

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	R04-022
REGULATION OF PETROLEUM	)	(UST Rulemaking)
LEAKING UNDERGROUND STORAGE	)	
TANKS (35 ILL.ADM.CODE 732)	)	
	)	
IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	R04-023
REGULATION OF PETROLEUM	)	(UST Rulemaking)
LEAKING UNDERGROUND STORAGE	)	Consolidated
TANKS (35 ILL.ADM.CODE 734)	)	

TESTIMONY OF UNITED SCIENCE INDUSTRIES, INC. TO ALTER THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL TO AMEND 35 ILL.
ADM. CODE 732 AND 35 ILL. ADM. CODE 734

My name is Jay P Koch. I am President & CEO of United Science Industries, Inc. (USI) located in, Woodlawn, Illinois. In one means or another I have been involved with the Illinois Leaking Underground Storage Tank (LUST) Program since founding USI in the fall of 1989.

Like many individuals that have been affiliated with the Illinois LUST program since its formative days, I have witnessed the trials, tribulations and triumphs of its evolution. Over the course of the past fifteen years, the LUST program has endured at least two funding crises and several legislative and regulatory changes. Nearly every crisis and legislative/regulatory change has been memorable. Countless companies have entered and left this industry for a variety of reasons, but those that are truly dedicated to this industry and their mission always seem to endure. We are experienced, strong, well managed, adaptive and dedicated to this industry and to our mission.

I am here today not only on behalf of United Science Industries, Inc., our employees and our clients but also to speak for a class of underground storage tank owner/operator that, to my knowledge, has been absent from these proceedings to this point. This class of owner/operator typically consists of the small business person, the retiree, the estate, the widow, the school district, the church, the agricultural cooperative, etc. that has from one to two incidents to remediate. These owners/operators are not large corporations or wealthy endowments. They are everyday law-abiding citizens and small businesses. They are our neighbors, our friends and our clients and they live in communities from Cairo to Chicago, from the Indiana state line to the Mississippi River.

In fact, as a group, they comprise the ownership of approximately 88% of all owner/operators of all leaking underground storage tank sites in the State. They also represent nearly 62.4 percent of the incidents that remain to be remediated. These citizens and small businesses are typically not well capitalized and they are not well represented. Unlike the major oil companies, large petroleum distributors and convenience store chains that are represented by groups such as the Illinois Petroleum Council, the Illinois Petroleum Marketer's Association/Illinois Association of Convenience Stores and the Illinois State Chamber of Commerce, I am not aware of a single trade organization or special interest group that serves the collective interest of this class of owner/operator. These owners/operators are the "silent majority". And, as I have stated previously, I am not aware that anyone has testified on behalf of these owner's/operators during the proceedings in this rulemaking. USI is well versed in the needs of this class of underground storage tank owners/operators. In fact, USI's in-house marketing statistics and the statistics published on the Illinois Environmental Protection

Agency's web site both indicate that United Science Industries, Inc. serves more of this class of underground storage owner/operator than any other environmental consultant in the State of Illinois. I, and several of the employees of United Science Industries, Inc., am here today not only to represent our organization, but to also speak to the needs of the "silent majority"; the needs of the thousands of owners/operators that have one or two incidents that they must remediate (hereinafter referred to as the "small owner/operator").

The small owner/operator has a number of special needs, but most immediately they need three things:

First, they need the record in this proceeding to be set straight.

Secondly, they need you, the Illinois Pollution Control Board, to listen closely today. They need you to listen to testimony that will question the IEPA's stated motives in this rulemaking. They need you to listen to the numerous conceptual flaws that make key portions of the currently proposed rule un-workable and intolerable. They need you to listen to testimony that will show that the Illinois EPA has over-stepped its scope of administrative authority in proposing certain key portions of the proposed rule that are contrary to the legislative intent of the Public Acts that define public policy on matters that are at the heart of this rule. They need you to listen; not to the speculation, conjecture, and highly inaccurate estimations that clutter, confuse and mislead the record in this proceeding, but instead to the facts and statistics as they really exist within the files and historical practices of the Illinois Environmental Protection Agency. These facts will be presented today. They will be based upon a survey of the IEPA's own data and files. They will present statistically significant findings and the means and methods used during this survey will be provided at the hearings and will be transparent to all.

These facts and statistics will establish a clear and competent record; one that can be relied upon. The small owner/operator also needs the Board to listen to and consider the proposed solutions to those conceptual flaws contained within this rule.

Finally, the small owner/operator, who is clearly the real beneficiary of a properly crafted rule, or the collateral victim of a poorly or casually crafted one, wants you to understand and to act. They want you to understand that they have long suffered the many contrary, unpopular and bureaucratic requirements of this Agency. They want you to understand that through the protections and services historically afforded by their consultants they have been able and willing to tolerate and suffer through the process. They want you to understand that they consider a threat to the well-being of their consultants to be a threat to their own well-being. They also want you to act. They want you to act based upon the adjusted record. They want you to act to alter the existing rule by modifying it to provide an objective rule based upon sound and transparent methodologies. They want the rule to be fair, easy to understand and they want it to be administered fairly and uniformly. They want the rule to represent a true process that ensures their protection into the future, not just the first engagement in a series of rate adjustment confrontations. They want you to act now. They want you to act to protect their safety and welfare. They want you to instill their faith in good government. They want to avoid an unworkable and intolerable rule moving to second notice. They want to avoid the need for legislative or judicial intervention. They want you to know that they are proud and independent, and they want you to know, hopefully unnecessarily, that if the key provisions of this rule remain so fundamentally flawed, they will quickly and loudly arise from their silence to right themselves and protect their welfare.

Before moving into the heart of our testimony today, on behalf of the employees of USI, I want you to know that we are with the small owner/operator. We always have been and we always will be. Inherent to our mission is the protection of their interest, their well-being, their property values and their peace of mind, and we are devoted to that mission. See Attachment I which shows a Petition signed by 100 Owners and Operators which clearly outlines for the board some of the needs of the owners and operators.

During its testimony today, United Science Industries, Inc. will do the following:

1. Demonstrate that the class of underground storage tank owner/operator described above represents the majority of owners/operators across the state, and provide the Board with a more thorough understanding of the characteristics, traits and needs of these small owners/operators.
2. Review the Agency's originally stated reasons for this rulemaking. Compare the Agency's stated reasons to the record and provide suggestions as to what the industry believes the Agency's real motives may be.
3. Provide factual information that will set the record straight as to the historical reimbursement practices of the Agency in regard to the reimbursement/payment of professional services and approval of work plans and budgets. This testimony will establish that, at least in the case of professional services, the Agency's previous testimony claiming that the rates proposed in Subpart H are "generally consistent" with the rates the Agency currently approves (Opinion and

Order; page 15, reference to testimony of Doug Clay) is inaccurate and cannot be relied upon.

4. Provide a synopsis of the areas within the proposed Subpart H, that are not objectionable as written, or that are acceptable with minor modification; noting proposed alternate language, if any, for each such provision.
5. Identify the key portions of the rule that are conceptually flawed, unworkable and intolerable and explain why each such provision is unworkable.
6. Provide proposed modifications to the conceptually flawed portions of the rule based upon simple and fundamentally sound management practices that will allow this rulemaking to be fair, uniform, and transparent and that will allow it to serve as a solid foundation for long term cost containment.
7. Provide other miscellaneous comments.

Section 1- Importance of 1-2 Incident PRPs and their Consultants

The following testimony is being presented to quantify and highlight the critical importance and unique characteristics of a distinct class of open incident potentially responsible parties (PRP). That class is comprised of the PRPs responsible for only 1-2 open incidents (PRP 1s or Small Owner/Operators). During this testimony we will present evidence that validates the importance and need of:

- Small Owner/Operators relevant to reducing overall LUST liabilities in the State of Illinois;
- The Illinois Pollution Control Board (IPCB) and Illinois Environmental Protection Agency (IEPA) promulgating LUST regulations that address the specialized needs of Small Owner/Operators and the potential severe consequences if those needs are not addressed; and
- The unique role of consultants in managing Small Owner/Operators sites and the need to maintain the integrity of that role.

This testimony is based upon the information obtained from the IEPA Lust database and other relevant sources during July of 2005.

Total Incident/PRP Data

The attached charts 1 and 2 provide a breakdown of total incidents and related PRP information segregated into the three categories of:

- PRPs with 1-2 open incidents (Small Owner/Operators);
- PRPs with 3-20 open incidents (PRP 3); and
- PRPs with >20 open incidents (PRP 21).

Although each class of PRPs exhibits its own unique characteristics, the focus of this testimony will concentrate on Small Owner/Operators.

In evaluating the data, several key points are as follows:

- There is a total of 8566 open incidents with a PRP listed;
- There is a total of 5620 PRPs responsible for one or more open incidents; and

- There is a total of 4991 Small Owner/Operators responsible for 5342 open incidents. **This is equal to 88.8% of all PRPs and 62.4% of all remaining open incidents.**

Small Owner/Operators is the largest single group of PRPs remaining in the program and are responsible for the majority of all remaining LUST environmental liabilities in the state of Illinois. They are also, as we will demonstrate later in this testimony, the group most highly dependent on the LUST funding, the efficiency and efficacy of the regulatory process and the integrity of their consultant relationship.

They are the single largest group to be impacted by the new LUST regulations, yet they are also the most under-represented group of PRPs.

Small Owner/Operators Characteristics

Small Owner/Operators has numerous distinctive characteristics. Although these characteristics are intuitively understood by anyone with a working knowledge of the LUST market in Illinois, the characteristics are quantitatively validated by the data outlined in the attached Chart 3.

Distinctive Small Owner/Operators characteristics are as follows:

- Over 19% are listed as individuals;
- The majority, a total of 67% are businesses. Based on a review of business names and a sampling of business information, we estimate that the majority are small to medium sized business owners;
- The remainder are school districts, government, church and small to medium sized communities; and

- For the most part Small Owner/Operators are not represented by key Illinois organizations. For example, only 1% of Small Owner/Operators are represented by IPMA.

USI has extensive experience working with Small Owner/Operators. During the past 15 years we have provided services to hundreds of Small Owner/Operators and are currently assigned 328 open incidents. Some additional key characteristics of Small Owner/Operators based on our experience include:

- Their financial resources are typically limited. They are typically unable to meet financial liabilities above the LUST deductible and oftentimes struggle to meet the deductible;
- Their LUST site property is considered a valuable and oftentimes substantial component of their assets;
- They typically have limited management and technical resources, oftentimes limited to the owner, or more difficult yet, a trustee; and
- They are proud and responsible individuals who would like to address their environmental liabilities.

Small Owner/Operators is comprised primarily of individuals, small businesses and institutions that make up the backbone of our rural and small-medium community infrastructure. What Small Owner/Operators is NOT, and this is absolutely critical to understanding the impact of the LUST regulations on them, is they are NOT typically big business, do NOT have deep pockets, and do NOT have extensive management and technical resources. Addressing their open incident responsibilities places them at significant financial, legal and resource risk!

For comparison purposes and to better understand the unique characteristics of Small Owner/Operators, we performed a similar analysis of the PRP 21 group. This data is presented in the attached Chart 4 and indicates the following:

- There are no individuals listed in the PRP 21 group;
- The majority, a total of 74% are businesses. Most of the businesses are larger with annual revenues in the millions of dollars;
- The only community listed in this PRP group is the City of Chicago; and
- Over 37% of PRP 21 are members of IPMA.

In addition, based on our working prior experience with the PRP 21s, they are several more distinctive differences from the Small Owner/Operators group including:

- They tend to have good financial resources. Paying the deductible is not an overwhelming financial hardship;
- The LUST site property is oftentimes a limited or negligible component of their assets;
- They have more extensive management resources. Larger companies oftentimes have an in-house environmental manager;
- Oftentimes they accelerate the project and pay out of pocket for activities not covered by the LUST fund in order to achieve internal financial/management goals; and
- They are oftentimes willing to TACO property and minimize returns from property sale in order to move property out of inventory.

Although we did not go into a detailed evaluation of the PRP 3 class, it is reasonable to assume their characteristics are somewhat a blend of the two previously discussed classes.

In comparison to the larger PRP groups, Small Owner/Operators is highly dependent on the financial resources provided by the IL. LUST fund. This financial dependence includes both the need for 100% reimbursement of approved items and also the need for timely payment. Also, the LUST site property is an important financial asset and the regulations must allow them to preserve that asset value. And finally, because of limited management and technical resources, they are highly dependent on their consultant to manage all aspects of their environmental project. The unique role of the consultant for Small Owner/Operators is discussed next in this testimony.

Open Incident Consultant Statistics

To better understand the role of the consultant in working with Small Owner/Operators, we first evaluated basic information concerning the number of consultants in Illinois and their primary PRP groups. Key information is as follows:

- The total number of consultants in IL is 375 as testified in previous hearings by the IEPA;
- Of the 8566 total open incidents, 2081 open incidents are currently assigned to 334 consultants;
- The number of consultants representing Small Owner/Operators is 321;
- The top 5 consultants represent 26.7% of the Small Owner/Operators;

- The top 5 consultants represent over 24.2% of the assigned Small Owner/Operators open incidents; and
- Three of the five top consultants are members of PIPE.

United Science Industries is the leader among the top 5 Small Owner/Operators consultants with a total of 328 assigned open incidents, 204 of which are Small Owner/Operators open incidents. We have operated successfully in the IL LUST market for over 15 years. We make this point primarily to verify that we have a deep understanding of the LUST market and especially the Small Owner/Operators needs. Our organization has been a leader in developing approaches that address the unique needs of Small Owner/Operators. The role of a consultant for Small Owner/Operators is significantly different then for the larger PRP groups.

Key components of the unique role of a Small Owner/Operators consultant include:

- They are oftentimes sole source for the duration of the project since the Small Owner/Operators has limited resources and is not able to easily procure or manage multiple providers;
- They typically manage all aspects of the work and discussion with the IEPA based on the Small Owner/Operator's limited technical expertise and understanding of the regulations;
- They discuss optional approaches with the Small Owner/Operators but tend to implement approaches that help protect property value since the Small Owner/Operators property is a key financial asset;

- They very carefully schedule and manage all activities within LUST fund guidelines to achieve 100% reimbursement due to the financial hardships that would be experienced by Small Owner/Operators if they were forced to pay additional monies above the deductible; and
- They typically wait on payment from the LUST fund since the Small Owner/Operators does not have sufficient cash flow to pay on standard consulting payment terms.

Contrast the Small Owner/Operators consultant approach with an approach more typical to the PRP 21 group and substantial differences will be noted. For example:

- Consultants typically report to the PRP 21 environmental manager, lawyer or purchasing agent.
- Consultants develop and implement approaches that meet PRP 21 overall objectives including schedule, property disposition, asset management, fiscal year goals and other key considerations;
- Managing an approach within LUST fund guidelines to achieve 100% reimbursement may be only one of multiple considerations mentioned above and not necessarily the ultimate approach driver; and
- Consultants typically receive payment on net 30-60 day terms direct from the PRP 21.

PRP 21 has significant internal resources and the open incident site is oftentimes not a critical part of their asset base. Although they rely on their consultants to achieve regulatory compliance in a cost effective and technically correct manner, their approach to site closure is driven more by overall goals as compared to site specific considerations.

In comparison to larger PRP groups, Small Owner/Operators is highly dependent on their consultant of choice. Oftentimes the relationship is significantly trust based with Small Owner/Operators relying on the consultant to ensure they meet regulatory requirements in a manner where they are not faced with legal liabilities, are not required to pay monies in addition to the deductible, and where their long-term property values are protected.

In order for the consultant to accomplish these goals, the regulatory process must recognize the unique needs of Small Owner/Operators and the necessity to maintain the integrity of the consultant/owner relationship. In addition, the reimbursement process must provide timely payments to ensure the Small Owner/Operators and their consultants are able to move forward with the work at a reasonable pace without suffering devastating cash flow drains.

Conclusions

Small Owner/Operators is the single largest PRP group responsible for the majority of the open incident sites in Illinois. As a group they have definite and unique needs that must be addressed if they are to be successful in achieving environmental compliance on their sites.

We feel it is imperative that the IPCB and the IEPA take action to provide regulations that address the special needs of Small Owner/Operators, their largest group of customers. Those actions include:

- **Providing a streamlined and efficient LUST program that ensures 100% timely payment for all approved activities above the applicable deductible.** A program that continuously delays payments and places payment amounts in

jeopardy based on arbitrary and unsubstantiated requirements can bankrupt the Small Owner/Operators.

- **Providing an efficient and functional LUST program that recognizes and maintains the stability of their unique owner/consultant relationship.** Dealing with regulations and payment “catch 22s” that necessitate ongoing competitive bidding and potential consulting changes is beyond the management resources of the Small Owner/Operators.
- **Providing regulations that recognize and address the critical need of Small Owner/Operators to maintain long-term property value.** Regulations that force Small Owner/Operators to close sites at contaminant levels that reduce or eliminate property value can be financially devastating.

Ignoring these needs in form or substance is basically ignoring a class of individuals, businesses, and public entities that are at the heart of our American culture. These are truly the entities that helped build our great state and nation and should be the primary recipients of the benefits and value of the LUST program funding. Ignoring these needs places Small Owner/Operators at significant financial risk and jeopardizes the majority of the LUST environmental work to be completed in Illinois. Although the larger PRP groups probably have the resources to survive poorly crafted, indifferent and bureaucratic regulations, under those circumstances Small Owner/Operators must either not perform the work and face legal liabilities or perform the work with the risk of significant financial losses and excruciating drains on internal resources.

This unique class of PRP deserves your comprehensive attention to the details that will make the program work for them. They are at the heart of the Illinois LUST

program and it is incumbent upon us as consultants and you as regulators to respond to their needs.

Final Remarks

The information and conclusions provided in this testimony is further corroborated and supported by the 100 signed petitions from PRPs and testimony from selected PRPs all requesting a fair, equitable and statistically sound approach to the new regulations that take into account the unique characteristics of the Small Owner/Operators-group.

It should also be stated that addressing the unique needs of the Small Owner/Operators group can and should be accomplished without comprising in any fashion the need for the IEPA to manage a LUST program that is efficient and effective, incorporates reasonable cost controls and achieves environmental regulatory compliance. More information concerning this is provided in other sections of this testimony.

Chart 1
Open Incident Data by PRP Group

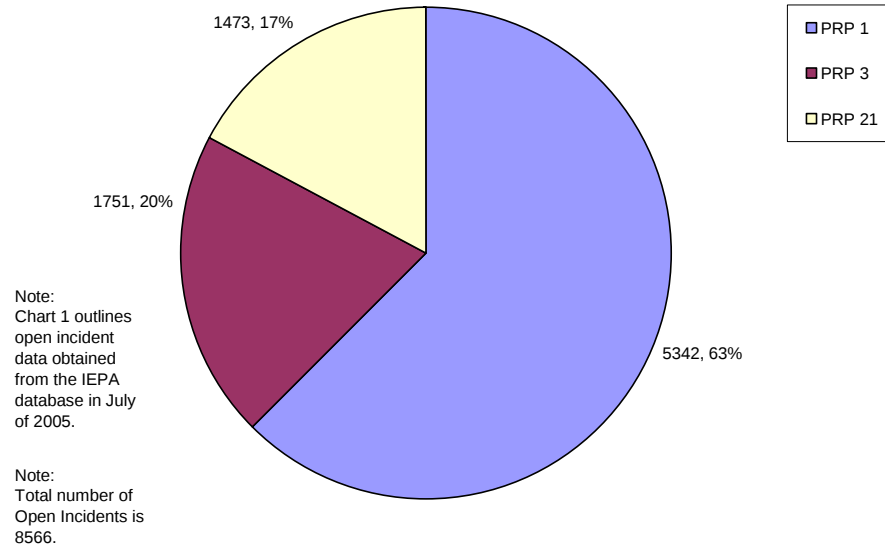
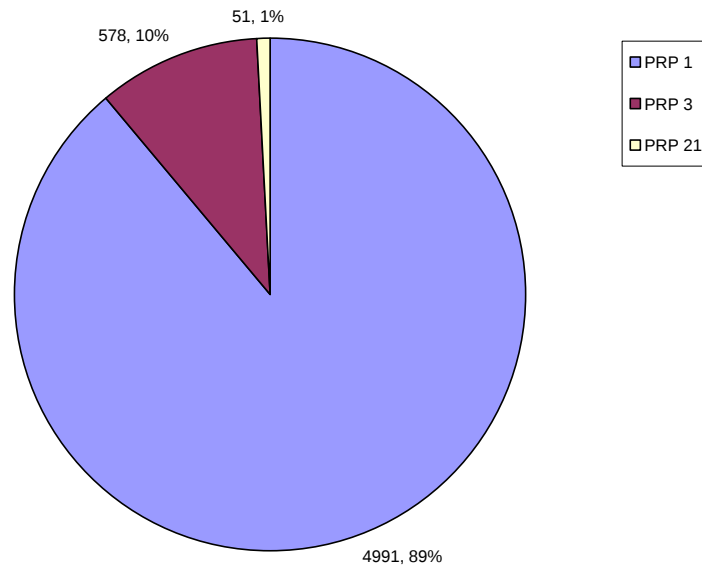


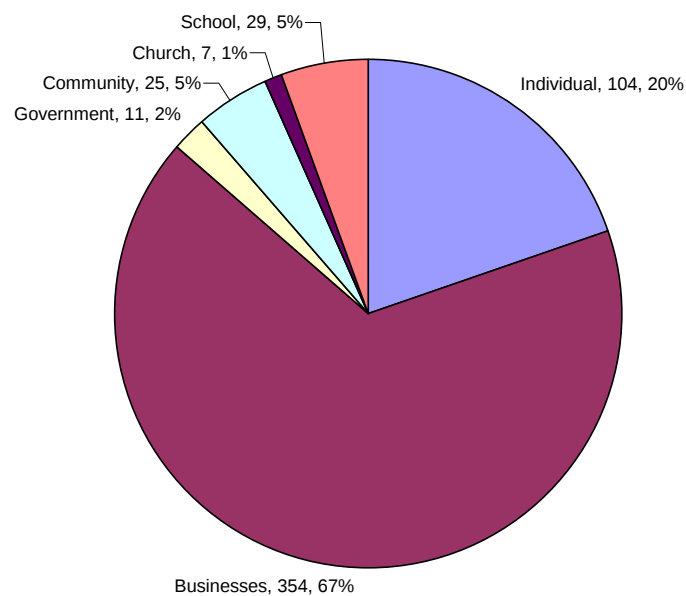
Chart 2
Total PRP Data by PRP Category



Note:
Chart 2 outlines
PRP information
obtained from the
IEPA database in
July of 2005.

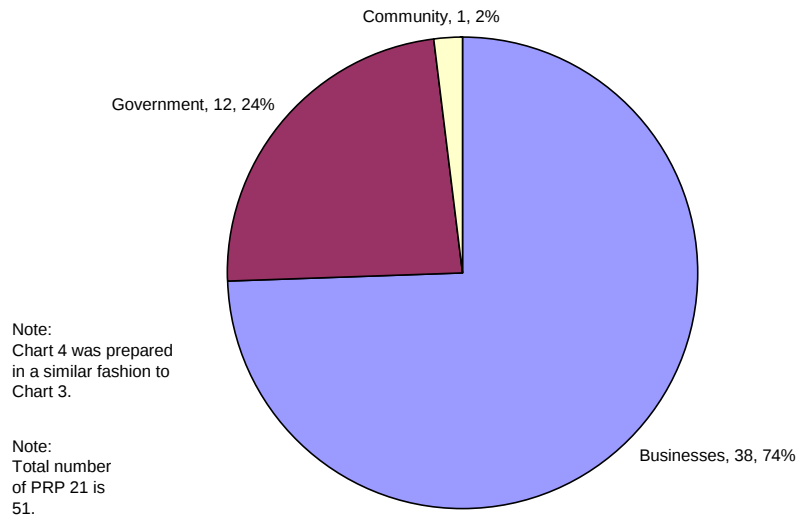
Note:
Total Number
of PRPs is
5620.

Chart 3
PRP 1 Characteristics



Note:
Chart 3 quantifies various characteristics of the PRP 1 group. To prepare Chart 3 we utilized a random number generator program to select approximately 10% of the PRP 1 group. We then separated the final list of approximately 530 PRPs into the categories of individuals, churches, government, schools, municipalities and businesses using naming conventions. After the initial categorization PRP we performed an additional analysis of the business and community categories using demographic and other information obtained ESRI Business Analyst and InfoUSA, a nationally recognized consumer/business database. We also compared this list to the Illinois Petroleum Marketers (IPMA) 2005 membership list. During this process we discovered numerous data gaps (e.g., lack of addresses, companies out of business, duplicate names) so the data should be considered approximate rather than absolute. However, the data patterns were more than sufficient to understand the basic trends and characteristics outlined in this testimony.

Chart 4
PRP 21 Characteristics



Section 2- Review of Reasons for this Rulemaking

Background Information:

Unlike the technical aspects of their proposal, the Subpart H portion of the proposed rules were developed by the Agency, not as the result of a legislative mandate, but rather through the Agency's motivation to create rules. Although the Agency has stated a number of reasons behind the Subpart H portion of the proposed rule, several participants in this process have publicly questioned and privately commented about the real motives of the Illinois EPA relating to Subpart H.

The Agency has publicly stated that the "most notable" reason behind their proposal is a need to reform the budgeting and reimbursement procedures. (Opinion and Order; page 15, page 22, and, page 24,). The Agency's statement begs two questions: 1. What is driving this need?; and, 2.) What types of reforms are needed? The Agency has sold the Board on the concept that these reforms are needed:

1.) So that the Agency can "streamline the preparation and review of budgets and applications for payment". (Opinion and Order; page 15, reference to testimony of Doug Clay);

2.) To make the program more cost effective (Opinion and Order: page 26, reference to testimony of Gary King);

3.) To reduce the amount of time spent by Agency personnel on the review of budget and reimbursement issues (Opinion and Order; page 26, reference to testimony of Gary King);

4.) To improve consistency in Agency decisions; (Opinion and Order; page 17, reference to testimony of Doug Clay);

5.) To control clean-up expenses (Opinion and Order; page 17, reference to testimony of Doug Clay);

6.) To expedite clean-ups; (Opinion and Order; page 17, reference to testimony of Doug Clay)

7.) To reimburse owners/operators in a more timely and efficient fashion. (Opinion and Order; page 17, reference to testimony of Doug Clay);

8.) To reduce the amount of time that will be needed for consultants to prepare budgets and payment applications. (Opinion and Order; page 17, reference to testimony of Doug Clay) and;

9.) To reduce the level of incidence of what the Agency believes are “abuses of the system”. (Opinion and Order page 26, reference to testimony of Gary King)

On the surface, the reasons for reform stated by the Agency seem reasonable. Taking each of their declared motives at face value, and assuming that they are genuine in their desire to achieve their above stated goals, one would easily surmise that the Agency would be open to suggestions that were consistent with their stated goals. Of the items stated above, items 1, 3, 5, 6, 7 and 8 all have to do with the goal of either streamlining, creating efficiency, expediting or reducing processing time. Actions speak much louder than words. The genuineness of the Agency’s stated motives listed above are called into question when one considers the numerous proposals that have been made by the parties in this proceeding to reduce processing times and streamline processes. The Agency’s response to these various proposals has always been consistent. In each instance they have rejected the proposal. Specific examples of such instances include:

1. The Agency's rejection of the proposal by PIPE that a database needs to be developed to assure accuracy in the maximum payment amounts (Opinion and Order; page 69);
2. The Agency's rejection of the suggestion by PIPE of a reduction in the amount of time allowed for reviews of plans and budgets to less than 120 days (Opinion and Order; page 69) (please note that in this instance the Agency suggested that any such changes would have to be statutory in nature. However, the applicable statute only sets forth the maximum timeframe that the Agency has to perform such reviews. If the Agency was genuine in its desires to "streamline" and "expedite" the process nothing in the statute would prohibit the Agency from decreasing its internal timeframes for review);
3. The proposal by PIPE of a "draft denial letter" to be entered (Opinion and Order; page 69) into the Agency's process in order to help resolve disputes before such disputes must go to the Board on appeal;
4. Anyone with knowledge or experience in the process of bid specification preparation, bid solicitation, contract management and administration, knows that the Agency's introduction, in the third *errata* sheet, of a competitive bidding process into their program will add levels of complexity and administration that will certainly not permit for the "streamlining" or "expediting" of the LUST program that they have declared they desire;

5. Finally, the blasé approach that the Agency used in the development of many of the rates proposed in Subpart H, is not indicative of a party truly interested in streamlining and efficiencies. The LUST section is a scientifically oriented organization consisting of scientists and engineers. Scientists and engineers are trained to hypothesize, test, study, analyze, plan and design and are typically motivated more by getting things right than merely “throwing something together”. It is highly suspect that a group trained in these disciplines would use such a nonchalant approach if their interest were truly genuine. Please see Attachment 2 for a list of all those that testified that a scope of work was needed for each maximum payment amount.

One can hardly conclude from the record, that the Agency’s motives are to streamline, create efficiencies, expedite, or reduce processing times.

Item two above provides that one of the Agency’s stated motives for this rulemaking is “to make the program more cost effective”. When questioned as to the level of cost savings that are likely to be achieved if this proposal is implemented, the Agency admitted that it had not performed an analysis of the anticipated cost savings. (Opinion and Order; page 17, referencing testimony of Doug Clay). It seems reasonable that if one has a genuine desire to cut costs, if for no other reason than to satisfy one’s own curiosity with regard to their contemplated actions, one would want to analyze and forecast the cost savings that might be generated. It also seems reasonable that if one was genuinely concerned about cost reduction, it would want to be in a position to properly defend its proposals. The Agency’s failure to predict the cost savings of their proposal

calls into question whether they genuinely want to achieve that goal or whether there is some other motive behind their proposal.

While, the Agency's failure to analyze the costs savings of this proposal calls into question whether cost reduction is the true objective, the Agency's outright rejection of the request by PIPE, the ad hoc group, and nearly every consultant that testified in this proceeding, to define a scope of work, when taken in the context of the competitive bidding process proposed by the Agency in the third *errata* sheet, is an absolute formula for financial disaster for the LUST program. Anyone with any business savvy whatsoever, understands that increasing levels of risks will serve to increase the costs of products and services. For instance, the state of Illinois is currently involved in a serious medical malpractice crisis. The costs for physicians doing business in Illinois to obtain medical malpractice insurance is significantly higher than in many other states. This is due to the increased risks of lawsuits in Illinois. It is only logical to believe that the Illinois EPA's refusal to define a scope of work for each maximum payment amount increases the level of uncertainty and risks and will drive bid prices higher. As a result the total costs to the fund will escalate and the Agency will have no choice but to pay the higher prices because their own regulation will require them to do so. Additionally, the fact that the Agency has refused to standardized a scope of work means that each consultant that prepares a bid specification will do so uniquely, thereby increasing the Agency's cost of review. The Agency's refusal to define a scope of work for each maximum payment amount along with their proposal to add a competitive bidding process to establish alternatives to maximum payment amounts for which they have

refused to define a scope of work is not only inconsistent with their stated goal of making their program more cost-effective, it is actually counter-productive to that goal.

Similarly, the Agency's refusal to define a scope does not even scarcely support their stated goal of "improving consistency in their decisions" as they have alleged is a goal in item number four above. Imagine how "straightforward" it will be for an agency reviewer to evaluate and compare a competitive bid price obtained pursuant to a "scope of work" prepared by a consultant in a competitive bid specification to a maximum payment amount that has no defined scope of work. The only consistency in a system so poorly designed will be consistent chaos and consistent appeal. As long as the Agency maintains that a defined scope of work is not needed for each task for which there is a maximum payment amount they cannot claim that they desire more consistency in their decisions.

With the above stated motives in this rulemaking being refuted, one is left to consider the Agency's stated concern about alleged increases in the incidence of perceived abuses of the system. This comment, included in Gary King's testimony pg 26, is almost akin to a distress signal, and is a baffling comment to be made by a senior level manager of the very organization that, pursuant to statute, has been granted not only the authority but also the responsibility to oversee the UST program and determine the reasonableness of reimbursement (Opinion and Order; page 20) and more specifically the responsibility to review all submittals for consistency with the Act and Board regulations. (Opinion and Order; page 68). Considering the fact that the program requires pre-approvals of budgets and work plans before reimbursement claims may be processed, and the fact that the Agency has already been granted the broad authority by the Illinois

legislature to audit all data, reports, plans, documents and budgets submitted to the Agency (Opinion and Order; page 66), it is almost impossible to conclude that the Agency does not already have the ability to thwart any abuses that might be perpetrated against the system. This conclusion is crystallized in view of Gary King's March 15, 2004 testimony that states that the Agency has never been accused of operating a give-away-program" and that the Agency is constantly aware that the Agency is responsible for reimbursing the "reasonable costs" of remediation. (Opinion and Order; page 26). Finally, the Agency's argument in response to PIPE's proposal to rely upon the certification of a number of licensed professional engineers or geologists makes the Agency's power and authority in making decisions related to LUST reimbursements quite clear. In that argument, the Agency stated that neither Section 57.7 of the Act (415 ILCS 5/57.7(2002)) or the regulations are intended to grant licensed professional engineers or geologist with a final decision making authority that supercedes the Agency. The Board concurred with the Agency's position on this matter and so does USI. (Opinion and Order; page 68)

Because of the Agency's actions and testimony during this proceeding, it is difficult if not impossible to rationalize any of the motives that the Agency declared when they first proposed Subpart H in early 2004.

One additional motive that was stated by the Agency during the proceedings is that the LUST Fund is operating at a deficit of approximately \$25 million per year and that if this difference is not reduced delays in payment could occur. (Opinion and Order; page 17). All parties in this proceeding know that in recent years the LUST Fund has been the subject of statutory transfers to other programs so this testimony should not be

weighted too heavily. Additionally, if a true funding crisis actually exist, why has the Agency not notified owners/operators pursuant to 732.503(h) and 734.505(g)?

In addition to the IEPA's declared motives, there are a number of other motives that have been discussed within industry circles during the course of the past year and one half. One is that the IEPA has been asked to reduce expenses so LUST Fund monies can be siphoned off to other state programs as a result of the fiscal problems that the state has been experiencing in other programs. One is that the regulators view the LUST Fund as their "cash cow" and want to protect balances in the Fund to protect their own jobs. One is that a current IEPA employee who is a former competitor to Illinois LUST consultants is driving these changes as means of settling a vendetta against his former competitors. Another is that the Agency is adamantly opposed to the business practices of some consultants that "defer payment" for their services until such time that their clients are reimbursed and/or guaranteed that their services will be reimbursable and that the Agency wants to use this rule as a means to diminish them. The real motives are never likely to be stated publicly but whatever the true motive, the Agency needs to keep the needs of the small owner/operator at the forefront.

Section 3. Historical Administration of the Illinois LUST Program.

In the Board's Opinion and Order the Board states "Although the Agency's methodology for determining the maximum rates is not statistically defensible, the Agency's data is from actual applications for reimbursement for sites in Illinois. The Agency's testimony is that the rates as developed will be inclusive of ninety percent of the sites remediated in Illinois (see Tr.3 at 54-56). Therefore, the Board finds that the

Agency's method for developing the maximum payment amounts is primarily based on the Agency's experience in administering the UST program in Illinois. The Board further finds that the rates are reasonable. Any deficiencies in the maximum rates are obviated by the language dealing with extraordinary circumstances and the addition of the bidding process." (Opinion and Order; page 79)

In the immediately preceding paragraph the Board states, "The participants questioned the Agency extensively on the procedures used to develop the rates. The comments and testimony before the Board demonstrated real concerns with how the rates were developed. However, other than certain specific areas, alternative rates were not offered." (Opinion and Order; page 78).

A close examination of the Board's language on these two pages, and elsewhere within the Opinion and Order, leaves little doubt that, in the absence of a competitive bidding process (734.855) and the unusual and extraordinary circumstances provisions (734.860), the Board would have been extremely hesitant and probably unwilling to accept the maximum payment amounts proposed by the Agency in Section 734.810 through 734.850. The likelihood that the maximum payment amounts proposed by the Agency are insufficient is clearly on the board's mind when they state that "Any deficiencies in the maximum rates are obviated by the language dealing with extraordinary circumstances and the addition of the bidding process". The Board's language explaining why the Board changed the payment unit of measure for the task of preparing competitive bid specifications from "lump sum" to "time and materials" is understandably to address the Board's concern that the maximum payment amounts may be too low. In that portion of the Opinion and Order the Board states that "The Board is

especially concerned given that bidding is an alternative to any of the lump sum payments in Subpart H and the Board is not convinced that the maximum rate of \$160 would be sufficient for the preparation of a request for bids and review of bids for all of the tasks in Subpart H.” In this passage, the Board indirectly acknowledges the potential insufficiency of the maximum payment amounts proposed in Sections 734.810 through 734.850 by helping to assure the sanctity of the alternative means of establishing maximum payment amounts. Perhaps even more importantly in this instance, the Board disqualifies, as insufficient, the maximum payment amount for the preparation of bid request and review of bids. Interestingly enough, when utilizing the approach that the Board elected to publish at First Notice, which is the use of competitive bidding and the extraordinary circumstances provision as an alternate means of establishing maximum payment amounts, the only truly critical rate in the entire structure is the rate associated with bid preparation and review. The fact that the Board chose to disqualify the Agency’s proposed rate for those activities speaks volumes.

The Board’s statement on page 78 (Opinion and Order) indicates that the Board would have been willing to consider alternative rates if they were presented. As a point of clarification, it is important to note that USI and other PIPE members were cautioned prior to the 2004 hearings to not discuss rates amongst one another for legal reasons. As a result, PIPE and its members refrained from providing alternative rates. In order to avoid these legal issues other solutions, such as RS Means, were offered by PIPE.

USI agrees with the Board when they state that the rates should be based upon actual experience in the UST program in Illinois. (Opinion and Order; page 79). RS Means and other sources that do not specifically track costs associated with the Illinois

UST program are not likely to reflect the requirements and costs unique to the Illinois Leaking Underground Storage Tank Program.

The Agency has testified that they have developed the rates from their experience in administering the LUST program in Illinois and that they believe that the rates that they have presented will be inclusive of ninety percent of the sites in Illinois. (Opinion and Order; page 79) Given the methods that the Agency used to develop the rates and USI's experience in UST work in Illinois which includes extensive experience in both consulting and contracting work, USI is not-objectionable to most of the maximum payment amounts provided in Section 734.810 through 734.840. Please see Section 4 of this testimony for additional discussion of this topic.

However, USI is confident that the record is significantly in error as it pertains to the consistency of the maximum payment amounts provided in Section 734.845 compared to the Agency's historical and current reimbursement practices. USI that other than with regard to the labor rates provided in Appendix E, the Agency's experience in administering the UST program is of little use. This statement will be explained in more detail later.

USI's experience in dealing with the UST program is significant. In each of 2003 and 2004, on behalf of our clients, USI submitted over fourteen percent of all reimbursement claims submitted to the UST program. (see Attachment 3). Our historical reimbursement percentage is well above the state-wide average. (see Attachment 4) USI's fee schedule items are routinely and consistently approved by the Agency in budget proposals and reimbursement requests and they have been for years based on our own experience at the sites we represent. USI has observed numerous

examples where the Agency's proposed maximum payment amounts deviate from the rates that the Agency currently and historically considers to be reasonable. USI submits its fee schedule as Attachment 5. This fee schedule provides rates that are currently being reimbursed in Illinois for professional services. USI would like to emphasize that this fee schedule provides charges for professional instrumentation, equipment and materials and supplies that the Agency has omitted from Subpart H. In light of the fact that numerous professional service oriented time and materials tasks are provided in Subpart H, and the fact that instrumentation, equipment and materials and supplies are resources that are just as critical and necessary to the completion of a corrective action as is professional labor, it would only be wise to include in Subpart H, time and materials maximum payment amounts for the instrumentation, equipment and materials and supplies that are routinely used by professionals.

In order to evaluate the current and historical reimbursement practices of the Agency on projects other than just USI's client's sites, USI performed a review of the professional service costs associated with sixty-nine (69) randomly selected incidents. These records were obtained via a Freedom of Information Act that was submitted to the Agency earlier this year. (The methods that were used to select these incident numbers along with a list of the incident numbers for each of the sixty-nine sites selected for the sample is provided in Attachment 6) The results of the survey were very revealing and prove that the maximum payment amount for professional services that have been proposed by the Agency are not even close to being consistent with the costs that the Agency currently approves. Most notably, the results of the survey showed that the maximum payment amounts proposed by the Agency in Subpart H would have the effect

of dramatically reducing the number of professional service hours and the costs that the Agency currently considers reasonable and necessary.

The data collected as part of this survey is reported by total professional service hours and total charges per phase of a project (i.e. Early Action, Site Classification/Investigation, Corrective Action) rather than on a task by task basis. This is due to the fact that a task-by-task analysis would be statistically meaningless and highly inaccurate due to the fact that the Agency has never implemented a standardized task structure against which costs must be reported by owners/operators and their consultants. Instead owners/operators and their consultants have historically been permitted to group varying work activities into task that are arbitrarily established and completely inconsistent across the Agency's files. In fact, USI's survey found 145 different task conventions associated with the Early Action Phase, 386 different task conventions associated with the Site Classification Phase and 534 different task conventions associated with the Corrective Action phase. The effect of this lack of standardization at the task level is that the only accurate means of assessing professional service cost are either to assess them at the project level or on a phase by phase level. Since the Agency's current regulations are written utilizing a phase by phase approach and the Agency's budget and billing forms require budgets per phase, USI elected to utilize a phase by phase approach in its review of the data. This is appropriate in light of the fact that the Agency elected to use a phase by phase approach for professional consulting services maximum payment amounts provided under Subpart H. It should be noted that in Subpart H the Agency provides 32 tasks (maximum payment items) for all phases of a UST project. USI is not suggesting that a consolidation and standardization

of tasks is not a concept without merit, rather only that the methods that the Agency used to accomplish this consolidation were horribly flawed, highly inaccurate and far from being consistent with current Agency reimbursement practices.

The summarized results of this survey are follows.

Professional Consulting Services Cost- Early Action

USI found that the average cost per hour for professional services plus one standard deviation multiplied times the average number of hours for professional consulting services for the Early Action Phase plus one standard deviation, yielded a total cost of approximately \$12,400. USI found that the average cost per hour for professional services plus two standard deviations multiplied times the average number of hours for professional consulting services for the Early Action Phase plus two standard deviations, yielded a total cost of approximately \$20,200.

Professional Consulting Services Cost- Site Classification/Site Investigation

USI found that the average cost per hour for professional services plus one standard deviation multiplied times the average number of hours for professional consulting services for the Site Classification/Investigation Phase plus one standard deviation, yielded a total cost of approximately \$17,300. USI found that the average cost per hour for professional services plus two standard deviations multiplied times the average number of hours for professional consulting services for the Site Classification/Investigation Phase plus two standard deviations, yielded a total cost of approximately \$26,400.

Professional Consulting Services Cost- Corrective Action

USI found that the average cost per hour for professional services plus one standard deviation multiplied times the average number of hours for professional consulting services for the Corrective Action Phase plus one standard deviation, yielded a total cost of approximately \$31,900. USI found that the average cost per hour for professional services plus two standard deviations multiplied times the average number of hours for professional consulting services for the Corrective Action Phase plus two standard deviations, yielded a total cost of approximately \$49,800.

USI will provide at the July 27th hearing, a detailed description of the means and methods that were used to collect and analyze this data as well as all of the supporting documentation and details and other relevant statistics.

The Agency has attempted to portray that many of the tasks associated with the maximum payment amounts provided in Sections 734.845 require similar levels of effort from one project to the next. This is generally not the case. USI intends to supplement this written testimony with visual aids that will be provided at the hearing. These visual aids will help clarify the record on this matter. Secondly, the Agency has attempted to portray that, as an organization, it is uniform and consistent in its reviews, and that the actions of its reviewers have little impact on the level of professional services and costs that are required to be incurred in order to comply with its regulations. This is evidenced in the Agency's testimony when they state that the amount of time that the Agency takes in reviewing a submittal is largely based on the quality of the submittal. (Opinion and Order at 17). It is also evidenced when they state that the "The Agency has always strived to maintain uniformity consistency and objectivity in its reviews and will continue to do so in the future." (IEPA June 15, 2005 Answer to Jay Koch's Question 33). USI

does not agree that the Agency is uniform and consistent in its reviews and submits as Attachment 7 report summarizing information taken from the Agency's own web site that shows that their reviews on a statewide basis are highly erratic. This also serves as a strong indication that the decisions of individual Agency reviewers have an impact on the total costs of professional services relative to a particular underground storage tank site.

Section 4 Synopsis of Non-Objectionable Provisions

USI has reviewed Sections 734.810 through 734.840 of the proposed rule to determine separately whether USI has any objections to the language of those provisions and whether USI has any objection to the maximum payment amounts proposed in each Section. USI is not objectionable in concept to the language of any of those provisions.

In evaluating the appropriateness of the maximum payment amounts proposed in each Section USI applied several tests to determine the adequacy of the maximum payment amount. If the maximum payment amount published in Section 734.810 through 734.840 passed all of these tests, then USI does not object to the maximum payment amounts published in that Section. The test criteria utilized are as follows:

1. *Test 1- Unit of Measure Test.* For this test USI asked is the "unit of measure" assigned to the work activity (task) appropriate? In answering this question USI considered whether the task was likely to be highly variable in scope of work or have a well defined scope of work. If the scope of work appeared to be well defined then USI considers a lump sum or unit price "unit of measure" to be appropriate. On the other hand, if the scope of work is undefined or is defined but likely to be the type of work that is inherently unpredictable, then

USI's opinion would be that the "unit of measure" assigned to the task should be scalable so that as the work increases or decreases the total compensation would be adjusted accordingly. A task in this category would not be expected to be assigned a "lump sum" unit of measure. To illustrate how USI applied this test the following example is provided. In Section 734.820 a maximum payment amount is provided for "hollow stem auguring". The assigned "unit of measure" for hollow stem auguring is "per foot". USI determined that this was an appropriate unit of measure due to the facts that the number of feet drilled during any investigation could vary significantly. A "per foot" unit of measure is scalable and therefore seems appropriate.

Test 2- Competitive Bidding Test- The competitive bidding provisions provided in Section 734.855 are intended to provide the owner operator with a means of establishing an alternative maximum payment amount if the owner operator believes that the published maximum payment amount is not sufficient. In order to effectively utilize the competitive bidding provisions of Section 734.855 as a means of establishing an alternative maximum payment amount it is necessary to demonstrate pursuant to 734.855 that the cost will "...cover all of the costs included in the maximum payment amount that the bid is replacing" (Order at 316) The only way to be certain that a bid request and its corresponding bids "covers all of the costs included in the maximum payment amount that the bid is replacing" is to mirror, in the bid specification, the scope of work published in the regulations for the applicable maximum payment amount. Therefore, the second test that USI used to evaluate the appropriateness of the maximum payment amount was to consider if the regulations in Sections 734.810 through 734.840

provided sufficient detail to allow a scope of work to be authored in a way that accurately matches the scope of work provided in Sections 734.810 through 734.840. If, in USI's opinion, the scope of work described in the regulations provided enough definition for a bid specification to be authored to the standard prescribed in Section 734.855, then the maximum payment amount passed this test. If the scope of work provided in the regulations did not provide sufficient detail, then the maximum payment amount would be disqualified as conceptually flawed. [please note that USI used its experience in contracting and the following definition of "scope of work" when applying this test. Definition: A scope of work is a detailed description of the work specifying the task and activities that are reasonably contemplated by the parties prior to the initiation of the work, including measurable objectives useful for determining successful completion.]

Test 3- Accuracy and Reasonableness of Price

The third and final test that USI used to evaluate the appropriateness of the maximum payment amounts published in Sections 734.810 through 734.840 is whether or not USI believes the price accurately reflects prevailing market prices and is reasonable and inclusive of the conditions that are likely to be encountered at most LUST sites in Illinois. It is obviously important to the Illinois EPA and the Board that the prices not be set too high. However, given the fact that significant costs are likely to be associated with the competitive bidding process required in Section 734.855 it is equally important that the maximum payment amount not be set too low. If the price is set too low, the effect is likely to be the creation of countless bid specifications and request and all of this additional work will come at a cost. Maximum payment

amounts that are set too low only invite additional costs to be accrued against the UST program and are not in anyone's best interest.

Sections 734.810 through 734.840 are generally related to investigatory or remedial field services and analytical work. These Sections of the regulations create 109 maximum payment amounts (including as a separate payment amount the price for each sample type specified in Appendix D). As a result of performing the above described test on the 109 maximum payment amounts provided in Sections 734.810 through 734.840, and with the exception that USI disagrees with the Agency's omission of a maximum payment amount for mobilization for the drilling activities provided in Section 734.820, USI believes the maximum payment amounts are appropriate and has no objection to their implementation. A detailed list of the maximum payment amounts created in each Subpart H Section from 734.810 through 734.840 is provided in Attachment 8.

Section 5- Conceptually Flawed & Intolerable Provisions

Conceptually Flawed and Intolerable Provisions

Although several financial aspects of the proposed regulations are notably flawed and inappropriate, the majority of concern is centralized around one primary subject: the lack of a defined scope of work associated with Subpart H and lump sum Professional Service payment items for professional services. Even within Subpart H Section 734.800 Applicability, eight (8) references are made to "tasks" which are present throughout Sections 734.845. The term "task" is utilized within Section 734.800 to denote activities which must be completed as a part of applicable Subpart H pay items. However, upon review of all pay items listed within Section 734.845, the specific listing of any of the

aforementioned “tasks” cannot be found. Furthermore, the term “task” in Section 734.800, which implicitly references “tasks” which are to be completed as a part of applicable Subpart H Professional Service pay items, is not referenced in any subsequent sections.

It is understood that the intent of Section 734.800 is to provide owner/operators with two (2) alternative means for determining applicable “maximum” payment amounts when standardized rates cannot be met. Unfortunately, however, this process is erred in concept and is certain to create undue financial and administrative stress on the owner/operators. The premise behind this argument resides in the description of what a “scope of work” is. By definition, the phrase “scope of work” denotes a detailed description of the work (inclusive of a substantive task breakdown), including measurable objectives useful for determining successful completion. As stated within this testimony, specific tasks have not been included or delineated throughout professional service Subpart H pay items whereby one might ascertain what measurable objectives were in fact completed. This point was alluded to in several questions submitted by Daniel King of USI which were vaguely answered with blatant disregard to the regulated community and their representatives. The primary intent of USI’s line of questioning was to determine the applicable Subpart H payment items (or lack thereof) associated with required scopes of work required by 734 regulations. For example, Section 734.210(a) requires that:

“Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions with 24 hours after the release:

- 1) Report the release to IEMA (e.g., by telephone or electronic mail);
- 2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Identify and mitigate fire, explosion and vapor hazards.”

USI's Question #1 (Please refer to Daniel King's questions submitted, May 3 on behalf of USI) merely asked if the Agency would be willing to address the completion of this scope of work through an additional maximum pay amount or if the Agency intended for costs associated with 734.210(a) to be completed under a current Subpart H pay item and if so, which *specific* pay item should be utilized. As noted in Response #1 on page 2 of the Agency's June 14, 2005 response to Mr. King's questions, all associated activities were accounted for "throughout Subpart H". A detailed review of all Subpart H Professional Service pay items clearly reveals the lack of the aforementioned tasks. The Agency's response purposefully skirted the question at hand by addressing other Early Action field activities (such as tank removal, free product removal, soil removal, etc). The environmental industry, in addition to the regulated community, are aware that the scope of work in 734.210(a) obviously includes remarkably different activities, including such things as emergency response and spill oversight, none of which are specifically included in any Subpart H pay item. This lack of the regulating authority to openly address issues between required technical scopes of work without adequate compensatory measures for the owner/operator undermines the intent of the LUST program and thus the ability of UST owners and operators to meet their financial obligation. Further neglect upon the Agency's behalf in addressing required scopes of work which are *not* compensated under Subpart H occurs numerous times throughout the proposed rulemaking. The continued discussion hereafter will focus on how the inability to define and delineate any scope of work within 734 affects any alternative proposal for pricing variances.

The first alternative to utilizing the Subpart H maximum payment amounts, as noted in Section 734.800(a), is the process of competitive bidding. These provisions, provided in Section 734.855, are intended to provide the owner/operator with a means of establishing an alternative maximum payment amount if the owner/operator believes that the published maximum payment amount is not sufficient. This concept requires that a minimum of three (3) bids be obtained with award given to the low bidder and that bids “must include all costs included in the maximum payment amount that the bid is replacing” and “be based upon the same scope of work” (Opinion and Order; pg. 316). As noted above, specific tasks and scopes of work are not listed in which to prepare adequate bid specifications for subcontractor’s to bid on. To assume that all costs must be included within bidding documentation without providing an adequate description of the tasks associated with those costs is ambiguous in nature. The only way to be certain that a bid request and its corresponding bids “covers all of the costs included in the maximum payment amount that the bid is replacing” is to mirror, in the bid specification, the scope of work published in the regulations for the applicable maximum payment amount. Therefore, the second test that USI used to evaluate the appropriateness of the maximum payment was to consider if the regulations in Sections 734.845 provided sufficient detail to allow a scope of work to be created in a bid specification that accurately matches the scope of work provided in Sections 734.845. If the scope of work described in the regulations provided enough definition for a bid specification to be prepared to the standard prescribed in Section 734.855, then the maximum payment amount would pass this test. If the scope of work provided in the regulations did not

provide sufficient detail, then the maximum payment amount would be disqualified as conceptually flawed.

Another visible trend within the Agency's answers to Mr. King's questions is the arbitrary grouping of items within applicable Subpart H payment amounts. In this, specific regulatory tasks listed throughout the regulations are nonchalantly lumped into the most relative Subpart H pay item. Additionally, the costs associated with various regulatory requirements may be divided amongst multiple phases of work prior to being lumped into non-specific pay items. The Agency's answer to Mr. King's question number 20 provides an excellent example of this arbitrary grouping and why a defined scope of work is necessary if competitive bidding is to be used as an alternative to the maximum lump sum payment amounts for professional services. The Agency answered Mr. King's question by stating that some of the costs of a well survey conducted pursuant to 445 (b) were included in the maximum payment amount for 20 and 45 day reports 734.845 (a) (3) and that the balance (the labor cost only) is covered by 734.845 (b) (7). 734.845 (a) lists the maximum payment amounts for professional services associated with Early Action activities and 734.845 (b) lists the maximum payment amounts associated with Site Investigation activities. To complicate matters further, the IEPA suggested that the costs for the professional engineer's review and certification of the well surveys be included within 734.845 (b) (relating to Site Investigation) and 734.845 (c) (relating to Corrective Action). Obviously, with this level of complexity in the formulation of the maximum payment amounts and the fact that none of this has been communicated to the regulated community, it will be impossible to: 1.) obtain competitive bids that match the scope of work contemplated by the IEPA in section 732.845/734.845 or 2.) determine if any bid

obtained meets or exceeds the maximum payment amount provided in Sections 732.845/734.845. It would not have been reasonable for a member of the regulated community to know that this water supply well survey should have been included as part of the maximum payment amount found in 734.845 (a) (3) and this certainly demonstrates that without a well defined and published scope of work for each professional service maximum payment amount, the competitive bidding and unusual or extraordinary provisions of Subpart H are of no utility.

The Board has indicated that "the inclusion of bidding in the proposal will assist in achieving the Agency's stated goals to streamline the UST remediation process, clarify remediation requirements, determine market rates for costs and "most notably" reform the budget and reimbursement process" in its Opinion and Order; pg 67. What is obvious to individuals within the industry, however, is the inflammatory affect competitive bidding will have on rates within environmental compliance work. Upon first glance, one would assume that competitive bidding would effectually reduce costs within a specific task. Without the requisite specificity in the bidding process, subcontractors are forced to inflate bids to cover unforeseen expenditures not listed in the available specifications. This conceptual flaw, pertaining specifically in this case to report submittal, was addressed in Mr. King's question #46 (Daniel King's Questions submitted on behalf of USI; pg. 10) which asked "pursuant to 734.845 Professional Consulting Services, how many submittals are included in each unit rate reporting pay item?" In the Agency's answer to Mr. King's question #46, the Agency states that their maximum payment amounts for professional services consider the submission of all plans and reports irrespective of the number of times a particular plan or report must be submitted. The

number of times that the Agency may request an additional report is highly erratic and unpredictable and without a defined number of submissions in relation to each maximum payment amount it will be impossible to compare a bid to the maximum payment amount and determine if the true costs is greater than or less than the maximum payment amount. Thus, the process of competitive bidding, based on bidding unknown scopes of work, will only serve to further diminish funding available to owner/operators. This renders the competitive bidding provision of Subpart H useless as an alternative means of establishing maximum payment amounts for professional services under Subpart H.

The third alternative the Agency proposes for payment of costs in excess of the proposed Subpart H payment amounts is through the designation of "unusual or extraordinary circumstances" (Opinion and Order; pg. 317, Section 734.860 Unusual or Extraordinary Circumstances). The Agency's comment which reads: "Please note that the unusual or extraordinary circumstances provisions focus on the circumstances present at a site, not on particular tasks," demonstrates that the Agency intends to administer this rule in a fashion that will prohibit the owner/operator from using the extraordinary circumstances provision of 734.860 as a means to establish alternative maximum payment amounts unless the entire site is somehow characterized as "unusual or extraordinary". It's clear, however, in 734.800 that the maximum payment amounts are intended to be utilized on a task by task basis. It was also clearly the intent that an owner/operator need only demonstrate that the circumstances with regard to a particular task were unusual or extraordinary; not that some condition exists that would qualify the entire site as unusual or extraordinary.

The arbitrary nature of this option provides only minor support to the regulated community given the inability to provide a definitive scope of work for each of the pay items. By definition, the antonym of extraordinary and unusual is ordinary; however, as noted earlier, “ordinary” is in no way defined or demonstrated throughout Subpart H. Furthermore, the perception of ordinary vs. extraordinary will be based upon the Agency’s tenure in office without substantive influence from the regulated community or even other State agencies. An example of the ensuing conflict is referenced in the questions submitted by Daniel King on behalf of USI. In question #6 (pg. 2), Mr. King asks:

“taking into consideration that a waiver of the removal requirements set forth by the OSFM to allow abandonment-in-place may only be granted when unusual situations, determined by OSFM, are present that make it infeasible to remove the UST(s), and as such, no typical situation exists, should all tank abandonment activities be considered as extraordinary circumstances?”

In their reply to Mr. King’s question (Agency’s Responses; pg. 6), the Agency indicates:

“the Illinois EPA does not envision the unusual or extraordinary circumstances provisions (Section 734.860) applying to a tank abandonment merely because the Office of the State Fire Marshal has determined that an unusual situation makes removal of the tank infeasible.”

As noted above, blatant disregard is given not only to the complexity of the task at hand, but also to an additional regulatory agency within the State of Illinois with substantial field experience. With this in mind, in addition to the issue that “ordinary” cannot be determined without a defined scope of work and task structure, one might ascertain the difficulties an owner/operator might have in utilizing the extraordinary circumstances approach.

Section 6- Proposed Modifications

United Science Industries, Inc. has provided detailed proposals for revision of the regulations. These proposals are based on two different options we offer for consideration. Option 1 is to establish a standardized task list. Individual standardized tasks will be tied directly to specific requirements under the regulations. This will establish clear and unambiguous scopes of work for each task. Recognizing that the application of lump sum pricing to such tasks is a purely arbitrary exercise, United Science Industries proposes the creation of a Standardized Fee Schedule, which will delineate individual costs that may be proposed for each Standard Task. Each Standard Fee Schedule item will have an associated Maximum Payment Amount. This will provide IEPA the ability to control costs but not create artificial charge ceilings for the performance of work which will naturally vary in content and quantity from site to site. Option 1 proposes to use actual reimbursement costs to determine, at the task level, what the costs are to perform given scopes of work. The standardization of tasks and costs will enable meaningful, reliable and statistically sound analysis to be performed on the cost data. As an alternative to Option 1, United Science Industries offers Option 2, a similar arrangement of standard tasks and fee schedule items, but with cost accounting for done at the phase level rather than the fee schedule item level. Option 2 does not deliver the same detailed information as Option 1, but it does have the advantage of allowing IEPA to make phase-level comparisons with existing historical data, since IEPA can currently only deliver somewhat reliable cost data at that level.

United Science Industries further proposes the use of a database management system to administer the processes described above. Options 1 and 2, managed in a manual manner, would represent considerable leaps in efficiency, consistency and

reliability as compared to the present program or the proposed new regulations. However, implementation of modern technology in the form of a database management system would represent a monumental improvement in IEPA operations, quality of service, and reliability of data.

Section 7- Miscellaneous

Included as Attachment _____ are two memorandums prepared by John Hundley, Law Office of Terry Sharp, Mt. Vernon, Illinois. Mr. Hundley's July 6, 2005 memorandum addresses proposed regulations regarding maximum reimbursable prices. The second memorandum, dated July 7, 2005, addresses proposed regulations regarding TACO and related issues. The memorandums identify several concerning issues relative to the practicality and feasibility of the Agency's proposal. One of the most notable of Mr. Hundley's concerns appears to be the concern that the Agency's proposal does not adequately satisfy the legislative intent of the Act. As a result, it appears to be questionable if the Agency is attempting to alter the legislation's original intent of various sections of the Act without the authority to do so. If it is indeed proven that the Agency has or is attempting to step beyond the boundaries of its authority, such action will not be tolerated. USI and the tank owners and operators we represent will accept nothing short of a fair and transparent rule moving to 2nd Notice.

Synopsis of Changes Proposed to Regulations

1. Establishment of Standardized Tasks

These proposed changes to the regulations would establish a Standard Task List. Each work task would be defined by the requirements of a specific regulation. The requirements of each specific regulation will define the scope of work for its corresponding task. Use of any given task on a project will still be subject to the approval of the IEPA technical Reviewer. Tasks will not have maximum payment amounts assigned at the task level; rather, a task's cost shall be determined by the assignment to that task of individual charge items, each with its own cost which, when summed, will define the task's cost for that particular instance of use.

Benefits

- Standardized work tasks will permit streamlined reviews; reviewers will quickly become expert at the analysis of the available tasks and will perform reviews more quickly and consistently due to the standardization. An analysis by USI of the different tasks proposed for use by consultants in 80 randomly selected reimbursement applications indicated the Agency had to review more than 900 difference task variations. IEPA has admitted that the time required to perform a review is largely a function of the quality of the work (Opinion and Order, Page 17, Testimony of Doug Clay) and that administrative time spent on budget and reimbursement issues has increased over time (Opinion and Order, Page 26, Gary King). There is no better way to establish a consistent level of quality than establishing a consistent approach to the reporting of work. Such consistency is a stated goal of IEPA (IEPA Answers, Page 19, reference to answer to question 33 from Jay Koch).
- The direct relationship between a given task and a given regulatory requirement is a simple and intuitive means of defining corrective action tasks. This approach will clearly define for all parties concerned the basis for the task and the work which it encompasses.
- Standardized tasks will enable consultants and contractors to prepare budgets and payment applications which are more conducive to an expeditious review and reliable results. The consultant community has testified that one of the major costs in LUST work is the cost of communicating with the Agency; this system of standardization will eliminate many of the friction points which lead to lengthy reviews and poor communications (Opinion and Order, Page 33, Testimony of PIPE).
- Definition of the scope of work required for each task will help to define when Section 734.860 Unusual or Extraordinary Circumstances is applicable. This has also been recognized by the consultant community (Opinion and Order, Page 58, Testimony of Dan Goodwin).
- Defined scopes of work for each task provide the only reliable basis for the setting and analysis of costs, especially given the IEPA's desire to apply lump sum maximum payment amounts to given tasks (Opinion and Order, Page 60, Public Comment of Maurer-Stutz; Opinion and Order, Page 36, Testimony of PIPE; Opinion and Order, Page 41, Testimony of Duane Doty, Opinion and Order, Page 42, Testimony of Joe Kelly; Opinion and Order, Page 49, Public Comment of CW3M).
- Defined scopes of work for each task are the only means by which competitive bidding will be a manageable and meaningful means to establish proper maximum payment amounts for given tasks (Opinion and Order, Page 53, Public Comment by CW3M). The regulations themselves recognize the need for scopes of work (Section 732.855(a) states "...The bids must be based upon the same scope of work..."). The ad hoc workgroup has informed IEPA that a lump sum payment cannot be provided without a clear scope of work; what subcontractor will be willing to commit to a price without knowing what work will be required? (Opinion and Order, Page 39, Testimony of Cindy Davis; Opinion and Order, Page 58, Public Comment of Dan Goodwin).

- The elimination of the risk of catastrophic loss due to the performance of an unknown scope of work under an artificially established lump sum maximum payment amount will cause the cost of all such work to increase to hedge against such catastrophes. The provision of a scope of work will mitigate that risk and prevent cost escalation (Opinion and Order, Page 59, Testimony of Dan Goodwin)
- Definition of scopes of work for each task is a necessity, given the need under Section 732.850(b) to identify when a given cost is or is not included in a maximum payment amount.
- Task standardization will permit statistically reliable reporting to be developed to help manage and improve the administration of the LUST Program.

2. Establishment of Standardized Rates

This proposal would establish a standard fee schedule which will list every acceptable charge item which may be used in the performance of corrective action. This schedule will include cost items for labor, materials and supplies, equipment, field purchases, and unit rate work items. The approval for use of any given fee schedule item on a project, and of the quantities thereof, will still be subject to the approval of the IEPA technical Reviewer.

Each fee schedule item will have a maximum payment amount. These shall be the only permitted pay items; all the individual maximum payment amounts specified in Sections 734.810 through 734.850 are replaced by Fee schedule items. Fee schedule items may only be proposed for use if they are assigned to a standardized task. Provided the owner/operator proposes a unit price for a given fee schedule item which is equal to or less than the maximum payment amount for that fee schedule item, no detailed review of the unit rate cost for that fee schedule item is required.

Proposed use of a cost item which is not in the Standardized Fee Schedule will be rejected, unless the owner/operator provides technical and cost justification for the acceptance of such an item.

Benefits

- Standardized fee schedule items will permit streamlined reviews; as with standardized task review, reviewers will quickly become expert at the analysis of the standardized fee schedule items and will perform reviews more quickly and consistently due to this standardization. Consistency in review is a stated IEPA goal (IEPA Answers, Page 19, reference to answer to question 33 from Jay Koch). The IEPA itself has recognized the benefits of fee standardization and has made some limited progress on this front by standardizing the titles of personnel (Opinion and Order, Page 24, Testimony of Brian Bauer).
- The assignment of maximum payment amounts to the fee schedule item level, rather than the task level, will enable a degree of flexibility which will result in more accurate budgeting and cost accounting. Introducing an element of flexibility so that the best and most cost-effective plan and budget can be developed is a major concern (Opinion and Order, Page 57, Public Comment of Harold Primack). The setting of unit pricing in the form of a fee schedule will improve the Agency's efficiency in administering the Fund (Opinion and Order, Page 57, Public Comment by Harold Primack). Taken together with the establishment of tasks and scopes of work, the process will attain a very desirable level of transparency and clarity, the lack of which with the current proposals is a major concern (Opinion and Order, Page 57, Public Comment of Harold Primack).
- Standardized fee schedule items will enable consultants and contractors to prepare budgets and payment applications which are more conducive to an expeditious review and reliable results. The ability to plan and budget on a reliable basis will eliminate a great deal of time IEPA and the Board spends on monetary issues, which is a stated concern of IEPA (Opinion and Order, Page 15, Testimony of Doug Clay).
- The use of standardized fee schedule items will assist in the solicitation and analysis of competitive bids.

- Standardized fee schedule items will permit statistically reliable reporting to be developed to help manage and improve the administration of the LUST Program. IEPA has stated that accurately assessing the market price for various costs is one of their goals for this rule-making (IEPA Answers, Page 10). The superiority of such an approach has been recognized by the consultant community (Opinion and Order, Page 55, Public Comment of Mike Rapp).

3. Exclusion of Professional Consulting Services from Competitive Bidding

This proposal would exclude costs associated with Section 734.845 Professional Consulting Services from the requirements of Section 734.855 Bidding. Professional consulting services often involve, by their very nature, an uncertain and undefinable scope of work. Experienced professionals cannot estimate, in advance, the number of hours or range of professions that will be required to remediate a given site; it is absurd to think that a layperson could accurately predict such factors and write the detailed and technical specifications that such a bid letting would demand. The application of a lump sum payment to such a service is not a reasonable solution, given the variability of the work and the apparently arbitrary determination of proposed lump sum amounts. There is evidence to suggest that the Board recognizes the inappropriateness of competitively bidding professional consulting services; please refer to Page 67 of the Opinion and Order, wherein the Board specifically revised Sections 732.855/734.855(a) to change the word "consultant" to "contractor."

Benefits

- Competitive bidding will be applied only to the types of tasks which are most conducive to an effective bidding process: commoditized services and products. Professional services are not a commodity which can be reliably lump summed (Opinion and Order, Page 45, Testimony of Vince Smith; Opinion and Order, Page 40, Testimony of Joe Truesdale; Opinion and Order, Page 43, Testimony of Barry Sink; Opinion and Order, Page 47, Jeff Weinhoff).
- Will eliminate the inevitable misunderstandings and disputes which must arise from attempts by laypeople to solicit, select and manage professional consulting services by competitive bid.

4. Base Increases in Maximum Payment Amounts on Analysis of Actual Cost Data

The changes proposed in these draft regulations would base changes in the maximum payment amounts (for standard fee schedule items) on a statistically reliable and defensible analysis of actual cost data collected during the administration of the program. Due to the organized and well-defined system of standardized tasks and fee schedule items, such an analysis would be easy to perform and would be highly reliable in its results.

Benefits

- The use of actual cost data, organized by standardized task and fee schedule item, is a far more accurate and reliable means of determining the increase (or decrease) in maximum payment amounts that may be appropriate than is the apples-to-oranges application of inflation or other generic cost increase factors.

5. Provide for Changes to the Work Breakdown Structure to Better Reflect How Work Actually Gets Performed

This proposal would permit the IEPA to perform statistically sound analyses of the use patterns of tasks in the Work Breakdown Structure, and periodically change the Work Breakdown Structure and/or characteristics of the tasks contained therein to better reflect the reality of corrective action work.

Benefits

- This approach will enable the Work Breakdown Structure to improve over time on its real-world applicability to the way that corrective action work is performed. This will help power

improved cost analyses that will increase the IEPA's understanding and management of the LUST Program.

6. Automation of Budgets and Reimbursement Applications

The general approach and philosophy of the changes proposed to the regulations which are outlined above is to increase efficiency in document preparation and review; standardize submittals so that a consistent review regimen may be established; and establish a structure that will permit meaningful statistical analyses to be performed for management of the overall program. These suggested changes, we believe, would represent a major improvement in the efficiency, quality of service and reputation of the LUST Program. However, when combined with the power of a modern database program, the approach outlined herein truly becomes a paradigm shifter.

We have developed a database management system, for which we will provide a brief review at the hearings. This system uses the concepts outlined above. Standardized tasks and fee schedule items form the core of its design. It has a web-enabled interface which will allow consultants and contractors to submit standardized budgets and payment applications to IEPA for review from anywhere in the world. Review of these documents may be automated so that unit pricing which equals or is less than the standard fee schedule maximum payment amounts is automatically approved. Notification of IEPA reviews is made by electronic mail. Numerous reports are available from the system, and other reporting is easily created (please see attached examples).

This system, or one like it, will represent the best means to accomplish the IEPA's stated goals for the new rules, namely:

- Better and timelier communications with consultants, contractors and owner/operators.
- Greatly expedited submittal of budget and payment application data by the consultants to the IEPA
- Greatly expedited reviews of budget and payment application data (Opinion and Order, Page 67, Board Clarification which references IEPA's stated goals); (Opinion and Order, Page 17, Testimony of Doug Clay; IEPA Answers, Page 15, reference to answer to Question 7 from Jay Koch). Please also see the numerous references in Sections 1 and 2 to the need for streamlined and more efficient processes.
- Effective management of the LUST Fund (Opinion and Order, Page 16, Testimony of Doug Clay).
- Detailed and sound data for use by the LUST Advisory Committee in analyzing cost trends and making pricing and other program management decisions (including determining what the market prices for given cost items truly are). IEPA has stated it will use resources it believes will deliver accurate market price data (IEPA Answers, Page 10, reference to answer to question 34 by Dan King). Effective management of LUST Fund moneys and reporting on same is a requirement of IEPA under numerous Sections, including Section 732.503(g).
- The availability of statewide budget and payment data in a single database management system will enable reporting to be easily developed to manage LUST Fund cash flows and cash encumbrances. Management of the IEPA's responsibilities under 734.450 Deferred Site Investigation or Corrective Action; Priority List for Payment will be greatly simplified.

The use of such a system has been championed in these hearings by the consultant community (Opinion and Order, Page 59, Public Comment of Dan Goodwin); (Opinion and Order, Page 36, Testimony of PIPE). The system has been demonstrated to IPMA and we have their support for its use. The impartiality, consistency, and easy updating of standards based on real data that is inherent in the use of a database system addresses the desire for transparency and flexibility in the process (Opinion and Order, Page 57, Public Comment by Harold Primack).

We offer to make this system available for use by the IEPA. It is not strictly necessary to adopt a database management system to make the most of the changes we have outlined above; as sound business practices,

they stand on their own. However, recent history has shown that the application of technology to business and governmental processes has reaped huge returns in efficiency and productivity. If the Board finds the suggestions above to have merit, then the best means to implement such changes is to do so with a database management system.

Reformation of the current system and improvements in efficiency has been oft-stated goals of IEPA (Opinion and Order, Page 22, Testimony of Brian Bauer; Opinion and Order, Page 15, Testimony of Doug Clay; Opinion and Order, Page 24, Testimony of Harry Chappel). With the opportunity presented by this rule-making, now is the time to move forward into the future and not remain mired in old, outdated ways of doing things.

EXAMPLE OF REVIEW STATUS REPORT

REVIEW STATUS BY REVIEWER

Page 1 of 1

Report Date/Time: 10/13/2004 09:31
 Incident Range: 0 - 20059999
 Reviewer Range: Jones, Bob - Martz, John
 Submittal Type(s): BS; PA; PANB
 Status Type(s): Received; Reviewed
 Sorted By: Incident; Status

<u>Incident</u>	<u>Phase</u>	<u>Number</u>	<u>Status</u>	<u>Date Received</u>	<u>Date Reviewed</u>	<u>Work Period</u>
932173	OR	PA-1	Reviewed	05/01/2005	05/12/2005	03/01/2005 - 03/31/2005
932173	OR	PA-2	Received	08/05/2005		06/01/2005 - 07/31/2005
970420	SC	BS-1	Reviewed	01/01/2005	01/04/2005	
970420	SC	PA-1	Reviewed	04/01/2005	04/07/2005	02/01/2005 - 02/28/2005
970420	CA	BS-1	Reviewed	05/21/2005	05/25/2005	
970420	CA	PA-1	Reviewed	07/13/2005	07/16/2005	06/01/2005 - 06/31/2005
970420	CA	PA-2	Received	08/01/2005		07/01/2005 - 07/15/2005
970420	CA	BS-2	Received	08/03/2005		
992103	EA	PA-1	Reviewed	03/31/2005	04/02/2005	12/01/2004 - 01/31/2005
992103	EA	PA-2	Reviewed	04/31/2005	05/04/2005	02/01/2005 - 03/31/2005
20010504	EA	PA-1	Reviewed	02/23/2005	03/01/2005	01/01/2005 - 01/31/2005
20010504	FP	PA-1	Reviewed	04/15/2005	04/20/2005	01/01/2005 - 03/15/2005
20010504	SC	BS-1	Reviewed	05/01/2005	05/07/2005	

DRAFT REPORT -- CONFIDENTIAL

EXAMPLE OF BUDGET PROPOSAL PRICE REVIEW WORKSHEET**BUDGET PROPOSAL PRICE REVIEW WORKSHEET**

Incident/Phase: 971597-SC
 Site Name: Rudicil Garage
 Submittal No.: BS-2

Contractor: United Science Industries, Inc.
 Certifying Prof.: Barry F. Sink
 Submission Date: 02/02/2005

Task/Res Number	Task/Resource Description	Bill Meth	UCM	Budget Unit Pr.	EUP/ERR	Proposed Unit Pr.	Approved Unit Pr.	Comments
000100	New Project Startup	T&M						
000001	BTEX Soil with MTBE (EPA8620)	T&M	Each	90.00	92.00	90.00	90.00	Meets Budget
000002	BTEX Water with MTBE (EPA 8620)	T&M	Each	90.00	92.00	90.00	90.00	Meets Budget
000003	COD (Chemical Oxygen Demand)	T&M	Each	0.00	40.00	40.00	40.00	Meets ERR
000004	Corrosivity	T&M	Each	75.00	70.00	75.00	75.00	Meets Budget
000005	Flash Point	T&M	Each	0.00	41.00	45.00		
000006	FOC (Fraction Organic Compound)	T&M	Each	52.00	52.00	55.00		
000007	Fat, Oil & Grease (FOG)	T&M	Each	84.00	84.00	84.00	84.00	Meets Budget
000008	Organic Carbon	TEM	Each	0.00	48.00	56.00	0.00	Nonbudgeted/Nonjustified
000010	Dissolved Oxygen	TEM	Each	0.00	33.00	33.00	33.00	Meets ERR
000101	Early Action UST Removal/Excav	UOP	Each	0.00	200.00	175.00	175.00	Meets EUP
000102	20-Day Cert / 45-Day Report	LS	Each	0.00	250.00	450.00	250.00	Exceeds EUP/Nonjustified
000104	Up to 2,000-gal UST Removal	UOP	Each	950.00	1000.00	975.00		
000105	2,001-5,000-gal UST Removal	UOP	Each	0.00	2000.00	2100.00		
000106	5,001-15,000-gal UST Removal	UOP	Gallon	3000.00	3000.00	1.00	0.00	Autoreject: Change in UCM
000107	15,001-20,000-gal UST Removal	UOP	Gallon	0.00	4000.00	1.00		

General Comments:

Signature of Reviewer

Signature of Unit Manager

EXAMPLE OF BUDGET PROPOSAL TECHNICAL REVIEW WORKSHEETBUDGET PROPOSAL QUANTITY REVIEW WORKSHEET

Incident/Phase: 971597-SC
 Site Name: Rudicil Garage
 Submittal No.: BS-2

Contractor: United Science Industries, Inc.
 Certifying Prof.: Barry F. Sink
 Submission Date: 02/02/2005

Task/Res Number	Task/Resource Description	Bill Meth	UOM	Budgeted Quantity	BQ	Proposed Quantity	Approved Quantity	Comments
000100	New Project Startup	T&M						
000001	BTEX Soil with MTBE (EPA8620)	T&M	Each	6.00	--	4.00		
000002	BTEX Water with MTBE (EPA 8620)	T&M	Each	6.00	--	4.00		
000003	COD (Chemical Oxygen Demand)	T&M	Each	0.00	--	4.00		
000004	Corrosivity	T&M	Each	2.00	--	1.00		
000005	Flash Point	T&M	Each	0.00	--	2.00		
000006	FOC (Fraction Organic Compound)	T&M	Each	2.00	--	1.00		
000007	Fat, Oil & Grease (FOG)	T&M	Each	2.00	--	1.00		
000009	Organic Carbon	T&M	Each	0.00	--	2.00		
000010	Dissolved Oxygen	T&M	Each	0.00	--	2.00		
000101	Early Action UST Removal/Excav	UOP	Each	0.00	1.00	1.00		
000102	20-Day Cert / 45-Day Report	LS	Each	0.00	1.00	1.00		
000104	Up to 2,000-gal UST Removal	UOP	Each	1.00	3.00	4.00		
000105	2,001-5,000-gal UST Removal	UOP	Each	0.00	3.00	1.00		
000106	5,001-15,000-gal UST Removal	UOP	Gallon	1.00	3.00	1.00	0.00	Autoreject: Change in UOM
000107	15,001-20,000-gal UST Removal	UOP	Gallon	0.00	2.00	3.00		

General Comments:

Signature of Reviewer

Signature of Unit Manager

EXAMPLE OF CASH ENCUMBRANCES REPORT**CASH ENCUMBRANCES REPORT**

Date/Time Printed: 01/01/2005 10:19 AM
 Report Uses Projection Data as of: 12/19/2004 12:36 PM
 Projection Run for Number of Months: 12

Page 1 of 1

PROJECTED ENCUMBRANCES

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
Historical Approved Budgets and Encumbrances	25,000,000	29,840,000	34,860,000	39,820,000	44,780,000	49,700,000	54,640,000	59,580,000	64,520,000	69,460,000	74,400,000	79,340,000
Historical Claims Paid / Unencumbered Funds	(22,385,000)	(28,235,000)	(30,085,000)	(33,835,000)	(37,785,000)	(41,635,000)	(45,485,000)	(49,335,000)	(53,185,000)	(57,035,000)	(60,885,000)	(64,735,000)
Starting Encumbrance Each Month	2,615,000	3,705,000	4,795,000	5,885,000	6,975,000	8,065,000	9,155,000	10,245,000	11,335,000	12,425,000	13,515,000	14,605,000
Projected New Budgets Approved	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000
Projected New Budget Amendments Approved	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000
Program G&A	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Projected Budgeted Claims Processed	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)	(3,000,000)
Projected Unbudgeted Claims Processed	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)	(600,000)
Projected Unused Budget Balances Freed	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)
Ending Remedial Obligation	2,205,000	3,295,000	4,385,000	5,475,000	6,565,000	7,655,000	8,745,000	9,835,000	10,925,000	12,015,000	13,105,000	14,195,000
Ending Operational Obligation	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
End Total Obligation	3,705,000	4,795,000	5,885,000	6,975,000	8,065,000	9,155,000	10,245,000	11,335,000	12,425,000	13,515,000	14,605,000	15,695,000

EXAMPLE OF CASH FLOW REPORT**CASH FLOW REPORT**

Date/Time Printed: 01/01/2005 10:19 AM
 Report Uses Projection Data as of: 12/19/2004 12:36 PM
 Projection Run for Number of Month: 12

Page 1 of 1

PROJECTED CASHFLOW

	<u>Month 1</u>	<u>Month 2</u>	<u>Month 3</u>	<u>Month 4</u>	<u>Month 5</u>	<u>Month 6</u>	<u>Month 7</u>	<u>Month 8</u>	<u>Month 9</u>	<u>Month 10</u>	<u>Month 11</u>	<u>Month 12</u>
Beginning Cash Balance	10,000,000	8,500,000	7,000,000	5,650,000	4,250,000	3,000,000	1,800,000	600,000	(400,000)	(1,700,000)	(3,200,000)	(4,650,000)
Revenue	3,200,000	3,200,000	3,350,000	3,300,000	3,450,000	3,600,000	3,600,000	3,500,000	3,400,000	3,200,000	3,250,000	3,300,000
Starting Unprocessed Claims	8,000,000	7,550,000	7,150,000	6,950,000	6,850,000	6,950,000	7,350,000	7,750,000	8,150,000	8,550,000	8,850,000	8,850,000
New Claims	2,750,000	2,800,000	3,000,000	3,100,000	3,300,000	3,600,000	3,800,000	3,800,000	3,800,000	3,500,000	3,300,000	3,000,000
Claims Approved for Payment	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000	3,600,000
Program G&A	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>
Net Ending Cash	8,100,000	6,600,000	5,250,000	3,850,000	2,600,000	1,500,000	400,000	(800,000)	(2,100,000)	(3,600,000)	(5,050,000)	(6,450,000)

EXAMPLE OF PAYMENT APPLICATION ACCOUNTING REVIEW WORKSHEETPAYMENT APPLICATION PRICE REVIEW WORKSHEET

Incident/Phase: 971597-SC
 Site Name: Rudicil Garage
 Submittal No.: PA-2

Contractor: United Science Industries, Inc.
 Certifying Prof.: Barry F. Sink
 Submission Date: 02/02/2005

Work Period: 01/01/2004 - 01/31/2004

Task/Res Number	Task/Resource Description	Bill Meth	UCM	Budget Unit Fr.	EUP/ERR	Proposed Unit Fr.	Approved Unit Fr.	Comments
000100	New Project Startup	T&M						
000001	BTEX Soil with MTBE (EPA8620)	T&M	Each	90.00	92.00	90.00	90.00	Meets Budget
000002	BTEX Water with MTBE (EPA 8620)	T&M	Each	90.00	92.00	90.00	90.00	Meets Budget
000003	COD (Chemical Oxygen Demand)	T&M	Each	0.00	40.00	40.00	40.00	Meets ERR
000004	Corrosivity	T&M	Each	75.00	70.00	75.00	75.00	Meets Budget
000005	Flash Point	T&M	Each	0.00	41.00	45.00		
000006	FOC (Fraction Organic Compound)	T&M	Each	52.00	52.00	55.00		
000007	Fat, Oil & Grease (FOG)	T&M	Each	84.00	84.00	84.00	84.00	Meets Budget
000009	Organic Carbon	T&M	Each	0.00	48.00	56.00	0.00	Nonbudgeted/Nonjustified
000100	Dissolved Oxygen	T&M	Each	0.00	33.00	33.00	33.00	Meets ERR
000101	Early Action UST Removal/Excav	UOP	Each	0.00	200.00	175.00	175.00	Meets EUP
000102	20-Day Cert / 45-Day Report	LS	Each	0.00	250.00	450.00	0.00	Exceeds EUP/Nonjustified
000104	Up to 2,000-gal UST Removal	UOP	Each	950.00	1000.00	975.00		
000105	2,001-5,000-gal UST Removal	UOP	Each	0.00	2000.00	2100.00		
000106	5,001-15,000-gal UST Removal	UOP	Gallon	3000.00	3000.00	1.00	0.00	Autoreject: Change in UCM
000107	15,001-20,000-gal UST Removal	UOP	Gallon	0.00	4000.00	1.00		

General Comments:

Signature of Reviewer

Signature of Unit Manager

EXAMPLE OF PAYMENT APPLICATION TECHNICAL REVIEW WORKSHEET**PAYMENT APPLICATION QUANTITY REVIEW WORKSHEET**

Incident/Phase: 971597-SC Contractor: United Science Industries, Inc.
 Site Name: Rudicil Garage Certifying Prof.: Barry F. Sink
 Submittal No.: PA-2 Submission Date: 02/02/2005 Work Period: 01/01/2004 - 01/31/2004

Task/Res Number	Task/Resource Description	Bill Meth	UCM	Budgeted Quantity	EO	Proposed Quantity	Verified Quantity	Approved Quantity	Comments
000100	New Project Startup	T&M							
000001	BTEX Soil with MTBE (EPA8620)	T&M	Each	10.00	--	4.00			
000002	BTEX Water with MTBE (EPA 8620)	T&M	Each	10.00	--	4.00			
000003	COD (Chemical Oxygen Demand)	T&M	Each	4.00	--	4.00			
000004	Corrosivity	T&M	Each	3.00	--	1.00			
000005	Flash Point	T&M	Each	2.00	--	2.00			
000006	FOC (Fraction Organic Compound)	T&M	Each	1.00	--	1.00			
000007	Fat, Oil & Grease (FOG)	T&M	Each	3.00	--	1.00			
000009	Organic Carbon	T&M	Each	2.00	--	2.00			
00010	Dissolved Oxygen	T&M	Each	2.00	--	2.00			
000101	Early Action UST Removal/Excav	UOP	Each	1.00	1.00	1.00			
000102	20-Day Cert / 45-Day Report	LS	Each	1.00	1.00	1.00			
000104	Up to 2,000-gal UST Removal	UOP	Each	5.00	3.00	4.00			
000105	2,001-5,000-gal UST Removal	UOP	Each	1.00	3.00	1.00			
000106	5,001-15,000-gal UST Removal	UOP	Gallon	2.00	3.00	7500.00	0.00	0.00	Autoreject: Changed UCM
000107	15,001-20,000-gal UST Removal	UOP	Gallon	0.00	2.00	17500.00			

General Comments:

Signature of Reviewer

Signature of Unit Manager

EXAMPLE OF PHASE ANALYSIS REPORT

Report Date/Time: 10/13/2004 09:31

PHASE ANALYSIS BY COUNTY

Page 1 of 1

Rules/Phase: 732/CA

County Range: Adams - Bond

Completed Date Range: 01/01/2004 - 12/31/2004

Phase Completed: Yes

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COUNTY      Avg Budget   Avg Budget   Percent   Avg Budget   Avg Budget   Net PGNT   Avg Reimb   Avg Reimb   Percent   Avg Reimb   Avg Reimb   Net PGNT
Proposed     Approved     Approved   Appeal App.   Not Approv.   Approved   Requested   Approved   Approved   Appeal App.   Not Approv.   Approved
-----
Adams        $94,040.05   $68,021.06   93.81%   $1,000.00   $94,854.73   96.61%   $84,799.00   $62,310.00   97.87%   $809.00   $60,110.00   96.00%
Alexander    $100,545.00   $97,343.74   97.02%   $1,001.00   $98,544.60   98.01%   $102,707.98   $96,808.00   96.81%   $1,244.48   $98,141.48   98.56%
Bond         $81,545.45   $61,340.00   80.54%   $554.12   $62,448.22   99.21%   $72,043.55   $72,001.70   99.94%   $0.00   $72,001.70   99.94%
-----
AVERAGES    $92,374.90   $69,035.27   96.38%   $1,000.00   $98,431.53   97.89%   $86,520.50   $63,708.90   96.76%   $801.16   $64,430.00   97.50%

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EXAMPLE OF REVIEW STATUS REPORT

REVIEW STATUS BY REVIEWER

Page 1 of 1

Report Date/Time: 10/13/2004 09:31
 Incident Range: 0 - 20059999
 Reviewer Range: Jones, Bob - Martz, John
 Submittal Type(s): BS, PA, PANE
 Status Type(s): Received, Reviewed
 Sorted By: Incident, Status

Incident	Phase	Number	Status	Date Received	Date Reviewed	Work Period
932173	OR	PA-1	Reviewed	05/01/2005	05/12/2005	03/01/2005 - 03/31/2005
932173	OR	PA-2	Received	08/05/2005		06/01/2005 - 07/31/2005
970420	SC	BS-1	Reviewed	01/01/2005	01/04/2005	
970420	SC	PA-1	Reviewed	04/01/2005	04/07/2005	02/01/2005 - 02/28/2005
970420	CA	BS-1	Reviewed	05/21/2005	05/25/2005	
970420	CA	PA-1	Reviewed	07/13/2005	07/16/2005	06/01/2005 - 06/31/2005
970420	CA	PA-2	Received	08/01/2005		07/01/2005 - 07/15/2005
970420	CA	BS-2	Received	08/03/2005		
992103	EA	PA-1	Reviewed	03/31/2005	04/02/2005	12/01/2004 - 01/31/2005
992103	EA	PA-2	Reviewed	04/31/2005	05/04/2005	02/01/2005 - 03/31/2005
20010504	EA	PA-1	Reviewed	02/23/2005	03/01/2005	01/01/2005 - 01/31/2005
20010504	FP	PA-1	Reviewed	04/15/2005	04/20/2005	01/01/2005 - 03/15/2005
20010504	SC	BS-1	Reviewed	05/01/2005	05/07/2005	

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EXAMPLE OF TASK EXTENDED PRICE MEAN, MEDIAN AND MODE REPORT

TASK EXTENDED PRICE MEAN, MEDIAN AND MODE ANALYSIS

Report Date/Time: 01/31/2005 13:45

Task: 00104, Up to 2,000 gal UST Removal

County Range: Adams - Bureau

Submittal Date Range: 01/01/2004 - 12/31/2004

Task Statuses: Approved As Proposed; Approved with Modifications

Budgets or Pay Applications: Pay Applications

=====

TASK EEP: \$3,000.00

<u>County</u>	<u>Number of Records</u>	<u>Median Price</u>	<u>Median % of EEP</u>	<u>Mode Price</u>	<u>Mode % of EEP</u>	<u>Mean Price</u>	<u>Mean % of EEP</u>
Adams	12	2656.88	88.56%	3000.00	100.00%	2259.20	75.31%
Alexander	16	3197.88	106.60%	3000.00	100.00%	3171.10	105.70%
Bond	9	2689.40	89.65%	3000.00	100.00%	2893.58	96.45%
Boone	19	1977.98	65.93%	3000.00	100.00%	1702.89	56.76%
Brown	5	2584.12	86.14%	3000.00	100.00%	2591.10	86.37%
Bureau	11	2878.24	95.94%	3000.00	100.00%	2654.76	88.49%
Group M/M/M:		2673.14	89.10%	3000.00	100.00%	2545.44	84.85%

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EXAMPLE OF TASK QUANTITY MEAN, MEDIAN AND MODE REPORT

TASK QUANTITY MEAN, MEDIAN AND MODE ANALYSIS

Report Date/Time: 01/31/2005 13:45

Task: 00104, Up to 2,000 gal UST Removal

County Range: Adams - Bureau

Submittal Date Range: 01/01/2004 - 12/31/2004

Task Statuses: Approved As Proposed; Approved with Modifications

Budgets or Pay Applications: Pay Applications

TASK EQ: 3.00

County	Number of Records	Median QTY	Median % of EQ	Mode QTY	Mode % of EQ	Mean QTY	Mean % of EQ
Adams	12	2.21	73.67%	2.00	66.67%	2.05	68.33%
Alexander	16	3.06	102.00%	2.00	100.00%	3.13	104.33%
Bond	9	2.01	67.00%	2.00	66.67%	2.14	71.33%
Boone	19	1.98	66.00%	2.00	66.67%	1.70	56.67%
Brown	5	3.04	101.33%	3.00	100.00%	3.00	100.00%
Bureau	11	2.87	95.67%	3.00	100.00%	2.66	88.67%
Group M/M/M:		2.54	84.67%	2.00	66.67%	2.45	81.67%

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ATTACHMENT 1

PETITION

We, the undersigned, do hereby petition the Illinois Pollution Control Board (IPCB) and the Illinois Environmental Protection Agency (IEPA) to ensure the proposed new rulemaking XXXXX meets the following standards:

1. *The LUST Fund continues to provide financial responsibility adequate to cover ALL costs of environmental clean-up incurred in order to comply with the requirements of the Illinois LUST Regulations.*
2. *The reimbursement practices of the Illinois LUST Fund shall assure the sanctity of our environmental compliance efforts by ensuring that the environmental professionals that we rely upon to achieve compliance are fairly and adequately compensated for each hour of work that they are required to perform on our behalf in order that we may comply with IEPA regulations and requirements.*
3. *Maximum payment amounts for professional consulting work tasks are established based on a statistically valid review of detailed and standardized scopes of work. In the absence of historically available standardized scopes of work the "maximum payment amounts" for professional services should be treated and administered merely as "guidance" and not absolutes during an interim period during which statistically valid "maximum payment amounts" can be established pursuant to standardized scopes of work.*
4. *All data and related information used to develop work task rates and levels of effort are fully-disclosed and available to the public.*

These standards are critical to our ability to work with the IEPA and environmental consultants/contractors to remediate our leaking underground storage tank sites in a timely manner and in accordance with applicable regulations. In the absence of regulations that meet the above standards, we do not have the technical, financial, legal and management resources to implement the mandated remedial projects without jeopardizing our businesses and financial livelihoods. The following background information generally outlines our circumstances and our rationale for making this petition.

Background Information

We are the owners/operators of LUST Incidents subject to remediation in Illinois and are genuinely concerned that, if implemented as written, the proposed regulations are likely to cause serious detrimental financial impact to us, our businesses or both. Typical characteristics of our businesses and our sites are as follows:

- We typically represent small or medium sized businesses. We are NOT BIG BUSINESS!
- We have limited financial, legal, technical and management resources. We DO NOT HAVE DEEP POCKETS!
- We are concerned about the environment and recognize our responsibilities to clean-up our LUST sites.
- Because of limited technical and legal resources, we rely upon our designated environmental consultant to interface with the IEPA to achieve the clean-up in accordance with the regulations.

- Because of limited technical and management resources we do not have the ability to develop detailed requests for proposals and evaluate consultant qualifications, work scopes, pricing and work execution.
- Because of limited financial resources we rely upon the LUST fund to cover all costs except the deductible. Our financial resources are such that unexpected costs above the deductible can be financially devastating.
 - Because of the significant costs of the environmental work and the long reimbursement cycles of the LUST fund, we oftentimes rely upon our environmental consultant to provide us project financing while waiting on LUST fund reimbursement.
 - Our financial resources are such that without project financing we may not be able to perform the work because we could not pay the ongoing bills.

We are appreciative of the LUST fund and the assistance from the regulatory agencies. The LUST Fund in conjunction with the professional and financial services provided by our consultants have historically provided us the ability, within our circumstances, to discharge our environmental responsibilities. We want to be able to continue this path of voluntary compliance and hereby petition the IPCB and IEPA to resist the temptation to proceed with this rulemaking in haste and to instead fully consider the seriousness and potential consequences of this rulemaking, work in collaboration and concert with the environmental consulting community and promulgate a carefully researched, fair and objective rule based upon statistically valid information that heeds our concerns, commitments, special circumstances and adheres to the intent of the standards outlined above.

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ATTACHMENT 2

ATTACHMENT II

**INDIVIDUALS WHO PROVIDED TESTIMONY REGARDING
SCOPE OF WORK**

- 1.) CW3M
- 2.) Cindy Davis
- 3.) Duane Doty
- 4.) Dan Goodwin
- 5.) Joe Kelly
- 6.) PIPE
- 7.) Barry Sink
- 8.) Vince Smith
- 9.) Maurer Stutz
- 10.) Joe Truesdale
- 11.) Jeff Weinhoff

ATTACHMENT 3

Reimbursement Requests by Consultant - 2004

<u>Consultant</u>	<u>Amount Requested</u>		<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
United Science Industries, Inc.	\$10,586,888.08	15.98%	\$9,989,474.26	\$597,413.82	5.64%
Environmental Management, Inc.	\$7,753,265.47	11.70%	\$7,719,815.70	\$33,449.77	0.43%
CW3M Company, Inc.	\$5,027,852.21	7.59%	\$4,980,398.52	\$47,453.69	0.94%
Marlin Environmental, Inc.	\$4,931,965.17	7.45%	\$4,790,182.33	\$141,782.84	2.87%
Land Tech, Inc.	\$2,536,605.19	3.83%	\$2,513,508.26	\$23,096.93	0.91%
United Environmental Consultants, Inc.	\$1,799,524.69	2.72%	\$1,773,794.33	\$25,730.36	1.43%
Ketchum & Eves, Inc.	\$1,521,932.81	2.30%	\$1,516,459.31	\$5,473.50	0.36%
Applied Environmental Solutions, Inc.	\$1,509,119.85	2.28%	\$1,469,441.67	\$39,678.18	2.63%
Practical Environmental Consultants, Inc.	\$1,498,817.11	2.26%	\$1,330,365.88	\$168,451.23	11.24%
Environmental Protection Industries, Inc.	\$1,430,111.34	2.16%	\$1,339,807.39	\$90,303.95	6.31%
GEOCON Environmental, Inc.	\$1,381,035.85	2.08%	\$1,378,385.84	\$2,650.01	0.19%
NESA and Associates, Inc.	\$1,371,199.03	2.07%	\$1,346,688.11	\$24,510.92	1.79%
Delta Environmental Consultants, Inc.	\$1,350,665.65	2.04%	\$1,053,134.22	\$297,531.43	22.03%
Herlacher Angleton Associates, LLC	\$1,309,022.52	1.98%	\$1,302,276.83	\$6,745.69	0.52%
Handex of Illinois, Inc.	\$1,258,127.77	1.90%	\$1,196,092.99	\$62,034.78	4.93%
ERS of Illinois, Inc.	\$1,188,366.47	1.79%	\$1,103,061.90	\$85,304.57	7.18%
Environmental Audits & Consultants, Inc.	\$888,630.74	1.34%	\$860,104.23	\$28,526.51	3.21%
Remediation Technologies, Ltd.	\$867,033.23	1.31%	\$849,247.80	\$17,785.43	2.05%
Wendler Engineering & Surveying, Inc.	\$832,168.69	1.26%	\$786,535.41	\$45,633.28	5.48%
Concord Engineering & Science, Inc.	\$817,491.22	1.23%	\$817,482.42	\$8.80	0.00%
American Environmental Consultants, Inc.	\$767,544.30	1.16%	\$756,072.21	\$11,472.09	1.49%
Environmental Testing & Consulting, Inc.	\$695,174.61	1.05%	\$694,461.39	\$713.22	0.10%
Midwest Environmental Consulting & Remediation	\$601,846.30	0.91%	\$564,363.61	\$37,482.69	6.23%
ENSR	\$578,024.63	0.87%	\$308,934.82	\$269,089.81	46.55%
Groundwater & Environmental Services, Inc.	\$561,639.71	0.85%	\$515,898.35	\$45,741.36	8.14%
Tri-Core Environmental, LLC	\$555,121.64	0.84%	\$511,615.56	\$43,506.08	7.84%
Adept Environmental Solutions, Inc.	\$542,501.64	0.82%	\$422,470.19	\$120,031.45	22.13%
Parsons Engineering Services, Inc.	\$481,424.20	0.73%	\$428,917.10	\$52,507.10	10.91%
HDC Engineering, Inc.	\$444,089.83	0.67%	\$444,067.53	\$22.30	0.01%
CSD Environmental Services, Inc.	\$434,894.64	0.66%	\$355,363.64	\$79,531.00	18.29%
Superior Environmental Corp.	\$412,859.76	0.62%	\$325,889.55	\$86,970.21	21.07%
	\$398,197.15	0.60%	\$369,913.40	\$28,283.75	7.10%
Andrews Environmental Engineering, Inc.	\$384,228.58	0.58%	\$366,959.43	\$17,269.15	4.49%
Laicon Environmental, Inc.	\$383,628.83	0.58%	\$346,201.75	\$37,427.08	9.76%
Armor Shield	\$338,283.19	0.51%	\$338,283.19	\$0.00	0.00%
DAI Environmental, Inc.	\$324,218.60	0.49%	\$283,284.44	\$40,934.16	12.63%
America's Water Resource Consultants, Inc.	\$307,088.64	0.46%	\$283,654.32	\$23,434.32	7.63%
Cummins Earth Services	\$281,458.19	0.42%	\$281,458.19	\$0.00	0.00%
Applied Environmental Technologies, Inc.	\$278,799.38	0.42%	\$263,182.47	\$15,616.91	5.60%
Quality Testing & Engineering, Inc.	\$261,256.58	0.39%	\$255,599.73	\$5,656.85	2.17%
CORE Geological Services, Inc.	\$249,767.70	0.38%	\$249,767.70	\$0.00	0.00%
Philip Environmental Services, Inc.	\$246,430.13	0.37%	\$246,399.33	\$30.80	0.01%
BPS Environmental Services, Inc.	\$238,215.35	0.36%	\$224,033.39	\$14,181.96	5.95%
SITE Environmental Services, Inc.	\$235,961.88	0.36%	\$190,959.06	\$45,002.82	19.07%
Safety Partners, LTD.	\$221,066.62	0.33%	\$215,206.29	\$5,860.33	2.65%
BASCOR Environmental, Inc.	\$219,796.74	0.33%	\$211,511.84	\$8,284.90	3.77%
Consolidated Environmental Services, Inc.	\$214,432.10	0.32%	\$180,746.24	\$33,685.86	15.71%
Rapps Engineering & Applied Science	\$212,874.40	0.32%	\$205,074.56	\$7,799.84	3.66%
ARCADIS Geraghty & Miller, Inc.	\$209,798.67	0.32%	\$203,173.89	\$6,624.78	3.16%
Environmental Management & Technologies, Inc.	\$207,365.75	0.31%	\$205,008.53	\$2,357.22	1.14%
Wight & Company	\$204,429.48	0.31%	\$176,839.38	\$27,590.10	13.50%
Mauer Stutz, Inc.	\$200,129.22	0.30%	\$162,890.37	\$37,238.85	18.61%
ISO Technologies, Inc.	\$196,384.27	0.30%	\$194,584.27	\$1,800.00	0.92%
Conestoga-Rovers & Assoc.	\$193,317.52	0.29%	\$193,317.52	\$0.00	0.00%
Northern Environmental Technologies, Inc.	\$183,456.14	0.28%	\$178,821.24	\$4,634.90	2.53%
Environmental Consulting Group, Inc.	\$150,041.82	0.23%	\$148,834.89	\$1,206.93	0.80%
Clayton Group Services, Inc.	\$148,445.51	0.22%	\$145,898.61	\$2,546.90	1.72%
Gannett Fleming, Inc.	\$141,296.79	0.21%	\$140,023.61	\$1,273.18	0.90%
Pioneer Environmental, Inc.	\$139,077.63	0.21%	\$129,368.14	\$9,709.49	6.98%
Huff & Huff, Inc.	\$135,792.37	0.20%	\$133,979.87	\$1,812.50	1.33%
Resource Consulting, Inc.	\$127,119.52	0.19%	\$96,909.00	\$30,210.52	23.77%
BT2, Inc.	\$114,619.53	0.17%	\$82,380.21	\$32,239.32	28.13%
Superior Environmental Remediation, Inc.	\$114,371.71	0.17%	\$111,795.26	\$2,576.45	2.25%
Schreiber, Yonley & Associates	\$108,375.51	0.16%	\$95,451.38	\$12,924.13	11.93%

Data is taken directly from the IEPA downloadable database (06/30/2005). This report excludes incidents that do not have an IEPA Manager listed, requests that do not have a voucher date, and bills not received in 2004

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE JULY 8, 2005

Reimbursement Requests by Consultant - 2004

Consultant	Amount Requested		Total Allowed	Amount Cut	%Cut of Requested
Cape Environmental Management, Inc.	\$106,185.53	0.16%	\$89,392.25	\$16,793.28	15.82%
Seneca Environmental, Inc.	\$101,506.39	0.15%	\$100,981.39	\$525.00	0.52%
STS Consultants, Ltd.	\$99,407.64	0.15%	\$98,772.09	\$635.55	0.64%
Midwest Engineering Services, Inc.	\$94,646.19	0.14%	\$94,466.19	\$180.00	0.19%
Bradburne, Briller, & Johnson, Inc.	\$93,683.46	0.14%	\$85,567.05	\$8,116.41	8.66%
Krikau, Pyles, Rysiewicz & Assoc., Inc.	\$93,638.89	0.14%	\$58,213.86	\$35,425.03	37.83%
Schrack Environmental Consulting, Inc.	\$90,470.73	0.14%	\$90,460.63	\$10.10	0.01%
August Mack Environmental, Inc.	\$81,626.72	0.12%	\$56,804.12	\$24,822.60	30.41%
Environmental Engineering and Science	\$81,097.14	0.12%	\$81,087.35	\$9.79	0.01%
Deigan & Associates, LLC	\$77,509.67	0.12%	\$76,211.48	\$1,298.19	1.67%
Daily & Associates, Engineers, Inc.	\$76,133.96	0.11%	\$76,121.96	\$12.00	0.02%
Superior Property Services Group	\$73,966.01	0.11%	\$64,802.65	\$9,163.36	12.39%
Bodine Environmental Consulting & Contracting	\$70,238.71	0.11%	\$69,518.71	\$720.00	1.03%
Great Lakes Remediation Services, LLC	\$69,401.11	0.10%	\$69,401.11	\$0.00	0.00%
RK & Assoc., Inc.	\$64,082.18	0.10%	\$64,082.18	\$0.00	0.00%
Aires Consulting Group, Inc.	\$62,148.07	0.09%	\$62,020.39	\$127.68	0.21%
Rock River Consulting, Inc.	\$61,500.43	0.09%	\$50,458.71	\$11,041.72	17.95%
PDC Technical Services, Inc.	\$60,528.13	0.09%	\$60,350.52	\$177.61	0.29%
Janrok Environmental, Inc.	\$59,142.80	0.09%	\$53,547.74	\$5,595.06	9.46%
Alpha Environmental, Inc.	\$56,423.80	0.09%	\$55,702.47	\$721.33	1.28%
Clark Engineers, Inc.	\$55,232.68	0.08%	\$47,923.01	\$7,309.67	13.23%
Terracon Environmental, Inc.	\$54,844.40	0.08%	\$54,818.62	\$25.78	0.05%
R.J. Mustari & Associates., Inc.	\$51,517.27	0.08%	\$45,769.84	\$5,747.43	11.16%
Environmental Management & Resource Consultants	\$48,303.10	0.07%	\$47,758.04	\$545.06	1.13%
Williams Environmental Services, Inc.	\$46,936.40	0.07%	\$39,414.97	\$7,521.43	16.02%
Roy F. Weston, Inc.	\$46,089.48	0.07%	\$45,936.35	\$153.13	0.33%
Burns & McDonnell Engineering Co., Inc.	\$45,591.99	0.07%	\$44,131.22	\$1,460.77	3.20%
Capital Environment Group, Inc.	\$45,524.61	0.07%	\$37,663.45	\$7,861.16	17.27%
Summit Envirosolutions, Inc.	\$45,190.07	0.07%	\$41,966.49	\$3,223.58	7.13%
Fehr-Graham & Associates, Inc.	\$44,222.18	0.07%	\$41,785.22	\$2,436.96	5.51%
CH2M Hill	\$41,367.19	0.06%	\$32,616.97	\$8,750.22	21.15%
AES Due Diligence, Inc.	\$41,154.15	0.06%	\$41,154.15	\$0.00	0.00%
The Environmental Solutions Group, Inc.	\$39,310.97	0.06%	\$37,105.39	\$2,205.58	5.61%
Environmental Solutions, Inc.	\$37,358.46	0.06%	\$31,780.90	\$5,577.56	14.93%
Baxter & Woodman, Inc.	\$37,175.09	0.06%	\$35,598.20	\$1,576.89	4.24%
Landmark Engineering Group, Inc.	\$33,869.06	0.05%	\$33,777.07	\$91.99	0.27%
K. Singh & Associates, Inc.	\$32,495.11	0.05%	\$26,845.11	\$5,650.00	17.39%
MACTEC Engineering & Consulting, Inc.	\$32,392.65	0.05%	\$32,392.65	\$0.00	0.00%
Environmental Consulting & Engineering, Inc.	\$31,487.63	0.05%	\$27,928.83	\$3,558.80	11.30%
Civil & Environmental Consultants, Inc.	\$30,274.27	0.05%	\$26,823.24	\$3,451.03	11.40%
K Plus Environmental Solutions	\$29,915.57	0.05%	\$29,773.77	\$141.80	0.47%
Global Development & Environmental Resources, Inc.	\$26,665.00	0.04%	\$21,925.00	\$4,740.00	17.78%
Testing Service Corporation	\$25,972.83	0.04%	\$25,922.83	\$50.00	0.19%
Geraghty & Miller	\$24,674.10	0.04%	\$24,440.84	\$233.26	0.95%
Trans Environmental, Inc.	\$24,080.30	0.04%	\$21,915.30	\$2,165.00	8.99%
Quality Environmental Professionals, Inc.	\$22,030.30	0.03%	\$21,835.37	\$194.93	0.88%
Environmental Operations, Inc.	\$21,226.78	0.03%	\$19,256.07	\$1,970.71	9.28%
Moraine Environmental, Inc.	\$21,033.10	0.03%	\$21,033.10	\$0.00	0.00%
Integrity Environmental Services, Inc.	\$20,778.00	0.03%	\$20,151.10	\$626.90	3.02%
EncoTech Midwest, Inc.	\$20,439.61	0.03%	\$10,255.87	\$10,183.74	49.82%
Dames & Moore	\$20,433.73	0.03%	\$19,954.06	\$479.67	2.35%
Mostardi-Platt Associates, Inc.	\$20,199.88	0.03%	\$15,372.68	\$4,827.20	23.90%
Hurst-Rosche Engineers, Inc.	\$18,833.77	0.03%	\$18,833.77	\$0.00	0.00%
Remediation Unlimited, Inc.	\$18,627.94	0.03%	\$18,616.62	\$11.32	0.06%
Hanson Professional Services, Inc.	\$17,703.65	0.03%	\$17,703.65	\$0.00	0.00%
Frank & Cowles, Inc.	\$17,330.20	0.03%	\$17,296.42	\$33.78	0.19%
The Green Environmental Group, Ltd.	\$16,386.97	0.02%	\$16,161.97	\$225.00	1.37%
Geotechnology, Inc.	\$16,350.91	0.02%	\$13,399.66	\$2,951.25	18.05%
BMC Environmental & Geophysical Exploration	\$15,918.59	0.02%	\$15,055.30	\$863.29	5.42%
Enviro-Co., LLC	\$15,518.28	0.02%	\$14,526.30	\$991.98	6.39%
Equiva Services, LLC	\$14,807.93	0.02%	\$14,602.43	\$205.50	1.39%
Environmental Design International, Inc.	\$12,080.78	0.02%	\$12,080.78	\$0.00	0.00%
Free Flow Technologies, Inc.	\$11,735.65	0.02%	\$11,735.65	\$0.00	0.00%
Weaver Boos Consultants, Inc.	\$10,248.72	0.02%	\$10,248.72	\$0.00	0.00%

Data is taken directly from the IEPA downloadable database (06/30/2005). This report excludes incidents that do not have an IEPA Manager listed, requests that do not have a voucher date, and bills not received in 2004

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE JULY 8, 2005
 Reimbursement Requests by Consultant - 2004

<u>Consultant</u>	<u>Amount Requested</u>		<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
Compliance Engineering, Inc.	\$10,039.00	0.02%	\$10,039.00	\$0.00	0.00%
Klingner & Assoc., P.C.	\$8,384.84	0.01%	\$8,384.84	\$0.00	0.00%
Kirwan Environmental Management	\$7,629.00	0.01%	\$7,623.00	\$6.00	0.08%
Ideal Environmental Engineering, Inc.	\$7,610.79	0.01%	\$7,610.79	\$0.00	0.00%
Goodwin Environmental Consultants, Inc.	\$7,030.00	0.01%	\$2,185.00	\$4,845.00	68.92%
Philip Services Corporation	\$5,381.50	0.01%	\$5,318.39	\$63.11	1.17%
ATC Assoc., Inc.	\$4,848.00	0.01%	\$4,848.00	\$0.00	0.00%
Ward Environmental Engineering, Inc.	\$2,955.20	0.00%	\$2,757.13	\$198.07	6.70%
QEP, Inc.	\$2,701.40	0.00%	\$1,441.96	\$1,259.44	46.62%
SCI Engineering, Inc.	\$2,477.25	0.00%	\$2,477.25	\$0.00	0.00%
RAM Engineering, Ltd.	\$1,562.50	0.00%	\$1,562.50	\$0.00	0.00%
TDH Enterprises, Inc.	\$1,437.50	0.00%	\$1,437.50	\$0.00	0.00%
TOTAL	\$66,243,393.74		\$63,074,758.04	\$3,168,635.70	4.78%

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE JULY 8, 2005

Reimbursement Requests by Consultant - 2003

<u>Consultant</u>	<u>Amount Requested</u>		<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
United Science Industries, Inc.	\$11,795,558.20	14.33%	\$11,267,723.61	\$527,834.59	4.47%
Environmental Management, Inc.	\$6,437,492.49	7.82%	\$6,403,685.45	\$33,807.04	0.53%
Marilyn Environmental, Inc.	\$5,576,957.40	6.77%	\$5,486,230.50	\$90,726.90	1.63%
CW3M Company, Inc.	\$3,406,433.57	4.14%	\$3,205,974.93	\$200,458.64	5.88%
Delta Environmental Consultants, Inc.	\$2,840,629.29	3.45%	\$2,431,504.57	\$409,124.72	14.40%
Environmental Protection Industries, Inc.	\$2,630,979.79	3.20%	\$2,147,739.42	\$483,240.37	18.37%
Land Tech, Inc.	\$2,511,866.00	3.05%	\$2,391,671.37	\$120,194.63	4.79%
Practical Environmental Consultants, Inc.	\$2,382,153.41	2.89%	\$2,147,370.02	\$234,783.39	9.86%
Concord Engineering & Science, Inc.	\$1,978,050.17	2.40%	\$1,737,637.83	\$240,412.34	12.15%
United Environmental Consultants, Inc.	\$1,828,782.20	2.22%	\$1,732,328.87	\$96,453.33	5.27%
Handex of Illinois, Inc.	\$1,553,500.88	1.89%	\$1,449,729.36	\$103,771.52	6.68%
NESA and Associates, Inc.	\$1,422,245.23	1.73%	\$1,354,211.84	\$68,033.39	4.78%
MACTEC Engineering & Consulting, Inc.	\$1,406,652.28	1.71%	\$1,149,065.85	\$257,586.43	18.31%
Midwest Environmental Consulting & Remediation	\$1,278,839.17	1.55%	\$1,216,084.04	\$62,755.13	4.91%
GEOCON Environmental, Inc.	\$1,260,535.43	1.53%	\$1,231,864.89	\$28,670.54	2.27%
Ketchum & Eves, Inc.	\$1,226,147.23	1.49%	\$1,125,653.29	\$100,493.94	8.20%
Applied Environmental Solutions, Inc.	\$1,183,508.07	1.44%	\$1,152,145.80	\$31,362.27	2.65%
CSD Environmental Services, Inc.	\$1,136,650.75	1.38%	\$1,078,085.56	\$58,565.19	5.15%
HDC Engineering, Inc.	\$1,003,044.24	1.22%	\$853,170.45	\$149,873.79	14.94%
Wendler Engineering & Surveying, Inc.	\$969,364.14	1.18%	\$948,288.57	\$21,075.57	2.17%
DAI Environmental, Inc.	\$911,368.61	1.11%	\$764,141.82	\$147,226.79	16.15%
Groundwater & Environmental Services, Inc.	\$885,055.53	1.07%	\$746,134.06	\$138,921.47	15.70%
Herlacher Angleton Associates, LLC	\$865,690.64	1.05%	\$829,849.96	\$35,840.68	4.14%
SITE Environmental Services, Inc.	\$811,634.02	0.99%	\$706,559.29	\$105,074.73	12.95%
Pioneer Environmental, Inc.	\$807,763.27	0.98%	\$586,476.14	\$221,287.13	27.40%
ERS of Illinois, Inc.	\$801,725.05	0.97%	\$753,293.68	\$48,431.37	6.04%
Environmental Audits & Consultants, Inc.	\$753,721.96	0.92%	\$733,294.75	\$20,427.21	2.71%
American Environmental Consultants, Inc.	\$732,378.82	0.89%	\$728,655.63	\$3,723.19	0.51%
Parsons Engineering Services, Inc.	\$711,376.11	0.86%	\$618,522.27	\$92,853.84	13.05%
Environmental Management & Technologies, Inc.	\$693,221.21	0.84%	\$507,823.73	\$185,397.48	26.74%
Remediation Technologies, Ltd.	\$624,146.61	0.76%	\$616,461.41	\$7,685.20	1.23%
America's Water Resource Consultants, Inc.	\$622,664.40	0.76%	\$560,614.33	\$62,050.07	9.97%
Safety Partners, LTD.	\$593,548.18	0.72%	\$572,494.98	\$21,053.20	3.55%
Applied Environmental Technologies, Inc.	\$590,352.91	0.72%	\$314,814.20	\$275,538.71	46.67%
Philip Environmental Services, Inc.	\$556,301.20	0.68%	\$541,972.34	\$14,328.86	2.58%
Clayton Group Services, Inc.	\$533,852.29	0.65%	\$493,687.27	\$40,165.02	7.52%
Environmental Testing & Consulting, Inc.	\$525,852.06	0.64%	\$501,644.39	\$24,207.67	4.60%
Midwest Engineering Services, Inc.	\$505,837.91	0.61%	\$479,814.75	\$26,023.16	5.14%
Superior Environmental Remediation, Inc.	\$482,622.50	0.59%	\$473,744.44	\$8,878.06	1.84%
ARCADIS Geraghty & Miller, Inc.	\$480,855.53	0.58%	\$440,700.01	\$40,155.52	8.35%
Trans Environmental, Inc.	\$446,012.66	0.54%	\$384,187.86	\$61,824.80	13.86%
ENSR	\$444,220.34	0.54%	\$444,130.70	\$89.64	0.02%
CORE Geological Services, Inc.	\$412,778.33	0.50%	\$315,579.79	\$97,198.54	23.55%
Benchmark Environmental Services, Inc.	\$397,246.58	0.48%	\$393,063.08	\$4,183.50	1.05%
Environmental Management & Resource Consultants	\$396,722.75	0.48%	\$395,656.25	\$1,066.50	0.27%
Brecheisen Engineering, Inc.	\$396,283.34	0.48%	\$386,223.30	\$10,060.04	2.54%
Integrity Environmental Services, Inc.	\$389,552.36	0.47%	\$371,578.07	\$17,974.29	4.61%
BASCOR Environmental, Inc.	\$379,437.62	0.46%	\$353,442.12	\$25,995.50	6.85%
EPS Environmental Services, Inc.	\$366,693.85	0.45%	\$344,789.40	\$21,904.45	5.97%
Northern Environmental Technologies, Inc.	\$358,017.65	0.43%	\$353,475.97	\$4,541.68	1.27%
Tri-Core Environmental, LLC	\$321,567.71	0.39%	\$217,437.83	\$104,129.88	32.38%
Hanson Engineering, Inc.	\$320,879.27	0.39%	\$121,465.77	\$199,413.50	62.15%
Superior Environmental Corp.	\$281,758.30	0.34%	\$277,177.89	\$4,580.41	1.63%
RK & Assoc., Inc.	\$281,093.11	0.34%	\$213,069.25	\$68,023.86	24.20%
GaiaTech, Inc.	\$279,817.70	0.34%	\$215,589.36	\$64,228.34	22.95%
Andrews Environmental Engineering, Inc.	\$274,604.63	0.33%	\$271,596.59	\$3,008.04	1.10%
ISO Technologies, Inc.	\$273,194.77	0.33%	\$197,433.06	\$75,761.71	27.73%
Versar, Inc.	\$272,821.01	0.33%	\$247,533.91	\$25,287.10	9.27%
K. Singh & Associates, Inc.	\$269,868.11	0.33%	\$264,987.45	\$4,880.66	1.81%
Environmental Group, Inc.	\$268,884.21	0.33%	\$250,794.25	\$18,089.96	6.73%
Quality Testing & Engineering, Inc.	\$268,425.20	0.33%	\$267,538.14	\$887.06	0.33%
Krikau, Pyles, Rysiewicz & Assoc., Inc.	\$261,812.01	0.32%	\$261,779.68	\$32.33	0.01%
AES Due Diligence, Inc.	\$253,936.40	0.31%	\$253,008.47	\$927.93	0.37%
	\$253,841.80	0.31%	\$191,627.30	\$62,214.50	24.51%

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ATTACHMENT 4

Reimbursement Requests by Consultant - 2003

<u>Consultant</u>	<u>Amount Requested</u>		<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
Aires Consulting Group, Inc.	\$220,301.32	0.27%	\$211,254.64	\$9,046.68	4.11%
Rapps Engineering & Applied Science	\$215,548.55	0.26%	\$189,230.26	\$26,318.29	12.21%
Huff & Huff, Inc.	\$208,643.06	0.25%	\$172,639.34	\$36,003.72	17.26%
Resource Consulting, Inc.	\$198,651.17	0.24%	\$178,846.00	\$19,805.17	9.97%
Ward Environmental Engineering, Inc.	\$198,548.66	0.24%	\$198,263.66	\$285.00	0.14%
EDP Consultants, Inc.	\$192,018.55	0.23%	\$192,015.05	\$3.50	0.00%
Conestoga-Rovers & Assoc.	\$167,284.25	0.20%	\$165,628.13	\$1,656.12	0.99%
STS Consultants, Ltd.	\$165,947.78	0.20%	\$160,789.52	\$5,158.26	3.11%
Schrack Environmental Consulting, Inc.	\$163,112.37	0.20%	\$153,537.18	\$9,575.19	5.87%
Forest Road Consulting, Inc.	\$161,808.26	0.20%	\$128,244.57	\$33,563.69	20.74%
Advanced Environmental Corporation	\$160,536.40	0.19%	\$52,337.98	\$108,198.42	67.40%
Adept Environmental Solutions, Inc.	\$159,978.18	0.19%	\$142,321.52	\$17,656.66	11.04%
Superior Property Services Group	\$156,884.43	0.19%	\$152,064.71	\$4,819.72	3.07%
URS Corporation	\$155,832.14	0.19%	\$119,849.05	\$35,983.09	23.09%
Bodine Environmental Consulting & Contracting	\$153,075.71	0.19%	\$135,620.01	\$17,455.70	11.40%
Laicon Environmental, Inc.	\$152,942.63	0.19%	\$140,157.14	\$12,785.49	8.36%
BEST Environmental, Inc.	\$146,510.66	0.18%	\$143,871.12	\$2,639.54	1.80%
Terracon Environmental, Inc.	\$145,834.78	0.18%	\$133,068.16	\$12,766.62	8.75%
Seneca Environmental, Inc.	\$142,113.22	0.17%	\$140,160.93	\$1,952.29	1.37%
Shield Environmental Associates, Inc.	\$132,765.55	0.16%	\$132,765.55	\$0.00	0.00%
Kirwan Environmental Management	\$130,572.62	0.16%	\$130,571.62	\$1.00	0.00%
Fehr-Graham & Associates, Inc.	\$129,093.23	0.16%	\$113,644.09	\$15,449.14	11.97%
Mauer Stutz, Inc.	\$125,700.59	0.15%	\$115,011.78	\$10,688.81	8.50%
Professional Service Industries, Inc.	\$121,719.63	0.15%	\$98,023.63	\$23,696.00	19.47%
Turnkey Environmental Consultants	\$119,189.77	0.14%	\$96,644.77	\$22,545.00	18.92%
Burns & McDonnell Engineering Co., Inc.	\$118,214.11	0.14%	\$110,514.18	\$7,699.93	6.51%
Armor Shield	\$113,995.79	0.14%	\$113,505.29	\$490.50	0.43%
BLM Consulting, LLC	\$111,640.57	0.14%	\$97,090.02	\$14,550.55	13.03%
Ecology & Environment, Inc.	\$110,075.19	0.13%	\$72,576.44	\$37,498.75	34.07%
TDH Enterprises, Inc.	\$99,313.13	0.12%	\$91,401.62	\$7,911.51	7.97%
Walker Engineering	\$97,317.42	0.12%	\$90,373.02	\$6,944.40	7.14%
Farnsworth Group, Inc.	\$91,193.53	0.11%	\$88,644.45	\$2,549.08	2.80%
Rock River Consulting, Inc.	\$90,621.47	0.11%	\$81,629.54	\$8,991.93	9.92%
Baxter & Woodman, Inc.	\$87,748.55	0.11%	\$87,631.58	\$116.97	0.13%
Goin Environmental Services, Inc.	\$78,140.70	0.09%	\$53,691.63	\$24,449.07	31.29%
Ideal Environmental Engineering, Inc.	\$68,940.35	0.08%	\$68,590.05	\$350.30	0.51%
Schreiber, Yonley & Associates	\$68,344.44	0.08%	\$50,271.89	\$18,072.55	26.44%
Envirogen, Inc.	\$67,274.20	0.08%	\$63,528.06	\$3,746.14	5.57%
K Plus Environmental Solutions	\$61,729.44	0.07%	\$61,624.44	\$105.00	0.17%
Weaver Boos Consultants, Inc.	\$61,148.63	0.07%	\$42,790.11	\$18,358.52	30.02%
PDC Technical Services, Inc.	\$58,923.20	0.07%	\$26,230.91	\$32,692.29	55.48%
Gannett Fleming, Inc.	\$58,501.46	0.07%	\$57,309.41	\$1,192.05	2.04%
BT2, Inc.	\$58,330.65	0.07%	\$43,069.05	\$15,261.60	26.16%
Daily & Associates, Engineers, Inc.	\$57,472.86	0.07%	\$57,418.84	\$54.02	0.09%
Gabriel Environmental Services, Inc.	\$56,932.75	0.07%	\$48,753.72	\$8,179.03	14.37%
Remediation Unlimited, Inc.	\$56,355.31	0.07%	\$54,134.02	\$2,221.29	3.94%
Enviro-Co., LLC	\$55,785.52	0.07%	\$53,937.32	\$1,848.20	3.31%
Landmark Engineering Group, Inc.	\$55,767.86	0.07%	\$53,408.72	\$2,359.14	4.23%
ATC Assoc., Inc.	\$54,740.35	0.07%	\$46,527.93	\$8,212.42	15.00%
Professional Environmental Engineers, Inc.	\$54,249.81	0.07%	\$47,119.19	\$7,130.62	13.14%
Envirmark, Inc.	\$53,994.93	0.07%	\$50,199.44	\$3,795.49	7.03%
QST Environmental, Inc.	\$51,392.74	0.06%	\$48,258.64	\$3,134.10	6.10%
Testing Service Corporation	\$46,997.40	0.06%	\$46,979.40	\$18.00	0.04%
APT	\$46,621.14	0.06%	\$41,405.74	\$5,215.40	11.19%
Raymond Professional Group, Inc.	\$45,014.78	0.05%	\$43,660.75	\$1,354.03	3.01%
Terra Nova Research, Inc.	\$44,360.08	0.05%	\$34,872.45	\$9,487.63	21.39%
B & L, Inc.	\$41,700.31	0.05%	\$39,714.58	\$1,985.73	4.76%
Hurst-Rosche Engineers, Inc.	\$40,727.31	0.05%	\$40,510.81	\$216.50	0.53%
The Environmental Solutions Group, Inc.	\$38,199.16	0.05%	\$31,440.61	\$6,758.55	17.69%
Environmental Science & Engineering, Inc.	\$34,485.73	0.04%	\$32,675.73	\$1,810.00	5.25%
Crawford, Murphy, & Tilly, Inc.	\$34,172.45	0.04%	\$31,801.22	\$2,371.23	6.94%
Philip Services Corporation	\$33,615.92	0.04%	\$32,226.60	\$1,389.32	4.13%
Harding ESE, Inc.	\$33,053.40	0.04%	\$32,936.32	\$117.08	0.35%
ENMAR Consultants, Inc.	\$30,624.20	0.04%	\$29,836.70	\$787.50	2.57%

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Reimbursement Requests by Consultant - 2003

<u>Consultant</u>	<u>Amount Requested</u>		<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
Dames & Moore	\$30,531.18	0.04%	\$28,724.42	\$1,806.76	5.92%
Environmental Solutions, Inc.	\$29,194.22	0.04%	\$23,322.23	\$5,871.99	20.11%
Environmental Operations, Inc.	\$28,969.18	0.04%	\$28,969.18	\$0.00	0.00%
Klingner & Assoc., P.C.	\$28,768.17	0.03%	\$28,652.88	\$115.29	0.40%
Cummins Earth Services	\$28,473.20	0.03%	\$28,456.63	\$16.57	0.06%
SECOR International, Inc.	\$27,535.40	0.03%	\$27,140.30	\$395.10	1.43%
Levine-Pricke	\$27,106.62	0.03%	\$21,691.62	\$5,415.00	19.98%
Wight & Company	\$26,724.93	0.03%	\$24,422.43	\$2,302.50	8.62%
Geotechnology, Inc.	\$26,510.48	0.03%	\$26,504.90	\$5.58	0.02%
Moraine Environmental, Inc.	\$24,557.23	0.03%	\$24,426.58	\$130.65	0.53%
EPI, Inc.	\$24,351.92	0.03%	\$24,351.92	\$0.00	0.00%
Tech Services Co., Inc.	\$21,609.50	0.03%	\$19,133.15	\$2,476.35	11.46%
Compliance Engineering, Inc.	\$21,386.02	0.03%	\$21,386.02	\$0.00	0.00%
Geotechnical Services, Inc.	\$21,376.84	0.03%	\$18,363.64	\$3,013.20	14.10%
Shaw Environmental, Inc.	\$20,654.21	0.03%	\$18,452.24	\$2,201.97	10.66%
Great Lakes Remediation Services, LLC	\$19,527.95	0.02%	\$19,527.95	\$0.00	0.00%
KPR & Associates, Inc.	\$18,645.00	0.02%	\$18,645.00	\$0.00	0.00%
Consolidated Environmental Services, Inc.	\$18,029.41	0.02%	\$14,980.03	\$3,049.38	16.91%
QEP, Inc.	\$17,431.69	0.02%	\$14,280.21	\$3,151.48	18.08%
Environmental Management	\$16,962.25	0.02%	\$16,962.25	\$0.00	0.00%
EnecoTech Midwest, Inc.	\$15,832.43	0.02%	\$12,216.85	\$3,615.58	22.84%
Chase Environmental Group, Inc.	\$14,325.36	0.02%	\$14,325.36	\$0.00	0.00%
The Green Environmental Group, Ltd.	\$14,292.00	0.02%	\$13,472.00	\$820.00	5.74%
Shochan Engineering, Inc.	\$13,837.74	0.02%	\$13,826.69	\$11.05	0.08%
Environmental Consulting & Engineering, inc.	\$13,292.55	0.02%	\$13,292.55	\$0.00	0.00%
Thompson Environmental, Inc.	\$11,900.80	0.01%	\$4,708.86	\$7,191.94	60.43%
M.G. Simmons & Assoc., Inc.	\$11,591.47	0.01%	\$9,091.47	\$2,500.00	21.57%
Equilon Enterprises, LLC	\$11,026.64	0.01%	\$9,914.44	\$1,112.20	10.09%
Aces Environmental Consulting	\$10,771.00	0.01%	\$10,771.00	\$0.00	0.00%
Hanson Professional Services, Inc.	\$10,751.37	0.01%	\$1,782.39	\$8,968.98	83.42%
Free Flow Technologies, Inc.	\$8,724.00	0.01%	\$8,724.00	\$0.00	0.00%
RAM Engineering, Ltd.	\$7,818.88	0.01%	\$6,472.78	\$1,346.10	17.22%
SCI Engineering, Inc.	\$7,247.80	0.01%	\$7,247.80	\$0.00	0.00%
ETS Environmental & Associates, Inc.	\$5,931.62	0.01%	\$5,931.62	\$0.00	0.00%
Lewis, Yockey & Brown, Inc.	\$4,553.29	0.01%	\$1,810.20	\$2,743.09	60.24%
Deuchler Environmental, Inc.	\$4,387.35	0.01%	\$3,573.00	\$814.35	18.56%
Patrick Engineering, Inc.	\$3,909.50	0.00%	\$3,909.50	\$0.00	0.00%
Massac Environmental Technologies, Inc.	\$2,836.49	0.00%	\$2,766.97	\$69.52	2.45%
Alex Environmental, Inc.	\$1,216.00	0.00%	\$1,216.00	\$0.00	0.00%
SEECO Environmental Services, Inc.	\$1,147.50	0.00%	\$1,127.50	\$20.00	1.74%
TOTAL	\$82,334,898.00		\$75,863,456.55	\$6,471,441.45	7.86%

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE JULY 8, 2005
Reimbursement Requests by Consultant - 2003 to Present

	<u>Amount Requested</u>	<u>Total Allowed</u>	<u>Amount Cut</u>	<u>%Cut of Requested</u>
United Science Industries, Inc.	\$22,382,446.28	\$21,257,197.87	\$1,125,248.41	5.03%

ATTACHMENT 5

Fee Schedule

DESCRIPTION	UNIT	RATE
Clerical	HOURL	40.00
Draftsman	HOURL	55.00
Project Coordinator	HOURL	60.00
Environmental Specialist	HOURL	65.00
Project Manager	HOURL	95.00
Professional Engineer	HOURL	115.00
Site Superintendent	HOURL	80.00
Laborer	HOURL	54.00
Environmental Technician	HOURL	53.00
Operator	HOURL	62.00
Fleet Supervisor	HOURL	55.00
Driver I-A CDL	HOURL	48.00
Driver II-A Oversize Loads	HOURL	55.00
Professional Geologist	HOURL	115.00
Drilling Foreman	HOURL	50.00
Rig Hand	HOURL	45.00
Mileage	MILE	0.32
Visqueen 20X100 Roll	FOOT	0.75
55 Gallon Drums	EACH	50.00
Absorbent Materials 25Lb/Bag	BAG	15.00
Manifest	EACH	3.00
Disposable Camera	EACH	10.00
Polycoated Tyvek	EACH	27.50
PVC Gloves	PAIR	3.50
Neoprene Gloves	PAIR	5.00
Nitrile Gloves	PAIR	0.50
Latex Gloves	PAIR	0.40
Grade D Breathing Air	BOTTLE	40.00
Sawzall Blades	EACH	2.95
OVA/HEPA Respirator Cartridges	PAIR	16.50
Absorbent Socks Emergency Response	EACH	30.00
Orange Safety Fence (50' Roll)	EACH	85.00
Boot Covers	EACH	5.00
Per Diem	EACH	20.00
Headspace Analysis Containers	EACH	0.15
Absorbent Pads	EACH	1.05
Voa Sampling/Preservation Kit (9000-9001-9002)	EACH	10.00
Ferrous Sulfate	POUND	1.00
Per Diem	EACH	20.00
Dedicated Poly Bailer	EACH	20.00
Injection Sys Expendable Point	EACH	5.00
Chemical Oxidation Compound	LB	12.00
Chem. Oxidation Comp. Type 2	LB	4.00
Poly Tubing	FT	0.25

DESCRIPTION	UNIT	PRICE
Silicone Tubing	FT	3.00
1-1/2" Inch Absorbent Sock	EACH	12.50
B&W Copies	EACH	0.10
Color Copies	EACH	1.25
Shelby Tubes 3" x 30"	EACH	12.00
End Cap 3" Shelby Tubes	EACH	0.40
Glass Drum Sampler	EACH	4.50
Skid Steer With Concrete Break	HOURL	35.00
Skid Steer	HOURL	15.00
Skid Steer W/ Drilling Attatch	HOURL	35.00
Backhoe	DAY	200.00
Excavator	DAY	775.00
Air Compressor (Trailerred)	DAY	120.00
850 Dozer	DAY	435.00
621 Wheel Loader	DAY	445.00
Compost Spreader	DAY	100.00
Skid Steer With Sweeper	HOURL	35.00
26 Gal. Speed Air Compressor	DAY	50.00
Concrete Saw (Walk Behind)	DAY	100.00
115 Volt Generator	DAY	50.00
2" Trash Pump	DAY	50.00
Power/Pressure Washer	DAY	75.00
Drilling Rig Pressure Washer	DAY	50.00
Milwaukee Thunderbolt Hammer	DAY	50.00
Laser Level	DAY	60.00
Builders Level	DAY	30.00
Eductor	DAY	20.00
500 Gal. Poly Tank	DAY	25.00
1000 Gal Poly Tank	DAY	35.00
1500 Gal. Poly Tank	DAY	45.00
Submersible Pump	DAY	15.00
Oxy/Acetylene Torch Outfit	DAY	40.00
Drum Vac.	DAY	60.00
Sawzall	DAY	30.00
Air Diaphragm Pump	DAY	60.00
Full Face Air Purifying Respir	DAY	25.00
Half Face Air Purifying Respir	DAY	20.00
Full Face Supplied Air Respira	DAY	45.00
Breathing Air Regulator	DAY	25.00
30 Min. SCBA	DAY	75.00
Lifting Cable	DAY	15.00
Combustible Gas Indicator	DAY	75.00
3" Trash Pump	DAY	75.00
Traffic Control Devices (Set)	DAY	40.00
17" X 19" Absorbent Pad	EACH	1.25
In-Situ Injection System	DAY	275.00

DESCRIPTION	UNIT	RENT
Tandem Dump	HOUR	25.00
Tractor With Dump Trailer	HOUR	32.50
Tractor With Lowboy Trailer	HOUR	55.00
Service Truck With Tools	DAY	60.00
Remediation Utility Vehicle	DAY	60.00
Environmental Utility Vehicle	DAY	60.00
Tanker Semi Truck	HOUR	65.00
Cargo Trailer	DAY	75.00
Dovetail Trailer	DAY	50.00
5-Ton Utility Trailer	DAY	45.00
Geoprobe	HOUR	80.00
Drilling Rig Utility Trailer	DAY	45.00
Drum Hauler Box Truck	HOUR	18.50
F-800 Drill Rig	HOUR	80.00
ATV With Utility Bed	DAY	240.00
PC Camera	DAY	25.00
Ph Meter	DAY	35.00
Electronic Water Level Indicat	DAY	30.00
Metal Dectecter	DAY	25.00
Datalogger	DAY	150.00
Transducer	DAY	50.00
Grundfos Well Pump	DAY	60.00
Colorimeter	DAY	100.00
Colorimeter Reagent	EACH	0.95
Photoionization Detector	DAY	105.00
Hand Auger	DAY	32.00
Free Product Removal System	WEEK	250.00
Oil/Water Interface Meter	DAY	50.00
Peristaltic Pump	DAY	65.00
Bacterial Growth Test Kit	EACH	4.00
Ezy Skimmer	WEEK	50.00
Multi-Meter	DAY	50.00
Site Survey Instrument/Equip.	DAY	250.00

ATTACHMENT 6

Part No.	Part Description	Unit	Quantity	Unit Price	Total Price
20000068	Cost City Trucking	1/13/2000	732	12/18/2004	24084.19
20000068	Wetzel's 75	1/15/2000	732	3/30/2000	502280.16
20000135	Strobel, Wilke Dean	1/25/2000	732	9/19/2003	230834.07
20000200	Twins County Service Co.	2/3/2000	732	4/2/2003	42396.03
20000235	Joe Gamble Chrysler Plymouth	2/24/2000	732	8/20/2003	345683.71
20000255	Seery's Co.	3/2/2000	732	1/21/2006	578095.71
20000274	Sherry, Rosemary	3/9/2000	732	1/26/2003	14874.67
20000360	Greene Geologic Services	3/6/2000	732	3/21/2006	7491.4
20000369	Liberty School Bus Co.	3/7/2000	732	7/15/2003	30000.9
20000428	U.S. Ford Service	3/11/2000	732	2/28/2005	27606.74
20000464	Lorix Auto Clinic, Inc.	3/17/2000	732	6/24/2004	413115.66
20000517	E & L Trucking Co.	3/24/2000	732	3/17/2005	2560.59
20000535	Equillon Enterprises	3/28/2000	732	7/26/2004	66815.69
20000581	Casullo, Howard	4/4/2000	732	1/27/2004	168196.1
20000600	Hicks, Blumig Stations, Inc.	4/4/2000	732	7/13/2004	624545.7
20000620	Nussbaum Trucking, Inc.	4/7/2000	732	3/24/2004	7576.23
20000667	Newton Community High School	4/14/2000	732	7/31/2003	210895.1
20000674	Adin Carlson & Co.	4/14/2000	732	3/7/2000	257770.99
20000701	Huckley Big Rock Community School	4/18/2000	732	2/20/2004	186752.02
20000732	FKG Oil Co.	4/20/2000	732	5/18/2003	135.80
20000766	Sather Enterprises	4/25/2000	732	10/31/2003	122601.76
20000786	Speedway SuperAmerica	4/28/2000	732	6/25/2004	31967.16
20000795	Speedway SuperAmerica	5/1/2000	732	4/30/2004	55312.11
20000842	Myer, Wendell & Sallendenger, Shirley	5/5/2000	732	1/12/2004	107696.04
20000860	Gill's Auto Service	5/9/2000	732	2/4/2004	758840.93
20000860	Hickory Hill Gilgo	5/18/2000	732	5/5/2004	67020.9
20000868	Lincoln Technical Institute	5/24/2000	732	5/13/2003	428442.53
20001075	Young Chevrolet Co	5/9/2000	732	2/13/2004	42544.07
20001077	SDC Corp.	6/5/2000	732	2/23/2006	821816.33
20001154	Horn's Service Station	6/16/2000	732	12/10/2003	83210.11
20001185	Worsh's Standard Service Station	6/19/2000	732	12/16/2004	456960.43
20001240	Ward's Service, Inc.	6/28/2000	732	1/11/2005	2754.63
20001294	Ninor, Paul	7/8/2000	732	12/20/2004	248628.18
20001314	Paul, Paul	7/15/2000	732	3/18/2005	318970.56

The length of time open or age of the incidents (NFR_NFA - IEMA_DATE) was then considered to further narrow the record set. Using this age value the 5th and the 95th percentile of the record set was determined. The 5th percentile was found to be 0.67 years and the 95th percentile was found to be 8.07 years. To further reduce the record set all records below the 5th percentile and above the 95th percentile were excluded bringing the record set from 412 to 370 records. According to *Isaac and Michael, 1981; Smith, M.F., 1983*, for a population of 375 records with a precision level of 10% the sample size should be about 80 records. Based on this information 80 of the remaining 370 incidents were randomly selected to be analyzed using a random number generator. A list of the selected incidents is included as Appendix B

Recommended sample sizes for two different precision levels

Population Size	Sample size		Population size	Sample size	
	+8%	10%		8%	10%
10	10		275	163	74
15	14		300	172	76
20	19		325	180	77
25	24		350	187	78
30	28		375	194	80
35	32		400	201	81
40	36		425	207	82
45	40		450	212	82
50	44		475	218	83
55	48		500	222	83
60	52		1000	286	91
65	56		2000	333	95
70	59		3000	353	97
75	63		4000	364	98
80	66		5000	370	98
85	70		6000	375	98
90	73		7000	378	99
95	76		8000	381	99
100	81	51	9000	383	99
125	96	56	10,000	385	99
150	110	61	15,000	390	99
175	122	64	20,000	392	100
200	134	67	25,000	394	100
225	144	70	50,000	397	100
250	154	72	100,000	398	100

Source: Isaac and Michael, 1981; Smith, M. F., 1983

Data Collection

A request was sent to the IEPA Freedom of Information Act (FOIA) coordinator on April 27, 2005 requesting an appointment at the FOIA office to review and copy all reimbursement information for the eighty (80) selected incidents. On June 7, 2005 and June 8, 2005 representatives from USI scanned copies of all the FOIA information available at that time. At the conclusion of that event it was found that the data for eleven (11) of the eighty (80) records was either missing or incomplete. An additional ten (10) incidents were then selected at random from the remaining sample population and an additional FOIA request was submitted to the

FOIA coordinator on June 7, 2005. An appointment was then scheduled based on the availability of the FOIA coordinator for July 12, 2005 to obtain scanned copies of additional (10) incidents and to again search for the information previously omitted or unavailable. At the time of this pre-filing the additional information has not yet been collected. All data analysis conducted to date is based on the sixty-nine (69) incidents with which information was available.

Data Entry & Processing

Once the incidents were selected, all available financial information was collected through the FOIA Office as described above. The collected information was then manually entered into a Microsoft Access Database. The database was designed to house detailed information from each reimbursement package for each incident. Information collected included: phase of work, resource description, quantity, unit of measure, unit rate, tasks performed, in addition to other information collected. Below is a sample screen shot of the database used, which outlines the various levels of detail extracted from the reimbursement claims.

Incident - Microsoft Internet Explorer

File Edit View Favorites Tools Help

J:\United Science Industries\FOIA\Incident.htm

Incident #	Name	Total								
20000399	Liberty School Bus	\$49,125.48								
Package #	Work Start	Work End	Submitted	Vendor Letter	Phase	Text of Findings	Number of MWs	Tons disposed	Miles	Total
33	3/8/2000	5/30/2000	4/10/2002	7/10/2002	EA		0	0	135	\$34,563.28
Invoice #	Date	Consultant	Total							
100721A	9/20/2000	United Environmental Consultants, Inc.	\$24,563.28							
Line #	Resource Type	Resource Description	Quantity	Unit of Measure	Unit Rate	Total				
1500	Personnel	Principal Hydrogeologist	18	HR	\$95.00	\$1,710.00				
Task Description										
30-Day Report and Project Preparation										
45-Day Report Preparation										
Tasks 1-2 of 2										
1501	Personnel	Senior Project Manager	16	HR	\$85.00	\$1,360.00				
1502	Personnel	Word Processing	8	HR	\$40.00	\$320.00				
1503	Personnel	Principal Hydrogeologist	25	HR	\$95.00	\$2,375.00				
1504	Personnel	Senior Project Manager	27	HR	\$85.00	\$2,295.00				
1505	Personnel	Cartographer	16	HR	\$60.00	\$960.00				
1506	Personnel	Word Processing	15	HR	\$40.00	\$600.00				
1507	Personnel	Project Manager	30	HR	\$75.00	\$2,250.00				
1508	Personnel	Word Processing	16	HR	\$40.00	\$640.00				
1509	Equipment	Photocopying Detector	2	DAY	\$100.00	\$200.00				
1510	Equipment	Decontamination Equipment	2	DAY	\$35.00	\$70.00				
1511	Stock Items	Vehicle Mileage	240	MILE	\$0.40	\$96.00				
1512	Stock Items	Vehicle Mileage	350	MILE	\$0.40	\$140.00				
1513	Subcontractors	8-Hour Construction	1	EA	\$9,290.00	\$9,290.00				
1514	Subcontractors	Emergency Trucking	1	EA	\$4,508.75	\$4,508.75				
1515	Subcontractors	Great Lakes Analytical Laboratories	1	EA	\$2,675.00	\$2,675.00				
1516	Subcontractors	RS Used Oil	1	EA	\$2,495.00	\$2,495.00				
1517	Handling	Handling	1	EA	\$1,933.50	\$1,933.50				

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Once all of the information collected had been entered into the database the data was then prepared for analysis. For professional personnel, the various titles used were categorized into the basic eight (8) personnel groups offered in Appendix E of Subpart H so that a direct comparison could be made between historical Agency data and Subpart H maximum payment rates for professional personnel. In preparation for this analysis and without changing any of the original data, each title used in the claims analyzed was associated with the most appropriate Subpart H title using check boxes as outlined below. If a reasonable association between titles

[illegible]

Appendix A

Professional Personnel FOIA Analysis Reports

(Titles Related to Sub Part H Appendix E Titles)

&

(Titles Not Related to Sub Part H Titles)

Professional Personnel FOIA Analysis*Titles Related to Sub Part H Appendix E Titles*

	Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
Accounting	10	676.00	\$54.21	21
ACCOUNTING CLERK		29.75	\$39.25	1
Accountant		10.50	\$50.00	1
Accounting Technician		7.50	\$50.00	2
PROJECT ACCOUNTANT		5.25	\$50.00	1
Reimbursement Specialist		54.50	\$53.63	3
Project Coordinator		513.25	\$53.85	13
Senior Claims Analyst		5.50	\$55.00	1
Senior Account Technician		9.75	\$55.00	1
Senior Claims Analyst		22.00	\$55.00	2
FINANCIAL PROJECT MANAGER		18.00	\$95.00	2
Administrative	30	1,646.05	\$37.57	52
Administrative Assistant I		12.10	\$25.05	1
Clerical Staff		25.00	\$26.68	2
Word Processor/ Clerical		3.00	\$28.00	1
Work Processor/ Clerical		3.00	\$28.00	1
Clerical		478.50	\$30.51	21
technical secretary		82.00	\$32.50	1
Administrative Assistant II		107.65	\$33.60	2
Administration		47.75	\$34.71	2
ADMINISTRATIVE/CLERICAL		21.00	\$35.00	1
Clerical I-A		27.00	\$35.00	5
Clerical I-B		5.50	\$35.00	1
field clerical		3.25	\$35.00	1
Project Administration		19.00	\$35.23	4
Support Staff		39.90	\$37.09	3
Administrative		8.00	\$37.66	3
Secretary		185.50	\$38.82	4
Clerical II-A		2.25	\$40.00	2
Clerical II-B		4.75	\$40.00	3
Stenographer		0.50	\$40.00	1
Administrative Support		1.00	\$40.13	2
Word Processing		77.00	\$41.43	2
Project Assistant I		0.90	\$42.75	1
Administrative Assistant		37.50	\$44.40	3
Administrator/ Analyst I-A		2.00	\$45.00	1
Senior Administrative Assistant		8.00	\$45.00	1
support		3.00	\$45.00	1
Project Assistant		326.50	\$46.25	8
Office Assistant		95.00	\$46.95	5
Technical Assistant		11.00	\$53.50	1
Project Administrator I		8.50	\$65.12	1
Draftsperson	21	1,080.00	\$50.86	43
CAD/Draftsman		2.00	\$23.75	1
CADD		1.50	\$38.50	1
Draftsperson 1		7.00	\$40.00	2
Drawing Preparation		15.75	\$40.00	1
Draftsperson		35.75	\$44.82	5
CAD DRAFTER		16.00	\$45.00	1
Draftsperson 2		152.25	\$45.11	4
Drafting		52.75	\$47.06	3
Graphics Support		7.25	\$48.00	1
Designer		12.00	\$49.46	2
CAD DRAFTER (SR)		1.50	\$50.00	1
graphics engineer		8.00	\$50.00	1
Draftsman		541.00	\$52.34	24

	Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
CADD Technician		70.00	\$52.57	1
CADD Operator		25.75	\$53.53	4
Cartography		24.50	\$54.00	2
Senior Draftsperson		5.00	\$54.18	1
CAD		8.00	\$55.00	1
Cartographer		67.00	\$56.15	2
CAD DRAFTING		23.00	\$60.22	1
SURVEYING MANAGER		4.00	\$67.00	1
Engineer	29	4,346.75	\$80.39	60
Reproduction Engineer		0.75	\$44.00	1
operating engineer		26.00	\$50.00	1
associate engineer		5.50	\$53.64	1
Engineer Staff		25.00	\$54.05	2
ENVIRONMENTAL ENGINEER I		280.75	\$55.00	1
Staff Engineer		674.75	\$61.84	9
field engineer		22.00	\$62.27	2
Field Engineer, Jr		1.00	\$64.00	1
Engineer Project		0.75	\$64.93	1
ENVIRONMENTAL ENGINEER II		64.75	\$65.00	1
assistant engineer		105.00	\$66.33	1
Staff Sci/Engineer/Geo/Hydro II		8.00	\$66.50	1
Environmental Staff Engineer		23.00	\$70.00	1
environmental engineer/hydrogeologist		25.00	\$75.00	1
Project Engineer		328.25	\$77.38	6
Senior Engineer		251.00	\$78.20	8
Senior Environmental Engineer		21.00	\$78.33	2
Project Engineer II		22.00	\$80.00	1
Principal Engineer		18.00	\$81.39	3
Engineer		639.75	\$81.62	6
Environmental Project Engineer		380.00	\$83.16	2
Engineering Manager		1.00	\$85.00	1
Environmental Engineer		251.25	\$87.36	6
associate/senior engineer		41.00	\$90.00	1
Engineer - Manager		6.25	\$95.00	2
Project Engineer IV		30.75	\$98.00	1
Professional Engineer		1,075.50	\$99.94	43
Engineer Senior		14.75	\$104.99	1
SENIOR PROFESSIONAL ENGINEER		4.00	\$130.00	1
Geologist	32	6,274.95	\$72.38	47
Geologist I		109.75	\$47.50	1
Geologist Labor		11.50	\$50.00	1
Staff Geologist		521.50	\$60.23	6
Professional Geologist		845.50	\$61.16	11
Field Geologist		458.50	\$62.29	6
Senior Engineer/Geologist		106.00	\$62.92	2
Staff Hydrogeologist		48.00	\$63.84	2
GEOLOGIST II		33.00	\$65.00	1
staff geologist/engineer		97.25	\$65.00	1
Project Hydrogeologist I		47.20	\$66.50	1
Senior Hydrogeologist		7.50	\$70.00	1
Staff Geologist Management		55.50	\$70.00	1
HYDROGEOLOGIST/GEOLOGIST		56.00	\$70.18	1
Senior Hydrogeologist		261.00	\$72.07	5
Project Hydrogeologist		482.50	\$72.48	5
Senior Geologist		144.00	\$72.57	2
Project Geologist		224.50	\$74.81	3
Geologist		856.75	\$75.58	14
LSP/Other Registered Professional		2.00	\$76.00	1
senior geologist/engineer		37.25	\$76.54	1
Project Hydrogeologist II		198.00	\$80.69	1
Environmental Project Geologist		140.75	\$81.00	1

	Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
Hydrogeologist		753.25	\$81.30	16
Environmental Geologist		274.00	\$83.78	4
Environmental Eng/Geologist		208.00	\$90.00	1
Principal Engineer/Geologist		31.00	\$90.00	1
Senior Environmental Geologist		70.00	\$92.00	1
Principal Hydrogeologist		81.00	\$94.69	3
Geologist/ Environmental Scientist		42.75	\$95.00	1
Licensed Professional Geologist		62.00	\$95.97	2
Professional Engineer / Geologist		3.00	\$115.00	1
Professional Engineer/Geologist		6.00	\$115.00	1
Project Manager	25	8,024.75	\$86.47	52
Office Manager		14.25	\$40.00	2
Associate Staff		110.00	\$55.34	2
Senior Staff		77.00	\$65.26	2
Project Manager/Geologist		184.00	\$70.00	1
Supervisor/ Manager I-A		27.50	\$70.00	2
Manager		9.00	\$75.00	1
Project Manager - Field		6.00	\$75.00	1
Management		510.00	\$77.79	1
REMEDIATION MANAGER		34.50	\$80.00	1
Project Management		25.25	\$81.21	3
Project Manager		5,912.75	\$87.71	43
Senior Project Manager		866.50	\$91.06	15
Senior Project Management		2.50	\$93.00	1
COMPLIANCE MANAGER		15.00	\$95.00	1
field project manager		78.00	\$95.00	2
Project Director		53.00	\$95.00	3
Remediation Project Manager		26.25	\$95.00	3
ENVIRONMENTAL DEPARTMENT MANAG		6.00	\$100.00	1
General Project Manager		33.00	\$100.00	1
Department Manager		1.50	\$105.00	1
Division Manager		20.75	\$108.00	5
Supervisor/ Manager II-A		6.50	\$108.00	1
BRANCH MANAGER		1.00	\$120.00	1
PROJECT MANAGER-ENVIRONMENTAL		2.50	\$120.00	1
Senior Manager		2.00	\$120.00	1
Scientist	24	3,653.50	\$67.27	30
Project Scientist I		0.50	\$23.75	1
Junior Staff		23.00	\$42.00	1
Scientist Staff		44.00	\$44.59	1
Environmental Specialist		18.00	\$50.00	1
Environmental Scientist		24.00	\$50.00	1
Scientist		13.50	\$52.78	2
Environmental Scientist/ PE Intern		2.50	\$54.00	1
Field Environmental Scientist		11.50	\$55.00	1
Engineer/ Scientist I-A		53.50	\$55.42	2
environmental specialist		598.25	\$56.31	10
Assistant Project Manager		570.00	\$64.95	9
Office/Technical Coordinator		1.25	\$65.00	1
Staff Scientist		3.50	\$65.00	1
Environmental Scientist		1,727.80	\$68.35	11
Project Scientist		72.75	\$72.48	2
Engineer/ Scientist II-A		22.00	\$73.69	2
Project Scientist II		59.50	\$76.00	1
senior engineer/scientist		21.00	\$80.00	1
senior engineer/scientist I		2.50	\$80.00	1
Environmental Project Scientist		3.25	\$81.00	1
Senior Scientist		273.45	\$86.70	1
Engineer/ Scientist III-A		80.25	\$90.00	2
Geog/ Enviro Scientist/ PE Intern		24.50	\$95.00	1
Engineer/ Scientist IV-A		3.00	\$115.00	1

	Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
Technician	19	3,642.00	\$48.75	35
junior technician		9.00	\$35.00	1
Technician I		202.25	\$36.22	1
Technician		16.50	\$38.00	1
Technician II		693.25	\$42.62	3
Technician/ Analyst I-A		107.00	\$45.00	2
Senior Technician		65.25	\$46.30	4
Technician III		10.75	\$48.00	1
Technician		870.50	\$48.76	9
Engineering Technician		61.00	\$48.89	2
Technician III		151.50	\$49.60	3
Surveyor/Technician		12.50	\$49.76	2
Environmental Technician		1,183.25	\$52.92	20
environmental technician II		29.00	\$53.92	1
Technician IV		19.50	\$54.17	2
Senior Environmental Technician		63.00	\$54.52	4
Technician/ Analyst II-A		30.00	\$55.00	2
Field technician		112.00	\$61.30	3
Senior Environmental		2.75	\$92.00	1
Senior TECHNICIAN PROFESSIONAL		3.00	\$120.00	1
TOTAL		29,344.00	\$70.68	69

Professional Personnel FOIA Analysis*Titles NOT Related to Sub Part H Appendix E Titles*

	Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
Response 1	82	5,179.30	\$60.96	40
ERROR-		1.00	\$1.00	1
Victor Gonda		3.50	\$23.00	1
EXTRA MAN		80.00	\$26.00	1
Brumbaugh		2.25	\$30.00	1
Laborer		169.50	\$31.61	6
Tech Sec		25.00	\$32.00	1
field clerk		37.75	\$35.00	1
Technical Staff		26.50	\$38.28	2
George Towne		8.50	\$40.00	1
NESA-D-1		8.00	\$40.00	1
C. Fitzmaurice		5.50	\$42.00	1
Norbert Kunkle		43.00	\$45.00	1
Rig Hand		173.00	\$45.00	8
Shelia Sangster		2.50	\$45.00	1
TECH 3		10.00	\$45.00	1
Laborer		697.00	\$45.46	15
Truck Driver		426.00	\$45.50	2
CREW CHIEF		20.00	\$47.00	1
Driver I-A CDL		829.75	\$47.63	5
Paraprofessional		45.25	\$47.71	2
Truck Driver I-A		87.00	\$48.00	1
Drilling Foreman		197.00	\$50.00	8
ES		14.00	\$50.00	1
Nathan L. Higginson		18.50	\$50.00	1
bobcat operator		18.00	\$52.78	1
Operator		108.00	\$54.78	6
Driver II-A Oversize Loads		43.00	\$55.00	5
Ellie Parkas		1.00	\$55.00	1
Operator I-B		115.50	\$55.00	4
Operator II-A		38.50	\$55.00	2
Operator II-B		21.50	\$55.00	1
S. Thrope		5.50	\$55.00	1
SENIOR DESIGNER		5.00	\$55.00	1
Technical Editor		4.75	\$55.00	1
Siekler		2.25	\$57.00	1
Hydrogeologist		17.00	\$59.00	1
Professional		15.25	\$59.00	1
Project Professional 1		47.00	\$59.00	1
Paula K. Riordan		213.75	\$59.72	1
Lars Kruse		0.50	\$60.00	1
Nickels		8.50	\$60.00	1
staff environmental consultant		41.00	\$60.12	1
Foreman		26.00	\$63.46	2
S. Thorpe		26.00	\$64.23	1
John P. Miral		35.00	\$64.86	1
CERTIFIED FLAGGERS		12.00	\$65.00	1
J. Cummins		9.50	\$65.00	1
Site Foreman		7.50	\$65.00	1
John P. Mital		37.75	\$65.07	1
Brad A. Muise		96.50	\$65.13	1
backhoe operator		21.00	\$67.14	1
Klinger		2.00	\$69.00	1
Katharine A. Siders		8.00	\$70.00	1
Katharine A. Schals		4.50	\$70.00	1
Katharine S. Golden		19.00	\$70.00	1
K. Fitzmaurice		7.50	\$75.00	1
LABOR FOREMAN		5.00	\$75.00	1
Site Supervisor		48.00	\$75.00	1

Number of Distinct Titles	Quantity (hours)	Average Unit Rate (weighted by hours)	Number of Incidents
Project Professional III	74.00	\$75.05	1
Site Superintendent	200.50	\$75.65	5
SITE INVESTIGATION REIMBURSEMENT	5.00	\$80.00	1
MARLIN ENVIRONMENTAL, INC.	61.00	\$83.61	1
Field Visit to collect four water samples	16.00	\$85.00	1
Patricia Feeley	78.00	\$85.00	1
Preparation of Corrective Action Work Plan	12.00	\$85.00	1
Project Professional IV	0.50	\$85.00	1
CONTRACTOR	1.05	\$87.50	1
Steven M. Bishoff	5.00	\$88.00	1
LAND SURVEYOR	7.00	\$90.00	1
FIELD SUPERVISOR	17.00	\$95.00	1
Supervisor	12.00	\$95.00	1
Unassigned	1.00	\$100.00	1
Field Supervisor/Coordinator	39.00	\$110.00	1
John Yang	7.00	\$110.00	1
Michael W. Rapps	7.00	\$110.00	1
PARTNER	452.25	\$113.33	1
driller	5.00	\$115.00	1
NONE	24.00	\$115.00	1
DRILL OPERATOR	39.00	\$125.00	1
Principal	111.50	\$127.61	5
Reg Chrg	1.75	\$276.32	1
OT Chrg	1.00	\$329.70	1
TOTAL	5,179.30	\$60.96	40

Appendix B

Freedom of Information Act Requests

(Original Eighty (80) Incidents Randomly Selected)

&

(Additional Ten (10) Incidents Randomly Selected)



United Science Industries, Inc.
P.O. Box 360
6295 East IL Highway 15
Woodlawn, IL 62898
toll free 800.372.8740
phone 618.735.2411
fax 618.735.2907

www.unitedscience.com

June 9, 2005

Ms. Jan Ogden
FOIA Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Ogden:

I am requesting information from the Illinois Environmental Protection Agency through the Freedom of Information Act. I respectfully request that you make an appointment for me or my representative to visit your offices in Springfield to review and copy all reimbursement applications for the following ten (10) incident numbers:

(Order by Incident #)

	Incident #	LPC#	Name
1	961579	430555049	Speedway Service Station #7430
2	981044	994905049	Clark Refining & Marketing
3	981369	311055001	Tappan, Richard J.
4	981848	490055005	Dixie Truckers Home
5	982953	1150155437	Decatur Park Dist.
6	992424	1054255013	Becker, Phillip
7	20001314	2010155149	Exel Sales, Inc.
8	20010303	990705025	Rich & John's Service
9	20011463	910705010	GET Cable Service
10	20021525	312795011	Thomas Management & Assoc., Inc.

(Order by LPC#)

	Incident #	LPC#	Name
1	981369	311055001	Tappan, Richard J.
2	20021525	312795011	Thomas Management & Assoc., Inc.
3	961579	430555049	Speedway Service Station #7430
4	981848	490055005	Dixie Truckers Home
5	20011463	910705010	GET Cable Service
6	20010303	990705025	Rich & John's Service
7	981044	994905049	Clark Refining & Marketing
8	992424	1054255013	Becker, Phillip
9	982953	1150155437	Decatur Park Dist.
10	20001314	2010155149	Exel Sales, Inc.

If you have any questions, please contact me at 618-735-2411, extension 120.

Sincerely,

Ross Buntin
Manager of Operational Analysis
United Science Industries, Inc.



United Science Industries, Inc.
P.O. Box 360
6295 East II. Highway 15
Woodlawn, IL 62898
toll free 800.377.8740
phone 618.735.2411
fax 618.735.2907

www.unitedscience.com

April 27, 2005

Ms. Jan Ogden
FOIA Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Ogden:

I am requesting information from the Illinois Environmental Protection Agency through the Freedom of Information Act. I respectfully request that you make an appointment for me or my representative to visit your offices in Springfield to review and copy all reimbursement applications for the following incident numbers:

Incident	LPC Number	Incident	LPC Number	Incident	LPC Number	Incident	LPC Number
981610	0890805024	981461	1970505132	991086	1830200018	20002169	0316505016
981869	0311145018	981604	0090105022	991116	0312885386	20010400	0312735088
982125	1790255003	981632	0311025090	991218	0434875118	20010410	0750055002
970240	1990555089	982005	0310635454	991395	0230055015	20010480	0810255010
970543	0894385178	982287	1030205051	991459	0310615323	20010788	1831455033
970707	0316195203	982369	1410155004	992085	1110055015	20010872	0950205130
970846	0316008094	982399	0750355001	992096	0316085082	20010908	0434875141
971123	0316490013	982458	0311475090	992352	0278000001	20010970	0316075208
971259	0316085100	982627	1570105008	992447	1671205070	20011579	0971905053
971680	0674305003	982698	1590205055	992773	1810205005	20020041	1930105042
972036	2010301126	990086	0191055023	20000399	0312310005	20020065	1191150015
972183	0610405008	990106	0890105046	20000620	1130900010	20020413	1610405010
972225	1198065019	990128	1638130005	20000687	0790105049	20020881	1130205175
980099	0974205034	990161	0316055071	20000674	0311865031	20020884	0770155045
980328	0550305007	990382	0312640006	20000701	0898025005	20021633	0311535086
980410	0898895015	990429	0430755019	20000755	0390155020	20031242	1870455189
980573	0810305145	990448	0318315184	20000786	0312225051	20031275	1850055013
980768	1150155133	990601	1630805004	20000880	0314825006	20031353	1110155250
981083	0050205010	990761	1450105036	20001382	1970250008	20031368	0894835115
981163	0434675322	990829	1130900010	20002157	0312285009	20031515	0830205022

If you have any questions, please contact me at 618-735-2411, extension 120.

Sincerely,

Ross Bunton

Manager of Operational Analysis,
United Science Industries, Inc.

ATTACHMENT 7

IEPA Unit Manager and Project Manager Response Type Analysis*Includes both initial and amended submittals 01-01-2003 to Present**Data is taken directly from
the IEPA downloadable
database (06-30-05)*

	<u>Total Decisions</u>	<u>Average Days for Response</u>	<u>Approvals</u>	<u>Average Days for Approval</u>	<u>Modified or Denied</u>	<u>Average Days for Mod/Den</u>
McGill	638	35	451 70.69%	30.59	187 29.31%	44.91
Rossi	579	38	316 54.58%	35.21	263 45.42%	41.86
Davis	472	30	213 45.13%	25.19	259 54.87%	33.38
Hale	433	54	204 47.11%	43.12	229 52.89%	64.23
Zuehlke	425	43	180 42.35%	37.73	245 57.65%	47.50
Kaiser	378	56	192 50.79%	47.71	186 49.21%	64.90
Rothering	323	57	214 66.25%	51.60	109 33.75%	67.13
Fernandes	268	45	150 55.97%	45.02	118 44.03%	45.46
Malcom	721	32	294 40.78%	29.46	427 59.22%	33.40
Hawbaker	437	89	194 44.39%	81.51	243 55.61%	94.73
Donnelly	426	41	119 27.93%	38.64	307 72.07%	42.29
Kuhlman	407	80	216 53.07%	71.62	191 46.93%	88.90
Weller	371	98	129 34.77%	88.10	242 65.23%	103.20
Bauer	288	96	77 26.74%	92.08	211 73.26%	97.89
Schwartzkopf	255	109	117 45.88%	101.50	138 54.12%	115.66
Benanti	450	100	155 34.44%	85.98	295 65.56%	107.59
Piggush	386	114	204 52.85%	111.02	182 47.15%	116.71
Heaton	317	88	125 39.43%	79.08	192 60.57%	93.17
Putrich	234	39	108 46.15%	40.73	126 53.85%	38.04
McCain	209	95	120 57.42%	89.44	89 42.58%	102.88
Friedel	208	93	85 40.87%	91.41	123 59.13%	94.51
Rahman	185	68	104 56.22%	60.84	81 43.78%	76.59
Urish	182	57	112 61.54%	54.43	70 38.46%	62.07
Daly	8	51	7 87.50%	56.57	1 12.50%	14.00
Lowder	4	368	0 0.00%	0.00	4 100.00%	368.00
Barrett	441	69	247 56.01%	67.22	194 43.99%	71.43
Myers	397	36	156 39.29%	31.92	241 60.71%	38.11
Wallace	354	60	174 49.15%	55.31	180 50.85%	64.32
Ransdell	245	88	137 55.92%	77.96	108 44.08%	100.64
Covert	234	79	160 68.38%	74.93	74 31.62%	88.49
Hamilton	211	80	149 70.62%	80.31	62 29.38%	80.89
Tucka	136	49	88 64.71%	46.60	48 35.29%	52.27
Thorsen	128	71	59 46.09%	69.93	69 53.91%	71.52
Dolan	10	46	7 70.00%	57.57	3 30.00%	19.00
Nickell	1	30	1 100.00%	30.00	0 0.00%	0.00
Jones	567	50	315 55.56%	44.56	252 44.44%	56.43
Bloome	330	67	225 68.18%	64.67	105 31.82%	72.80
Gaydos	304	111	183 60.20%	105.89	121 39.80%	119.98
Layman	174	100	101 58.05%	90.78	73 41.95%	113.66
South	104	52	73 70.19%	49.41	31 29.81%	58.00
Kasa	51	42	40 78.43%	36.00	11 21.57%	62.91
Olbaitis	45	55	35 77.78%	52.71	10 22.22%	61.40
Ingold	32	79	25 78.13%	81.20	7 21.88%	71.00
Reynolds	27	84	18 66.67%	77.11	9 33.33%	98.00
GRAND TOTAL	12,395	65	6,279 50.66%	59.12	6,116 49.34%	70.34

ATTACHMENT 8

ATTACHMENT

Section	Section Description	Description	Unit	Maximum Estimated Amount
1 734.810	UST Removal or Abandonment Costs	Removal or Abandonment of 110 gallon to 999 gallon UST	each	\$ 2,100.00
2 734.810	UST Removal or Abandonment Costs	Removal or Abandonment of 1000 gallon to 14,999 gallon UST	each	\$ 3,150.00
3 734.810	UST Removal or Abandonment Costs	Removal or Abandonment of 15000 gallon or larger UST	each	\$ 4,100.00
1 734.830	Drum Disposal	Purchase, transportation & disposal of 55 gallon drums of solid waste	Drum	\$ 250.00
2 734.830	Drum Disposal	Purchase, transportation & disposal of 55 gallon drums of liquid waste	Drum	\$ 150.00
3 734.830	Drum Disposal	Solid or Liquid Waste Minimum 55 gallon Drum Disposal Fee	lump sum	\$ 500.00
71 734.835	Sample Handling & Analysis	See Appendix D	Sample	varying
1 734.815 (a)	Free Product or Groundwater Removal & Disposal	Free Product or Groundwater Disposal (295 gallons or greater)	gallon	\$ 0.68
2 734.815 (a)	Free Product or Groundwater Removal & Disposal	Free Product or Groundwater Disposal (fewer than 295 gallons)	lump sum	\$ 200.00
3 734.815 (b)	Free Product or Groundwater Removal & Disposal	Free Product or Groundwater removal or disposal via method other than hand bailing	T&M	

ATTACHMENT

1	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Hollow Stem Augering (more than 65 feet drilled per event)	foot	\$ 23.00
2	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Hollow Stem Augering (65 feet or fewer drilled per event)	lump sum	\$ 1,500.00
3	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Direct-push platform for sampling or other non-injection purposes (more than 66 feet per event)	foot	\$ 18.00
4	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Direct-push platform for sampling or other non-injection purposes (66 feet or fewer per event)	lump sum	\$ 1,200.00
5	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Direct push platform for injection purposes (more than 80 feet per event)	foot	\$ 15.00
6	734.820 (a)	Drilling, Well Installation, and Well Abandonment	Direct push platform for injection purposes (80 feet or less per event)	lump sum	\$ 1,200.00
7	734.820 (b)	Drilling, Well Installation, and Well Abandonment	Well placement via hollow stem augering	foot	\$ 16.50
8	734.820 (b)	Drilling, Well Installation, and Well Abandonment	Well placement via direct push platform.	foot	\$ 12.50
9	734.820 (c)	Drilling, Well Installation, and Well Abandonment	4 to 6 inch recovery well installation	foot	\$ 25.00
10	734.820 (c)	Drilling, Well Installation, and Well Abandonment	8 inch or larger recovery well installation	foot	\$ 41.00
11	734.820 (d)	Drilling, Well Installation, and Well Abandonment	Monitoring Well Abandonment	foot	\$ 10.00

ATTACHMENT

1	734.825 (a)	Soil Removal & Disposal	Removal Transportation & Disposal of Contaminated soil, fill and concrete, asphalt or paving overlying contaminated soil	Cubic Yard \$	57.00
2	734.825 (b)	Soil Removal & Disposal	Purchase, Transportation & Placement of Backfill Material	Cubic Yard \$	20.00
3	734.825 (c)	Soil Removal & Disposal	Removal and Return of Clean Overburden	Cubic Yard \$	6.50
1	734.840 (a)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	2' of asphalt or paving installed as an engineered barrier	Sq. Ft.	1.65
2	734.840 (a)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	3' of asphalt or paving installed as an engineered barrier	Sq. Ft.	1.86
3	734.840 (a)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	4' of asphalt or paving installed as an engineered barrier	Sq. Ft.	2.38
4	734.840 (a)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	Concrete installed as an engineered barrier (any depth)	Sq. Ft.	2.38
5	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	2' of asphalt or paving installed as replacement material	Sq. Ft.	1.65
6	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	3' of asphalt or paving installed as a replacement material	Sq. Ft.	1.86
7	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	4' of asphalt or paving installed as a replacement material	Sq. Ft.	2.38
8	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	6' of asphalt or paving installed as a replacement material	Sq. Ft.	3.06

ATTACHMENT

9	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	2" of concrete installed as a replacement material	Sq. Ft.	\$	2.45
10	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	3" of concrete installed as a replacement material	Sq. Ft.	\$	2.93
11	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	4" of concrete installed as a replacement material	Sq. Ft.	\$	3.41
12	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	5" of concrete installed as a replacement material	Sq. Ft.	\$	3.89
13	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	6" of concrete installed as a replacement material	Sq. Ft.	\$	4.36
14	734.840 (b)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	8" of concrete installed as a replacement material	Sq. Ft.	\$	5.31
15	734.840 (c)	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures	Destruction or Dismantling and Reassembly of Above Grade Structures	T&M NTE	\$	10,000
Appendix D Maximum Payment Amounts						
LABS						
1	Chemical	BETX Soil with MTBE	Sample		\$	85.00

ATTACHMENT

2	Chemical	BETX Water with MTBE	Sample		\$ 81.00
3	Chemical	COD (Chemical Oxygen Demand)	Sample		\$ 30.00
4	Chemical	Corrosivity	Sample		\$ 15.00
5	Chemical	Flash Point or Ignitability Analysis EPA 1010	Sample		\$ 33.00
6	Chemical	FOC (Fraction Organic Carbon)	Sample		\$ 38.00
7	Chemical	Fat, Oil & Grease (FOG)	Sample		\$ 60.00
8	Chemical	LUST Pollutants Soil- analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 732, Appendix B of this Part.	Sample		\$ 693.00
9	Chemical	Organic Carbon (ASTM-D 2974-87)	Sample		\$ 33.00
10	Chemical	Dissolved Oxygen (DO)	Sample		\$ 24.00
11	Chemical	Paint Filter (Free Liquids)	Sample		\$ 14.00
12	Chemical	PCB/Pesticides (combination)	Sample		\$ 222.00
13	Chemical	PCBs	Sample		\$ 111.00
14	Chemical	Pesticides	Sample		\$ 140.00
15	Chemical	PH	Sample		\$ 14.00
16	Chemical	Phenol	Sample		\$ 34.00
17	Chemical	Polynuclear Aromatics PNA, or PAH Soil	Sample		\$ 152.00
18	Chemical	Polynuclear Aromatics PNA, or PAH Water	Sample		\$ 152.00
19	Chemical	Reactivity	Sample		\$ 68.00
20	Chemical	SVOC-Soil (Semi-volatile Organic Compounds)	Sample		\$ 313.00

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21	Chemical	SVOC-Water (Semi-volatile Organic Compounds)	Sample	\$	313.00
22	Chemical	TKN (Total Kjeldahl) "Nitrogen"	Sample	\$	44.00
23	Chemical	TOC (Total Organic Carbon) EPA 9060A	Sample	\$	31.00
24	Chemical	TPH (Total Petroleum Hydrocarbons)	Sample	\$	122.00
25	Chemical	VOC (Volatile Organic Compound)- Soil (Non-Aqueous)	Sample	\$	175.00
26	Chemical	VOC (Volatile Organic Compound)- Water	Sample	\$	169.00
1	Geotechnical	Bulk Density ASTM D4292/D2937	Sample	\$	22.00
2	Geotechnical	Ex-Situ Hydraulic Conductivity/Permeability	Sample	\$	255.00
3	Geotechnical	Moisture Content ASTM D2216-90/D4643-87	Sample	\$	12.00
4	Geotechnical	Porosity	Sample	\$	30.00
5	Geotechnical	Rock Hydraulic Conductivity Ex-Situ	Sample	\$	350.00
6	Geotechnical	Sieve/Particle Size Analysis ASTM D422-63/D1140-54	Sample	\$	145.00
7	Geotechnical	Soil Classification ASTM D2488-90/D2487-90	Sample	\$	68.00
8	Metals	Arsenic TCLP Soil	Sample	\$	16.00
9	Metals	Arsenic Total Soil	Sample	\$	16.00
10	Metals	Arsenic Water	Sample	\$	18.00
11	Metals	Barium TCLP Soil	Sample	\$	10.00
12	Metals	Barium Total Soil	Sample	\$	10.00
13	Metals	Barium Water	Sample	\$	12.00
14	Metals	Cadmium TCLP Soil	Sample	\$	16.00
15	Metals	Cadmium Total Soil	Sample	\$	16.00
16	Metals	Cadmium Water	Sample	\$	18.00

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17 Metals	Chromium TCLP Soil	Sample	\$	10.00
18 Metals	Chromium Total Soil	Sample	\$	10.00
19 Metals	Chromium Water	Sample	\$	12.00
20 Metals	Cyanide TCLP Soil	Sample	\$	28.00
21 Metals	Cyanide Total Soil	Sample	\$	34.00
22 Metals	Cyanide Water	Sample	\$	34.00
23 Metals	Iron TCLP Soil	Sample	\$	10.00
24 Metals	Iron Total Soil	Sample	\$	10.00
25 Metals	Iron Water	Sample	\$	12.00
26 Metals	Lead TCLP Soil	Sample	\$	16.00
27 Metals	Lead Total Soil	Sample	\$	16.00
28 Metals	Lead Water	Sample	\$	18.00
29 Metals	Mercury TCLP Soil	Sample	\$	19.00
30 Metals	Mercury Total Soil	Sample	\$	10.00
31 Metals	Mercury Water	Sample	\$	26.00
32 Metals	Selenium TCLP Soil	Sample	\$	18.00
33 Metals	Selenium Total Soil	Sample	\$	16.00
34 Metals	Selenium Water	Sample	\$	15.00
35 Metals	Silver TCLP Soil	Sample	\$	10.00
36 Metals	Silver Total Soil	Sample	\$	10.00
37 Metals	Silver Water	Sample	\$	12.00
38 Metals	Metals TCLP Soil (a combination of all RCRA metals)	Sample	\$	103.00

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39 Metals	Metals Total Soil (a combination of all RCRA metals)	Sample	\$ 94.00
40 Metals	Metals Water (a combination of all RCRA metals)	Sample	\$ 119.00
41 Metals	Soil preparation for Metals TCLP (one fee per sample)	Sample	\$ 79.00
42 Metals	Soil preparation for Metals Total Soil (one fee per sample)	Sample	\$ 16.00
43 Metals	Water Preparation for Metals (one fee per sample)	Sample	\$ 11.00
1 Other	EnCore Sampler, purge-and-trap sampler, or equivalent sampling device	Sample	\$ 10.00
2 Other	shipping all samples collected in a calendar day)	Sample	\$ 50.00

MEMORANDUM

To: Jay Koch
From: John Hundley
Re: Proposed regulations re maximum reimbursable prices
Date: July 6, 2005

In Subpart H, proposed Regulation §§ 734.800 *et seq.*, the Board proposes to enact regulations providing for "Maximum Payment Amounts" for various items commonly reimbursable from the Leaking Underground Storage Tank ("LUST") fund. Indeed, although its clairvoyance may be doubted, in proposed Regulation § 734.800(a) the Illinois EPA states that "[a]ll costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850". The amounts set in these sections have been attacked as often unreasonably low.

The centerpiece for the defense to the claim that IEPA has fixed prices unreasonably low is the argument that Subpart H "provides three methods for determining the maximum amounts that can be paid from the Fund" (Prop. Reg. § 734.800, subpara. "a)"). If the prices fixed in proposed Regulations §§ 734.810 to 734.845 are not required, errors in adopting them become harmless, it may be reasoned. See, *e.g.*, Opinion and Order at 27, 79. Hence, an attack on the fixed prices must include a showing that the "alternative" methods are not viable.

The first alternative is the proposal for competitive bidding. Proposed Regulation

§ 734.855 provides:

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

a) A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

The proposed regulation contains multiple roadblocks to providing a workable bidding system. First, a "three written bids must be *obtained*," not just sought (Prop. Reg. § 734.855 (emphasis added)). Each "must cover all costs included in the maximum payment amount that the bid is replacing" (*id.*), even though the agency has refused to define meaningfully what work is covered by many of those maximum payment amounts (Opinion and Order at 78). Each of the bids "must be based upon the same scope of work" (Prop. Reg. § 734.855), despite the agency's refusal to

define same, and all three bids "must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget" (*id.*), whenever that may be. While the bidder must stand behind his bid for that indeterminate amount of time, he is given no assurance that the wait will be worthwhile, because there is no assurance that the proposal with which the bid is associated will be approved by IEPA (see, e.g., 415 ILCS 5/57.7, 5/57.8), and even if it is, there is no assurance that the low bidder will perform the work (see Prop. Reg. § 734.855, subpara. "c)").

Perhaps most important, the bidding option is not functionally available to firms which typically serve as primary contractor and do the work themselves, because there is no reason for their competitors to submit *bona fide* bids meeting the proposed regulation's several requirements, including the requirement that the bidder keep the offer open while IEPA considers the proposal, if the contractor is likely to use his own staff anyway. Even if such a firm were able to receive three bids, it is doubtful that it should submit them to IEPA in light of the penalties that can attach to highball submissions and perceived non-competitive practices.¹

The other alternative relied upon in arguing that errors in the maximum amounts are harmless – and the only alternative which is functionally available to a company such as USI – is the option for showing "unusual or extraordinary circumstances" (Prop. Reg. § 734.860). That proposed regulation provides as follows:

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and

¹ See, e.g., 415 ILCS 5/44(a), 5/44(h)(4), 5/44(i); 740 ILCS 10/3.

operators seeking to have the Agency determine maximum payments amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances may include, but not be limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.

Careful reading of that language should remove any illusion that it provides a means to cure errors inherent in the maximum prices stated in proposed Regulations §§ 734.810 to 734.845. This is so because proposed Regulation § 734.860 twice makes clear that merely sustaining "costs that exceed the maximum payment amounts set forth in this Subpart H" is insufficient; the necessity for greater reimbursement must be "a result of unusual or extraordinary circumstances" (*id.*, sentence 1). See also *id.*, sentence 2 (applicants seeking to invoke this regulation "must demonstrate" that the costs for which they are seeking reimbursement "exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, . . . and are necessary in order to satisfy the requirements of this Part") (emphasis added). In other words, the procedure in proposed Regulation § 734.860 may not be invoked because a maximum price in Subpart H was erroneous, resulting in inadequate reimbursement being the usual and ordinary circumstance; inadequacy of the price fixed in §§ 734.810 to 734.845 must be *unusual* and *extraordinary*.

The approach taken in proposed Regulation § 734.860 is indefensible in light of the agency's concession that "[t]he costs listed under each task set forth in Sections 734.810 through 734.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each

task for the purposes of payment from the Fund" (Proposed Regulation § 734.800, subpara. "b)"). Although it is undisputed that one doing a cleanup will bear additional costs not covered by the stated prices, the proposed regulations repeatedly state that all payments "for costs associated with" a subject "must not exceed the amounts set forth in th[e] Section". See, e.g., Prop. Reg. § 734.810 sentence 1; § 734.815 sentence 1; § 734.820 sentence 1; § 734.825 sentence 1; § 734.830 sentence 1; § 734.845 sentence 1.²

To avoid those sections and recover all of one's costs, one can only proceed under the always difficult and, in this case, functionally unavailable bidding process (Prop. Reg. § 734.855) or shoulder the multiple burdens of the "unusual or extraordinary circumstances" rule (Prop. Reg. § 734.860). This is so because "Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs." Prop. Reg. § 734.800, subpara. "c)"). See also Prop. Reg. § 734.630, subpara. "aaa)" ("Costs that exceed the maximum payment amounts set forth in Subpart H" are "ineligible for payment from the Fund"). Further indicating the extent to which the proposed regulations depart from reality is the fact that "references to 'materials, activities, or services' are deleted because pursuant to proposed Subpart H, payment from the UST Fund will generally no longer be made based on 'materials, activities, or services'." Opinion and Order at 9, quoting IEPA.

² Compare § 734.835 sentence 1; § 734.840 sentence 1. See also Opinion and Order at 12 (Prop. Reg. § 734.800 "clarifies that the maximum payment amount is intended to include all costs associated with an activity and the subpart does not enumerate eligible costs").

That the prices stated in proposed Regulations §§ 734.810 to 734.845 are criticized as too low can hardly be a surprise given the way that they were derived. For example, according to Mr. Bauer the IEPA evaluated nine (9!)³ sites that had leaking tanks removed or abandoned, and found that the average cost to remove the tanks was \$3,152.71, an average cost "consistent with the amounts the Agency has seen historically for the removal of USTs within the typical range of 6,000-gallons to 10,000-gallons in size". Opinion and Order at 22. The proposed regulation (§ 734.810) then sets the *maximum* allowable for removal of a tank of that size at \$3,150.00 – \$2.71 per tank *less* than the *average* in the IEPA's sample. Similarly, for removal, transportation, and disposal of free product or groundwater the agency evaluated 47 sites, and found the average cost was \$0.68 per gallon. Opinion and Order at 22. The proposed regulation (§ 734.814, subpara. "a") then utilizes the 68-cents-per-gallon *average* as the *maximum* payable whenever more than 295 gallons of such free product or ground water are recovered by hand bailing or vacuum truck. Similarly, for costs associated with installation of monitoring wells, "The *average* costs for . . . 37 sites resulted in the *maximum* payment amount" (Opinion and Order at 23, emphasis added). See also Prop. Reg. § 734.820 subpara. "b)". For costs associated with the installation of recovery wells, "The Agency evaluated seven sites" and "[t]he *average* rates were then used to establish the *maximum* payment amount" (Opinion and Order at 23, emphasis added). See also Prop. Reg. § 734.820 subpara. "c)". Well abandonment? Mr. Bauer testified that "the *average* cost to abandon a

³ IEPA states there are 153 approved tank removers (Opinion and Order at 18). Has IEPA picked an inordinately small sample or does it take 17 tank removers to clear each site?

groundwater monitoring well is \$150" and the "average depth for a groundwater-monitoring well is 15 to 20 feet", so the Agency divided \$150 by 15 and decreed that the *maximum* permissible "must not exceed \$10.00 per foot of well length". (Opinion and Order at 23, Prop. Reg. § 734.820 subpara. "d)" (emphasis added)).

The list goes on (see, e.g., Opinion and Order at 24-25), but the methodology is the same and the point is made. Throughout Subpart H the Agency has determined an *average* based on some small sample, not scientifically based or statistically defensible (Opinion and Order at 1, 78-79) and which it refuses to allow be tested by replication (Opinion and Order at 19, 36, 67-68). It then has decreed that the *average* shall henceforth be the *maximum*. In none of these instances does it appear that the agency took action against the approximately ½ of the applicants whose costs were above the average⁴ in the base pool, meaning that it found those above-average costs to be necessary and reasonable. See 415 ILCS 5/57.5 (test for reimbursement is "requirements necessary to comply with this Title"). See also pp. 8-9 below. Necessity and reasonability are the statutory tests, and to equate them with "average" is a perversion. Indeed, anyone who has enjoyed Garrison Keillor can almost hear the IEPA now, announcing it is time for the "Prairie State Companion" and inviting the listener to hear the news from "Lake WoeBecome, where all the environment is second-tier and all the remediators below average." *All the remediation in Illinois cannot reasonably be deemed below average any more than all of the children in Lake Wobegone can be "above average"*. The methodology used by the IEPA

⁴ Precisely what the Agency means by "average" is not clear.

deserves no more respect than that of a school teacher who obtains higher average standardized test results by holding below-average students out of the testing.

There is a drastic lack of statutory basis for this radical approach which the IEPA proposes. Indeed, consulting the statute leaves one with the firm conviction that the approach is unlawful. In creating the LUST fund, the legislature said that it intended persons required to undertake cleanups to be able "to seek payment for *any* costs associated with physical soil classification, groundwater investigation, site classification and corrective action". 415 ILCS 5/57 (emphasis added). Why did it say "any costs" if it meant "average costs"?

If the legislature intended the applicant to recover only *average* costs without reference to site-specific concerns, why did it, in 415 ILCS 5/57.7(a)(1)-(2)₅₅₄⁵, require that the applicant study and state numerous site-specific factors and set forth "an accounting of *all* costs associated with the implementation and completion of the site investigation plan" (emphasis added)? Why, in 415 ILCS 5/57.7(c)(3)₅₅₄ (emphasis added), did it charge IEPA with determining, in the context of a given plan, "that the costs associated with *the plan* are reasonable"? Why, in 415 ILCS 5/57.7(a)(2)₅₇₄ (emphasis added), did the legislature direct the applicant to submit "an accounting of *all* costs associated with the implementation and completion of the physical soil classification and groundwater investigation plan"? If *average* is good enough, why did it specify that the classifications "shall be determined using the actual site geologic

⁵ Because multiple versions of § 57.7 are extant due to multiple amendments by a single legislature, in this document, we reference § 57.7 as amended by P.A. 92-554 with subscript numbers₅₅₄; § 57.7 as amended by P.A. 92-574 with subscript₅₇₄; the version as amended by P.A. 92-651 with subscript₆₅₁; and the version as amended by P.A. 735 with the subscript₇₃₅.

characteristics" (415 ILCS 5/57.7(b)(5)₅₇₄? Why is the applicant required to provide a "budget which includes, but is not limited to, an accounting of *all* costs associated with the implementation and completion of the corrective action plan" (415 ILCS 5/57.7(c)(1)(B)₅₇₄ (emphasis added)? Why, after defining the budget in that way, did the legislature say that "Agency approval of any plan and associated budget . . . shall be considered *final approval* for purposes of seeking and obtaining payment from the [LUST] Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget" (415 ILCS 5/57.7(c)(4)(A)₅₇₄ (emphasis added))? If the legislature had meant to say "equal to or less than average", surely it would have known how to say so.

Why is the "all costs associated with the implementation and completion of the . . . plan" approach taken *again* in 415 ILCS 5/57.7(a)(2)₆₅₁? And *again* in 415 ILCS 5/57.7(a)(2)₇₃₅? Why is "an accounting of *all* costs associated with the implementation and completion of the corrective action plan" again required in 415 ILCS 5/57.7(c)(1)(B)₆₅₁ (emphasis added) – and again in 415 ILCS 5/57.7(c)(1)(B)₇₃₅? If the legislature intended to provide that reimbursable costs be *average*, why did it in 415 ILCS 5/57.7(c)(4)(C)₆₅₁, direct the agency to determine "that the costs associated with the plan are reasonable, will be incurred in the performance of corrective action, and will not be used for corrective action activities in excess of those required"? Why didn't it just direct the agency to find whether those costs were "average"? Why did it say that the review conducted according to the proper criteria was to be "final" (415 ILCS 5/57.7(c)(4)₆₅₁)? Why did it re-enact substantially the same provisions in 415 ILCS 5/57.7(c)(4)₇₃₅? Plainly, the only reason the legislature had for not articulating the

simple, "streamlined" concept of *average* is that average is not what the legislature intended.

The blunt fact of the matter is that the regulations are not being proposed to help meet statutory responsibilities, but to cut the size of the reimbursement requests down to perceived available funds. See Opinion and Order at 17 (Mr. Clay testifying that the proposed changes would help control cleanup costs); *id.* (Mr. Clay testifying that based on recent data \$25 million more a year is being paid out from the UST Fund than is being received"); *id.* at 21 (desire to see that Fund money is used in the most cost effective manner); *id.* at 22 (desire to better predict outstanding liabilities of the Fund); *id.* at 23 (limiting reimbursement for concrete to the maximum reimbursement for asphalt simply because asphalt is cheaper). Mr. Clay's concern that if cleanup costs aren't cut, delays in payments may occur (*id.* at 17) may be valid. But the short answer to that concern is that the legislature has considered the matter and acted otherwise. In 415 ILCS 5/57.8 it could have provided that if funds are not sufficient to pay all claimants the claims should be reduced by some arbitrary or mathematical amount, but it did not do so. Rather, it said that if available funds were insufficient "the Agency shall form a priority list for payment and shall notify persons in such priority list monthly of the availability of funds and when payment shall be made." 415 ILCS 5/57.8(a)(3). Whether available funds are sufficient or not, in the case of any plan or budget that has been approved pursuant to the previously-cited statutory criteria,

the Agency **shall** make a payment determination within 120 days of receipt of the application. Such determination shall be considered a **final** decision. The Agency's review shall be limited to generally accepted auditing and accounting practices. In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal. If the Agency fails to approve the

payment application within 120 days, such application shall be ***deemed approved by operation of law***

415 ILCS 5/57.8(a)(1) (emphasis added). The legislative intent could hardly be made any clearer.

The Agency does not sit as a super-legislature over-ruling the judgment calls which the General Assembly has made. Neither good law nor good economics is served by pretending that no expenditure in the future will reasonably exceed the average of reasonable expenditures in the past. Similarly, no real purpose is served by pretending that remediators are being fully compensated when they are not. The legislature may change the remediator's entitlement if it so chooses, but until it has done so, it is the obligation of the IEPA – and of the Board – to carry out, not to rewrite, the bargain which the legislature has struck.

J.H.

JohalUSNFixedPriceMemo

MEMORANDUM

To: Jay Koch (Fax 735-2114)

From: John Hundley

Re: Proposed regulations – TACO and Related Issues

Date: July 7, 2005

In the third *errata* sheet submitted in connection with the current proposed rule-making, the Illinois EPA has proposed two changes which, if adopted, would require the use of the Tiered Approach to Corrective Objectives, 35 ILL. ADM. CODE 742 ("TACO"), in the cost reimbursement process under the Leaking Underground Storage Tank ("LUST") Fund. See Opinion and Order at 21, 75. First, the Agency proposes to limit payment from the Fund to costs that achieve Tier 2 objectives (*id.*; Prop. Reg. § 734.630, subpara. "bbb")), and second, it proposes to require use of a groundwater ordinance as an "institutional control"¹ under TACO if such an ordinance is available (Opinion and Order at 21; Prop. Reg. § 734.630, subpara. "ccc)").

Both of the changes are made in rapidly-growing sections of the regulations² which list costs which, by administrative decree, are "ineligible for payment from the Fund".

¹ By making human drinking of groundwater unlawful in a given area, a groundwater ordinance excuses the owner/operators from having to meet health standards that would apply if human drinking of natural water in the area (e.g., through wells) were common and lawful. See, e.g., Opinion and Order at 27 ("The Agency proposal to require the use of groundwater ordinances is intended to ensure that the UST Fund is not used for cleanup of groundwater that cannot be used as potable water because of an existing ordinance"). The Agency notes that simply making it unlawful to drink polluted water "will significantly reduce" the cost of cleanup" (Opinion and Order at 77). See also p. 4 below.

² Before the recent rule-making, Reg. § 732.606 ended with subpara. "oo"); if the proposals are allowed, it will extend to subpara. "fff)". See Opinion and Order at 182-87.

Prop. Reg. §§ 732.606, 734.630. As codified in proposed Reg. § 734.630, subpara.

"bbb)", the former proposal would prohibit reimbursement for

Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (bbb) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

As codified in proposed Reg. § 734.630, subpara. "ccc)", the latter proposal would prohibit reimbursement for

Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

The Agency said it was proposing those changes to ensure that Fund money is used in the most cost effective manner. Opinion and Order at 21. According to the IEPA, these changes "will significantly reduce" the cost of cleanup and hence payments out of the fund. See Opinion and Order at 17, 76. In a highly controversial contention, it has suggested that limiting reimbursement to Tier 2 TACO cleanup objectives is justified because it will ensure cost-effective cleanup which results in the same protection of human health and the environment. Opinion and Order at 27, 76.

The use of an *errata* sheet in order to propose these substantive changes appears suspect. In addition to the dubious nature of the terminology,³ the proposal occurred late in the previous proceedings – indeed, on the last day of the pre-first-notice live testimony.

³ An *errata* sheet lists errors in work already published. WEBSTER'S NEW WORLD DICTIONARY 202 (Warner Books 1990); see also AMERICAN HERITAGE DICTIONARY 445 (Houghton Mifflin 1981). Procedurally, it is as if the Agency is saying "Oops! We never intended the environment to meet Tier 1 standards in the first place."

Nonetheless the Board considered the proposals, and, for first notice purposes at least, has allowed them.

With all due respect, the suggestion that Tier 2 "results in the same protection of human health and the environment" as Tier 1 cannot be taken seriously. "Tier 2 evaluation is only required for contaminants of concern and corresponding exposure routes . . . *exceeding the Tier 1 remediation objectives.*" 35 ILL. ADM. CODE 742.600(b) (emphasis added). When contaminant concentrations do not exceed those set forth for Tier 1, evaluation under Tier 2 is unnecessary. 35 ILL. ADM. CODE 742.110(e). On the other hand, Tier 2 can be used to declare a site remedied when Tier 1 would not permit such a finding, because "[w]hen contaminant concentrations do not exceed remediation objectives developed under *one* of the tiers . . . further evaluation under any of the other tiers is not required". *Id.* (emphasis added). Tier 1 compares levels of contaminants at a site to pre-determined remediation standards (35 ILL. ADM. CODE 742.110(b); Opinion and Order at 75), while Tier 2 provides "risk-based equations" which may be used when Tier 1 standards are not met. See 35 ILL. ADM. CODE 742.110(c). But if a Tier 2 soil remediation equation results in an objective which is "more stringent than the corresponding Tier 1 remediation objective, then the Tier 1 remediation objective applies." 35 ILL. ADM. CODE 742.600(f).

The concept for Tier 2 is that its equations can be used to set standards which provide "acceptable risk levels" even if Tier 1 is not met. See 35 ILL. ADM. CODE 742.100(a). The theory is to provide "adequate" protection of "human health and the environment based on the risks to human health posed by environmental conditions while incorporating site related information". 35 ILL. ADM. CODE 742.100(b). Often

remediation for a particular site and a particular future purpose under Tier 2 will be achieved by deeming contaminants to be an "acceptable risk" because they are below the surface of the earth and not currently moving, and hence humans are not immediately exposed to them. Such an approach to "remediation" may balance "risks to human health" with "site related information" information, but to suggest that it is real "cleanup" is sophistry bordering on fraud. The contaminant remains in the soil where it must be cleaned up at some future time if the site is disturbed by constructing a basement, putting in a new utility line, or digging a hole for a child's basketball standard. Similarly, an ordinance making it unlawful to drink polluted water may indeed "'significantly reduce' the cost of cleanup" (Opinion and Order at 77), but that is simply because the "cleanup" has not occurred. To say that there is equal protection under either approach is like saying a lamb may down with a lion as safely as it may lie with its own mother. That is only true *if the lion doesn't wake up*.

Again, there is a striking lack of statutory basis under the LUST statute for these proposals. As noted in a previous memo, in creating the LUST fund the legislature said it intended persons required to undertake cleanups to be able "to seek payment for *any* costs associated with physical soil classification, groundwater investigation, site classification and corrective action". 415 ILCS 5/57 (emphasis added). Similarly, in 415 ILCS 5/57.7(a)(1)-(2)⁴ and comparable provisions, it required that the applicant study and state numerous site-specific factors and set forth "an accounting of *all* costs

⁴ Because multiple versions of § 57.7 are extant due to multiple amendments by a single legislature, in this document, we reference § 57.7 as amended by P.A. 92-554 with subscript numbers₃₃₄; § 57.7 as amended by P.A. 92-574 with subscript₃₇₄; the version as amended by P.A. 92-651 with subscript₆₅₁; and the version as amended by P.A. 735 with the subscript₇₃₅.

associated with the implementation and completion” of the plan (emphasis added), which accounting became the basis for the payments IEPA was to make – and which it has made throughout LUST Fund history. See generally Memo on *Proposed regulations re maximum reimbursable prices*.

In enacting P.A. 92-554, the legislature acknowledged TACO and said “[r]emediation objectives for the applicable indicator contaminants shall be determined using” it. 415 ILCS 5/57.7(a)(3)⁵⁵⁴. However, the legislature did not specify that *only* Tier 2 was applicable, and its direction that the owner or operator develop a plan “designed to mitigate *any* threat to human health, human safety, or the environment resulting from the underground storage tank release” (415 ILCS 5/57.7(b)(2)⁵⁵⁴ (emphasis added)) evidences that the legislature did *not* intend for the reference to TACO to refer to Tier 2 methodology. Had the legislature intended only threats deemed “unacceptable” under Tier 2 to be covered by a plan, it would not have used the term “*any* threat” (emphasis added). If it intended to cover only threats of imminent harm to humans, it would not have said plans were to cover “any threat to human health, human safety, or the environment resulting from the underground storage tank release” without qualifying the imminence of the “resulting” clause.

Those inferences are confirmed by the fact that the “designed to mitigate any threat” language is included in versions of § 57.7 which contain no reference to TACO. See 415 ILCS 5/57.7(c)(1)(A)⁵⁷⁴; 415 ILCS 5/57.7(c)(1)(A)⁶⁵¹; 415 ILCS 5/57.7(c)(1)(A)⁷³⁵. This is not surprising: That a compensable plan should be “designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release” was part of the original LUST statute enacted long before TACO was even

a gleam in some IEPA employee's eye. See § 57.7(c)(1)(A) as originally enacted in P.A. 88-946.

Indisputably, whether a property is cleaned up to Tier 1 or Tier 2 standards can have a significant impact on its future use, sale-ability and value. The EPA's short answer to these concerns has been that it is not concerned with property values. See Opinion and Order at 27. This is a curious position to be taken by an agency charged with administering a law which cites property values *twice* in its legislative purpose. See 415 ILCS 5/20(a)(2), 5/20(a)(10). Indeed, it is an indefensible position given the latter of those provisions, in which the General Assembly finds, *inter alia*,

that the handling, storage and disposal of hazardous substances *and petroleum* pose a danger of exposing citizens, *property*, natural resources and the environment to substantial risk of harm or degradation, that the Agency is authorized by this Act to use public funds to respond to and correct releases of hazardous substances and *petroleum*, that *by doing such the value of property is enhanced or preserved*

(Emphasis added).

In TACO the IEPA focuses on "the risk to human health" (35 ILL. ADM. CODE 742.100(a)). This indisputably is an important consideration, but to suggest that it is the only objective served by the LUST statute is to say that by including "the environment" in the clause "any threat to human health, human safety, or the environment" the legislature added meaningless words as surplusage. In interpreting a statute, the General Assembly will not be presumed to have engaged in meaningless acts by including such words. See King v. First Cap. Fin. Serv. Corp., 215 Ill. 2d 1, 828 N.E.2d 1155, 1169 (2005) (under "the guise of construction" an interpreter "may not supply omissions" from the statutory language); People v. Grever, 353 Ill. App. 3d 736, 751, 819 N.E.2d 6, 19 (2nd Dist. 2004) (similar); Application of County Collector, 356 Ill. App. 3d 668, 826

N.E.2d 951 (1st Dist. 2005) (statutory construction may not render any part of the statute "superfluous or meaningless"). If the environment is not a distinguishable interest from human safety, why did the legislature in 415 ILCS 5/20(b) state that "[i]t is the purpose of this Title to prevent the pollution or misuse *of land*" (emphasis added)? Similarly, if the only concern is human life, why did the legislature in 415 ILCS 5/20(a)(2) include, as an objective to be addressed, the interference which pollutants pose for community development?

TACO may well be an appropriate exercise of administrative power in many contexts. However, whatever its propriety in other contexts, limiting reimbursements from the LUST Fund to costs incurred in meeting Tier 2 objectives is not one of them.

J.H.

John\US\TacoMemo

UNITED SCIENCE INDUSTRIES, INC. RESPECTFULLY SUBMITS THIS PROPOSED REVISION TO PART 734 PETROLEUM UNDERGROUND STORAGE TANKS. SPECIFICALLY, SECTIONS 734.8XX AND THE APENDICES HAVE BEEN REVISED TO INCLUDE PROPOSED PROVISIONS AND REGULATIONS WHICH ARE REFERENCED IN TESTIMONY AND OTHER SUBMITTALS MADE BY UNITED SCIENCE INDUSTRIES.

requirements.

(Source: Added at Ill. Reg. , effective)

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND
STORAGE TANK PROGRAMS

PART 734 PETROLEUM UNDERGROUND STORAGE TANKS (RELEASES REPORTED
ON OR AFTER JUNE 24, 2002)

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734.505 Review of Plans, Budgets, or Reports

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SUBPART F: PAYMENT FROM THE FUND

Section

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734.615 Authorization for Payment; Priority List

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734.660 Determination and Collection of Excess Payments

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- 734.815 Free Product or Groundwater Removal and Disposal
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- 734.870 Increase in Maximum Payment Amounts
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734.APPENDIX A 734.APPENDIX B 734.APPENDIX C 734.APPENDIX D 734.APPENDIX E
Indicator Contaminants Additional Parameters Backfill Volumes Sample Handling and Analysis
Personnel Titles and Rates AUTHORITY: Implementing Sections 22.12 and 57 - 57.17 and
authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5,
22, 22.12, 27, and 57 - 57.17]

SOURCE: Adopted in R at Ill. Reg. , effective .

NOTE: Italics denotes statutory language.

SUBPART A: GENERAL

Section 734.100 Applicability

- a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) on or after the effective date of these rules in accordance with Office of State Fire Marshal (OSFM) regulations. It

does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].

- 1) For releases reported on or after June 24, 2002, but prior to the effective date of these rules, and for owners and operators electing prior to the effective date of these rules to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to the effective date of these rules, even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the effective date of these rules may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.
 - 2) Costs incurred pursuant to a budget approved prior to the effective date of these rules must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.
- b) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.
 - c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.
 - d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.
 - e) The following underground storage tank systems are excluded from the requirements of this Part:

- 1) Equipment or machinery that contains petroleum substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.
- 2) Any underground storage tank system whose capacity is 110 gallons or less.
- 3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.
- 4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.
- 5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act [33 USC 1251 *et seq.* (1972)].
- 6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act [42 USC 3251 *et seq.*] or a mixture of such hazardous waste or other regulated substances.

Section 734.105 Election to Proceed under Part 734

- a) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.
- b) Except as provided in Section 734.100(c) of this Part, owners or operators of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.
- c) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part.

The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

- d) If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election must be payable from the Fund in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election. Corrective action costs incurred after the notification of election must be payable from the Fund in accordance with this Part.
- e) This Section does not apply to any release for which the Agency has issued a No

Section 734.110 Severability

Further Remediation Letter.

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication must not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 734.115 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Alternative Technology" means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

"Board" means the Illinois Pollution Control Board.

"Bodily Injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank [415 ILCS 5/57.2].

"Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or

regularly serves at least 25 residents [415 ILCS 5/3.145].

“Confirmation of a release” means the confirmation of a release of petroleum in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Confirmed Release" means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Conventional Technology" means a process or technique to perform a corrective action by removal, transportation, and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

“Corrective action” means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act [415 ILCS 5/57.2].

“County highway” means county highway as defined in the Illinois Highway Code [605 ILCS 5].

“District road” means district road as defined in the Illinois Highway Code [605 ILCS 5].

“Environmental Land Use Control” means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

“Federal Landholding Entity” means that federal department, agency, or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

“Fill material” means non-native or disturbed materials used to bed and backfill around an underground storage tank [415 ILCS 5/57.2].

“Financial interest” means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in water).

"Full Accounting" means a compilation of documentation to establish, substantiate, and justify the nature and extent of the corrective action costs

incurred by an owner or operator.

“Fund” means the Underground Storage Tank Fund [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

“Groundwater” means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure [415 ILCS 5/3.210].

“Half-day” means four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

"Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

“Heating oil” means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c [415 ILCS 5/57.2].

“Highway authority” means the Illinois Department of Transportation *with respect to a State highway*; the Illinois State Toll Highway Authority with respect to a toll highway; *the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved; the highway commissioner with respect to a township or district road not in a county or unit road district; or the corporate authorities of a municipality with respect to a municipal street [605 ILCS 5/2-213].*

“Highway Authority Agreement” means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

"IEMA" means the Illinois Emergency Management Agency.

“Indemnification” means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator [415 ILCS 5/57.2].

“Indicator contaminants” means the indicator contaminants set forth in Section 734.405 of this Part.

“Institutional Control” means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742.Subpart J.

“Land Use Control Memorandum of Agreement” means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

“Licensed Professional Engineer” means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering [415 ILCS 5/57.2].

“Licensed Professional Geologist” means a person licensed under the laws of the State of Illinois to practice as a professional geologist [415 ILCS 5/57.2].

"Man-made Pathway" means a constructed route that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously excavated and filled areas.

"Monitoring Well" means a water well intended for the purpose of determining groundwater quality or quantity.

"Natural Pathway" means a natural route for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to soil, groundwater, sand seams and lenses, and gravel seams and lenses.

“Non-community water supply” means a public water supply that is not a community water supply [415 ILCS 5/3.145].

“Occurrence” means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank [415 ILCS 5/57.2].

"OSFM" means the Office of the State Fire Marshal.

“Operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground must not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (Derived from 42 USC 6991)

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this Part.

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and must include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

"Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

"Potable" means generally fit for human consumption in accordance with accepted water supply principles and practices [415 ILCS 5/3.340].

"Practical quantitation limit" ("PQL") means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 734.120 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 734.120 of this Part.

"Property damage" means physical injury to, destruction of, or contamination of tangible property owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release

occurred. Property damage includes *all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

“Public water supply” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply” [415 ILCS 5/3.365].

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

“Regulated recharge area” means a compact geographic area, as determined by the Board, [35 Ill. Adm. Code Subtitle F] the geology of which renders a potable resource groundwater particularly susceptible to contamination [415 ILCS 5/3.390].

“Regulated Substance” means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USC 9601(14)] (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act [42 USC 6921 et seq.]), and petroleum. (Derived from 42 USC 6991)

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils [415 ILCS 5/57.2].

"Residential Tank" means an underground storage tank located on property used primarily for dwelling purposes.

"Residential Unit" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives, or dormitories.

“Right-of-way” means the land, or interest therein, acquired for or devoted to a highway [605 ILCS 5/2-217].

“Setback Zone” means a geographic area, designated pursuant to the Act [415 ILCS 5/14.1, 5/14.2, 5/14.3] or regulations [35 Ill. Adm. Code Subtitle F], containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

“Site” means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way [415 ILCS 5/57.2].

“State highway” means state highway as defined in the Illinois Highway Code [605 ILCS 5].

“Street” means street as defined in the Illinois Highway Code [605 ILCS 5].

"Surface Body of Water" or "Surface Water Body" means a natural or man-made body of water on the ground surface including but not limited to lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks, and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off, or groundwater in UST excavations.

“Toll highway” means toll highway as defined in the Toll Highway Act, 605 ILCS 10.

“Township road” means township road as defined in the Illinois Highway Code [605 ILCS 5].

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 [49 USC App. 1671 et seq.], or the Hazardous Liquid Pipeline Safety Act of 1979 [49 USC App. 2001 et seq.], or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and that is determined by the Secretary of Energy to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 USC § 6991)

The term “underground storage tank” shall also mean an

underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit [415 ILCS 5/57.2].

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wellhead Protection Area" means the wellhead protection area of a community water supply well as determined under the Agency's wellhead protection program pursuant to 42 USC § 300h-7.

Section 734.120 Incorporations by Reference

a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 (610) 832-9585

ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 605-6000 or (800) 553-6847

"Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010 (June 1991);

"Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111 (May 1994);

"Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039 (December 1988) (revised July 1991);

"Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129 (August 1992);

"Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131 (August 1995); "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September

1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

- b) This Section incorporates no later editions or amendments.

Section 734.125 Agency Authority to Initiate Investigative, Preventive, or
Corrective Action

- a) *The Agency has the authority to do either of the following:*
- 1) *Provide notice to the owner or operator, or both, of an underground storage tank whenever there is a release or substantial threat of a release of petroleum from such tank. Such notice shall include the identified investigation or response action and an opportunity for the owner or operator, or both, to perform the response action.*
 - 2) *Undertake investigative, preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank [415 ILCS 5/57.12(c)].*
- b) *If notice has been provided under this Section, the Agency has the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank [415 ILCS 5/57.12(d)].*

Section 734.130 Licensed Professional Engineer or Licensed Professional
Geologist Supervision

All investigations, plans, budgets, and reports conducted or prepared under this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must be prepared under the supervision of a Licensed Professional Engineer.

Section 734.135 Form and Delivery of Plans, Budgets, and Reports; Signatures
and Certifications

- a) All plans, budgets, and reports must be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.
- b) All plans, budgets, and reports must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

- c) All plans, budgets, and reports must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number.
- d) All plans, budgets, and reports submitted pursuant to this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must contain the following certification from a Licensed Professional Engineer.

I certify under penalty of law that all activities that are the subject of this plan, budget, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 734, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

- e) Except in the case of sites subject to Section 734.715(c) or (d) of this Part, reports documenting the completion of corrective action at a site must contain a form addressing site ownership. At a minimum, the form must identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form must also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):

I hereby affirm that I have reviewed the attached report entitled and dated , and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the report upon the property I own.

Section 734.140 Development of Remediation Objectives

The owner or operator must propose remediation objectives for the applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742.

BOARD NOTE: Several provisions of this Part require the owner or operator to determine whether contamination exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm.

Code 742. Please note that these requirements do not limit the owner's or operator's ability to use Tier 2 or Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742.

- a) The owner or operator may develop remediation objectives at any time during site investigation or corrective action. Prior to developing Tier 2 or Tier 3 remediation objectives the owner or operator must propose the development of remediation objectives in the appropriate site investigation plan or corrective action plan. Documentation of the development of remediation objectives must be included as a part of the appropriate plan or report.
- b) Any owner or operator intending to seek payment from the Fund shall, prior to the development of Tier 2 or Tier 3 remediation objectives, propose the costs for such activities in the appropriate budget. The costs should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part.
- c) Upon the Agency's approval of a plan that includes the development of remediation objectives, the owner or operator must proceed to develop remediation objectives in accordance with the plan.
- d) If, following the approval of any plan or associated budget that includes the development of remediation objectives, an owner or operator determines that a revised plan or budget is necessary, the owner or operator must submit, as applicable, an amended plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.
- e) Notwithstanding any requirement under this Part for the submission of a plan or budget that includes the development of remediation objectives, an owner or operator may proceed to develop remediation objectives prior to the submittal or approval of an otherwise required plan or budget. However, any such plan or budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to receiving payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

Section 734.145 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not be limited to, a description of the field activities to be

conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product.

Section 734.150 LUST Advisory Committee

Once each calendar quarter the Agency must meet with a LUST Advisory Committee to discuss the Agency's implementation of this Part, provided that the Agency or members of the Committee raise one or more issues for discussion. The LUST Advisory Committee must consist of the following individuals: one member designated by the Illinois Petroleum Marketers Association, one member designated by the Illinois Petroleum Council, one member designated by the American Consulting Engineers Council of Illinois, one member designated by the Illinois Society of Professional Engineers, one member designated by the Illinois Chapter of the American Institute of Professional Geologists, one member designated by the Professionals of Illinois for the Protection of the Environment, one member designated by the Illinois Association of Environmental Laboratories, one member designated by the Illinois Environmental Regulatory Group, one member designated by the Office of the State Fire Marshal, and one member designated by the Illinois Department of Transportation. Members of the LUST Advisory Committee must serve without compensation.

SUBPART B: EARLY ACTION

Section 734.200 General

Owners and operators of underground storage tanks shall, in response to all confirmed releases of petroleum, comply with all applicable statutory and regulatory reporting and response requirements [415 ILCS 5/57.6(a)]. No work plan or corresponding budget must be required for conducting early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product.

Section 734.205 Agency Authority to Initiate

Pursuant to Sections 734.100 or 734.125 of this Part, the Agency must have the authority to require or initiate early action activities in accordance with the remainder of this Subpart B.

Section 734.210 Early Action

- a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions within 24 hours after the release:
 - 1) Report the release to IEMA (e.g., by telephone or electronic mail);
 - 2) Take immediate action to prevent any further release of the

regulated substance to the environment; and

- 3) Identify and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:
- 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
 - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 - 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
 - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
 - 6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.
- c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.
- d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:

- 1) Data on the nature and estimated quantity of release;
 - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
 - 3) Results of the site check required at subsection (b)(5) of this Section; and
 - 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.
- e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.
- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill. Adm. Code 160, 170, 180, 200). The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank [415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.*
- g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

- h) The owner or operator must determine whether the areas or locations of soil

contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

- 1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.
 - A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.
 - B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.
 - C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.
 - D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.
 - E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with

Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

- 2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.
 - A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the UST(s) and as close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.
 - B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.
 - C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.
 - D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be

identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

- 3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:
 - A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - B) Supporting documentation, including, but not limited to, the following:
 - i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);
 - ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and
 - iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - C) A site map containing only the information required under Section 734.440 of this Part.
- 4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:
 - A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);
 - B) Free product that may impact groundwater is found to

need recovery in compliance with Section 734.215 of this Part; or

- C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:
 - i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and
 - ii) The Agency determines that further groundwater investigation is not necessary.

Section 734.215 Free Product Removal

- a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators must remove, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water, while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators must:
 - 1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State, and federal regulations;
 - 2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
 - 3) Handle any flammable products in a safe and competent manner to prevent fires or explosions;
 - 4) Within 45 days after the confirmation of presence of free product from a UST, prepare and submit to the Agency a free product removal report. The report must, at a minimum, provide the following:
 - A) The name of the persons responsible for implementing the free product removal measures;
 - B) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes, and excavations;

- C) The type of free product recovery system used;
- D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
- E) The type of treatment applied to, and the effluent quality expected from, any discharge;
- F) The steps that have been or are being taken to obtain necessary permits for any discharge;
- G) The disposition of the recovered free product;
- H) The steps taken to identify the source and extent of the free product; and
- I) A schedule of future activities necessary to complete the recovery of free product still exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or still present as a BOARD NOTE: Owners or operators proceeding under subsection (f) of this

sheen on groundwater in the tank removal excavation or on surface water. The schedule must include, but not be limited to, the submission of plans and budgets required pursuant to subsections (c) and (d) of this Section; and

5) If free product removal activities are conducted more than 45 days after confirmation of the presence of free product, submit free product removal reports quarterly or in accordance with a schedule established by the Agency.

- b) For purposes of payment from the Fund, owners or operators are not required to obtain Agency approval for free product removal activities conducted within 45 days after the confirmation of the presence of free product.
- c) If free product removal activities will be conducted more than 45 days after the confirmation of the presence of free product, the owner or operator must submit to the Agency for review a free product removal plan. The plan must be submitted with the free product removal report required under subsection (a)(4) of this Section. Free product removal activities conducted more than 45 days after the confirmation of the presence of free product must not be considered early action activities.
- d) Any owner or operator intending to seek payment from the Fund must, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product

removal budget with the corresponding free product removal plan. The budget must include, but not be limited to, an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed in Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of free product removal and other methods of free product removal.

- e) Upon the Agency's approval of a free product removal plan, or as otherwise directed by the Agency, the owner or operator must proceed with free product removal in accordance with the plan.
- f) Notwithstanding any requirement under this Part for the submission of a free product removal plan or free product removal budget, an owner or operator may proceed with free product removal in accordance with this Section prior to the submittal or approval of an otherwise required free product removal plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

- g) If, following approval of any free product removal plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to complete free product removal, the owner or operator must submit, as applicable, an amended free product removal plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all free product removal plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

Section 734.220 Application for Payment of Early Action Costs

Owners or operators intending to seek payment for early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product, are not required to submit a corresponding budget. The application for payment may be submitted to the Agency upon completion of the early action activities in accordance with the requirements at Subpart F of this Part, excluding free product removal activities conducted more

than 45 days after confirmation of the presence of free product. Applications for payment of free product removal activities conducted more than 45 days after confirmation of the presence of free product may be submitted upon completion of the free product removal activities.

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section 734.300 General

Unless the owner or operator submits a report pursuant to Section 734.210(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, the owner or operator must investigate the site, conduct corrective action, and prepare plans, budgets, and reports in accordance with the requirements of this Subpart C.

Section 734.305 Agency Authority to Initiate

Pursuant to Sections 734.100 or 734.125 of this Part, the Agency must have the authority to require or initiate site investigation and corrective action activities in accordance with the remainder of this Subpart C.

Section 734.310 Site Investigation – General

The investigation of the release must proceed in three stages as set forth in this Part. If, after the completion of any stage, the extent of the soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release has been defined, the owner or operator must cease investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part.

- a) Prior to conducting site investigation activities pursuant to Section 734.315, 734.320, or 734.325 of this Part, the owner or operator must submit to the Agency for review a site investigation plan. The plan must be designed to satisfy the minimum requirements set forth in the applicable section and to collect the information required to be reported in the site investigation plan for the next stage of the site investigation, or in the site investigation completion report, whichever is applicable.
- b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any site investigation activities, submit to the Agency a site investigation budget with the corresponding site investigation plan. The budget must include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the site investigation plan, excluding handling charges and costs associated with monitoring well abandonment. Costs associated with monitoring well abandonment must be included in the corrective action budget. Site investigation budgets should be consistent with the eligible and ineligible costs listed at Sections 734.625 and

734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. A budget for a Stage 1 site investigation must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the costs of the Stage 1 site investigation will not exceed the amounts set forth in Subpart H of this Part.

- c) *Upon the Agency's approval of a site investigation plan, or as otherwise directed by the Agency, the owner or operator shall conduct a site investigation in accordance with the plan [415 ILCS 5/57.7(a)(4)].*
- d) If, following the approval of any site investigation plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to determine, within the area addressed in the applicable stage of the investigation, the nature, concentration, direction of movement, rate of movement, and extent of the contamination, or the significant physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment, the owner or operator must submit, as applicable, an amended site investigation plan or associated budget to the Agency for review.
The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all site investigation plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

- e) Notwithstanding any requirement under this Part for the submission of a site investigation plan or budget, an owner or operator may proceed to conduct site investigation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site investigation plan or budget. However, any such plan or budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to receiving payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

Section 734.315 Stage 1 Site Investigation

The Stage 1 site investigation must be designed to gather initial information regarding the extent of on-site soil and groundwater contamination that, as a result of the release, exceeds the most

stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

- a) The Stage 1 site investigation must consist of the following:
 - 1) Soil investigation.
 - A) Up to four borings must be drilled around each independent UST field where one or more UST excavation samples collected pursuant to 734.210(h), excluding backfill samples, exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled as close as practicable to each UST field if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site-specific conditions warrant.
 - B) Up to two borings must be drilled around each UST piping run where one or more piping run samples collected pursuant to 734.210(h) exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled as close as practicable to each UST piping run if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site-specific conditions warrant.
 - C) One soil sample must be collected from each five-foot interval of each boring drilled pursuant to subsections (a)(1)(A) and (B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All samples must be analyzed for the applicable indicator contaminants.
 - 2) Groundwater investigation.
 - A) A groundwater investigation is required under the following circumstances:
 - i) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

- ii) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or
 - iii) There is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary.
- B) If a groundwater investigation is required, the owner or operator must install five groundwater monitoring wells. One monitoring well must be installed in the location where groundwater contamination is most likely to be present. The four remaining wells must be installed at the property boundary line or 200 feet from the UST system, whichever is less, in opposite directions from each other. The wells must be installed in locations where they are most likely to detect groundwater contamination resulting from the release and provide information regarding the groundwater gradient and direction of flow.
- C) One soil sample must be collected from each five-foot interval of each monitoring well installation boring drilled pursuant to subsection (a)(2)(B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All soil samples exhibiting signs of contamination must be analyzed for the applicable indicator contaminants. For borings that do not exhibit any signs of soil contamination, samples from the following intervals must be analyzed for the applicable indicator contaminants, provided that the samples must not be analyzed if other soil sampling conducted to date indicates that soil contamination does not extend to the location of the monitoring well installation boring:
 - i) The five-foot intervals intersecting the elevations of soil samples collected pursuant to Section 734.210(h), excluding backfill samples, that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.
 - ii) The five-foot interval immediately above each five-foot interval identified in subsection (a)(2)(C)(i) of this Section; and
 - iii) The five-foot interval immediately below each five-foot interval identified in subsection (a)(2)(C)(i) of this Section.
- D) Following the installation of the groundwater monitoring wells, groundwater samples must be collected from each well and analyzed for the applicable indicator contaminants.

- E) As a part of the groundwater investigation an in-situ hydraulic conductivity test must be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test must be performed on each such unit.
 - i) Wells used for hydraulic conductivity testing must be constructed in a manner that ensures the most accurate results.
 - ii) The screen must be contained within the saturated zone.
- 3) An initial water supply well survey in accordance with Section 734.445(a) of this Part.
- b) The Stage 1 site investigation plan must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the Stage 1 site investigation will be conducted in accordance with this Section.
- c) If none of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If one or more of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, within 30 days after completing the Stage 1 site investigation the owner or operator must submit to the Agency for review a Stage 2 site investigation plan in accordance with Section 734.320 of this Part.

Section 734.320 Stage 2 Site Investigation

The Stage 2 site investigation must be designed to complete the identification of the extent of soil and groundwater contamination at the site that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The investigation of any off-site contamination must be conducted as part of the Stage 3 site investigation.

- a) The Stage 2 site investigation must consist of the following:
 - 1) The additional drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities

conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and

- 2) The additional installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.
- b) The Stage 2 site investigation plan must include, but not be limited to, the following:
- 1) An executive summary of Stage 1 site investigation activities and actions proposed in the Stage 2 site investigation plan to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - 2) A characterization of the site and surrounding area, including, but not limited to, the following:
 - A) The current and post-remediation uses of the site and surrounding properties; and
 - B) The physical setting of the site and surrounding area including, but not limited to, features relevant to environmental, geographic, geologic, hydrologic, hydrogeologic, and topographic conditions;
 - 3) The results of the Stage 1 site investigation, including but not limited to the following:
 - A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed to date, and the groundwater flow direction;
 - B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all samples collected to date and analyzed for the applicable indicator contaminants;
 - C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm.

Code 742 for the applicable indicator contaminants;

- D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 1 site investigation;
 - F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - G) Water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of the Stage 1 site investigation; and
 - H) For soil borings and groundwater monitoring wells installed as part of the Stage 1 site investigation, soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and
- 4) A Stage 2 sampling plan that includes, but not be limited to, the following:
- A) A narrative justifying the activities proposed as part of the Stage 2 site investigation;
 - B) A map depicting the location of additional soil borings and groundwater monitoring wells proposed to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.
- c) If the owner or operator proposes no site investigation activities in the Stage 2 site investigation plan and none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon submission of the Stage 2 site investigation plan the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the owner

or operator proposes no site investigation activities in the Stage 2 site investigation plan and applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the submission of the Stage 2 site investigation plan the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

- d) If the results of a Stage 2 site investigation indicate that none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon completion of the Stage 2 site investigation the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the results of the Stage 2 site investigation indicate that applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the completion of the Stage 2 site investigation the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

Section 734.325 Stage 3 Site Investigation

The Stage 3 site investigation must be designed to identify the extent of off-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

- a) The Stage 3 site investigation must consist of the following:
 - 1) The drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and
 - 2) The installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at

appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

- b) The Stage 3 site investigation plan must include, but not be limited to, the following:
- 1) An executive summary of Stage 2 site investigation activities and actions proposed in the Stage 3 site investigation plan to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - 2) The results of the Stage 2 site investigation, including but not limited to the following:
 - A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of the Stage 2 site investigation;
 - B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all groundwater monitoring wells completed to date, and the groundwater flow direction;
 - C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 2 site investigation;
 - F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - G) For soil borings and groundwater monitoring wells installed as part of the Stage 2 site investigation, soil boring logs and

monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and

- 3) A Stage 3 sampling plan that includes, but not be limited to, the following:
 - A) A narrative justifying the activities proposed as part of the Stage 3 site investigation;
 - B) A map depicting the location of soil borings and groundwater monitoring wells proposed to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.
- c) Upon completion of the Stage 3 site investigation the owner or operator must proceed with the submission of a site investigation completion report that meets the requirements of Section 734.330 of this Part.

Section 734.330 Site Investigation Completion Report

Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report [415 ILCS 5/57.7(a)(5)]. At a minimum, a site investigation completion report must contain the following:

- a) A history of the site with respect to the release;
- b) A description of the site, including but not limited to the following:
 - 1) General site information, including but not limited to the site's and surrounding area's regional location; geography, hydrology, geology, hydrogeology, and topography; existing and potential migration pathways and exposure routes; and current and post-remediation uses;
 - 2) One or more maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of site investigation, and the groundwater flow direction;
 - 3) One or more maps showing the horizontal extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

- 4) One or more map cross-sections showing the horizontal and vertical extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - 5) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of site investigation;
 - 6) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of site investigation;
 - 7) A table comparing the analytical results of samples collected as part of site investigation to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - 8) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of site investigation; and
- c) A conclusion that includes, but is not limited to, an assessment of the sufficiency of the data in the report.

Section 734.335 Corrective Action Plan

- a) *If any of the applicable indicator contaminants exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, within 30 days after the Agency approves the site investigation completion report, the owner or operator shall submit to the Agency for approval a corrective action plan designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release.*
 [415 ILCS 5/57.7(b)(2)]. The corrective action plan must address all media impacted by the UST release and must contain, at a minimum, the following information:

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- 1) An executive summary that identifies the objectives of the corrective action plan and the technical approach to be utilized to meet such objectives. At a minimum, the summary must include the following information:
 - A) The major components (e.g., treatment, containment, removal) of

the corrective action plan;

B) The scope of the problems to be addressed by the proposed corrective action, including but not limited to the specific indicator contaminants and the physical area; and

C) A schedule for implementation and completion of the plan;

2) A statement of the remediation objectives proposed for the site;

3) A description of the remedial technologies selected and how each fits into the overall corrective action strategy, including but not limited to the following:

A) The feasibility of implementing the remedial technologies;

B) Whether the remedial technologies will perform satisfactorily and reliably until the remediation objectives are achieved;

C) A schedule of when the remedial technologies are expected to achieve the applicable remediation objectives and a rationale for the schedule; and

D) For alternative technologies, the information required under Section 734.340 of this Part;

4) A confirmation sampling plan that describes how the effectiveness of the corrective action activities will be monitored or measured during their implementation and after their completion;

5) A description of the current and projected future uses of the site;

6) A description of any engineered barriers or institutional controls proposed for the site that will be relied upon to achieve remediation objectives. The description must include, but not be limited to, an assessment of their long-term reliability and operating and maintenance plans;

7) A description of water supply well survey activities required pursuant to Sections 734.445(b) and (c) of this Part that were conducted as part of site investigation; and

8) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses.

b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any corrective action activities beyond site investigation, submit to

the Agency a corrective action budget with the corresponding corrective action plan. The budget must include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the corrective action plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation.

c) *Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan [415 ILCS 5/57.7(b)(4)].*

d) Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

e) If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all corrective action plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

Section 734.340 Alternative Technologies

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release. Corrective action plans proposing the use of

alternative technologies must be submitted to the Agency in accordance with Section 734.335 of this Part. In addition to the requirements for corrective action plans contained in Section 734.335, the owner or operator who seeks approval of an alternative technology must submit documentation along with the corrective action plan demonstrating that:

- 1) The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and remediation objectives necessary to comply with the Act and regulations and to protect human health and safety and the environment;
 - 2) The proposed alternative technology will not adversely affect human health and safety or the environment;
 - 3) The owner or operator will obtain all Agency permits necessary to legally authorize use of the alternative technology;
 - 4) The owner or operator will implement a program to monitor whether the requirements of subsection (a)(1) of this Section have been met; and
 - 5) Within one year from the date of Agency approval the owner or operator will provide to the Agency monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with the requirements of subsection (a)(1) of this Section and any other applicable regulations. The Agency may require interim reports as necessary to track the progress of the alternative technology. The Agency will specify in the approval when those interim reports must be submitted to the Agency.
- b) An owner or operator intending to seek payment for costs associated with the use of an alternative technology must submit a corresponding budget in accordance with Section 734.335 of this Part. In addition to the requirements for a corrective action budget at Section 734.335 of this Part, the budget must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan must compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.
- c) If an owner or operator has received approval of a corrective action plan and associated budget from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure must not make the owner or operator ineligible to seek payment for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case must the

total payment for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval must be ineligible to seek payment for the subsequent performance of a corrective action using conventional technology.

- d) The Agency may require remote monitoring of an alternative technology. The monitoring may include, but not be limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.

Section 734.345 Corrective Action Completion Report

- a) *Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report. The report shall demonstrate whether corrective action was completed in accordance with the approved corrective action plan and whether the remediation objectives approved for the site, as well as any other requirements of the plan, have been achieved*
[415 ILCS 57.7(b)(5)]. At a minimum, the report must contain the following information:

- 1) An executive summary that identifies the overall objectives of the corrective action and the technical approach utilized to meet those objectives. At a minimum, the summary must contain the following information:
 - A) A brief description of the site, including but not limited to a description of the release, the applicable indicator contaminants, the contaminated media, and the extent of soil and groundwater contamination that exceeded the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - B) The major components (e.g., treatment, containment, removal) of the corrective action;
 - C) The scope of the problems corrected or mitigated by the corrective action; and
 - D) The anticipated post-corrective action uses of the site and areas immediately adjacent to the site;

- 2) A description of the corrective action activities conducted, including but not limited to the following:

- A) A narrative description of the field activities conducted as part of corrective

action;

- B) A narrative description of the remedial actions implemented at the site and the performance of each remedial technology utilized;
 - C) Documentation of sampling activities conducted as part of corrective action, including but not limited to the following:
 - i) Sample collection information, including but not limited to the sample collector's name, the date and time of sample collection, the collection method, and the sample location;
 - ii) Sample preservation and shipment information, including but not limited to field quality control;
 - iii) Analytical procedure information, including but not limited to the method detection limits and the practical quantitation limits;
 - iv) Chain of custody and control; and
 - v) Field and lab blanks; and
 - D) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of corrective action;
- 3) A narrative description of any special conditions relied upon as part of corrective action, including but not limited to information regarding the following:
- A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;
 - B) Institutional controls utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives, including but not limited to a legible copy of any such controls;
 - C) Other conditions, if any, necessary for protection of human health and safety and the environment that are related to the issuance of a No Further Remediation Letter; and
 - D) Any information required pursuant to Section 734.350 of this Part regarding off-site access;
- 4) An analysis of the effectiveness of the corrective action that compares the confirmation sampling results to the remediation objectives approved for the site. The analysis must present the remediation objectives in an appropriate format (e.g., tabular and graphical displays)

such that the information is organized and presented logically and the relationships between the different investigations for each medium are apparent;

- 5) A conclusion that identifies the success in meeting the remediation objectives approved for the site, including but not limited to an assessment of the accuracy and completeness of the data in the report;
 - 6) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses;
 - 7) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of corrective action; and
 - 8) A site map containing only the information required under Section 734.440 of this Part. The site map must also show any engineered barriers utilized to achieve remediation objectives.
- b) The owner or operator is not required to perform remedial action on an off-site property, even where complete performance of a corrective action plan would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 734.350 of this Part.

Section 734.350 Off-site Access

- a) An owner or operator seeking to comply with the best efforts requirements of Section 734.345(b) of this Part must demonstrate compliance with the requirements of this Section.
- b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:
 - 1) Citation to Title XVI of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;
 - 2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;
 - 3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;

- 4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;
 - 5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and
 - 6) A reasonable time to respond to the letter, not less than 30 days.
- c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:
- 1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and
 - 2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.
- d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:
- 1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;
 - 2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;
 - 3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;
 - 4) The potential effects of residual contamination on nearby surface water and groundwater;
 - 5) The proximity, quality and current and future uses of nearby surface water and groundwater, including regulated recharge areas, wellhead protection areas, and setback zones of a potable water supply wells;
 - 6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

- 7) The nature and use of the part of the off-site property that is the suspected area of contamination;
 - 8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and
 - 9) Any other applicable information assembled in compliance with this Part.
- e) The Agency must issue a No Further Remediation Letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.
 - f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.

Section 734.355 Status Report

- a) *If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not submitted a corrective action completion report, the owner or operator shall submit a status report for Agency review. The status report shall include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved [415 ILCS 5/57.7(b)(6)].*
- b) If the Agency determines any approved corrective action plan will not achieve applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit to the Agency for approval a revised corrective action plan. *If the owner or operator intends to seek payment from the Fund, the owner or operator shall also submit a revised budget [415 ILCS 5/57.7(b)(7)].* The revised corrective action plan and any associated budget must be submitted in accordance with Section 734.335 of this Part.
- c) Any action by the Agency to require a revised corrective action plan pursuant to subsection (b) of this Section must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

SUBPART D: MISCELLANEOUS PROVISIONS

Section 734.400 General

This Subpart D applies to all activities conducted under this Part and all plans, budgets, reports, and other documents submitted under this Part.

Section 734.405 Indicator Contaminants

- a) For purposes of this Part, the term “indicator contaminants” must mean the parameters identified in subsections (b) through (i) of this Section.
- b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead must also be an indicator contaminant.
- c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions, and heavy oils, the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Section 734.Appendix B of this Part. For leaded aviation turbine fuels, lead must also be an indicator contaminant.
- d) For transformer oils the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics and the polychlorinated biphenyl parameters listed in Section 734.Appendix B of this Part.
- e) For hydraulic fluids the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Section 734.Appendix B of this Part, and barium.
- f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents, and petroleum extender oils, the indicator contaminants must be the volatile, base/neutral and polynuclear aromatic parameters listed in Section 734.Appendix B of this Part. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
- g) For used oil, the indicator contaminants must be determined by the results of a used oil soil sample analysis. In accordance with Section 734.210(h) of this Part, soil samples must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the

used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters:

- 1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Section 734.Appendix B of this Part and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
 - 2) The used oil indicator contaminants must be those volatile, base/neutral, and metal parameters listed at Section 734.Appendix B of this Part or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and polynuclear aromatics listed in Section 734.Appendix B of this Part.
 - 3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Section 734.Appendix B of this Part.
- h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" must not include MTBE for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).
- i) An owner or operator exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i). Elections to include MTBE as an indicator contaminant must be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.
 - 1) If the Agency has not issued a No Further Remediation Letter for the release; or
 - 2) If the Agency has issued a No Further Remediation Letter for the

release and the release has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742.

Section 734.410 Remediation Objectives

The owner or operator must propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:

- Hydraulic conductivity (K)
- Soil bulk density (?b)
- Soil particle density (?s)
- Moisture content (w)
- Organic carbon content (foc)

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Sections 734.630(bbb) and (ccc) of this Part.

Section 734.415 Data Quality

- a) The following activities must be conducted in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 734.120 of this Part, or other procedures as approved by the Agency:
 - 1) All field sampling activities, including but not limited to activities relative to sample collection, documentation, preparation, labeling, storage and shipment, security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures;
 - 2) All field measurement activities, including but not limited to activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling; and
 - 3) All quantitative analysis of samples to determine concentrations of indicator contaminants, including but not limited to activities relative to facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. Analyses of samples that require more exacting detection limits than, or that cannot be analyzed by standard methods identified in, "Test Methods for

Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, must be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.

- b) The analytical methodology used for the analysis of indicator contaminants must have a practical quantitation limit at or below the most stringent objectives or detection levels set forth in 35 Ill. Adm. Code 742 or determined by the Agency pursuant to Section 734.140 of this Part.
- c) All field or laboratory measurements of samples to determine physical or geophysical characteristics must be conducted in accordance with applicable ASTM standards incorporated by reference at 35 Ill. Adm. Code 742.210, or other procedures as approved by the Agency.

Section 734.420 Laboratory Certification

All quantitative analyses of samples collected on or after January 1, 2003, and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 must be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. A certification from the accredited laboratory stating that the samples were analyzed in accordance with the requirements of this Section must be included with the sample results when they are submitted to the Agency. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 must be deemed invalid.

Section 734.425 Soil Borings

- a) Soil borings must be continuously sampled to ensure that no gaps appear in the sample column.
- b) Any water bearing unit encountered must be protected as necessary to prevent cross-contamination during drilling.
- c) Soil boring logs must be kept for all soil borings. The logs must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. At a minimum, soil boring logs must contain the following information:
 - 1) Sampling device, sample number, and amount of recovery;
 - 2) Total depth of boring to the nearest 6 inches;
 - 3) Detailed field observations describing materials encountered in boring, including but not limited to soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

- 4) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);
- 5) Locations of sample(s) used for physical or chemical analysis;
- 6) Groundwater levels while boring and at completion; and
- 7) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 734.120 of this Part, or other Agency approved method.

Section 734.430 Monitoring Well Construction and Sampling

- a) At a minimum, all monitoring well construction must satisfy the following requirements:
 - 1) Wells must be constructed in a manner that will enable the collection of representative groundwater samples;
 - 2) Wells must be cased in a manner that maintains the integrity of the borehole. Casing material must be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings must not be used;
 - 3) Wells must be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section must be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen must be designed to minimize clogging. Screens must be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;
 - 4) Annular space above the well screen section must be sealed with a relatively impermeable, expandable material such as cement/bentonite grout that does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal must extend to the highest known seasonal groundwater level;
 - 5) The annular space must be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;
 - 6) Wells must be covered with vented caps and equipped with devices to

protect against tampering and damage. Locations of wells must be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and

- 7) Wells must be developed to allow free entry of groundwater, minimize turbidity of the sample, and minimize clogging.
- b) Monitoring well construction diagrams must be completed for each monitoring well. The well construction diagrams must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.
- c) Static groundwater elevations in each well must be determined and recorded following well construction and prior to each sample collection to determine the gradient of the groundwater table, and must be reported in the corresponding site investigation plan, site investigation completion report or corrective action completion report.

Section 734.435 Sealing of Soil Borings and Groundwater Monitoring Wells

Boreholes and monitoring wells must be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

Section 734.440 Site Map Requirements

At a minimum, all site maps submitted to the Agency must meet the following requirements:

- a) The maps must be of sufficient detail and accuracy to show required information;
- b) The maps must contain the map scale, an arrow indicating north orientation, and the date the map was created; and
- c) The maps must show the following:
 - 1) The property boundary lines of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;
 - 2) The uses of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;
 - 3) The locations of all current and former USTs at the site, and the contents of each UST; and
 - 4) All structures, other improvements, and other features at the site, properties adjacent to the site, and other properties that are, or may

be, adversely affected by the release, including but not limited to buildings, pump islands, canopies, roadways and other paved areas, utilities, easements, rights-of-way, and actual or potential natural or man-made pathways.

Section 734.445 Water Supply Well Survey

- a) At a minimum, the owner or operator must conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but not be limited to, the following:
 - 1) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;
 - 2) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and
 - 3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.
- b) In addition to the potable water supply wells identified pursuant to subsection (a) of this Section, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:
 - 1) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

- 2) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.
- c) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (a) or (b) of this Section. The additional investigation may include, but not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).
- d) Documentation of the water supply well survey conducted pursuant to this Section must include, but not be limited to, the following:
 - 1) One or more maps, to an appropriate scale, showing the following:
 - A) The location of the community water supply wells and other potable water supply wells identified pursuant to this Section, and the setback zone for each well;
 - B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to this Section;
 - C) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - D) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in a site investigation report if modeling is not performed as part of site investigation;
 - 2) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to this Section;
 - 3) A narrative that, at a minimum, identifies each entity contacted to

identify potable water supply wells pursuant to this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

- 4) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of this Section and that the documentation submitted pursuant to subsection (d) of this Section includes the information obtained as a result of the survey.

Section 734.450 Deferred Site Investigation or Corrective Action; Priority List for Payment

- a) An owner or operator who has received approval for any budget submitted pursuant to this Part and who is eligible for payment from the Fund may elect to defer site investigation or corrective action activities until funds are available in an amount equal to the amount approved in the budget if the requirements of subsection (b) of this Section are met.
 - 1) Approvals of budgets must be pursuant to Agency review in accordance with Subpart E of this Part.
 - 2) The Agency must monitor the availability of funds and must provide notice of insufficient funds to owners or operators in accordance with Section 734.505(g) of this Part.
 - 3) Owners and operators must submit elections to defer site investigation or corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
 - 4) The Agency must review elections to defer site investigation or corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.
 - A) The Agency must mail notices of final action on an election to defer by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.
 - B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided

for the review of permit decisions in Section 40 of the Act.

- 5) Upon approval of an election to defer site investigation or corrective action activities until funds are available, the Agency must place the site on a priority list for payment and notification of availability of sufficient funds. Sites must enter the priority list for payment based solely on the date the Agency receives a complete written election of deferral, with the earliest dates having the highest priority.
- 6) As funds become available the Agency must encumber funds for each site in the order of priority in an amount equal to the total of the approved budget for which deferral was sought. The Agency must then notify owners or operators that sufficient funds have been allocated for the owner or operator's site. After such notification the owner or operator must commence site investigation or corrective action activities.
- 7) Authorization of payment of encumbered funds for deferred site investigation or corrective action activities must be approved in accordance with the requirements of Subpart F of this Part.
- b) An owner or operator who elects to defer site investigation or corrective action activities under subsection (a) of this Section must submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:
 - 1) The Agency has approved the owner's or operator's site investigation budget or corrective action budget;
 - 2) The owner or operator has been determined eligible to seek payment from the Fund;
 - 3) The early action requirements of Subpart B of this Part have been met;
 - 4) Groundwater contamination does not exceed the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and
 - 5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is

satisfied must include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 734.445 of this Part.

- c) An owner or operator may, at any time, withdraw the election to defer site investigation or corrective action activities. The Agency must be notified in writing of the withdrawal. Upon such withdrawal, the owner or operator must proceed with site investigation or corrective action, as applicable, in accordance with the requirements of this Part.

SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

Section 734.500 General

The Agency must have the authority to review any plan, budget, or report, including any amended plan, budget, or report, submitted pursuant to this Part. All such reviews must be subject to the procedures set forth in the Act and this Subpart E.

Section 734.505 Review of Plans, Budgets, or Reports

- a) The Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site.
- b) The Agency must have the authority to approve, reject, or require modification of any plan, budget, or report it reviews. The Agency must notify the owner or operator in writing of its final action on any such plan, budget, or report, except in the case of 20 day, 45 day, or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget, or report within 120 days after the receipt of a plan, budget, or report, the owner or operator may deem the plan, budget, or report rejected by operation of law. If the Agency rejects a plan, budget, or report or requires modifications, the written notification must contain the following information, as applicable:
 - 1) An explanation of the specific type of information, if any, that the Agency needs to complete its review;
 - 2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget, or report is approved; and
 - 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget, or report is approved.

- c) For corrective action plans submitted by owners or operators not seeking payment from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 734.345 of this Part.
- d) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 60 days.
- e) The Agency must mail notices of final action on plans, budgets, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.
- f) Any action by the Agency to reject or require modifications, or rejection by failure to act, of a plan, budget, or report must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.
- g) In accordance with Section 734.450 of this Part, upon the approval of any budget by the Agency, the Agency must include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient

funds to provide payment of the total costs approved in the budget. Section

734.510 Standards for Review of Plans, Budgets, or Reports

- a) A technical review must consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, must include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans must be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. The overall goal of the technical review for reports must be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices or principles of professional geology, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.
- b) A financial review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but not be limited

to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part.

SUBPART F: PAYMENT FROM THE FUND

Section 734.600 General

The Agency must have the authority to review any application for payment or reimbursement and to authorize payment or reimbursement from the Fund or such other funds as the legislature directs for corrective action activities conducted pursuant to the Act and this Part. For purposes of this Part and unless otherwise provided, the use of the word "payment" must include reimbursement. The submittal and review of applications for payment and the authorization for payment must be in accordance with the procedures set forth in the Act and this Subpart F.

Section 734.605 Applications for Payment

- a) An owner or operator seeking payment from the Fund must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment. Costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to Subpart B of this Part other than free product removal activities conducted more than 45 days after confirmation of the presence of free product.
- b) A complete application for payment must consist of the following elements:
 - 1) A certification from a Licensed Professional Engineer or a Licensed Professional Geologist acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;
 - 2) A statement of the amounts approved in the corresponding budget and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget approved by the Agency;
 - 3) A copy of the OSFM or Agency eligibility and deductibility determination;

- 4) Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 734.620 of this Part;
 - 5) A federal taxpayer identification number and legal status disclosure certification;
 - 6) Private insurance coverage form(s);
 - 7) A minority/women's business form;
 - 8) Designation of the address to which payment and notice of final action on the application for payment are to be sent;
 - 9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and
 - 10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.
- c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.
- d) Applications for payment and change of address forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.
- f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, in no case must the Agency review an application for payment unless there is an approved budget on file corresponding to the application for payment.
- g) In no case must the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budgets as required under this Part.

- h) Applications for payment of costs associated with a Stage 1, Stage 2, or Stage 3 site investigation may not be submitted prior to the approval or modification of a site investigation plan for the next stage of the site investigation or the site investigation completion report, whichever is applicable.
- i) Applications for payment of costs associated with site investigation or corrective action that was deferred pursuant to Section 734.450 of this Part may not be submitted prior to approval or modification of the corresponding site investigation plan, site investigation completion report, or corrective action completion report.
- j) All applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all applications for payment must be submitted no later than one year after the effective date of this subsection (j).

Section 734.610 Review of Applications for Payment

- a) At a minimum, the Agency must review each application for payment submitted pursuant to this Part to determine the following:
 - 1) Whether the application contains all of the elements and supporting documentation required by Section 734.605(b) of this Part;
 - 2) For costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;
 - 3) For costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and
 - 4) Whether the amounts sought are eligible for payment.
- b) 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.

- c) 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.
- d) Following a review, the Agency must have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency must notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification must contain the following information, as applicable:
 - 1) An explanation of the specific type of information, if any, that the Agency needs to complete the review;
 - 2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and
 - 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.
- e) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 30 days.
- f) The Agency must mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed. The Agency must mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.
- g) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

Section 734.615 Authorization for Payment; Priority List

- a) Within 60 days after notification to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency must forward to the Office of the State Comptroller in accordance with subsection (d) or (e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency must have 60 days after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency must not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.
- b) The following rules must apply regarding deductibles:
 - 1) Any deductible, as determined by the OSFM or the Agency, must be subtracted from any amount approved for payment by the Agency or by operation of law, or ordered by the Board or courts;
 - 2) Only one deductible must apply per occurrence;
 - 3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible must apply for those incidents, even if the incidents relate to more than one occurrence; and
 - 4) Where more than one deductible determination is made, the higher deductible must apply.
- c) The Agency must instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Sections 734.605(b)(8) or (c) of this Part. In no case must the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that has conducted corrective action activities for the owner or operator.
- d) For owners or operators who have deferred site classification or corrective action in accordance with Section 734.450 of this Part, payment must be authorized from funds encumbered pursuant to Section 734.450(a)(6) of this Part upon approval of the application for payment by the Agency or by operation of law.
- e) For owners or operators not electing to defer site investigation or corrective action in accordance with Section 734.450 of this Part, the Agency must form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.
 - 1) All such applications for payment must be assigned a date that is the date upon which the complete application for partial or final payment was

received by the Agency. This date must determine the owner's or operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.

- 2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment must be assigned priority in accordance with subsection (e)(1) of this Section. The assigned date must be the only factor determining the priority for payment for those applications approved for payment.

Section 734.620 Limitations on Total Payments

a) Limitations per occurrence:

- 1) *The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of corrective action incurred by such owner or operator in an amount in excess of \$1,500,000 per occurrence [415 ILCS 5/57.8(g)(1)]; and*
- 2) *The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of indemnification of such owner or operator in an amount in excess of \$1,500,000 per occurrence [415 ILCS 5/57.8(g)(2)].*

b) Aggregate limitations:

- 1) *Notwithstanding any other provision of this Part, the Agency shall not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois:*

A) For calendar years prior to 2002:

Amount	Number of Tanks
\$1,000,000 fewer than 101	\$2,000,000
101 or more	

B) For calendar years 2002 and later:

Amount	Number of Tanks
\$2,000,000 fewer than 101	\$3,000,000
101 or more	

[415 ILCS 5/57.8(d)].

- 2) *Costs incurred in excess of the aggregate amounts set forth in subsection (b)(1) of this Section shall not be eligible for payment in subsequent years [415 ILCS 5/57.8(d)(1)].*
- c) *For purposes of subsection (b) of this Section, requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator [415 ILCS 5/57.8(d)(2)].*
- d) *For purposes of subsection (b) of this Section, owner or operator includes;*
 - 1) *any subsidiary, parent, or joint stock company of the owner or operator; and*
 - 2) *any company owned by any parent, subsidiary, or joint stock company of the owner or operator [415 ILCS 5/57.8(d)(3)].*

Section 734.625 Eligible Corrective Action Costs

- a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include, but are not limited to, reasonable costs for:
 - 1) Early action activities conducted pursuant to Subpart B of this Part;
 - 2) Engineer or geologist oversight services;
 - 3) Remedial investigation and design;
 - 4) Laboratory services necessary to determine site investigation and whether the established remediation objectives have been met;
 - 5) The installation and operation of groundwater investigation and groundwater monitoring wells;
 - 6) The removal, treatment, transportation, and disposal of soil contaminated by petroleum at levels in excess of the established remediation objectives;
 - 7) The removal, treatment, transportation, and disposal of water contaminated by petroleum at levels in excess of the established remediation objectives;
 - 8) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation objectives;

- 9) Groundwater corrective action systems;
- 10) Alternative technology, including but not limited to feasibility studies approved by the Agency;
- 11) Recovery of free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water;
- 12) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM;
- 13) Costs incurred as a result of a release of petroleum because of vandalism, theft, or fraudulent activity by a party other than an owner or operator or agent of an owner or operator;
- 14) Engineer or geologist costs associated with seeking payment from the Fund including but not limited to completion of an application for partial or final payment;
- 15) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;
- 16) Costs for destruction and replacement of concrete, asphalt, or paving to the extent necessary to conduct corrective action 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 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);
- 17) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs must not be paid in excess of a total of \$10,000 per occurrence. For purposes of this subsection (a)(17), destruction, dismantling, or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies;

- 18) Preparation of reports submitted pursuant to Section 734.210(h)(3) of this Part, free product removal plans and associated budgets, free product removal reports, site investigation plans and associated budgets, site investigation completion reports, corrective action plans and associated budgets, and corrective action completion reports;
- 19) Costs associated with the removal or abandonment of a potable water supply well, and replacement of the well or connection to a public water supply, whichever is less, if a Licensed Professional Engineer or Licensed Professional Geologist certifies that such activity is necessary to the performance of corrective action and that the property served by the well cannot receive an adequate supply of potable water from an existing source other than the removed or abandoned well, and the Agency approves such activity in writing. If the well being removed or abandoned is a public water supply well, the Licensed Professional Engineer or Licensed Professional Geologist is required to certify only that the removal or abandonment of the well is necessary to the performance of corrective action; and
 - 20) Costs associated with the repair or replacement of potable water supply lines damaged to the point of requiring repair or replacement as a direct result of the release, if such activity is certified by a Licensed Professional Engineer or Licensed Professional Geologist as necessary for the protection of the potable water supply and approved by the Agency in writing.
- b) An owner or operator may submit a budget or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials, or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials, or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part.

Section 734.630 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund include but are not limited to:

- a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Section 734.Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Section 734.Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;
- b) Costs or losses resulting from business interruption;
- c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the

owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;

- d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;
- e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989 [415 ILCS 5/57.8(j)];*
- f) Costs associated with the procurement of a generator identification number;
- g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;
- h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;
- i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;
- j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;
- k) Costs for removal, disposal, or abandonment of UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;
- l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;
- m) Costs exceeding those contained in a budget or amended budget approved by the Agency;
- n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- p) Costs associated with improperly installed sampling or monitoring wells;

- q) Costs associated with improperly collected, transported, or analyzed laboratory samples;
- r) Costs associated with the analysis of laboratory samples not approved by the Agency;
- s) Costs for any corrective activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;
- t) Interest or finance costs charged as direct costs;
- u) Insurance costs charged as direct costs;
- v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;
- w) Costs associated with the compaction and density testing of backfill material;
- x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;
- y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;
- z) Costs of alternative technology that exceed the costs of conventional technology;
- aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;
- bb) Costs requested that are based on mathematical errors;
- cc) Costs that lack supporting documentation;
- dd) Costs proposed as part of a budget that are unreasonable;
- ee) Costs incurred during early action that are unreasonable;
- ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740 to address the UST release;
- gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence

for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:

- 1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;
- 2) Monitoring well abandonment costs;
- 3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;
- 4) Costs associated with seeking payment from the Fund; and
- 5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;
- hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;
- ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;
- jj) Costs associated with standby and demurrage;
- kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;
- ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;
- mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;
- nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;
- oo) Handling charges for subcontractor costs where any person with a direct or indirect financial interest in the contractor has a direct or indirect financial interest in the subcontractor;

- pp) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;
- qq) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;
- rr) Costs associated with oversight by an owner or operator;
- ss) Handling charges charged by persons other than the owner's or operator's primary contractor; Section 734.635 Payment for Handling Charges

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- tt) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;
- uu) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;
- vv) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;
- ww) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;
- xx) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;
- yy) For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;
- zz) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;
- aaa) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

- bbb) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (bbb) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.
- ccc) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

Subcontract or Field Eligible Handling Charges

Purchase Cost: as a Percentage of Cost:

\$0 - \$5,000.....	12%
\$5,001 - \$15,000.....	\$600 + 10% of amt. over \$5,000
\$15,001 - \$50,000.....	\$1,600 + 8% of amt. over \$15,000
\$50,001 - \$100,000.....	\$4,400 + 5% of amt. over \$50,000
\$100,001 - \$1,000,000.....	\$6,900 + 2% of amt. over \$100,000

Section 734.640 Apportionment of Costs

- a) The Agency may apportion payment of costs if:
- 1) *The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and*
 - 2) *The owner or operator failed to justify all costs attributable to each underground storage tank at the site. [415 ILCS 5/57.8(m)]*
- b) The Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.

Section 734.645 Subrogation of Rights

Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release [415 ILCS 5/57.8(h)].

Section 734.650 Indemnification

- a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency a request for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
 - 1) A complete application for payment must contain the following:
 - A) A certified statement by the owner or operator of the amount sought for payment;
 - B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but not be limited to, the following:
 - i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and
 - ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;
 - C) A copy of the OSFM or Agency eligibility and deductibility determination;
 - D) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 734.620 of this Part;
 - E) A federal taxpayer identification number and legal status disclosure certification;
 - F) A private insurance coverage form; and
 - G) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

- 2) The owner's or operator's address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change of address.
- 3) Applications for payment must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated,
signed receipt from certified or registered mail.
- b) The Agency must review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:
 - 1) Whether the application contains all of the information and supporting documentation required by subsection (a) of this Section;
 - 2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;
 - 3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and
 - 4) Whether the amounts sought for indemnification are eligible for payment.
- c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency must forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification must not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment must then enter the priority list established at Section 734.615(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.
- d) Costs ineligible for indemnification from the Fund include, but are not limited to:
 - 1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;

- 2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;
- 3) Amounts incurred prior to July 28, 1989;
- 4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;
- 5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;
- 6) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;
- 7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;
- 8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;
- 9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;
- 10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740 to address the UST release; and
- 11) Amounts incurred prior to the effective date of the owner's or operator's election to proceed in accordance with this Part.

Section 734.655 Costs Covered by Insurance, Agreement, or Court Order

Costs of corrective action or indemnification incurred by an owner or operator which have been paid to an owner or operator under a policy of insurance, another written agreement, or a court order are not eligible for payment from the Fund. An owner or operator who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund

[415 ILCS 5/57.8(e)].

Section 734.660 Determination and Collection of Excess Payments

- a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.
 - 1) Upon identifying an excess payment, the Agency must notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.
 - 2) The notification letter must state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.
 - 3) The Agency's determination of an excess payment must be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.
- b) An excess payment from the Fund includes, but is not limited to:
 - 1) Payment for a non-corrective action cost;
 - 2) Payment in excess of the limitations on payments set forth in Sections 734.620 and 734.635 and Subpart H of this Part;
 - 3) Payment received through fraudulent means;
 - 4) Payment calculated on the basis of an arithmetic error;
 - 5) Payment calculated by the Agency in reliance on incorrect information; or
 - 6) Payment of costs that are not eligible for payment.
- c) Excess payments may be collected using any of the following procedures:
 - 1) Upon notification of the determination of an excess payment in accordance with subsection (a) of this Section or pursuant to a Board order affirming such determination upon appeal, the Agency may attempt to negotiate a payment schedule with the owner or operator. Nothing in this subsection (c)(1) of this Section must prohibit the Agency from exercising at any time its options at subsection (c)(2) or (c)(3) of this Section or any other collection methods available to the Agency by law.
 - 2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount.

If the amount subsequently approved is insufficient to recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.

- 3) The Agency may deem an excess payment amount to be a claim or debt owed the Agency, and the Agency may use the Comptroller's Setoff System for collection of the claim or debt in accordance with Section 10.5 of the "State Comptroller Act." 15 ILCS 405/10.05 (1993).

Section 734.665 Audits and Access to Records; Records Retention

- a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify such report, plan, budget, application for payment, data, or document, must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.
- b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must provide proper facilities for such access and inspection.
- c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:
 - 1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter issued pursuant to Subpart G of this Part;
 - 2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or
 - 3) The expiration of any other applicable record retention period.

SUBPART G: NO FURTHER REMEDIATION LETTERS AND
RECORDING REQUIREMENTS Subpart G provides
the procedures for the issuance of No Further
Remediation Letters under Title XVI and this Part.

Subpart G also sets forth the recording requirements and the circumstances under which the letter may be voidable.

Section 734.700 General

Section 734.705
Issuance of
a No Further
Remediation
Letter a)

734.210(h)(3) of this Part or a corrective action completion report, the Agency must issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter must have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter must be denied if the Agency rejects or requires modification of the applicable report.

- b) The Agency must have 120 days after the date of receipt of the applicable report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it must be deemed denied by operation of law.
- c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial of the letter must be stated in the notification. The denial must be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.
- d) The Agency must mail the No Further Remediation Letter by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that the letter is mailed.
- e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission, or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency must mail the corrected letter to the owner or operator as set forth in subsection (d) of this Section. The corrected letter must be perfected by recording in accordance with the requirements of Section 734.715 of this Part.

Section 734.710
 Contents of
 a No Further
 Remediation
 Letter A No
 Further
 Remediation
 Letter
 issued
 pursuant to
 this Part
 must
 include all
 of the
 following:

- a)
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for the purposes of Section 734.715(d) of this Part, other means sufficient to identify the site location with particularity;
- c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:
 - 1) *All statutory and regulatory corrective action requirements applicable to the occurrence have been complied with;*
 - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
 - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment* [415 ILCS 5/57.10(c)(1)-(3)], or, if the No Further Remediation Letter is issued pursuant to Section 734.350(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site.

- e) The prohibition under Section 734.715(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;
- f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;
- g) The recording obligations pursuant to Section 734.715 of this Part;
- h) The opportunity to request a change in the recorded land use pursuant to Section 734.715(e) of this Part;
- i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
- j) Any other provisions agreed to by the Agency and the owner or operator.

Section
734.715
Duty to
Record a No
Further
Remediation
Letter

a)

to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter and any attachments must be filed in accordance with Illinois law so that they form a permanent part of the chain of title for the site. Upon the lapse of the 45 day period for recording, pursuant to Section 734.720(a)(5) of this Part the Agency may void an unrecorded No Further Remediation Letter for failure to record it in a timely manner.

- b) Except as provided in subsections (c) and (d) of this Section, a No Further Remediation Letter must be perfected upon the date of the official recording of such letter. The owner or operator must obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator.
- c) For sites located in a highway authority right-of-way, the following requirements must apply:
 - 1) In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:
 - A) The name of the site, if any, and any highway authority or Agency identifiers (e.g., incident number, Illinois inventory identification number);
 - B) The address of the site (or other description sufficient to identify the location of the site with certainty);
 - C) A copy of the No Further Remediation Letter for each site subject to the MOA;
 - D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;
 - E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:
 - i) Upon creation of a deed, the recording of the No Further

Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

- ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and
 - iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and
 - F) Provisions for notifying the Agency if any actions taken by the highway authority or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.
- 2) Failure to comply with the requirements of this subsection (c) may result in avoidance of the No Further Remediation Letter pursuant to Section 734.720 of this Part as well as any other penalties that may be available.
- d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements must apply:
- 1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:
 - A) Identify the location on the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification must be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identify the site in question with particularity;
 - B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
 - C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and

inspection requirements set forth in the LUC MOA;

- D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
 - E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property; and
 - F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.
- 2) To perfect a No Further Remediation letter containing no restriction(s) on future land use, the Federal Landholding Entity must submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter must be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity must obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.
- 3) Failure to comply with the requirements of this subsection (d) and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.
- e) At no time must any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter. The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

Section 734.720 Voidance of a No Further Remediation Letter

- a) The No Further Remediation Letter must be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter

include, but not be limited to:

- 1) Any violations of institutional controls or land use restrictions, if applicable;
- 2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering, and institutional controls;
- 3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;
- 4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based that:
 - A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;
 - B) results in the failure to meet the remediation objectives established for the site; and
 - C) pose a threat to human health or the environment;
- 5) Upon the lapse of the 45 day period for recording the No Further Remediation Letter, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;
- 6) The disturbance or removal of contamination left in place under an approved plan;
- 7) The failure to comply with the requirements of Section 734.715(c) of this Part and the Memorandum of Agreement entered in accordance with Section 734.715(c) of this Part for a site that is located in a highway authority right-of-way;
- 8) The failure to comply with the requirements of Section 734.715(d) of this Part and the LUC MOA entered in accordance with Section 734.715(d) of this Part for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;
- 9) The failure to comply with the requirements of Section 734.715(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 734.715(d) of this Part within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any

entity that will not remain or become a Federal Landholding Entity; or

- 10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).
- b) If the Agency seeks to void a No Further Remediation Letter, it must provide a Notice of Voidance to the current title holder of the site and the owner or operator at his or her last known address.
 - 1) The Notice of Voidance must specify the cause for the voidance and describe the facts in support of the cause.
 - 2) The Agency must mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.
- c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.
- d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition must be deemed denied and the petitioner must be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency must have the burden of proof in such action.
 - 1) If the Agency's action is appealed, the action must not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.
 - A) Upon receiving a notice of appeal, the Agency must file a Notice of lis pendens with the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice must be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.
 - B) If the Agency's action is not upheld on appeal, the Notice of lis pendens must be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.
 - 2) If the Agency's action is not appealed or is upheld on appeal, the Agency must submit the Notice of Voidance to the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The Notice must be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section 734.800 Applicability

- a) This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850 of this Part. The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and Section 734.870.
- b) Maximum payment amounts shall be set forth in the Agency-approved Standard Fee Schedule, Appendix F of this Part. Owners or operators must use Agency-approved Standard Fee Schedule pay items in all budget proposals and payment applications. Proposed use of any Standard Fee Schedule item must meet with the approval of the Agency Technical Reviewer. The use by an owner or operator of a fee in a budget proposal or payment application which is not included in the Standard Fee Schedule shall result in the rejection of that fee by the Agency, unless the owner or operator provides justification for the use of said fee which meets with the Agency's technical approval. Proposed use of a Standard Fee Schedule cost item which employs a billing method or unit of measure other than that specified in the Standard Fee Schedule shall be rejected. Use by the owner or operator of unit pricing for a given Standard Fee Schedule item in excess of that specified in the Standard Fee Schedule shall result in the detailed review of that budget proposal or payment application and the reduction of the proposed unit pricing to that specified for that cost item in the Standard Fee Schedule. Use by the owner or operator of unit pricing for a given Standard Fee Schedule item equal to or less than that specified in the Standard Fee Schedule shall result in the approval without detailed financial review of said unit pricing.
- c) Owners or operators must group their proposed budget and payment application Standard Fee Schedule cost items by Agency-approved Standard Task List task, Appendix G of this Part. Standard Fee Schedule cost items which are not associated with a Standard Task List task shall be rejected. Proposed use of any Standard Task List task must meet with the approval of the Agency Technical Reviewer. The use by an owner or operator of a task in a budget proposal or payment application which is not included in the Standard Task List shall result in the rejection of that task by the Agency, unless the owner or operator provides justification for the use of said task which meets with the Agency's technical approval. The Standard Task List shall delineate every standard task approved for use, the regulation to which the task corresponds, and a description of the scope of work included under that task.
- d) As an alternative to using the amounts set forth in Sections 734.810, 734.815, 734.820, 734.825, 734.830, 734.835, 734.840, and 734.850 of this Part, the second method for determining the maximum amounts that can be paid for one or

more tasks is bidding in accordance with Section 734.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 734.810, 734.815, 734.820, 734.825, 734.830, 734.835, 734.840, and 734.850, the amount in Sections 734.810, 734.815, 734.820, 734.825, 734.830, 734.835, 734.840, and 734.850 of this Part may be used instead of the lowest bid. Finally, the third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 734.860 of this Part.

- e) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

Section 734.810 UST Removal or Abandonment Costs

Payment for costs associated with UST removal or abandonment of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, disposal, and abandonment of UST systems. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

Section 734.815 Free Product or Groundwater Removal and Disposal

Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the removal, transportation, and disposal of free product or groundwater, and the design, construction, installation, operation, maintenance, and closure of free product or groundwater removal systems. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

- a) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck must include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.

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. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set

forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

- a) Payment for costs associated with each round of drilling must include, but not be limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.
- b) Payment for costs associated with the installation of monitoring wells, excluding drilling, must include, but not be limited to, those associated with well construction and development.
- c) Payment for costs associated with the installation of recovery wells, excluding drilling, must include, but not be limited to, those associated with well construction and development.
- d) Payment for costs associated with the abandonment of monitoring wells must not exceed \$10.00 per foot of well length.

Section 734.825 Soil Removal and Disposal

Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 734.210(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

- a) Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 734.210(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill must not exceed the amounts set forth in the Agency-approved Standard Fee Schedule, Appendix F of this Part.
 - 1) 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. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.
 - 2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Section

734.Appendix C of this Part.

- b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil must not exceed the amounts set forth in the Agency-approved Standard Fee Schedule, Appendix F of this Part.
 - 1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.
 - 2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Section 734.Appendix C of this Part.
- c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action must not exceed the amounts set forth in the Agency-approved Standard Fee Schedule, Appendix F of this Part. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil: (Excavation Length x Excavation Width x Excavation Depth). A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Section 734.830 Drum Disposal

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste generated as a result of corrective action (e.g., boring cuttings, water bailed for well development or sampling, hand-bailed free product) must not exceed the amounts set forth in this Section. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

Section 734.835 Sample Handling and Analysis

Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in this Section. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part. Such costs must include, but not be limited to, those associated with the transportation, delivery, preparation, and analysis

of samples, and the reporting of sample results. For laboratory analyses not included in this Section, the Agency may determine reasonable maximum payment amounts on a site-specific basis.

Section 734.840

Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures

- a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the amounts set forth in this Section. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 1 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.
- b) Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures must not exceed \$10,000.00 per site.

Section 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with project planning and oversight; 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. Such costs must be documented on a task by task basis, in accordance with the tasks listed in the Standard Task List. The Standard Task List is set forth in Appendix G, Section 2 of this Part. The individual charge items for each task must correspond to the Agency-approved Standard Fee Schedule, set forth in Appendix F of this Part.

- a) Distances must be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site must be measured from the consultant's office that is closest to the site.

Section 734.850 Payment on Time and Materials Basis

- a) Maximum payments amounts for costs associated with activities that do not have a maximum payment amount set forth in other sections of this Subpart H must be determined by the Agency on a site-specific basis. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 734.340(b) and 734.630(z) of this Part.

Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, with the exception of Section 734.845, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

- a) A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. The bids must be formatted to correspond with the tasks listed in the Standard Task List set forth in Appendix G. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.
- b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.
- c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

Section 734.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payments amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances may include, but not be limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.

Section 734.865 Handling Charges

Payment of handling charges must not exceed the amounts set forth in Section 734.635 of this Part.

Section 734.870 Increase in Maximum Payment Amounts

The maximum payment amounts set forth in this Subpart H must be adjusted not less than every two years by the Agency first conducting a statistically significant analysis of the costs proposed by owners or operators. The Agency must include in this analysis costs which did not conform to the Agency-approved Standard Fee Schedule but were approved and were classified as being indicative of a statistically significant trend concerning the normal and customary performance of the work proposed. The statistical analysis shall be designed to identify Agency-approved Standard Fee Schedule cost amounts that do not accurately reflect customary and accepted market prices. The Agency must submit a report to the Board on whether the Agency-approved Standard Fee Schedule amounts are consistent with the statistical analysis. The report must identify Agency-approved Standard Fee Schedule amounts that are not consistent with the statistical analysis and suggest changes needed to make the Agency-approved Standard Fee Schedule consistent with customary and accepted market prices.

- a) The Agency must post the latest approved Standard Fee Schedule on its website no later than the date it becomes effective.
- b) Adjusted maximum payment amounts must be applied as follows:
 - 1) For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payments amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).
 - 2) For costs not approved by the Agency in writing prior to the date the costs are incurred, including, but not limited to, early action costs, the applicable maximum payments amounts must be the amounts in effect on the date the costs were incurred.
 - 3) Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.

Section 734.875 Agency Review of Payment Amounts

No less than every two years the Agency must review the Standard Task List set forth in this Subpart H and submit a report to the Board on whether the tasks are fully consistent with the tasks that are being approved to meet the goals of approved work plans. The report must identify both Standard Task List tasks that are not being used on a statistically significant number of sites, and tasks which are not in the Standard Task List but are being approved on a site-by-site basis in a statistically significant number of times. Based on such data, the Agency must recommend existing tasks for deletion from the Standard Task List and new tasks for inclusion in the Standard Task List, provided however, that each new task must have a clear relationship to a provision of the regulations.

Section 734.APPENDIX A Indicator Contaminants

TANK CONTENTS
INDICATOR CONTAMINANTS

GASOLINE

leaded(1), unleaded, premium and gasohol
ethylbenzene
toluene
xylene
Methyl tertiary butyl ether (MTBE)

MIDDLE DISTILLATE AND HEAVY ENDS

aviation turbine fuels(1)
jet fuels
ethylbenzene
toluene
xylene
diesel fuels
acenaphthene
anthracene
heating fuel oils
benzo(a)anthracene
benzo(a)pyrene
Kerosene
liquid asphalt and dust laying oils
cable oils
dibenzo(a,h)anthracene
crude oil, crude oil fractions
petroleum feedstocks
fluorene
petroleum fractions
heavy oils
naphthalene
transformer oils(2)
hydraulic fluids(3)
Acenaphthylene
petroleum spirits(4)
mineral spirits(4), Stoddard solvents(4)
Phenanthrene
high-flash aromatic naphthas(4)
VM&P naphthas(4)
moderately volatile hydrocarbon solvents(4)

petroleum extender oils(4)

USED OIL

Screening sample(5)

- (1) lead is also an indicator contaminant
- (2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
- (4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
- (5) used oil indicator contaminants must be based on the results of a used oil soil sample analysis - refer to Section 734.405(g) of this Part

Section 734.APPENDIX B Additional Parameters

Volatiles

1. Benzene
2. Bromoform
3. Carbon tetrachloride
4. Chlorobenzene
5. Chloroform
6. Dichlorobromomethane
7. 1,2-Dichloroethane
8. 1,1-Dichloroethane
9. cis-1,2-Dichloroethane
10. Trans-1,2-Dichloroethylene
11. Dichloromethane (Methylene chloride)
12. 1,2-Dichloropropane
13. 1,3-Dichloropropylene (cis + trans)
14. Ethylbenzene
15. Styrene
16. Tetrachloroethylene
17. Toluene
18. 1,1,1-Trichloroethane
19. 1,1,2-Trichloroethane
20. Trichloroethylene
21. Vinyl chloride
22. Xylenes (total)

Base/Neutrals

1. Bis(2-chloroethyl)ether
2. Bis(2-ethylhexyl)phthalate
3. 1,2-Dichlorobenzene
4. 1,4-Dichlorobenzene
5. Hexachlorobenzene
6. Hexachlorocyclopentadiene
7. *n*-Nitrosodi-*n*-propylamine
8. *n*-Nitrosodiphenylamine
9. 1,2,4-Trichlorobenzene

Polynuclear Aromatics

1. Acenaphthene
2. Anthracene
3. Benzo(a)anthracene
4. Benzo(a)pyrene
5. Benzo(b)fluoranthene
6. Benzo(k)fluoranthene
7. Chrysene
8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrene
14. Acenaphthylene
15. Benzo(g,h,i)perylene
16. Phenanthrene

Metals (total inorganic and organic forms)

1. Arsenic
2. Barium
3. Cadmium
4. Chromium (total)
5. Lead
6. Mercury
7. Selenium

Polychlorinated Biphenyls

1. Polychlorinated Biphenyls
(as Decachlorobiphenyl)

Section 734.APPENDIX C Backfill Volumes

Volume of Tank in Gallons	Maximum amount of backfill material to be removed: Cubic yards	Maximum amount of backfill material to be replaced: Cubic yards
<285	54	56
285 to 299	55	57
300 to 559	56	58
560 to 999	67	70
1000 to 1049	81	87
1050 to 1149	89	96
1150 to 1999	94	101
2000 to 2499	112	124
2500 to 2999	128	143
3000 to 3999	143	161
4000 to 4999	175	198
5000 to 5999	189	219
6000 to 7499	198	235
7500 to 8299	206	250
8300 to 9999	219	268
10,000 to 11,999	252	312
12,000 to 14,999	286	357
>15,000	345	420

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Section 734.APPENDIX D Sample Handling and Analysis

Chemical	
BETX Soil with MTBE	
BETX Water with MTBE	
COD (Chemical Oxygen Demand)	
Corrosivity	
Flash Point or Ignitability Analysis EPA 1010	
FOC (Fraction Organic Carbon)	
Fat, Oil, & Grease (FOG)	
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part	
Organic Carbon (ASTM-D 2974-87)	
Dissolved Oxygen (DO)	
Paint Filter (Free Liquids)	
PCB / Pesticides (combination)	
PCBs	
Pesticides	
PH	
Phenol	
Polynuclear Aromatics PNA, or PAH SOIL	
Polynuclear Aromatics PNA, or PAH WATER	
Reactivity	
SVOC - Soil (Semi-volatile Organic Compounds)	
SVOC - Water (Semi-volatile Organic Compounds)	
TKN (Total Kjeldahl) "nitrogen"	
TOC (Total Organic Carbon) EPA 9060A	
TPH (Total Petroleum Hydrocarbons)	
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	
VOC (Volatile Organic Compound) - Water	
Geo-Technical	
Bulk Density ASTM D4292 / D2937	
Ex-Situ Hydraulic Conductivity / Permeability	
Moisture Content ASTM D2216-90 / D4643-87	
Porosity	
Rock Hydraulic Conductivity Ex-Situ	
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	

Soil Classification ASTM D2488-90- D2487-90	
<u>Metals</u>	
Arsenic TCLP Soil	
Arsenic Total Soil	
Arsenic Water	
Barium TCLP Soil	
Barium Total Soil	
Barium Water	
Cadmium TCLP Soil	
Cadmium Total Soil	
Cadmium Water	
Chromium TCLP Soil	
Chromium Total Soil	
Chromium Water	
Cyanide TCLP Soil	
Cyanide Total Soil	
Cyanide Water	
Iron TCLP Soil	
Iron Total Soil	
Iron Water	
Lead TCLP Soil	
Lead Total Soil	
Lead Water	
Mercury TCLP Soil	
Mercury Total Soil	
Mercury Water	
Selenium TCLP Soil	
Selenium Total Soil	
Selenium Water	
Silver TCLP Soil	
Silver Total Soil	
Silver Water	
Metals TCLP Soil (a combination of all RCRA metals)	
Metals Total Soil (a combination of all RCRA metals)	
Metals Water (a combination of all RCRA metals)	
<u>Soil preparation for Metals TCLP Soil (one fee per sample)</u>	
Soil preparation for Metals total soils (one fee per sample)	

Water preparation for Metals Water (one fee per sample)	
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Section 734.APPENDIX E Personnel Titles

Title	Degree Required	Ill. License Req'd	Min. Yrs. Experience	
Engineer I	Bachelor's in Engineering	None	0	
Engineer II	Bachelor's in Engineering	None	2	
Engineer III	Bachelor's in Engineering	None	4	
Professional Engineer	Bachelor's in Engineering	P.E.	4	
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	
Scientist I	Bachelor's in a Natural or Physical Science	None	0	
Scientist II	Bachelor's in a Natural or Physical Science	None	2	
Scientist III	Bachelor's in a Natural or Physical Science	None	4	
Scientist IV	Bachelor's in a Natural or Physical Science	None	6	
Senior Scientist	Bachelor's in a Natural or Physical Science	None	8	
Project Manager	None	None	8 ¹	
Senior Project Manger	None	None	12 ¹	
Technician I	None	None	0	
Technician II	None	None	2 ¹	
Technician III	None	None	4 ¹	
Technician IV	None	None	6 ¹	
Senior Technician	None	None	8 ¹	
Account Tech I	None	None	0	
Account Tech II	None	None	2 ²	
Account Tech III	None	None	4 ²	
Account Tech IV	None	None	6 ²	
Senior Acct.Tech	None	None	8 ²	
Administrative Assist I	None	None	0	
Administrative Assistant II	None	None	2 ³	
Administrative Assistant III	None	None	4 ³	
Administrative Assistant IV	None	None	6 ³	
Senior Admin. Assistant	None	None	8 ³	
Draftperson/CAD I	None	None	0	
Draftperson/CAD II	None	None	2 ⁴	
Draftperson/CAD III	None	None	4 ⁴	
Draftperson/CAD IV	None	None	6 ⁴	
Senior Draftperson/CAD	None	None	8 ⁴	

¹ Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.

² Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.

³ Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.

⁴ Equivalent work-related or college level education with significant coursework in drafting or computer aided design (“CAD”) can be substituted for all or part of the specified experience requirements.

Section 734.APPENDIX F Standard Task List

EARLY ACTION

Major Task	Detailed Task
210(a)	Complete 24hr Response Actions & IEMA Reporting
	734.210(a)(1) Report Release to IEMA
	734.210(a)(2) Take Immediate action to prevent further release
	734.210(a)(3) Identify and mitigate fire, explosion, & vapor hazards
210(b)	Conduct 20day Abatement Measures
	734.210(b)(1) Remove Petroleum to prevent further release
	734.210(b)(2) Visually inspect Release and prevent further migration
	734.210(b)(3) Monitor/mitigate fire, explosion, & vapor hazards
	734.210(b)(4) Remedy hazards posed by excavated or exposed soils
	734.210(b)(5) Measure for the presence of a release
	734.210(b)(6) Determine the possible presence of free product
210(c)	Prepare & Submit 20-day Report
210(d)	Prepare 45-day report
210(e)	Submit 45-Day Report
210(f)	Conduct Applicable Early Action Field Activities
	734.210(f)1 Tank Removal
	734.210(f)2 Tank Abandonment
	734.210(f)3 EA ETD&B
	734.210(f)4 Ex-situ Treatment
210(g)	Optional Filing of EA Extension
210(h)(1,2)	Determine Areas and locations of soil contamination
	734.210(h)(1) Collect and analyze soil samples for each tank removed
	734.210(h)(2) Collect and analyze soil samples for each tank remaining
210(h)(3)	Prepare & Submit report for EA Closure, if Tier 1 Objectives are met
215(a)(1)	Perform 45 day Free Product Removal
215(a)(4)	Prepare & Submit 45 day Free Product Removal Report
220	Prepare & Submit Application for Payment of Early Action Costs
625(a)(15)	Prepare & Submit EDD Application

Post 45day FREE PRODUCT REMOVAL

Major Task	Detailed Task
215(c)	Prepare & Submit Post 45 day Free Product Removal Plan
350	Negotiate Off-Site Access
215(d)	Prepare & Submit Post 45 day Free Product Removal Budget
215(e)	Perform Free Product Removal
215(g)1	Prepare & Submit Plan Amendments as Necessary
215(g)2	Prepare & Submit Budget Amendments as Necessary
605(h)	Prepare & Submit Application for Payment

605(b)(3) Prepare & Submit EDD Application**Stage 1**

Major Task	Detailed Task
315(b)	Prepare & Submit Work Plan (Stage 1)
310(b)	Prepare & Submit Budget (Stage 1)
315(a)(1)	Perform Site Soil Investigation (Stage 1)
315(a)(2)	Perform Site Groundwater Investigation (Stage 1)
	315(a)(2)(B) Install Monitoring Well(s)
	315(a)(2)(C) Collect Soil Sample(s)
	315(a)(2)(D) Sample Monitoring Wells
	315(a)(2)(E) Perform Hydraulic Conductivity Testing
315(a)(3)	Conduct Water Supply Well Survey
330	Prepare and Submit Completion Report (Stage 1)
605(h)	Prepare and Submit Application for Payment (Stage1)
605(b)(3)	Prepare & Submit EDD Application

Stage 2

Major Task	Detailed Task
320(b)	Prepare & Submit Work Plan (Stage 2)
310(b)	Prepare & Submit Budget (Stage 2)
320(a)(1)	Perform Site Soil Investigation (Stage 2)
320(a)(2)	Perform Site Groundwater Investigation (Stage 2)
	320(a)(2) Advance Soil Borings & Collect Samples
	320(a)(2) Install & Sample Montioring Well(s)
330	Prepare and Submit Completion Report (Stage 2)
310(d)1	Prepare & Submit Plan Amendments as Necessary (Stage 2)
310(d)2	Prepare & Submit Budget Amendments as Necessary (Stage 2)
605(h)	Prepare and Submit Application for Payment (Stage1)
605(b)(3)	Prepare & Submit EDD Application

Stage 3

Major Task	Detailed Task
325(b)	Prepare & Submit Work Plan (Stage 3)
350	Negotiate Off-Site Access
310(b)	Prepare & Submit Budget (Stage 3)
325(a)(1)	Perform Off-Site Soil Investigation (Stage 3)
325(a)(2)	Perform Off-Site Groundwater Investigation (Stage 3)
	325(a)(2) Advance Soil Borings & Collect Samples
	325(a)(2) Install & Sample Montioring Well(s)

- 330 Prepare and Submit Completion Report (Stage 3)
- 310(d)1 Prepare & Submit Plan Amendments as Necessary (Stage 3)
- 310(d)2 Prepare & Submit Budget Amendments as Necessary (Stage 3)
- 605(h) Prepare and Submit Application for Payment (Stage2)
- 605(b)(3) Prepare & Submit EDD Application

CORRECTIVE ACTION

Soil Remediation

- | Major Task | Detailed Task |
|------------|--|
| 335 | Conventional <ul style="list-style-type: none"> 335(a) Prepare & Submit Work Plan 335(b) Prepare & Submit Budget 335(c) Preform Corrective Action After Approval 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary |
| 340 | Alternative <ul style="list-style-type: none"> 340(a) Prepare & Submit Work Plan 340(b) Prepare & Submit Budget 340(c) Preform Corrective Action After Approval 340(d) Agency Required Remote Monitoring 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary |
| 350 | Negotiate Off-Site Access |

Groundwater Remediation

- | Major Task | Detailed Task |
|------------|--|
| 335 | Conventional <ul style="list-style-type: none"> 335(a) Prepare & Submit Work Plan 335(b) Prepare & Submit Budget 335(c) Preform Corrective Action After Approval 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary |
| 340 | Alternative <ul style="list-style-type: none"> 340(a) Prepare & Submit Work Plan 340(b) Prepare & Submit Budget 340(c) Preform Corrective Action After Approval 340(d) Agency Required Remote Monitoring 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary |
| 350 | Negotiate Off-Site Access |

Soil&Groundwater

Major Task	Detailed Task
335	Conventional 335(a) Prepare & Submit Work Plan 335(b) Prepare & Submit Budget 335(c) Preform Corrective Action After Approval 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary
340	Alternative 340(a) Prepare & Submit Work Plan 340(b) Prepare & Submit Budget 340(c) Preform Corrective Action After Approval 340(d) Agency Required Remote Monitoring 335(e)1 Prepare & Submit Plan Amendments as Necessary 335(e)2 Prepare & Submit Budget Amendments as Necessary
350	Negotiate Off-Site Access

Major Task	Detailed Task
345(a)	Prepare & Submit Corrective Action Completion Report
355(a)	Prepare and Submit Status Report within 4 years
605(h)	Prepare and Submit Application for Payment (Stage 3)
605(b)(3)	Prepare & Submit EDD Application

Section 734.APPENDIX G Standard Fee Schedule

DESCRIPTION	BILLING METHOD	UNIT OF MEASURE	MAXIMUM PAYMENT AMOUNT
SECTION 1 - NON-PROFESSIONAL COSTS			
Site Superintendent	Time and Materials	Hour	80.00
Laborer	Time and Materials	Hour	54.00
Environmental Technician	Time and Materials	Hour	53.00
Operator	Time and Materials	Hour	62.00
Fleet Supervisor	Time and Materials	Hour	55.00
Driver I-A CDL	Time and Materials	Hour	48.00
Driver II-A Oversize Loads	Time and Materials	Hour	55.00
Drilling Foreman	Time and Materials	Hour	50.00
Rig Hand	Time and Materials	Hour	45.00
UST Removal/Abandonment 110-999 gallons	Unit Rate	Each	2100.00
UST Removal/Abandonment 1,000-14,999 gallons	Unit Rate	Each	3150.00
UST Removal/Abandonment 15,000+ gallons	Unit Rate	Each	4100.00
Free Product/Groundwater Removal, Bill Method 1	Unit Rate	Gallon	0.68
Free Product/Groundwater Removal, Bill Method 2	Lump Sum	Each	200.00
Hollow-Stem Auger Drilling, Bill Method 1	Unit Rate	Foot	23.00
Hollow-Stem Auger Drilling, Bill Method 2	Lump Sum	Each	1500.00
Direct Push, Non-Injection Purposes, Bill Method 1	Unit Rate	Foot	18.00
Direct Push, Non-Injection Purposes, Bill Method 2	Lump Sum	Each	1200.00
Direct Push, Injection Purposes, Bill Method 1	Unit Rate	Foot	15.00
Direct Push, Injection Purposes, Bill Method 2	Lump Sum	Each	1200.00
Hollow Stem Auger Well Installation	Unit Rate	Foot	16.50
Direct Push Well Installation	Unit Rate	Foot	12.50
Well Installation exclusive of Drilling, 4-6 inch diameter	Unit Rate	Foot	25.00
Well Installation exclusive of Drilling, 8+ inch diameter	Unit Rate	Foot	41.00
Well Abandonment	Unit Rate	Foot	10.00
Drilling Rig and Crew Mobilization	Unit Rate	Each	250.00
Removal, Transportation & Disposal of Contaminated Soil	Unit Rate	Cubic Yard	57.00
Purchase, Transportation & Placement of Backfill	Unit Rate	Cubic Yard	20.00
Removal and Return of Clean Soil to Access Contaminated Soil	Unit Rate	Cubic Yard	6.50
Solid Waste Drum Disposal	Unit Rate	Drum	250.00
Liquid Waste Drum Disposal	Unit Rate	Drum	150.00
Drum Disposal Maximum Billing	Lump Sum	Each	500.00
BETX Soil with MTBE	Unit Rate	Each	85.00
BETX Water with MTBE	Unit Rate	Each	81.00
COD (Chemical Oxygen Demand)	Unit Rate	Each	30.00
Corrosivity	Unit Rate	Each	15.00
Flash Point or Ignitability Analysis EPA 1010	Unit Rate	Each	33.00
FOC (Fraction Organic Carbon)	Unit Rate	Each	38.00
Fat, Oil, & Grease (FOG)	Unit Rate	Each	60.00

LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734 Appendix B of this Part	Unit Rate	Each	693.00
Organic Carbon (ASTM-D 2974-87)	Unit Rate	Each	33.00
Dissolved Oxygen (DO)	Unit Rate	Each	24.00
Paint Filter (Free Liquids)	Unit Rate	Each	14.00
PCB / Pesticides (combination)	Unit Rate	Each	222.00
PCBs	Unit Rate	Each	111.00
Pesticides	Unit Rate	Each	140.00
PH	Unit Rate	Each	14.00
Phenol	Unit Rate	Each	34.00
Polynuclear Aromatics PNA, or PAH SOIL	Unit Rate	Each	152.00
Polynuclear Aromatics PNA, or PAH WATER	Unit Rate	Each	152.00
Reactivity	Unit Rate	Each	68.00
SVOC - Soil (Semi-volatile Organic Compounds)	Unit Rate	Each	313.00
SVOC - Water (Semi-volatile Organic Compounds)	Unit Rate	Each	313.00
TKN (Total Kjeldahl) "nitrogen"	Unit Rate	Each	44.00
TOC (Total Organic Carbon) EPA 9060A	Unit Rate	Each	31.00
TPH (Total Petroleum Hydrocarbons)	Unit Rate	Each	122.00
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	Unit Rate	Each	175.00
VOC (Volatile Organic Compound) - Water	Unit Rate	Each	169.00
Bulk Density ASTM D4292 / D2937	Unit Rate	Each	22.00
Ex-Situ Hydraulic Conductivity / Permeability	Unit Rate	Each	255.00
Moisture Content ASTM D2216-90 / D4643-87	Unit Rate	Each	12.00
Porosity	Unit Rate	Each	30.00
Rock Hydraulic Conductivity Ex-Situ	Unit Rate	Each	350.00
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	Unit Rate	Each	145.00
Soil Classification ASTM D2488-90 / D2487-90	Unit Rate	Each	68.00
Arsenic TCLP Soil	Unit Rate	Each	16.00
Arsenic Total Soil	Unit Rate	Each	16.00
Arsenic Water	Unit Rate	Each	18.00
Barium TCLP Soil	Unit Rate	Each	10.00
Barium Total Soil	Unit Rate	Each	10.00
Barium Water	Unit Rate	Each	12.00
Cadmium TCLP Soil	Unit Rate	Each	16.00
Cadmium Total Soil	Unit Rate	Each	16.00
Cadmium Water	Unit Rate	Each	18.00
Chromium TCLP Soil	Unit Rate	Each	10.00
Chromium Total Soil	Unit Rate	Each	10.00
Chromium Water	Unit Rate	Each	12.00
Cyanide TCLP Soil	Unit Rate	Each	28.00
Cyanide Total Soil	Unit Rate	Each	34.00
Cyanide Water	Unit Rate	Each	34.00
Iron TCLP Soil	Unit Rate	Each	10.00
Iron Total Soil	Unit Rate	Each	10.00
Iron Water	Unit Rate	Each	12.00
Lead TCLP Soil	Unit Rate	Each	16.00
Lead Total Soil	Unit Rate	Each	16.00

Lead Water	Unit Rate	Each	18.00
Mercury TCLP Soil	Unit Rate	Each	19.00
Mercury Total Soil	Unit Rate	Each	10.00
Mercury Total Water	Unit Rate	Each	26.00
Selenium TCLP Soil	Unit Rate	Each	16.00
Selenium Total Soil	Unit Rate	Each	16.00
Selenium Water	Unit Rate	Each	15.00
Silver TCLP Soil	Unit Rate	Each	10.00
Silver Total Soil	Unit Rate	Each	10.00
Silver Total Water	Unit Rate	Each	12.00
Metals TCLP Soil (a combination of all RCRA metals)	Unit Rate	Each	103.00
Metals Total Soil (a combination of all RCRA Metals)	Unit Rate	Each	94.00
Metals Water (a combination of all RCRA metals)	Unit Rate	Each	119.00
Soil preparation for Metals TCLP Soil (one fee per sample)	Unit Rate	Each	79.00
Soil preparation for Metals Total Soil (one fee per sample)	Unit Rate	Each	16.00
Water preparation for Metals Water (one fee per sample)	Unit Rate	Each	11.00
En Core Sampler, purge-and-trap sampler or equivalent sampling device	Unit Rate	Each	10.00
Sample Shipping (*maximum total amount for shipping for all samples collected in a clendar day)	Unit Rate	Day	50.00
Asphalt and Paving as Engineered Barrier, 2 inches	Unit Rate	Square Foot	1.65
Asphalt and Paving as Engineered Barrier, 3 inches	Unit Rate	Square Foot	1.86
Asphalt and Paving as Engineered Barrier, 4 inches	Unit Rate	Square Foot	2.38
Concrete as Engineered Barrier, any depth	Unit Rate	Square Foot	2.38
Replacement of Asphalt and Paving, 2 inches	Unit Rate	Square Foot	1.65
Replacement of Asphalt and Paving, 3 inches	Unit Rate	Square Foot	1.86
Replacement of Asphalt and Paving, 4 inches	Unit Rate	Square Foot	2.38
Replacement of Asphalt and Paving, 6 inches	Unit Rate	Square Foot	3.08
Replacement of Concrete, 2 inches	Unit Rate	Square Foot	2.45
Replacement of Concrete, 3 inches	Unit Rate	Square Foot	2.93
Replacement of Concrete, 4 inches	Unit Rate	Square Foot	3.41
Replacement of Concrete, 5 inches	Unit Rate	Square Foot	3.89
Replacement of Concrete, 6 inches	Unit Rate	Square Foot	4.36
Replacement of Concrete, 8 inches	Unit Rate	Square Foot	5.31
Destruction/Dismantling and Reassembly of Above Grade Structures	Lump Sum	Each	10000.00
Mileage	Time and Materials	MILE	0.32
Visqueen 20X100 Roll	Time and Materials	FOOT	0.75
55 Gallon Drums	Time and Materials	EACH	50.00
Absorbent Materials 25Lb/Bag	Time and Materials	BAG	15.00
Manifest	Time and Materials	EACH	3.00
Disposable Camera	Time and Materials	EACH	10.00
Polycoated Tyvek	Time and Materials	EACH	27.50
PVC Gloves	Time and Materials	PAIR	3.50
Neoprene Gloves	Time and Materials	PAIR	5.00
Nitrile Gloves	Time and Materials	PAIR	0.50

Latex Gloves	Time and Materials	PAIR	0.40
Grade D Breathing Air	Time and Materials	BOTTLE	40.00
Sawzall Blades	Time and Materials	EACH	2.95
OVA/HEPA Respirator Cartridges	Time and Materials	PAIR	16.50
Absorbent Socks Emergency Response	Time and Materials	EACH	30.00
Orange Safety Fence (50' Roll)	Time and Materials	EACH	85.00
Boot Covers	Time and Materials	EACH	5.00
Per Diem	Time and Materials	EACH	20.00
Headspace Analysis Containers	Time and Materials	EACH	0.15
Absorbent Pads	Time and Materials	EACH	1.05
Voa Sampling/Preservation Kit (9000-9001-9002)	Time and Materials	EACH	10.00
Ferrous Sulfate	Time and Materials	POUND	1.00
Per Diem	Time and Materials	EACH	20.00
Dedicated Poly Bailer	Time and Materials	EACH	20.00
Injection Sys Expendable Point	Time and Materials	EACH	5.00
Chemical Oxidation Compound	Time and Materials	LB	12.00
Chem. Oxidation Comp. Type 2	Time and Materials	LB	4.00
Poly Tubing	Time and Materials	FT	0.25
Silicone Tubing	Time and Materials	FT	3.00
1-1/2" Inch Absorbent Sock	Time and Materials	EACH	12.50
B&W Copies	Time and Materials	EACH	0.10
Color Copies	Time and Materials	EACH	1.25
Shelby Tubes 3" x 30"	Time and Materials	EACH	12.00
End Cap 3" Shelby Tubes	Time and Materials	EACH	0.40
Glass Drum Sampler	Time and Materials	EACH	4.50
Skid Steer With Concrete Break	Time and Materials	HOURL	35.00
Skid Steer	Time and Materials	HOURL	15.00
Skid Steer W/ Drilling Attatch	Time and Materials	HOURL	35.00
Backhoe	Time and Materials	DAY	200.00
Excavator	Time and Materials	DAY	775.00
Air Compressor (Trailerred)	Time and Materials	DAY	120.00
850 Dozer	Time and Materials	DAY	435.00
621 Wheel Loader	Time and Materials	DAY	445.00
Compost Spreader	Time and Materials	DAY	100.00
Skid Steer With Sweeper	Time and Materials	HOURL	35.00
26 Gal. Speed Air Compressor	Time and Materials	DAY	50.00
Concrete Saw (Walk Behind)	Time and Materials	DAY	100.00
115 Volt Generator	Time and Materials	DAY	50.00
2" Trash Pump	Time and Materials	DAY	50.00
Power/Pressure Washer	Time and Materials	DAY	75.00
Drilling Rig Pressure Washer	Time and Materials	DAY	50.00
Milwaukee Thunderbolt Hammer	Time and Materials	DAY	50.00
Laser Level	Time and Materials	DAY	60.00
Builders Level	Time and Materials	DAY	30.00
Eductor	Time and Materials	DAY	20.00
500 Gal. Poly Tank	Time and Materials	DAY	25.00
1000 Gal Poly Tank	Time and Materials	DAY	35.00
1500 Gal. Poly Tank	Time and Materials	DAY	45.00

Submersible Pump	Time and Materials	DAY	15.00
Oxy/Acetylene Torch Outfit	Time and Materials	DAY	40.00
Drum Vac.	Time and Materials	DAY	60.00
Sawzall	Time and Materials	DAY	30.00
Air Diaphragm Pump	Time and Materials	DAY	60.00
Full Face Air Purifying Respir	Time and Materials	DAY	25.00
Half Face Air Purifying Respir	Time and Materials	DAY	20.00
Full Face Supplied Air Respira	Time and Materials	DAY	45.00
Breathing Air Regulator	Time and Materials	DAY	25.00
30 Min. SCBA	Time and Materials	DAY	75.00
Lifting Cable	Time and Materials	DAY	15.00
Combustible Gas Indicator	Time and Materials	DAY	75.00
3" Trash Pump	Time and Materials	DAY	75.00
Traffic Control Devices (Set)	Time and Materials	DAY	40.00
17" X 19" Absorbent Pad	Time and Materials	EACH	1.25
In-Situ Injection System	Time and Materials	DAY	275.00
Tandem Dump	Time and Materials	HOURL	25.00
Tractor With Dump Trailer	Time and Materials	HOURL	32.50
Tractor With Lowboy Trailer	Time and Materials	HOURL	55.00
Service Truck With Tools	Time and Materials	DAY	60.00
Remediation Utility Vehicle	Time and Materials	DAY	60.00
Environmental Utility Vehicle	Time and Materials	DAY	60.00
Tanker Semi Truck	Time and Materials	HOURL	65.00
Cargo Trailer	Time and Materials	DAY	75.00
Dovetail Trailer	Time and Materials	DAY	50.00
5-Ton Utility Trailer	Time and Materials	DAY	45.00
Geoprobe	Time and Materials	HOURL	80.00
Drilling Rig Utility Trailer	Time and Materials	DAY	45.00
Drum Hauler Box Truck	Time and Materials	HOURL	18.50
F-800 Drill Rig	Time and Materials	HOURL	80.00
ATV With Utility Bed	Time and Materials	DAY	240.00
PC Camera	Time and Materials	DAY	25.00
Ph Meter	Time and Materials	DAY	35.00
Electronic Water Level Indicat	Time and Materials	DAY	30.00
Metal Dectecter	Time and Materials	DAY	25.00
Datalogger	Time and Materials	DAY	150.00
Transducer	Time and Materials	DAY	50.00
Grundfos Well Pump	Time and Materials	DAY	60.00
Colorimeter	Time and Materials	DAY	100.00
Colorimeter Reagent	Time and Materials	EACH	0.95
Photoionization Detector	Time and Materials	DAY	105.00
Hand Auger	Time and Materials	DAY	32.00
Free Product Removal System	Time and Materials	WEEK	250.00
Oil/Water Interface Meter	Time and Materials	DAY	50.00
Peristaltic Pump	Time and Materials	DAY	65.00
Bacterial Growth Test Kit	Time and Materials	EACH	4.00
Ezy Skimmer	Time and Materials	WEEK	50.00
Multi-Meter	Time and Materials	DAY	50.00

Site Survey Instrument/Equip.	Time and Materials	DAY	250.00
SECTION 2 - PROFESSIONAL SERVICES COSTS			
Engineer I	Time and Materials	Hour	75.00
Engineer II	Time and Materials	Hour	85.00
Engineer III	Time and Materials	Hour	100.00
Professional Engineer	Time and Materials	Hour	110.00
Senior Prof. Engineer	Time and Materials	Hour	130.00
Geologist I	Time and Materials	Hour	70.00
Geologist II	Time and Materials	Hour	75.00
Geologist III	Time and Materials	Hour	88.00
Professional Engineer	Time and Materials	Hour	92.00
Senior Prof. Geologist	Time and Materials	Hour	110.00
Scientist I	Time and Materials	Hour	60.00
Scientist II	Time and Materials	Hour	65.00
Scientist III	Time and Materials	Hour	70.00
Scientist IV	Time and Materials	Hour	75.00
Senior Scientist	Time and Materials	Hour	85.00
Project Manager	Time and Materials	Hour	90.00
Senior Project Manager	Time and Materials	Hour	100.00
Technician I	Time and Materials	Hour	45.00
Technician II	Time and Materials	Hour	50.00
Technician III	Time and Materials	Hour	55.00
Technician IV	Time and Materials	Hour	60.00
Senior Technician	Time and Materials	Hour	65.00
Account Technician I	Time and Materials	Hour	35.00
Account Technician II	Time and Materials	Hour	40.00
Account Technician III	Time and Materials	Hour	45.00
Account Technician IV	Time and Materials	Hour	50.00
Senior Acct. Technician	Time and Materials	Hour	55.00
Administrative Assistant I	Time and Materials	Hour	25.00
Administrative Assistant II	Time and Materials	Hour	30.00
Administrative Assistant III	Time and Materials	Hour	35.00
Administrative Assistant IV	Time and Materials	Hour	40.00
Senior Admin. Assistant	Time and Materials	Hour	45.00
Draftperson/CAD I	Time and Materials	Hour	40.00
Draftperson/CAD II	Time and Materials	Hour	45.00
Draftperson/CAD III	Time and Materials	Hour	50.00
Draftperson/CAD IV	Time and Materials	Hour	55.00
Senior Draftperson/CAD	Time and Materials	Hour	60.00
Professional Field Oversight	Unit Rate	Half Day	390.00