groundwater contamination exceeded Tier One Cleanup objectives in a defined, limited area, and the plan proposed implementing a groundwater ordinance for the Village of Towanda to address groundwater contamination. (A.R.178; A.R.180) After implementing the ordinance, a Corrective Action Completion Report would then be submitted justifying the entitlement to a No Further Remediation Letter. (A.R.181) The associated budget estimated costs for the work to be $27,831.15. (A.R.345)

On March 4, 2024, the corrective action plan and budget was reviewed by the Illinois EPA reviewer, Scott Rothering. (A.R.381) On March 6, 2024, Rothering emailed Petitioner's consultant with several questions about the plan and budget that needed responses by March 12,

2024. (A.R.399) In the course of the resulting communications, Petitioner's consultant justified the estimated time for the Senior Project Manager to design and prepare the corrective action plan and the Senior Draftsperson to draft additional maps for the plan, but agreed to reductions of 6 hours for the former and 2 hours for the latter if the hours still had to be reduced. (A.R.396) Petitioner is not appealing those reductions.

On March 19, 2024, the Illinois EPA modified the plan in part and modified the budget in part. (A.R.416) The budget for $27,831.15 was cut by $13,052.00, the bulk of which were the costs to obtain a groundwater ordinance and prepare the Corrective Action Completion Report. (A.R.418 - A.R.421) The decision letter stated these costs could be added "to a future budget." (A.R.419 & A.R.420) In addition, Petitioner appeals the denial of professional consulting services for planning and oversight of well abandonment, which the Illinois EPA deems covered by the lump sum rate of $14.79 per foot. (A.R.420 - A.R.421)

On April 30, 2024, Petitioner timely filed its petition for review before the Pollution Control Board.

LEGAL STANDARDS AND SCOPE OF REVIEW

The Agency's denial or modification of a corrective action plan budget may be appealed to the Board. See 415 ILCS 5/57.7(c)(4). Such Agency action must be accompanied by an explanation of the legal provisions that may be violated if the plan is approved, a statement of specific reasons why the legal provisions might be violated, and an explanation of the specific type of information the Agency deems the applicant did not provide. (415 ILCS 5/57.7(c)(4)) On appeal to the Board, the Agency statements and explanation frame the issues. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016) The Board must decide whether the submittal to the Agency demonstrated compliance with the Act and the Board's rules. Id.

Petitioner has the burden of proof in these proceedings. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016). The standard of proof in UST appeals is a "preponderance of the evidence." Id. ("A proposition is proved by a preponderance of the evidence when it is more probably true than not."). "The Board's review is generally limited to the record before IEPA at the time of its determination." Id.

The Board has promulgated rules for summary judgments: "If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." (35 Ill. Adm. Code § 101.516(b)) This motion for summary judgment is based upon the record filed by the Agency and the explanation given in the Agency decision letter. A party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219 (2d Dist. 1994).

ARGUMENT

The Agency made two deductions to the corrective action budget for work approved in the plan, but which the Agency believes without legal authority must be addressed in a future budget submittal. The Board has addressed this erroneous understanding of the Illinois Environmental Protection Act and the Board regulations on multiple occasions in the past, most prominently in Dersch Energies v. IEPA, PCB 17-3 (Aug. 11, 2022). The Illinois Environmental Protection Act is clear that a budget is "an accounting of all costs associated with the implementation and completion of the corrective action plan." (415 ILCS 5/57.7(b)(3)) Implementing the groundwater ordinance and preparing a corrective action completion report were approved corrective action activities, and the budget appropriately presented estimates of the cost of that work, which is all that is required at the budget stage. No provision of the Act or Board regulations is violated in doing what the Act expects.

In addition the Agency made two smaller deductions for consulting personnel work approved in the plan, but which the Agency believes are included in the well abandonment rate of $14.79 per foot. Professional consulting services are not governed by the well abandonment rate, but are "reimbursed on a time and materials basis." (35 Ill. Adm. Code § 734.845) The Agency's argument is not supported by (i) the text of the Board regulations, (ii) the Agency's own treatment of similar consulting services for planning and oversight in the record, nor (iii) the history of the Subpart H rates which contemplated, but ultimately abandoned, efforts to explore alternatives to time and materials payments for consultants.

I. The Illinois EPA Improperly Deducted All Corrective Action Completion Report Costs – Second Deduction ($7,347.42)

The corrective action plan approved by the Illinois EPA provided that once the groundwater ordinance is implemented, a corrective action completion report ("CACR") will be submitted to the Illinois EPA. (A.R.181) The Agency decision letter similarly states that "the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted on or before September 19, 2024." (A.R.417) This deadline goes beyond the requirement of the Act that requires a CACR within 30 after the completion of a corrective action plan that achieves applicable remediation objectives (415 ILCS 5/57.7(b)(5)), but there can be no question that the corrective action plan required submission of a CACR.

Nonetheless, the Illinois EPA deducted all of the costs of writing the corrective action completion report. (A.R.419) Instead, the decision letter states that "[t]hese costs may be added, with documentation, to a future budget." (A.R.419) The Agency reviewer's email similarly stated that "when you submit the CACR, you can submit an amended budget to include those costs." (A.R.410)

The Agency lacks legal authority to require costs in a plan to be submitted in a subsequent proposed budget. Dersch Energies v. IEPA, PCB 17-3, slip op. at 14 & 18 (Aug. 11, 2022) This is even more true here, where the corrective action plan anticipates no future plan or budget because the implementation of the groundwater ordinance is expected to achieve compliance with the applicable remediation objectives. In Dersch Energies, the reviewer thought it would be easier once "the costs will be known and it will not be necessary to approve costs in

excess of what is needed for the task." Id. While this approach might be convenient for the Agency, this is contrary to the Board rules providing that "[t]he budget must include . . . an estimate of all costs associated with the development, implementation, and completion of the corrective action plan." (35 Ill. Adm. Code 734.335(b) (emphasis added); see also (415 ILCS 5/57.7(b)(3) ("a corrective action budget . . . includes . . . all costs associated with the implementation and completion of the corrective action plan.")

In response to the Agency's questions, Petitioner's consultant explained in detail the basis for the hours to write the corrective action completion report and the number of maps needed:

> **All CACRs, especially for older sites can take 40-50 hours. We can only budget what it would typically take; if it takes less time, less time would be billed. We never just bill for the full amount budgeted; only for the hours actually incurred. The process includes combining years of previous plans which have not been reviewed or assessed recently along with correctly including the documents needed for the closure report. We will need to accurately examine, assess, and incorporate the needed analytical data, soil boring logs, well completion reports, TACO documentation, drafted maps, report tables, and previous information to satisfy the Illinois EPA requirements. We also may need to correspond and acquired documents from the client, property owners, and from city officials. This documentation also needs to be correctly incorporated into the closure report. The process also involves ongoing feedback from senior personnel, consistent assessment, and writing the comprehensive CACR. This is a complex and involved process which strives for correct representation and accuracy. In all likelihood, completion of the CACR will take more than 40.00 hours from start to finish.**
>
> **We anticipate 10.00 hrs for drafting and updating maps because we are compiling current and old reports into the CACR. Besides our current maps needing to accurately reflect the most recent data locations and depths, we have to be sure that the drafted maps of previous reports are still legible and reflect the information from their reports. Between contamination value and location maps, previous consultant maps, and maps that accurately reflect the completed actions taken, about 10 plus maps will be updated.**

(A.R.396-A.R.397)

The Agency reviewer acknowledged that the 40 hours for the CACR was "ok after their response," and the cost of drafting and updating the maps was also "OK after their response." (A.R.387)[1] In summary, the Agency deducted all five items attributed to CACR work, had questions about two of them, and the responses were acceptable. At some point, the Agency pivoted to requiring all CACR costs, not just those it initially questioned, to be submitted later in a new budget, which as explained supra the Agency lacks legal authority to require.

Budgets must be submitted on Agency forms of general applicability for all applicants to complete. (35 Ill. Adm. Code 734.135(a)) As such, completion of the forms is *prima facie* evidence that the documentation required by the Board's regulations has been submitted. This is not to dispute the Agency's right to ask questions about the submittal, but simply an unspecified sense that the submittal lacks documentation cannot be sustained when the documents required by the Agency forms have been submitted. If there was a necessary document that wasn't submitted, the Agency was required by the Act to give "an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency." (415 ILCS 5/57.7(c)(4)(C)) The Agency did not specify the type of information that was not provided because there was no information that was not provided.

In summary, the Agency's rejection of CACR costs for work required by law and by the approved plan is in direct contravention of the Board's ruling in Dersch Energies v. IEPA, PCB 17-3 (Aug. 11, 2022). As such Petitioner meets its burden of demonstrating neither the Act nor

[1] The Agency reviewer notes comment on each line item of the consulting personnel costs form. The CACR items are found on lines 5 through 8. (A.R.391) The notes indicate that each CACR line was "ok" or "ok after their response." (A.R.387) Also, while all material costs were noted as "ok," (A.R.387), postage for distributing the CACR documentation was cut as well. (A.R.419)

the Board's regulations would be violated by approving CACR costs in a budget before those costs are incurred.

II. The Illinois EPA Improperly Deducted All Groundwater Ordinance Costs – Third Deduction ($3,751.66)

The primary corrective action activity in the approved plan is for the implementation of a groundwater ordinance. (A.R.178) Nonetheless, the Illinois EPA deducted all of the "costs for obtaining the Village of Towanda Groundwater Ordinance." (A.R.419) Instead, the decision letter states that "[t]hese costs may be added, with documentation, to a future budget." (A.R.420) The Agency reviewer's email similarly stated that the groundwater ordinance preparation costs "will have to be included in the next [amended budget]." (A.R.410)

As explained in the previous section, the Agency lacks legal authority to require costs in a plan to be submitted in a subsequent proposed budget. Dersch Energies v. IEPA, PCB 17-3, slip op. at 14 & 18 (Aug. 11, 2022) This is even more true here, where the Illinois EPA went so far to require Petitioner's consultant to submit a draft notification for the groundwater ordinance to be used herein. (A.R.412 - A.R.415)[2] The Agency reviewer also requested further breakdowns of the Senior Project Manager's estimated twelve hours for review, preparation, design and

[2] The Agency reviewer stated that "[a]pparently, a draft groundwater ordinance is not sufficient. I need some sort of communication with a representative of the Village of Towanda indicating they are willing to accept the use of the ordinance. I assume you had communication with them." (A.R.412) There is no allegation in the Agency decision letter that the absence of any such communication was the basis of the denial. To the extent the Agency contends otherwise in this proceeding, the Board recently ruled that assurances from local government cannot required in order to approve a budget for implementing a groundwater ordinance. Marine Bank Springfield Trust #53-0051 v. IEPA, PCB 24-81, slip op. at 3 & 6 (Dec. 4, 2025)

meeting regarding the groundwater ordinance. (A.R.399) The consultant responded:

> **Village of Towanda Groundwater Ordinance Review (Draft review by IEPA, Senior Project Manager review, Draft review by the Village of Towanda): 4.00 hrs**
>
> **Preparation (Parcel boundary and address gathering, Communication with Village of Towanda, Notifications Letters, Creating an accurate ordinance narrative). 2.00 hrs**
>
> **Design (accurately drafting, incorporating Parcel information): 2.00 hrs**
>
> **Village Meeting: 4.00 hr**

(A.R.397)

The information submitted to the Illinois EPA complied with all applicable Board regulations, including provision of "an estimate of all costs the development, implementation, and completion of the corrective action plan." (35 Ill. Adm. Code 734.335(b) (emphasis added)) If there was a necessary document that wasn't submitted, the Agency was required by the Act to give "an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency." (415 ILCS 5/57.7(c)(4)(C)) The Agency did not specify the type of information that was not provided because there was no information that was not provided.

In summary, the Agency's rejection of all groundwater ordinance costs for work required by law and by the approved plan is in direct contravention of the Board's ruling in Dersch Energies v. IEPA, PCB 17-3 (Aug. 11, 2022). As such Petitioner has met its burden of demonstrating neither the Act nor the Board's regulations would be violated by approving the groundwater ordinance budget.

III. The Illinois EPA Improperly Deducted All of Consultant's Costs for Well Abandonment Activities – Fifth and Sixth Deductions ($887.70)

Pursuant to Board regulations, "monitoring wells must be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120." (35 Ill. Adm. Code § 734.435) The corrective action plan provides for the proper abandonment of all sixteen monitoring wells. (A.R.390) The Agency's decision letter does not dispute the necessity of well abandonment, nor the necessity of paying the drilling contractor, but rejected all of consultant's costs for preparing, scheduling, arranging and documenting the abandonment of sixteen monitoring wells ($591.80), and documenting and overseeing compliance with the well abandonment requirements ($295.90). (A.R.394; A.R.420-421)

In doing so, the Agency's decision letter did not claim that there are no professional consulting costs associated with well abandonment, but claimed that "[t]hese charges are included in the Well Abandonment Costs rate, for which a maximum rate of $14.79 per foot applies." (A.R.420 and A.R.421) Payment of the direct costs associated with drilling, well installation, and well abandonment are set forth in Section 734.820 of the Board's regulations. (35 Ill. Adm. Code § 734.820) The maximum payment amounts in Section 734.820 do not govern professional consulting services, which are set forth in Section 734.845 of the Board's regulations:

> **Payment for costs associated with professional consulting services will be reimbursed on a time and materials basis pursuant to Section 734.850. Such costs must include, but are not limited to, those associated with <u>project planning and oversight</u>; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation.**

(35 Ill. Adm. Code § 734.845 (emphasis added))

The Agency apparently believes that because the "per foot" rate in Section 734.820(d) applies to "costs associated with the abandonment of monitoring wells," the rate also encompasses all of the consultant's charges associated with planning and overseeing abandonment of monitoring wells, as opposed to the hourly rate for professional consulting services, including planning and oversight, authorized by Section 734.845. Just as there are consulting services required for preparing, scheduling and arranging for installing monitoring wells, there are similar consulting costs for abandoning those same wells. Indeed, the consultant's costs associated with drilling and installing five monitoring wells were approved in the previous budget. (A.R.123 (budget); A.R.163 (approval)) There is nothing in the text of Section 734.820 of the Board's regulations that hints that consulting costs are included in the lump sum rate for well installation, but not for well abandonment:

> **Section 734.820 Drilling, Well Installation, and Well Abandonment**
>
> **Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.**
>
> **a) Payment for <u>costs associated with each round of drilling</u> must not exceed the following amounts. Such costs must include, but are not limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.**
>
> | **Type of Drilling** | **Maximum Total Amount** |
> |---|---|
> | **Hollow-stem auger** | **greater of $23 per foot or $1,500** |
> | **Direct-push platform** | |
> | **- for sampling or other non-injection purposes** | **greater of $18 per foot or $1,200** |
> | **- for injection purposes** | **greater of $15 per foot or $1,200** |
>
> **b) Payment for <u>costs associated with the installation of monitoring wells</u>, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and**

development.

Type of Borehole	**Maximum Total Amount**
Hollow-stem auger	**$16.50/foot (well length)**
Direct-push platform	**$12.50/foot (well length)**

c) Payment for costs associated with the installation of recovery wells, excluding drilling, must not exceed the following amounts. Such costs must include, but not be limited to, those associated with well construction and development.

Well Diameter	**Maximum Total Amount**
4 or 6 inches	**$25.00/foot (well length)**
8 inches or greater	**$41.00/foot (well length)**

d) Payment for costs associated with the abandonment of monitoring wells must not exceed $10 per foot of well length.

(35 Ill. Adm. Code § 734.820 (emphasis added))

"Because administrative regulations have the force and effect of law, the familiar rules that govern construction of statutes also apply to the construction of administrative regulations." Kean v. Wal-Mart Stores, 235 Ill.2d 351, 368 (2009) One such rule is that "words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." Town & Country v. Pollution Control Bd., 225 Ill.2d 103, 117 (2007) "When the statutory language is plain and unambiguous, we may not depart from the law's terms by reading into it exceptions, limitations, or conditions the legislature did not express, nor may we add provisions not found in the law." Rosenbach v. Six Flags Entertainment Corp., 2019 IL 123186, ¶ 24.

Subpart H of the Board's UST regulations sets forth maximum payment amounts for various tasks. (35 Ill. Adm. Code § 734.800(a)(1)) These tasks are set forth in separate sections, utilizing the same basic phrasing: **"Payment for costs associated with [the task] must not**

exceed the amounts set forth in this Section." See 35 Ill. Adm. Code § 734.810 ("Payment for costs associated with removal of each UST must not exceed the amounts set forth in this Section."); 35 Ill. Adm. Code § 734.815 (Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section."); 35 Ill. Adm. Code § 820 ("Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section."); 35 Ill. Adm. Code § 825 ("Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section."); 35 Ill. Adm. Code § 734.830 ("Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums . . . must not exceed the following amounts or a total of $500, whichever is greater."); 35 Ill. Adm. Code § 835 ("Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in Section 734.Appendix D of this Part."); 35 Ill. Adm. Code § 840(a) ("Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier . . . must not exceed the following amounts."); 35 Ill. Adm. Code § 840(b) ("Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:"); 35 Ill. Adm. Code § 840(c) ("Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures must not exceed the time and material amounts set forth in Section 734.850 of this Part.")

The parallel structure employed from Section 734.810 to Section 734.840 of the Board's UST Regulations expresses the intention that these provisions should be interpreted consistently and without any differences or limitations unexpressed therein. These provisions can be referred to as "lump sum" provisions because costs for each task is capped by a lump sum established by

volume, length, weight or such other unit of measurement referenced. This is distinct from how professional consulting services are treated, which are reimbursed on a time and materials basis, and for which no lump sum cap is imposed in the Subpart H maximum payment amount.

The Subpart H rulemaking proceedings included an unsuccessful effort by the Illinois EPA to create lump sump caps for professional consulting services. The Board found that without identification of the scope of work for professional consulting services, lump sum limits were inappropriate, and therefore professional consulting services would have to be paid on a time and materials basis. See Proposed Amendments To: Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732), R04-22(a), slip op. at 60 (Dec. 1, 2005) The Board opened a new docket with the purpose of developing "scopes of work to be used in reimbursing professional consulting services with the hope of proceeding ultimately to lump sum payments for many tasks undertaken in the remediation of UST sites in Illinois." Id. at 79. However, the Board ultimately concluded that "the record does not support proceeding with maximum lump sum payment amounts for professional consulting fees associated with the cleanup of sites with leaking underground storage tanks. The Board further finds that the record lacks support for proceeding with scopes of work." Proposed Amendments To: Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732), R04-22(b), slip op. at 5 (June 1, 2006) As a result, no professional consulting services are subject to lump sum limits as the rulemaking proceeding tasked with their creation failed to produce a record for the Board to adequately support such limits.

Furthermore, many of the tasks subject to lump sum caps involve some sort of field activity, such as removing tanks, excavating contaminated soil, or installing engineered barriers,

that are performed by contractors based upon consultants' plans and pursuant to consultants' oversight. If the total units rates authorized for these field tasks also covered these consulting costs, then there would have been no reason to identify "field work" or "field oversight" as professional consulting services chargeable on a time and materials basis. (35 Ill. Adm. Code § 734.845)

Similarly, lump sum rates associated with "sample handling and analysis" (35 Ill. Adm. Code § 734.835), are separate from the "consulting fees associated with sample collecting and shipping." T-Town Drive Thru v. IEPA, PCB 07-85, slip op. at 24 (April 3, 2008) There was no dispute raised in T-Town about the consultant's costs associated with sample collecting and shipping, but there were issues raised with the consultant's practice of including consulting costs in the lump sum rate for sample handing and analysis by the laboratory. At the very least, the Board affirmed the Agency's denial of reimbursement for the latter costs without invoices from the laboratory. Id. at 24 & 29. The Agency is taking the opposite position here by insisting that consulting costs are required to be included in the lump sum rates and barred from recovery under the provisions governing consulting fees.

In summary, there is nothing in the Board's regulations that indicates that professional consulting charges for preparing, arranging and overseeing well abandonment are included in the lump sum rates in Section 734.820(d)). Moreover, this novel interpretation should be rejected as it could not be limited to well abandonment activities, but would eliminate a fairly large portion of professional consulting activities planning and overseeing all stage of underground storage tank cleanup, from tank removal to soil removal and disposal to sample handling and analysis. While there were previous rulemakings that considered use of lump sum caps for at least some

professional consulting services, these ultimately did not establish a record adequate for such an approach. As the Agency has repeatedly failed to conduct a triennial review of the adequacy of the amounts set forth in Subpart H as required by the Board's regulations (35 Ill. Adm. Code § 734.875), there is even less basis today to believe that the Agency's interpretation of the Board's Subpart H regulations reflect prevailing market rates. Accordingly, neither the Illinois Environmental Protection Act, nor the Board's regulations, would be violated by approving consulting professional services on a time and materials basis for planning and overseeing well abandonment.

WHEREFORE, Petitioner HENSON OIL COMPANY, INC., prays the Board find the Illinois EPA erred in its decision, direct the Illinois EPA to reinstate $11,986.78 erroneously cut from the budget, and that the Board further award payment of Petitioner's attorney's fees.

HENSON OIL COMPANY, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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