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
Illinois Pollution Control Board
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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 RESPONSE TO ILLINOIS EPA'S CROSS 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 30th day of July, 2026. The number of pages in the e-mail transmission is 5 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 RESPONSE TO

ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, HENSON OIL COMPANY, INC., by its undersigned counsel, responds to Illinois EPA's Cross Motion for Summary Judgment pursuant to Section 101.516(a) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.516(a)), stating as follows:

ARGUMENT

The Illinois EPA only defends the deductions related to consulting personnel costs for well abandonment. It takes the position that professional consulting services associated with "project planning and oversight" allowed under Section 734.845 of the Board regulations are unavailable if there is a maximum payment amount for "sample handling and analysis, drilling, well installation and abandonment, or drum disposal." (Cross Mot., at p. 9 (quoting 35 Ill. Adm. Code § 735.850(a)(emphasis in cross motion)) The Illinois EPA declines to explain this conclusion or address the contrary arguments in Petitioner's motion for summary judgment.

The main problem with the Illinois EPA suggestion, however, is that Section 735.850(a) currently does not govern any professional consulting tasks, those are governed by Section 735.850(b). Under the Board's regulations, professional consulting services set forth in Section

734.845 are tasks, just as drilling and abandonment of wells, soil removal and paving. (35 Ill. Adm. § 734.800(a)("All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850 of this Part." Professional consulting services are not subservient to other tasks; they are just different. The provision addressing professional consulting services references Section 734.850, which reads in full:

> **This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.**
>
> **a) Payment for costs associated with <u>activities that have a maximum payment amount</u> set forth in other sections of this Subpart H (e.g., sample handling and analysis, drilling, well installation and abandonment, or drum disposal) must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 734.860 of this Part.**
>
> **b) Maximum payment amounts for costs associated with <u>activities that do not have a maximum payment amount</u> set forth in other Sections of this Subpart H must be determined by the Agency on a site-specific basis, provided, however, that <u>personnel costs must not exceed the amounts set forth in Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work</u>. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.**

(35 Ill. Adm. Code § 734.850)

This provision contains two independent, mutually exclusive rules, depending on whether a maximum payment amount has been set or not. As explained in Petitioner's motion, the Subpart H rulemaking proceedings initially contemplated setting lump sump limits for specific professional consulting tasks, but ultimately none were adopted. (Mot. S.J., at p. 16) If a rule had, for example, set a lump sum of $50 in professional services for each well abandoned, then that task would fall under Section 734.850(a) as a rate for which a maximum payment amount has been set. Having not set such a rate, professional consulting services are governed by

734.850(b) which incorporates and explains the application of Appendix E's "Personnel Titles and Wages" provisions. Since professional consulting services have never had lump sump limitations imposed, all professional consulting services are currently governed by Section 734.850(b). This interpretation is consistent with the Illinois EPA's own approval of well installation costs. (A.R.123 (budget); A.R.163 (approval))

Petitioner does not dispute that consulting personnel costs are minimal for well abandonment, at least relative to well installation costs. That is not a basis to deny those costs altogether. If there was additional information that the Illinois EPA needed to evaluate, it was the Illinois EPA's obligation to provide "[a]n explanation of the specific type of information, if any the Agency needs to complete the review" in the decision letter. (35 Ill. Adm. Code § 734.610(d)(1)) The Illinois EPA's cross motion does not offer an explanation of the specific type of information needed either. Instead, the Illinois has been enforcing an unwritten rule that consulting personnel costs for well abandonment are never available as a class, not because any particular cost estimates are excessive.

Petitioner does not agree that well abandonment activities occur "after corrective action," but it is generally true that it is one of the last activities at the site. Monitoring well abandonment costs are properly included in a corrective action budget. (35 Ill. Adm. § 734.310(b)) When payment is sought for well abandonment, a licensed professional will be required to certify the work for which payment is sought in the payment application. Abel Investments v. IEPA, PCB 16-108, slip op. at 9 (Dec. 15, 2016)

Petitioner did not claim unusual or extraordinary circumstances, nor does it object to official notice being taken of the documents the Illinois EPA submits.

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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