

CHAPTER 2890
DEPARTMENT OF COMMERCE
PETROLEUM TANK RELEASES

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2890.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the terms in this part have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 2a. **Applicant.** "Applicant" means a person seeking reimbursement of costs from the Minnesota petroleum tank release compensation fund.

Subp. 2b. **Board.** "Board" means the petroleum tank release compensation board.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 3a. **Consultant services.** "Consultant services" means the rendering of professional opinion, advice, or analysis regarding a release.

Subp. 3b. **Contractor services.** "Contractor services" means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical, plumbing, carpentry, and equipment.

Subp. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subp. 4a. **Limited use applicant.** "Limited use applicant" means an applicant who:

A. has not regularly sold petroleum to others;

B. seeks reimbursement for costs incurred in response to a release from a tank containing no more than 10,000 gallons of petroleum; and

C. is unlikely to have known of federal and state regulations applicable to the tank because of the nature of the applicant's business or use of the tank.

Subp. 5. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an

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interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 5a. **Prima facie unreasonable.** "Prima facie unreasonable" means unreasonable absent proof by a preponderance of the evidence.

Subp. 6. **Responsible person.** "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release, except as provided in Minnesota Statutes, section 115C.021, subdivision 2.

Subp. 7. **Volunteer.** "Volunteer" means a person who:

- A. is not a responsible person under Minnesota Statutes, section 115C.02;
- B. holds legal or equitable title to the property where a release occurred; and
- C. incurs reimbursable costs on or after May 23, 1989.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 13 SR 496; 14 SR 1928; 15 SR 2266; 16 SR 2684; 18 SR 1471; 20 SR 227*

2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE.

Subpart 1. **Regular meetings.** A regular meeting of the board must be scheduled at least four times a year. A scheduled meeting may be canceled if there is insufficient business.

Subp. 2. **Special meetings.** A special meeting may be called by the chair or by written request of three board members.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0030 VICE-CHAIR.

A vice-chair shall be elected by the board at the first regular board meeting of each calendar year. The vice-chair shall preside at regular and special meetings in the absence of the chair and perform other duties assigned by the board. If the vice-chair position becomes vacant, a vice-chair shall be elected at the next regularly scheduled board meeting.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 18 SR 1471*

2890.0040 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** A quorum shall consist of three board members.

Subp. 2. **Minutes.** Meetings shall be tape recorded and minutes prepared by staff.

Subp. 3. **Parliamentary procedure.** Except as specifically provided by statute or negotiation, Robert's Rules of Order shall govern questions that may arise at a meeting of the board.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0050 CONFLICT OF INTEREST.

A member of the board who has a direct or indirect financial or employment interest relating to a matter before the board, which interest is reasonably likely to affect impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. The abstention of a board member or members shall not prevent the remaining members from conducting a legal vote.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

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2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each applicant eligible for reimbursement may apply to the board for reimbursement of eligible costs.

Subp. 2. **Conditions for reimbursement.** A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release in terms of public health, welfare, and the environment.

Subp. 2a. [Repealed, 18 SR 1471]

Subp. 2b. [Repealed, 18 SR 1471]

Subp. 3. **Multiple applicants.** If there is more than one applicant who incurs reimbursable costs for a single release or at a single corrective action site, each applicant must apply separately for reimbursement. Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement.

Subp. 4. [Repealed, 18 SR 1471]

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 13 SR 496; 14 SR 1928; 15 SR 2266; 18 SR 1471*

2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

Subpart 1. **Amount of reduction.** Pursuant to Minnesota Statutes, section 115C.09, subdivision 3, paragraph (f), the board shall reduce the amount of reimbursement to be made to an applicant as follows:

A. The board shall reduce the amount of reimbursement for failure to comply with state and federal rules and regulations applicable to the tank as follows:

(1) by 15 percent for failure to provide adequate corrosion protection;

(2) by 15 percent for failure to provide release detection;

(3) by 15 percent for failure to provide spill or overfill control;

(4) by ten percent for failure to use a certified contractor;

(5) by ten percent for failure to provide prior notice of tank removal;

(6) by \$1,000 for failure to register an aboveground or underground tank.

The amount of the reduction shall be \$200, rather than \$1,000, for a limited use applicant unaware of the registration requirement; and

(7) by up to 50 percent for failure to comply with any state or federal rules or regulations applicable to the tank not specifically cited in this subpart.

B. For failure to report a release as required by Minnesota Statutes, section 115.061, the board shall consider the timeliness of the release reporting in determining the amount of the reduction. The board shall reduce the amount of reimbursement by a minimum of \$1,000. The minimum amount of the reduction shall be \$200, rather than \$1,000, for a limited use applicant unaware of the reporting requirement.

C. For failure to cooperate with the agency in responding to the release, the board shall reduce the amount of reimbursement by up to 50 percent.

D. For failure to exercise due care with regard to operation of the tank, the board shall reduce the amount of reimbursement by up to 50 percent.

Subp. 2. [Repealed, 18 SR 1471]

Subp. 2a. **Calculations of reductions.** Percentage or dollar reductions shall be applied as specified in this subpart. If the board imposes more than one dollar reduction on an application, the dollar amounts shall be added together and the total dollar amount of reduction shall be applied to the application. If the board imposes more than one percentage reduction on an application, the percentage amounts shall be added together and then applied to the reimbursement request to determine a dollar amount of the reduction. If the board imposes both percentage and dollar

amount reductions on an application, the dollar amount reductions shall be applied after the percentage reductions.

Subp. 3. **Deviations.** The board may increase or decrease the amount of reduction by up to 50 percent of the original amount of reimbursement, or use either dollar amounts or percentages for any reduction, based on the following factors:

- A. the likely environmental impact of the noncompliance;
- B. the deterrent effect of the award reduction on other tank owners and operators;
- C. the amount of reimbursement reduction recommended by the commissioner; and
- D. whether the noncompliance was negligent, knowing, or willful.

Subp. 4. **Multiple applications.**

A. When the board imposes a reduction in the form of a percentage, the percentage for that reduction shall continue to be imposed on all subsequent applications for the same release.

B. When the board imposes a reduction in the form of a dollar amount, the amount of the reduction shall be a one-time penalty. That dollar amount reduction shall not continue to be imposed on subsequent applications unless necessary to fully impose the reduction.

Statutory Authority: *MS s 115C.07*

History: *15 SR 2266; 18 SR 1471*

2890.0070 ELIGIBLE COSTS.

Subpart 1. **Reimbursable corrective actions.** Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. Emergency response and initial site hazard mitigation. Costs may include, but are not limited to, those necessary to abate acute risks to human health, safety, and the environment.

B. Temporary site hazard control measures. Costs may include, but are not limited to, temporary provision of drinking water and housing, initial abatement of vapors, and removal of free product.

C. Investigation and source identification including, but not limited to, collecting and analyzing soil samples, testing the groundwater, testing adjacent drinking water supplies, tank integrity testing, and engineering services.

D. Development of a corrective action plan in accordance with the commissioner's requirements.

E. Clean up of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Clean up must be performed in accordance with a corrective action plan approved by the commissioner.

Subp. 2. [Repealed, 16 SR 2684]

Subp. 3. **Documentation of eligible costs.** It is the responsibility of the applicant to obtain and maintain all records that document incurred costs. Among the records required are all invoices, time records, equipment records, receipts, proposals for consultant services, and bids for contractor services.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 14 SR 1928; 15 SR 2266; 16 SR 2684; 20 SR 227*

2890.0071 INELIGIBLE COSTS.

All costs associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment are ineligible costs. Among ineligible costs are:

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A. costs related to the repair or replacement of tanks, upgrading tanks, removal of tanks, or abandonment of tanks in place;

B. loss of income;

C. attorney's fees;

D. permanent relocation of residents;

E. decreased property values for the applicant's property;

F. reimbursement for the applicant's own time spent in planning and administering a corrective action plan;

G. aesthetic or site improvements;

H. work performed that is not in compliance with safety codes including, but not limited to, Occupational Safety and Health Administration requirements, well codes, and fire codes;

I. per diem charges for sites less than 60 miles from an office of the person providing consultant services or contractor services;

J. repair of buildings, roads, yards, fences, or other structures or land damaged by equipment used in the corrective action, unless the damage was necessary to access the petroleum contaminated soil;

K. costs for the demolition, disposal, removal, repair, or replacement of the following items, when the demolition, disposal, removal, repair, or replacement is necessary to remove, repair, upgrade, or replace a tank:

(1) clean overburden;

(2) concrete, asphalt, or other manmade surfacing;

(3) pump islands, canopies, lights, or any other aboveground structures;

or

(4) sewer lines, water lines, electrical lines, phone lines, fiber optic lines, or any other utilities;

L. costs for the removal of water from the excavation basin, unless mandated by the agency as a remedial action;

M. site restoration costs for clean fill in excess of the agency-approved amount of petroleum contaminated soil removed for disposal; or

N. administrative costs incurred in obtaining reimbursement from the board, including, but not limited to, compiling materials for and preparing applications to the board for reimbursement, responding to inquiries from the board or its staff, or appearing before the board.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0072 OVERVIEW OF RULES GOVERNING REASONABLENESS OF COSTS FOR CONSULTANT SERVICES.

The board shall approve for reimbursement only those costs for consultant services that meet the standards and requirements in parts 2890.0073 to 2890.0079. Part 2890.0073 sets forth the definition of terms related to consultant services. Parts 2890.0074 to 2890.0076 establish the requirement of a written proposal and invoice for each step of consultant services and the standard tasks and maximum costs for each step of consultant services. Part 2890.0077 states the requirements for competitive bidding in proposals for consultant services, and part 2890.0089 establishes standards for exemption from the competitive bidding requirement. Part 2890.0078 establishes criteria for the board in evaluating costs for consultant services that deviate from either the standard tasks or maximum costs for consultant services, or are higher than the costs stated in the written proposal for consultant services. Part 2890.0079 states the requirement for costs to be reasonable and necessary.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

CONSULTANT SERVICES REIMBURSEMENT

2890.0073 DEFINITIONS RELATED TO CONSULTANT SERVICES.

Subpart 1. **Scope.** As used in this part and parts 2890.0074 to 2890.0079, the terms defined in this part have the meanings given them.

Subp. 2. **Air emission testing.** "Air emission testing" means evaluation of air emissions from various groundwater or soil treatment systems to determine if the concentration meets the standard emission rate established by the agency.

Subp. 3. **Aquifer test.** "Aquifer test" means the design of a site-specific hydraulic response test and the collection of data obtained from the test including hydraulic conductivity, storativity, transmissivity, recharge times, radius of influence, and pumpability rates. This generally involves removal of water by pumping at a constant rate over a specified time period based on aquifer characteristics.

Subp. 4. **Background review.** "Background review" means a search of records to establish the site history. It includes gathering information from the applicant's records and public records. This information includes, but is not limited to, purchase and lease dates, operation dates, previous ownership, previous site use, current and previous underground storage tanks, current and previous waste oil tanks, types of products handled, current site status, tank and line testing results, inventory records, spill history, maintenance history, previous environmental assessments, and geologic setting.

Subp. 5. **CAD installation notification worksheet.** "CAD installation notification worksheet" means the completion and submission to the agency of a form that provides notification of Corrective Action Design (CAD) system start up, verifies system construction, and documents initial system emissions and operating parameters.

Subp. 6. **CAD system monitoring worksheet.** "CAD system monitoring worksheet" means the completion and submission to the agency of a form with equations and methods for calculating contaminant mass removal for various remediation technologies.

Subp. 7. **Contaminated soil stockpile sampling.** "Contaminated soil stockpile sampling" means soil sampling from the stockpile of petroleum contaminated soil.

Subp. 8. **Corrective action alternative.** "Corrective action alternative" means the development of a conceptual design of a system or scheme for cleanup of petroleum contamination at a site.

Subp. 9. **Data reduction.** "Data reduction" means the evaluation and interpretation of analytical and field data.

Subp. 10. **Delineation decision/work plan.** "Delineation decision/work plan" means the development of a plan of action to determine the size and severity of the petroleum contamination and to determine from the data gathered in the course of investigation whether the extent of the petroleum contamination has been defined. This task includes a recommendation letter to the applicant for additional assessment, or if no additional assessment is necessary, a letter recommending that to the applicant.

Subp. 11. **Draftsperson.** "Draftsperson" means a person with a trade school diploma and one or more years of experience in computer-assisted design.

Subp. 12. **Entry level professional.** "Entry level professional" means a person with:

A. a college degree in agricultural engineering, chemical engineering, civil engineering, environmental engineering, geological engineering, geotechnical engineering, soil science, geology, hydrogeology, or a related science, and zero to three years of experience in performing the activities listed in this subpart; or

B. a high school degree and a minimum of eight years of experience in performing a majority of the following activities:

- (1) report preparation;
- (2) field work preparation and planning;
- (3) supervision of site assessment activities;

- (4) system installation oversight;
- (5) limited data review and analysis; and
- (6) monitoring activities.

Subp. 13. **Equipment.** "Equipment" means the purchase or rental of equipment necessary to perform consultant services including, but not limited to, photoionization detectors, flame ionization detectors, electronic water level indicators, oil water interface indicators, sampling bailers, explosimeters, and carbon dioxide meters.

Subp. 14. **Excavation basin soil sampling.** "Excavation basin soil sampling" means soil sampling of petroleum contaminated soil as it is excavated from the perimeter and bottom of the excavation basin and obtaining representative samples for submission to a laboratory for chemical analysis.

Subp. 15. **Excavation report.** "Excavation report" means the preparation of a report submitted to the agency that documents petroleum contaminant concentrations encountered during the excavation process.

Subp. 16. **Field technician.** "Field technician" means a person who performs field work, including one or more of the following activities:

- A. field work preparation and planning;
- B. operation and maintenance of equipment;
- C. well oversight and development;
- D. waste disposal;
- E. decontamination of equipment;
- F. system installation oversight; and
- G. monitoring activities.

Subp. 17. **Groundwater pump and treat system design.** "Groundwater pump and treat system design" means the design of a remedial technology used to capture the contaminant plume by extracting groundwater and treating the effluent to meet discharge requirements.

Subp. 18. **Groundwater receptor survey.** "Groundwater receptor survey" means a qualitative survey performed to identify features such as surface water bodies and aquifer and water supply wells that potentially may be impacted if petroleum contamination is present.

Subp. 19. **Groundwater sampling.** "Groundwater sampling" means the purging of a well by removing the number of well volumes required by the agency, the filling and preserving of each sample vial, and water level measurement.

Subp. 20. **Groundwater sampling analysis.** "Groundwater sampling analysis" means quantifying the concentration of petroleum contaminants and inorganic compounds present in a groundwater sample.

Subp. 21. **Health and safety plan.** "Health and safety plan" means preparation of a site-specific document containing local, state, and federal safety data instructions and guidelines for health and safety.

Subp. 22. **Hydraulic conductivity estimate.** "Hydraulic conductivity estimate" means determining the rate at which groundwater can move through subsurface material.

Subp. 23. **Infiltration test.** "Infiltration test" means the performance and oversight of a test to determine the rate which water introduced at the surface will infiltrate to the subsurface.

Subp. 24. **Midlevel professional.** "Midlevel professional" means a person with:

- A. a college degree in agricultural engineering, chemical engineering, civil engineering, environmental engineering, geological engineering, geotechnical engineering, soil science, geology, hydrogeology, or a related science; registration as a professional engineer or other professional certification, if such certification is available; and

at least four years of experience in performing one or more of the activities listed in this subpart; or

B. a graduate degree in the environmental sciences; registration as a professional engineer or other professional certification, if such certification is available; and at least three years of experience in performing one or more of the following activities;

- (1) project management;
- (2) engineering/equipment design;
- (3) report preparation;
- (4) data review and analysis;
- (5) field work planning;
- (6) work plan preparation;
- (7) site inspection; and
- (8) off-site access.

Subp. 25. **Mileage.** "Mileage" means a charge per mile to transport individuals to or from the leaksite or other location necessary to provide consultant services.

Subp. 26. **Monitoring well.** "Monitoring well" means a well constructed for the purpose of measuring water levels and collecting representative groundwater samples.

Subp. 27. **MPCA conference call.** "MPCA conference call" means a conference call among the agency, the applicant, and the consultant.

Subp. 28. **Off-site access.** "Off-site access" means the process of obtaining permission from property owners other than the applicant to enter their property for the purpose of doing a remedial investigation or implementing a corrective action plan.

Subp. 29. **Passive bioremediation risk assessment.** "Passive bioremediation risk assessment" means the analysis of the effectiveness and risks involved in allowing microorganisms to break down petroleum products in the soil and groundwater naturally without the use of any corrective action technology.

Subp. 30. **Per diem.** "Per diem" means per day costs incurred by the consultant for meals and lodging when the distance to the leaksite makes it more cost-effective for the consultant to lodge overnight near the leaksite.

Subp. 31. **Piezometer installation.** "Piezometer installation" means the conversion of a small diameter soil boring to a nonpumping well used to measure the elevation of the water table or potentiometric surface.

Subp. 32. **Piezometer installation oversight.** "Piezometer installation oversight" means the oversight of the conversion of a small diameter soil boring to a nonpumping well used to measure the elevation of the water table or potentiometric surface.

Subp. 33. **Project management and administration.** "Project management and administration" means the documented management of the project. It includes preparing and submitting status reports, tracking regulatory issues, producing additional assessment or monitor-only recommendation letters, and managing subcontracts. It does not include field work or data analysis.

Subp. 34. **Remedial action decision.** "Remedial action decision" means the conferences between the consultant and the applicant at which the assessment data is discussed and, if appropriate, a conference call among the agency, the applicant, and the consultant.

Subp. 35. **RI/CAD report.** "RI/CAD report" means compilation of all data at the time the vertical and horizontal extent of the petroleum contamination has been determined. The CAD portion of the report must include all reduced data from the CAD field tests.

Subp. 36. **Senior level professional.** "Senior level professional" means a person with:

A. a college degree in agricultural engineering, chemical engineering, civil engineering, environmental engineering, geological engineering, geotechnical engineer-

ing, soil science, geology, hydrogeology, or a related science; registration as a professional engineer or other professional certification, if this certification is available; and at least eight years of experience in performing one or more of the activities listed in this subpart; or

B. a graduate degree in the environmental sciences; registration as a professional engineer or other professional certification, if the certification is available; and at least seven years of experience in performing one or more of the following activities:

- (1) project oversight;
- (2) project management;
- (3) aquifer characterization;
- (4) review of technical reports;
- (5) review of remedial plans; and
- (6) data review and analysis.

Subp. 37. **Site monitoring worksheet.** "Site monitoring worksheet" means the preparation and submission to the agency of a form providing information about groundwater or vapor impact.

Subp. 38. **Soil boring drilling.** "Soil boring drilling" means the drilling of holes in the ground to determine soil structure or to monitor for the presence of contaminants in soil.

Subp. 39. **Soil boring oversight.** "Soil boring oversight" means the oversight of the drilling of borings, including soil sampling, logging, and field screening of materials encountered during the installation of borings.

Subp. 40. **Soil borings.** "Soil borings" means holes drilled in the ground to determine the lithologic log or monitor for the presence of contaminants in soil.

Subp. 41. **Soil excavation corrective action plan.** "Soil excavation corrective action plan" means the design of a remediation technology that removes petroleum contaminated soils from the ground and treatment by landfarming, thin spreading, composting, incineration, or other agency-approved methods.

Subp. 42. **Soil field screening and sampling.** "Soil field screening and sampling" means the collection and screening of soil samples that are not collected or screened as part of excavation basin soil sampling, soil boring oversight, soil test pit oversight, or contaminated soil stockpile sampling.

Subp. 43. **Soil sampling.** "Soil sampling" means the collection of soil samples and the filling and, if necessary, preserving of each sample vial.

Subp. 44. **Soil sampling analysis.** "Soil sampling analysis" means quantifying the concentration of petroleum contaminants and inorganic compounds present in a soil sample.

Subp. 45. **Soil test pit oversight.** "Soil test pit oversight" means the oversight of soil test pits as defined in part 2890.0081, including soil sampling.

Subp. 46. **Soil treatment permitting.** "Soil treatment permitting" means preparation of the application for treatment of petroleum contaminated soil to be submitted to government and regulatory bodies.

Subp. 47. **Soil vapor extraction system design.** "Soil vapor extraction system design" means the design of a remediation technology that induces air flow from the subsurface and brings contaminants to the surface where they can be treated if necessary and discharged.

Subp. 48. **Soil vapor extraction system with groundwater sparging design.** "Soil vapor extraction system with groundwater sparging design" means the design of a remediation technology that removes volatile organic compounds from groundwater by forcing an air flow through a well screen placed in the aquifer which causes a bubbling effect in the groundwater and forces contaminants into the soils above the aquifer.

Subp. 49. **Sparging test.** "Sparging test" means the design and implementation of a site-specific saturated zone air injectability test and the collection of data gained from the test including flow rates, pressure requirements, and radius of influence of the system.

Subp. 50. **Surveying.** "Surveying" means surveying the locations and elevations of the soil borings and monitoring wells and preparing site maps. The locations of the site boundaries, aboveground features, and belowground features must be known with reasonable accuracy.

Subp. 51. **System installation oversight.** "System installation oversight" means the consultant's monitoring of the remedial system installation activities performed by the contractor to ensure that all design specifications are met, and discussion with the contractor of any design modifications or system layout changes.

Subp. 52. **System operation and maintenance.** "System operation and maintenance" means the operation and any necessary maintenance of the remediation system.

Subp. 53. **System startup/initial discharge sampling.** "System startup/initial discharge sampling" means a one-day trial run of the remediation system to ensure that the system and all its components are in proper running condition, and the collection of any initial discharge samples required by the agency.

Subp. 54. **Travel time.** "Travel time" means the time spent by the consultant to mobilize equipment and to travel to and from the leaksite or other location necessary to provide consultant services.

Subp. 55. **Vacuum enhanced groundwater extraction system design.** "Vacuum enhanced groundwater extraction system design" means the design of a combined remediation technology in which groundwater recovery is supplemented by applying vacuum pressure to a recovery well. Vacuum extraction may also remediate petroleum contaminated soil above the water table in the same manner as a soil vapor extraction system.

Subp. 56. **Vapor risk assessment and survey.** "Vapor risk assessment and survey" means the making of a determination whether the petroleum release has or could cause petroleum vapor accumulation in basements, sewer lines, or other confined spaces.

Subp. 57. **Vehicle cost.** "Vehicle cost" means the cost of a van or truck used to carry to the leaksite tools or equipment which cannot reasonably fit into a passenger car.

Subp. 58. **Vent point.** "Vent point" means a borehole screened in the subsurface, typically in the unsaturated zone, and used to extract petroleum vapors and induce clean air in the subsurface.

Subp. 59. **Vent point installation.** "Vent point installation" means the completion of a vent point from a completed soil boring.

Subp. 60. **Vent point installation oversight.** "Vent point installation oversight" means the oversight of the completion of a vent point from a completed soil boring.

Subp. 61. **Venting test.** "Venting test" means the design and implementation of a site-specific vapor extraction test and the collection of data gained from the test, including radius influenced by the system, discharge rates, and contaminant emission rate.

Subp. 62. **Waste disposal.** "Waste disposal" means the making of arrangements for the disposal of all waste generated at a leaksite, including disposable bailers, rubber gloves, bailer rope, and petroleum contaminated drill cuttings during assessment activity.

Subp. 63. **Water discharge compliance permitting.** "Water discharge compliance permitting" means preparation of an application for water discharge approval to the appropriate regulatory authorities.

Subp. 64. **Water level measurement.** "Water level measurement" means the calculation of groundwater elevation referenced to an established elevation.

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Subp. 65. **Well abandonment.** "Well abandonment" means the permanent discontinuation of a well according to applicable well codes.

Subp. 66. **Well abandonment oversight.** "Well abandonment oversight" means the time required to solicit competitive bids for the permanent discontinuation of a well according to applicable well codes.

Subp. 67. **Well installation.** "Well installation" means the completion of a monitoring well from a completed soil boring.

Subp. 68. **Well oversight and development.** "Well oversight and development" means the oversight of the conversion of completed soil borings to monitoring wells.

Subp. 69. **Well permitting.** "Well permitting" means obtaining permits to allow the drilling and installation of monitoring wells and filing well completion/installation records with state and local agencies.

Subp. 70. **Word processor.** "Word processor" means a person who operates a computer for word processing spreadsheets, statistical typing, correspondence, and report generation.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0074 WRITTEN PROPOSAL AND INVOICE REQUIRED FOR CONSULTANT SERVICES.

Subpart 1. **Written proposal.** The board shall consider as prima facie unreasonable costs incurred for consultant services for which the applicant has not obtained a written proposal for consultant services according to this part, unless the necessary services were required by an emergency, including the emergency abatement of free product, for which there was not sufficient time to obtain proposals. A written proposal for consultant services shall be approved by the applicant, as necessary, in the following steps: underground storage tank removal assessment, initial site assessment, additional site assessments, remedial investigation/corrective action design report, and remedial design/maintenance. The applicant shall approve the written proposal before incurring costs for each step of consultant services. Proposals for each step of consultant services shall be on a form prescribed by the board according to parts 2890.0072 to 2890.0079.

Subp. 2. **Invoice.** The board shall consider as prima facie unreasonable costs incurred for consultant services that are not billed to the applicant on an invoice form prescribed by the board. The invoice form prescribed by the board shall be consistent with the written proposal for consultant services and shall be according to parts 2890.0072 to 2890.0079.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0075 MR 1993 [Repealed, 20 SR 227]

2890.0075 REASONABLENESS OF WORK PERFORMED; STANDARD TASKS FOR EACH STEP OF CONSULTANT SERVICES.

Subpart 1. **Generally.** The board shall consider as prima facie unreasonable costs incurred for consultant services for work other than tasks specified in this part.

Subp. 2. **Underground storage tank removal assessment.** Notwithstanding part 2890.0071, item A, costs for an underground storage tank removal assessment may be incurred before an initial site assessment, but only when an underground storage tank is being removed and the site is discovered to have petroleum contaminated soil. The objectives of the underground storage tank removal assessment are to determine the volume of petroleum contaminated soil, determine the feasibility of excavating the petroleum contaminated soil, and allow for the excavation of petroleum contaminated soil to accommodate new tanks.

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The board shall consider as prima facie unreasonable costs incurred for an underground storage tank removal assessment other than costs for the following tasks or items: excavation basin soil sampling, soil test pit oversight, contaminated soil stockpile sampling, soil sampling analysis, travel time, mileage, vehicle cost, per diem, and equipment. If petroleum contaminated soil is excavated, an underground storage tank removal assessment may also include soil treatment permitting and an excavation report.

Subp. 3. **Initial site assessment.** The objectives of the initial site assessment are to determine the vertical and horizontal extent of petroleum contaminated soil, determine if groundwater has been impacted, determine the apparent source or sources of petroleum contamination, and establish any vapor and groundwater receptors. The initial site assessment shall consist of up to five soil borings with up to three of the five borings completed as monitoring wells. Monitoring wells may be completed only if petroleum contamination is found to be in contact with groundwater or bedrock, or if requested by the agency. The board shall consider as prima facie unreasonable costs incurred for an initial site assessment other than costs for the following tasks or items:

- A. project management and administration;
- B. health and safety plan;
- C. background review;
- D. soil field screening and sampling;
- E. soil treatment permitting;
- F. well permitting;
- G. surveying;
- H. soil test pit oversight;
- I. soil boring drilling;
- J. soil boring oversight;
- K. well installation;
- L. well oversight and development;
- M. groundwater sampling;
- N. piezometer installation;
- O. piezometer installation oversight;
- P. vapor risk assessment and survey;
- Q. groundwater receptor survey;
- R. water level measurement;
- S. data reduction;
- T. waste disposal;
- U. delineation decision/work plan;
- V. remedial action decision, if applicable;
- W. soil sampling analysis;
- X. groundwater sampling analysis; and
- Y. other:
 - (1) travel time;
 - (2) mileage;
 - (3) vehicle cost;
 - (4) per diem; and
 - (5) equipment.

Subp. 4. **Additional site assessment.** Costs for an additional site assessment may be incurred only if the initial site assessment failed to determine the vertical and horizontal extent of petroleum contaminated soil. The objectives of the additional site assessment are the same as the objectives for the initial site assessment. The additional site assessment shall consist of up to three soil borings, with all completed as

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monitoring wells if the petroleum is found to be in contact with the groundwater. The applicant shall continue to obtain a proposal for each additional site assessment until the vertical and horizontal extent of petroleum contamination has been determined. The board shall consider as prima facie unreasonable costs incurred for an additional site assessment other than costs for the following tasks or items:

- A. project management and administration;
- B. soil field screening and sampling;
- C. well permitting;
- D. off-site access;
- E. surveying;
- F. soil boring drilling;
- G. soil boring oversight;
- H. well installation;
- I. well oversight and development;
- J. groundwater sampling of wells installed in the additional site assessment;
- K. groundwater sampling on a quarterly basis of wells installed in the initial site assessment;
- L. piezometer installation;
- M. piezometer installation oversight;
- N. water level measurement;
- O. data reduction;
- P. waste disposal;
- Q. delineation decision/work plan;
- R. remedial action decision;
- S. soil sampling analysis;
- T. groundwater sampling analysis; and
- U. other:
 - (1) travel time;
 - (2) mileage;
 - (3) vehicle cost;
 - (4) per diem; and
 - (5) equipment.

Subp. 5. **Remedial investigation/corrective action design report.** The objective of the remedial investigation/corrective action design report is to prepare a report either recommending no further corrective action or recommending a specific plan for further corrective action. If the consultant recommends no further corrective action, the board shall consider as prima facie unreasonable costs incurred for a remedial investigation/corrective action design report other than costs for the submission to the agency of an RI/CAD report which proposes and provides justification for no further action.

If the consultant recommends further corrective action, the further objectives of this step are to conduct applicable field and pilot tests and to prepare an RI/CAD report for submission to the agency. The report must present three corrective action alternatives specific to the applicant's site, evaluate these three alternatives, and recommend the most cost-effective alternative. The evaluation of the three corrective action alternatives must set forth long-term costs and separate dollar amounts for consulting and contracting services. Soil removal and treatment is one corrective action alternative whether the soil is landfarmed, thin spread, composted, incinerated, or treated by other approved means.

If the consultant recommends further corrective action, the board shall consider as prima facie unreasonable costs incurred for a remedial investigation/corrective action design report other than costs for the following tasks or items:

- A. project management and administration;
- B. aquifer test:
 - (1) hydraulic conductivity estimate;
 - (2) soil boring drilling;
 - (3) well installation;
 - (4) well oversight and development;
 - (5) well permitting;
 - (6) data reduction;
- C. piezometer installation;
- D. piezometer installation oversight;
- E. venting test:
 - (1) soil boring drilling;
 - (2) vent point installation;
 - (3) vent point installation oversight;
 - (4) data reduction;
- F. sparging test:
 - (1) soil boring drilling;
 - (2) well installation;
 - (3) well oversight and development;
 - (4) data reduction;
- G. infiltration;
- H. groundwater sampling;
- I. surveying;
- J. data reduction;
- K. corrective action alternative;
- L. passive bioremediation risk assessment;
- M. site monitoring worksheet;
- N. MPCA conference call;
- O. RI/CAD report;
- P. waste disposal;
- Q. soil sampling analysis;
- R. groundwater sampling analysis; and
- S. other:
 - (1) travel time;
 - (2) mileage;
 - (3) vehicle cost;
 - (4) per diem; and
 - (5) equipment.

Subp. 6. **Remedial design/maintenance.** Costs for remedial design/maintenance may be incurred only if the agency has approved a corrective action design for the site. The objectives of remedial design/maintenance are to develop site-specific drawings, specifications, and schedules consistent with the corrective action design approved by the agency; initiate permitting activities; assist the applicant in obtaining contractor services for the implementation of the system for corrective action; verify and document that installation of the system for corrective action is consistent with the design; and conduct up to one year of operating, monitoring, and maintaining the system for corrective action.

The board shall consider as prima facie unreasonable costs incurred for remedial design/maintenance other than costs for the following tasks or items:

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- A. project management and administration;
- B. groundwater pump and treat system design;
- C. soil excavation corrective action plan;
- D. soil vapor extraction system design;
- E. soil vapor extraction system with groundwater sparging design;
- F. vacuum enhanced groundwater extraction system design;
- G. system installation oversight;
- H. system startup/initial discharge sampling;
- I. air emission testing;
- J. water discharge compliance permitting;
- K. CAD installation notification worksheet;
- L. groundwater sampling;
- M. soil field screening and sampling;
- N. water level measurement;
- O. site monitoring worksheet;
- P. CAD system monitoring worksheet;
- Q. system operation and maintenance;
- R. data reduction;
- S. well abandonment;
- T. well abandonment oversight;
- U. soil sampling analysis;
- V. groundwater sampling analysis; and
- W. other:
 - (1) travel time;
 - (2) mileage;
 - (3) vehicle cost;
 - (4) per diem; and
 - (5) equipment.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0076 MAXIMUM COSTS FOR CONSULTANT SERVICES.

Subpart 1. **Maximum labor charges.** The board shall consider as prima facie unreasonable costs incurred for consultant services either in excess of the amounts specified in the proposal for consultant services or in excess of the following maximum charges, whichever is less:

- A. air emission testing has a maximum cost of two hours per technology employed at the leaksite per quarter;
- B. aquifer tests have a maximum cost of 24 hours per test;
- C. background review has a maximum cost of eight hours per leaksite;
- D. CAD installation notification worksheet has a maximum cost of six hours per report;
- E. CAD system monitoring worksheet has a maximum cost of two hours per worksheet per technology employed at the leaksite;
- F. contaminated soil stockpile sampling has a maximum charge of four hours per leaksite;
- G. corrective action alternative has a maximum cost of \$1,000 per leaksite;
- H. data reduction has a maximum cost of six hours plus six hours per technology employed at the leaksite per test;

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I. delineation decision/work plan has a maximum cost of two hours per leaksite;

J. excavation basin soil sampling has a maximum cost of two hours per tank;

K. excavation report has a maximum charge of five hours per leaksite;

L. groundwater pump and treat system design has a maximum cost of \$3,500;

M. groundwater receptor survey has a maximum cost of four hours per leaksite;

N. groundwater sampling has a maximum cost of 1-1/2 hours per well per sampling event;

O. health and safety plan has a maximum cost of \$250;

P. hydraulic conductivity estimate has a maximum cost of four hours per test;

Q. infiltration test has a maximum cost of one hour per test;

R. MPCA conference call has a maximum cost of two hours per leaksite;

S. off-site access has a maximum cost of ten hours per leaksite;

T. passive bioremediation risk assessment has a maximum cost of \$1,000;

U. piezometer installation oversight has a maximum cost of four hours per piezometer;

V. project management and administration shall be reimbursed only for actual hours spent on this task with a maximum cost of (1) 20 percent of total consultant services labor charges, inclusive of the cost for hours spent on project management and administration, or (2) \$200 per proposal, whichever is greater;

W. remedial action decision has a maximum cost of four hours per leaksite;

X. RI/CAD report has a maximum cost of 50 hours if the report recommends no further corrective action and a maximum of 65 hours if the report recommends further corrective action;

Y. site monitoring worksheet has a maximum cost of four hours per worksheet;

Z. soil boring oversight has a maximum cost of two hours per boring;

AA. soil excavation corrective action plan has a maximum cost of \$500;

BB. soil field screening and sampling shall be reimbursed only for actual hours spent on this task;

CC. soil test pit oversight has a maximum cost of one hour per test pit;

DD. soil treatment permitting has a maximum cost of two hours per leaksite;

EE. soil vapor extraction system design has a maximum cost of \$3,000;

FF. soil vapor extraction system with groundwater sparging design has a maximum cost of \$3,500;

GG. sparging test has a maximum cost of 16 hours per leaksite;

HH. surveying has a maximum cost of two hours per step of consultant services;

II. system installation oversight shall be reimbursed only for actual hours spent on this task with a maximum cost of 25 percent of the contractor's time on site installing the system;

JJ. system operation and maintenance shall be reimbursed only for actual hours spent on this task and for the cost of materials;

KK. system startup/initial discharge sampling has a maximum cost of eight hours per leaksite;

LL. travel time has a maximum cost per hour of the maximum hourly rate specified for the traveler's services in subpart 2;

MM. vacuum enhanced groundwater extraction system design has a maximum cost of \$4,000;

NN. vapor risk assessment and survey has a maximum cost of four hours per leaksite;

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OO. vent point installation oversight has a maximum cost of two hours per vent point;

PP. venting test has a maximum cost of 16 hours per leaksite;

QQ. waste disposal has a maximum cost of three hours per leaksite;

RR. water discharge compliance permitting has a maximum cost of 12 hours per permit application process and two hours per periodic discharge report submittal;

SS. water level measurement has a maximum cost of .25 hours per well;

TT. well abandonment oversight has a maximum cost of .5 hours per well;

UU. well oversight and development has a maximum cost of four hours per well, except when done in connection with aquifer tests when it shall have a maximum cost of eight hours per well; and

VV. well permitting has a maximum cost of .5 hours per well.

Subp. 2. **Maximum hourly rates.** The board shall consider as prima facie unreasonable hourly rate charges for consultant services in excess of the following: senior level professional at \$110 per hour, midlevel professional at \$85 per hour, entry level professional at \$60 per hour, field technician at \$55 per hour, draftsperson at \$45 per hour, and word processor at \$35 per hour.

Subp. 3. **Allowable level of expertise.** The board shall consider as prima facie unreasonable costs incurred for consultant services when the work is performed by an individual with a level of expertise other than as contained in items A to E.

A. Corrective action alternative, equipment, groundwater pump and treat system design, health and safety plan, mileage, MPCA conference call, passive bioremediation risk assessment, per diem, project management and administration, RI/CAD report, soil excavation corrective action plan, soil vapor extraction system design, soil vapor extraction system with groundwater sparging design, travel time, vacuum enhanced groundwater extraction system design, vehicle cost, and well abandonment shall be performed by one or more of the following:

- (1) a senior level professional;
- (2) a midlevel professional;
- (3) an entry level professional;
- (4) a field technician;
- (5) a draftsperson; and
- (6) a word processor.

B. Delineation decision/work plan and remedial action decision shall be performed by one or more of the following:

- (1) a senior level professional;
- (2) a midlevel professional;
- (3) an entry level professional; and
- (4) a field technician.

C. CAD installation notification worksheet, CAD system monitoring worksheet, off-site access, system installation oversight, system startup/initial discharge sampling, and well abandonment oversight shall be performed by a midlevel professional.

D. Air emission testing, aquifer test, contaminated soil stockpile sampling, data reduction, excavation basin soil sampling, excavation report, groundwater sampling, hydraulic conductivity estimate, infiltration test, soil boring oversight, soil field screening and sampling, soil test pit oversight, soil treatment permitting, sparging test, surveying, system operation and maintenance, vapor risk assessment and survey, venting test, water discharge compliance permitting, water level measurement, and well permitting shall be performed by an entry-level professional and/or a field technician.

E. Background review, groundwater receptor survey, piezometer installation oversight, site monitoring worksheet, vent point installation oversight, waste disposal, and well oversight and development shall be performed by an entry level professional.

Notwithstanding items A to E, the board shall not consider as prima facie unreasonable tasks performed by an individual with a higher level of expertise than permitted under this subpart if the total charges for the tasks performed by the individual do not exceed the total cost that could have been charged under this part for an individual with the level of expertise permitted to perform the task under this subpart.

Subp. 4. **Maximum analytical, drilling, and well charges.** The board shall consider as prima facie unreasonable costs incurred for groundwater sampling analysis, soil sampling analysis, soil boring drilling, piezometer installation, vent point installation, well abandonment, or well installation in excess of the amount specified in the proposal for consultant services.

Subp. 5. **Maximum nonlabor charges.** The board shall consider as prima facie unreasonable costs incurred for consultant services in excess of the following maximum charges:

A. mileage has a maximum cost of the rate per mile specified as the business standard mileage rate for passenger automobile use in Internal Revenue Service Procedure 94-73, 1994-52 I.R.B. 23, which is incorporated by reference in this part, and was issued in 1994 by the Internal Revenue Service under authority in Code of Federal Regulations, title 26, section 1.274(d)-1, and is updated on an annual basis by the Internal Revenue Service. Two copies of the document are located in the state law library;

B. vehicle cost has a maximum cost of 35 cents per mile or \$50 per day, whichever is greater;

C. per diem has a maximum cost of \$70 per day or actual cost, whichever is less; and

D. equipment has a maximum cost of the following:

(1) for a disposable item, the cost to purchase the item; or

(2) for a reusable item, the cost to purchase the item or to rent it for the amount of time necessary to transport and use it, whichever is less.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0077 COMPETITIVE BIDDING REQUIREMENTS FOR CONSULTANT SERVICES PROPOSALS.

Subpart 1. **Generally; dollar cost bidding.** The applicant shall obtain written competitive proposals for consultant services according to this part. All items on the consultant proposal shall be bid by dollar amount per unit of service.

Subp. 2. **Underground storage tank removal assessment.** An applicant is not required to seek competing proposals from consultants for an underground storage tank removal assessment.

Subp. 3. **Initial site assessment.** The applicant shall obtain at least two written competitive proposals for consultant services for an initial site assessment according to parts 2890.0072 to 2890.0079. The proposals shall be on a form prescribed by the board according to parts 2890.0072 to 2890.0079. The proposals shall comply with all requirements of parts 2890.0072 to 2890.0079.

Subp. 4. **Subsequent steps.** After the initial site assessment step, the applicant is not required to seek competing proposals from consultants other than the consultant performing the prior step of consultant services if:

A. the applicant continues to use the same consultant that performed services for the prior step;

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B. the consultant that performed services for the prior step does not increase its hourly rates over the amounts stated in that consultant's proposal for the prior step; and

C. the consultant that performed services for the prior step does not increase its rates for analytical, drilling, and well services identified in part 2890.0076, subpart 4, over the amounts stated in that consultant's proposal for the prior step.

If the applicant seeks competitive proposals after the initial site assessment step, the applicant shall obtain at least two written proposals for consultant services for the appropriate step of consultant services according to parts 2890.0072 to 2890.0079. The proposals shall be on a form prescribed by the board according to parts 2890.0072 to 2890.0079, and the proposal shall comply with all requirements of parts 2890.0072 to 2890.0079.

Subp. 5. Drilling costs.

A. Soil boring drilling shall be bid based on the assumption of drilling to a depth of 30 feet in unconsolidated soil with sampling at five-foot intervals. However, if the applicant knows, determines, or reasonably suspects that the specific site does not contain unconsolidated soil or that borings of a depth of 30 feet with sampling at five-foot intervals would not meet the purpose of drilling the borings, the applicant must make substantial efforts to obtain a minimum of two written competitive proposals for consultant services based on substantially similar assumptions as to the characteristics of the site. These proposals shall specifically state the assumptions of the proposal as to soil conditions, drilling depths, and drilling intervals, and provide a detailed explanation of the basis for those assumptions.

B. Costs for soil boring drilling shall be bid by cost per foot.

Subp. 6. **Lowest cost proposal.** Except as provided in part 2890.0078, the board shall consider as prima facie unreasonable total costs for consultant services in excess of the total cost in the lowest competitive proposal for consultant services based on the use of the same technology, and in the case of proposals involving soil borings, substantially similar assumptions as to number of soil borings, number of monitoring wells, soil conditions, drilling depth, and sampling intervals, unless the applicant demonstrates that the services to be performed or the selected consultant's qualifications justify the selection of a higher cost proposal. Among the factors relevant to the qualifications of a consultant are education, experience, certifications and registrations, health and safety training, insurance, availability, and references. The board shall consider costs for a consultant service in the lowest overall competitive proposal as a reasonable amount to charge for a specific task or item if the costs for that task or item do not exceed the maximum costs stated in part 2890.0076.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0078 DEVIATIONS FROM STANDARD TASKS AND MAXIMUM COSTS FOR CONSULTANT SERVICES.

Subpart 1. Deviations from standard tasks in proposals.

A. The board shall not consider as prima facie unreasonable tasks performed and costs incurred to implement a technology other than soil borings if:

(1) the tasks and associated costs to implement that alternative technology are identified in the proposal prior to approval by the applicant; and

(2) the board determines that the applicant has established that the alternative approach:

(a) met the objectives for that step of consultant services; and

(b) resulted in lower total reimbursed costs, as compared to an approach using soil borings.

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B. The board shall not consider as prima facie unreasonable consultant services costs for tasks additional to or different than those specified in part 2890.0075 if:

(1) the proposal accepted by the applicant prior to the provision of consultant services specifically states the additional or different tasks to be performed and provides a detailed explanation of the reasons for these additional or different tasks; and

(2) the applicant demonstrates that the additional or different tasks:

(a) met the objectives for that step of consultant services; and

(b) were essential to the completion of the objectives for that step of consultant services or were more cost-effective than the standard tasks for that step of consultant services.

C. The board shall not consider as prima facie unreasonable consultant services charges for a higher number of hours spent performing a task or a higher dollar cost for a task than the number of hours or dollar costs set as the maximum cost for that task in part 2890.0076, subpart 1, if:

(1) the proposal accepted by the applicant prior to the provision of consultant services specifically states that the amount exceeds the maximum cost limits and provides a detailed explanation of the reasons for the higher number of hours or dollar costs; and

(2) the applicant demonstrates that the higher number of hours or dollar costs:

(a) were justified by unusual conditions existing at the applicant's site; and

(b) were essential to the completion of the objectives for that step of consultant services.

D. The board shall not consider as prima facie unreasonable consultant services costs in excess of the maximum costs for soil boring oversight in part 2890.0076, subpart 4, if:

(1) the applicant knew, determined, or reasonably suspected prior to accepting a proposal that the specific site does not contain unconsolidated soil or that borings of a depth of 30 feet with sampling at five-foot intervals would not meet the purpose of drilling the borings;

(2) the costs in excess of maximum costs result from depth of drilling greater than 30 feet, or greater drilling costs due to consolidated soil or unusual subsurface conditions;

(3) the proposal accepted by the applicant prior to the provision of consulting services specifically states the assumptions of the proposal as to soil conditions, drilling depths, and drilling intervals, and the proposal provides a detailed explanation of the basis for those assumptions; and

(4) the applicant demonstrates that the applicant has established that the costs incurred for consultant services related to drilling were reasonable given the actual conditions for drilling at that site.

Subp. 2. Deviations from standard tasks or maximum costs after proposal approved by applicant.

A. The board shall not consider as prima facie unreasonable tasks performed that are different than or in addition to the tasks specified in a proposal for consultant services approved by the applicant if:

(1) the applicant approves a change order for the different or additional tasks;

(2) the different or additional tasks were required by circumstances beyond the control of the consultant or applicant that could not have been reasonably anticipated at the time the proposal was accepted by the applicant; and

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(3) the applicant demonstrates that the applicant has established that the different or additional tasks:

- (a) met the objectives for that step of consultant services; and
- (b) were essential to complete the objectives for that step of consultant services or were more cost-effective than the standard tasks for that step of consultant services.

B. The board shall not consider as prima facie unreasonable consultant services charges for a higher number of hours spent performing a task or a higher dollar cost for a task than the number of hours or dollar costs specified for that task in a proposal approved by the applicant if:

(1) the applicant approves a change order for the higher number of hours or dollar costs;

(2) the higher number of hours or dollar costs for the task were required by circumstances beyond the control of the consultant or applicant that could not have been reasonably anticipated at the time the proposal was accepted by the applicant; and

(3) the applicant demonstrates that the applicant has established that the higher number of hours or dollar costs were essential to complete the objectives for that step of consultant services.

C. Notwithstanding items A and B, the board shall not consider as prima facie unreasonable higher charges or a higher number of hours for consultant services for soil boring drilling and soil boring oversight than the costs specified in a proposal approved by the applicant if:

(1) the applicant approves a change order for the additional drilling costs;

(2) the higher costs were required by circumstances beyond the control of the consultant or applicant that could not have been reasonably anticipated at the time the proposal was accepted by the applicant;

(3) the change order is limited to:

- (a) depth of drilling greater than specified in the proposal;
- (b) redrilled borings due to subsurface conditions; and
- (c) other greater drilling costs due to type of soil other than that assumed in the proposal; and

(4) the applicant demonstrates that the applicant has established that the higher number of hours were essential to complete the objectives for that step of consultant services.

D. The applicant shall approve all change orders on a form prescribed by the board. The change order shall contain the following:

(1) a detailed description of the different or additional tasks and/or higher number of hours;

(2) the reason for the proposed changes from the original proposal;

(3) the original proposal amount and the revised proposal amount; and

(4) signatures of the applicant and the consultant.

Subp. 3. **Additional or different tasks approved by the agency.** Notwithstanding subparts 1 and 2, the board shall not consider as prima facie unreasonable tasks performed that are different than or in addition to those specified in part 2890.0075 or specified in a proposal for consultant services approved by the applicant if the agency states in writing that the performance of those tasks is necessary and appropriate for the completion of the corrective action.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

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2890.0079 REASONABLE, NECESSARY, AND ACTUAL CONSULTANT SERVICES COSTS.

Notwithstanding parts 2890.0073 to 2890.0078, the board shall reimburse applicants only for consultant services tasks and costs necessary for corrective action at the applicant's site, only for consultant services costs that are reasonable, and only for actual hours spent by the consultant performing tasks when consultant services are charged based on the consultant's time.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

CONTRACTOR SERVICES STANDARDS

2890.0080 MR 1993 [Repealed, 20 SR 227]

2890.0080 OVERVIEW OF RULES GOVERNING REASONABLENESS OF COSTS FOR CONTRACTOR SERVICES.

The board shall approve for reimbursement only those costs for contractor services that meet the standards and requirements in parts 2890.0081 to 2890.0086. Part 2890.0081 sets forth the definitions of terms related to contractor services. Part 2890.0082 states the maximum costs for specific contractor services. Part 2890.0083 establishes the requirement of competitive written bids for contractor services, and part 2890.0089 establishes standards for exemption from the competitive bidding requirement. Part 2890.0084 establishes criteria for the board in evaluating costs for contractor services that deviate from the maximum costs for contractor services. Part 2890.0085 states the requirements for costs to be reasonable and necessary. Part 2890.0086 states the need for use of a standardized invoice form.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0081 DEFINITIONS RELATED TO CONTRACTOR SERVICES.

Subpart 1. **Scope.** As used in this part and in parts 2890.0082 to 2890.0086, the terms defined in this part have the meanings given them.

Subp. 2. **Clean fill purchase, transportation, and installation.** "Clean fill purchase, transportation, and installation" means the purchase, transportation, placement, and compaction of soil necessary to replace excavated petroleum contaminated soil.

Subp. 3. **Compaction.** "Compaction" means the densification of soils by the application of mechanical energy.

Subp. 4. **Disking.** "Disking" means the periodic tilling of landspread petroleum contaminated soil to aerate the soil.

Subp. 5. **Excavation.** "Excavation" means utility clearance and all necessary equipment and labor to remove petroleum contaminated soil and any overburden and surfacing which must be displaced in order to access the petroleum contaminated soil.

Subp. 6. **Hauling.** "Hauling" means the transportation and unloading of:

A. petroleum contaminated soil from the leaksite to an agency-approved stockpiling site and/or soil disposal location; and

B. concrete, asphalt, or debris from the leaksite to a disposal location.

Subp. 7. **Landfarmed soil sampling.** "Landfarmed soil sampling" means the periodic collection and testing of soil samples from the landfarming site.

Subp. 8. **Landfarming.** "Landfarming" consists of the following costs or activities:

A. costs for use of land;

B. costs for any permits necessary for the land application of the petroleum contaminated soil;

C. costs for fertilizer;

D. separation of rocks and debris from the petroleum contaminated soil;
 E. spreading of petroleum contaminated soil and incorporation with native soil;

F. periodic disking of soil;

G. landfarmed soil sampling; and

H. periodic reporting of the landfarmed soil sampling results.

Subp. 9. **Loading.** "Loading" means all necessary equipment and labor required to:

A. load petroleum contaminated soil into trucks at the leaksite;

B. load petroleum contaminated soil into a stockpile at the leaksite; and

C. load petroleum contaminated soil into trucks at an off-site stockpiling location.

Subp. 10. **Mobilization.** "Mobilization" means:

A. the preparation and transport to and from the leaksite of any necessary excavation equipment after the release is discovered;

B. the preparation and transport to and from an off-site stockpiling location, if applicable, of equipment needed to consolidate the stockpile;

C. the preparation and transport to and from an off-site stockpiling location, if applicable, of equipment needed to load petroleum contaminated soil into trucks for hauling to a disposal location; and

D. the preparation and transport to and from the landfarming site, if applicable, of any equipment necessary for spreading of petroleum contaminated soil.

Subp. 11. **Off-site stockpiling.** "Off-site stockpiling" means:

A. all equipment, materials, and labor necessary for stockpiling on property other than the leaksite or the final disposal site; and

B. the cost to rent the temporary storage site.

Subp. 12. **Overburden.** "Overburden" means any soil which must be replaced in order to access the petroleum contaminated soil.

Subp. 13. **Soil test pits.** "Soil test pits" means the excavation, backfilling, and compaction, if necessary, of small pits around the tank basin at the time of tank removal to determine the vertical and horizontal extent of petroleum contaminated soil.

Subp. 14. **Spreading.** "Spreading" means the labor and equipment necessary for the placement of petroleum contaminated soil at the landfarming site.

Subp. 15. **Stockpiling.** "Stockpiling" means the temporary storage of petroleum contaminated soil.

Subp. 16. **System installation.** "System installation" means the labor and equipment necessary to install the remediation system.

Subp. 17. **Thermal treatment.** "Thermal treatment" means the burning of petroleum contaminated soil.

Subp. 18. **Treatment of petroleum contaminated water from the excavation basin.** "Treatment of petroleum contaminated water from the excavation basin" means the cost to treat petroleum contaminated water from the excavation basin.

Subp. 19. **Utility clearance.** "Utility clearance" means the process of locating aboveground and belowground utilities and identifying all underground storage tanks and associated lines, pumps, and dispensers.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0082 MAXIMUM COSTS FOR CONTRACTOR SERVICES.

Subpart 1. **Maximum costs in "Means" book.** The board shall consider as prima facie unreasonable costs incurred either in excess of the amounts specified in the bid

for contractor services or in excess of the amounts stated in the most recent edition of "Means Heavy Construction Cost Data," as of the date the costs were incurred, whichever is less, for mobilization; hauling; and cutting, removal, and replacement of concrete and asphalt. "Means Heavy Construction Cost Data" (ed. Kornelis Smit et al., publ. R.S. Means Company, Inc., 1993), is incorporated by reference in this part, and is updated on an annual basis. Two copies of the document are located in the State Law Library.

Subp. 2. **Maximum costs for test pits, excavation, loading, clean fill, off-site stockpiling, landfarming, and thermal treatment.** The board shall consider as prima facie unreasonable costs incurred for the following contractor services either in excess of the amount specified in the bid for contractor services or in excess of the following maximum charges, whichever is less:

- A. soil test pits has a maximum cost of \$100 per test pit;
- B. excavation has a maximum cost of \$7 per cubic yard;
- C. loading has a maximum cost of \$3 per cubic yard;
- D. clean fill purchase, transportation, and installation has a maximum cost of \$15 per cubic yard;
- E. off-site stockpiling has a maximum cost of \$2.50 per cubic yard;
- F. landfarming has a maximum cost that shall be determined by the county of disposal site as follows:

(1) Becker, Beltrami, Benton, Blue Earth, Brown, Cass, Chisago, Clay, Clearwater, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Houston, Hubbard, Isanti, Kanabec, Kittson, Lake of the Woods, Le Sueur, Mahnommen, Marshall, Martin, Mille Lacs, Morrison, Mower, Nicollet, Norman, Olmsted, Otter Tail, Pennington, Pine, Polk, Pope, Red Lake, Rice, Roseau, Sherburne, Sibley, Stearns, Steele, Stevens, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, and Wright: \$20 per cubic yard;

(2) Anoka, Big Stone, Carver, Chippewa, Cottonwood, Dakota, Hennepin, Jackson, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, McLeod, Meeker, Murray, Nobles, Pipestone, Ramsey, Redwood, Renville, Rock, Scott, Swift, Washington, and Yellow Medicine: \$25 per cubic yard; and

(3) Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and St. Louis: \$30 per cubic yard; and

G. thermal treatment of petroleum contaminated soil has a maximum cost of \$40 per cubic yard.

Notwithstanding item G, if the type of soil to be treated requires the thermal treatment facility to operate at a reduced rate of production, the maximum reimbursable cost for thermal treatment of petroleum contaminated soil shall be \$50 per cubic yard.

Subp. 3. **Maximum analytical, drilling, and well charges.** To the extent that groundwater sampling analysis, soil sampling analysis, soil boring drilling, piezometer installation, vent point installation, well abandonment, and well installation constitute contractor services, reimbursement of costs for these services shall be governed by parts 2890.0072 to 2890.0079. Analytical services performed as part of landfarmed soil sampling shall be governed by parts 2890.0080 to 2890.0086.

Subp. 4. **Maximum costs for all other contractor services.** For contractor services not otherwise listed in this part, such as treatment of petroleum contaminated water from the excavation basin, and system installation, the board shall consider as prima facie unreasonable costs incurred in excess of the amount specified in the bid for contractor services.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0083 COMPETITIVE BIDDING REQUIREMENTS FOR CONTRACTOR SERVICES.

Subpart 1. **Generally; competitive bidding required.** The applicant shall obtain, publicly or privately, a minimum of two written competitive bids for each contractor service prior to incurring costs for that contractor service. Bids for contractor services shall be on a form prescribed by the board according to parts 2890.0081 to 2890.0086. The applicant shall only obtain bids for contractor services from persons who are registered with the board.

Subp. 2. **Dollar cost bidding and cost per cubic yard bidding required.** All items on the contractor bid shall be bid by dollar amount per unit of service. The following contractor services must be itemized on a cost per cubic yard basis on the bid form for contractor services:

- A. hauling;
- B. excavation;
- C. clean fill purchase, transportation, and installation;
- D. off-site stockpiling;
- E. landfarming, including a breakdown by cost per cubic yard for each of the tasks listed in part 2890.0081, subpart 8; and
- F. thermal treatment.

Subp. 3. **Lowest cost bid.** Except as provided in part 2890.0084, total costs in excess of those in the bid of the lowest qualified bidder shall be considered prima facie unreasonable by the board, unless the applicant demonstrates that the services to be performed or the selected contractor's qualifications justify the selection of a higher cost bid. Among the factors relevant to the qualifications of a contractor are education, experience, certifications and registrations, health and safety training, insurance, availability, and references. The board shall consider costs for a contractor service in the lowest overall competitive bid as a reasonable amount to charge for a specific task or item if the costs for that task or item do not exceed the maximum costs stated in part 2890.0082.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0084 DEVIATIONS FROM MAXIMUM COSTS FOR CONTRACTOR SERVICES.

Subpart 1. **Bids over maximum costs due to unusual site conditions.** The board shall not consider as prima facie unreasonable contractor services costs higher than the maximum costs in part 2890.0082 if:

A. the bid accepted by the applicant prior to the provision of contractor services specifically states that the amount exceeds the maximum cost limits and provides a detailed explanation of the reasons for costs in excess of the maximum cost limits; and

B. the applicant demonstrates that the higher costs:

(1) were justified by unusual conditions existing at the applicant's site; and

(2) were essential to complete the corrective action properly.

Subp. 2. **Bids over maximum costs due to unavailability of contractors.** The board shall not consider as prima facie unreasonable contractor services costs higher than the maximum costs in part 2890.0082, if:

A. the bid accepted by the applicant prior to the provision of contractor services specifically states that the amount exceeds the maximum cost limits and provides a detailed explanation of the reasons for costs in excess of the maximum cost limits; and

B. the applicant demonstrates by reasonable evidence that:

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(1) the applicant was unable to secure a bid to perform that contractor service for an amount not exceeding the maximum costs in part 2890.0082 for that contractor service;

(2) the applicant conducted an extensive search for bids from persons that could perform that contractor service or perform a comparable service at less expense that would make unnecessary the performance of that contractor service; and

(3) the performance of that contractor service was essential to complete the corrective action properly.

Subp. 3. Additional costs incurred after bid approved by applicant.

A. The board shall not consider as prima facie unreasonable charges greater than the amount specified in a bid approved by an applicant if:

(1) the applicant approves a change order for the higher costs;

(2) the higher costs were required by circumstances beyond the control of the contractor that could not have been reasonably anticipated at the time the bid was accepted by the applicant; and

(3) the applicant demonstrates that the applicant has established that the higher costs were essential to complete the corrective action properly.

B. The applicant shall approve all change orders on a form prescribed by the board. The charge order form shall contain the following:

(1) a detailed description of the higher costs;

(2) the reason for the proposed changes from the original proposal;

(3) the original proposal amount and the revised proposal amount; and

(4) signatures of the applicant and the contractor.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0085 REASONABLE, NECESSARY, AND ACTUAL COSTS.

Notwithstanding parts 2890.0081 to 2890.0084, the board shall reimburse applicants only for contractor services tasks and costs necessary for the corrective action at the applicant's site, only for contractor services costs that are reasonable, and only for actual hours spent by the contractor when contractor services are charged based on the contractor's time.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0086 INVOICE.

The board shall consider as prima facie unreasonable costs incurred for contractor services that are not billed to the applicant on an invoice form prescribed by the board. The invoice form prescribed by the board shall be consistent with the bid form for contractor services and according to parts 2890.0081 to 2890.0085.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0089 EXEMPTIONS FROM COMPETITIVE BIDDING.

The applicant shall be granted an exemption from the competitive bidding requirement of parts 2890.0077 and 2890.0083 if:

A. the board determines that the applicant has provided satisfactory evidence that:

(1) only one contractor or consultant was reasonably available to perform the necessary service and that costs are not substantially in excess of costs charged for similar services by a comparable contractor or consultant in the same geographical area; or

(2) the necessary services were required by an emergency, including the emergency abatement of free product, for which there was not sufficient time to obtain bids or proposals; or

B. the board makes an annual determination that the applicant has established that a standard contract that was entered into via the annual bidding or evaluation process will result in reasonable corrective action costs by providing to the board:

(1) documentation of the annual bidding process that led to the standing contract for contractor services or a written explanation of the annual evaluation process that led to the standing contract for consultant services; and

(2) a written explanation of why the standing contract results in lower corrective action costs than obtaining bids or proposals on a per job basis.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227*

2890.0090 APPLICATION PROCESS.

Subpart 1. **Applications.** An applicant shall complete, sign, and submit to the board a written application. The application shall be made on a form prescribed by the board and shall contain at least the following:

A. the name of the person making the application;

B. a description of the site of the release;

C. (1) for costs associated with corrective action related to soil contamination, a copy of the commissioner's approval of a soil corrective action plan, or evidence that a proposed soil corrective action plan has been submitted to the commissioner; or

(2) for costs associated with corrective action that will address the entire release, including groundwater if necessary, a copy of the commissioner's approval of a comprehensive corrective action plan, or evidence that a proposed comprehensive corrective action plan has been submitted to the commissioner; or

(3) a closure letter issued by the commissioner;

D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action;

E. a copy of all competitive bids and competitive proposals obtained by the applicant as required by parts 2890.0077 and 2890.0083, or documentation of an exemption from these requirements under part 2890.0089;

F. a copy of the proposals for each step of consultant services as required by parts 2890.0074 to 2890.0077 and a copy of all change orders, if any, as required by parts 2890.0078 and 2890.0084; and

G. a copy of all invoices as required by parts 2890.0074 and 2890.0086.

Subp. 2. **Time of application.** The application and all accompanying documentation must be received by the board's office 30 days before a board meeting in order for reimbursement to be considered at that meeting. The board may waive the 30-day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed until the next regular meeting.

Subp. 3. **Subsequent applications.** An applicant who has already submitted to the board an application for reimbursement and who has incurred additional or continuing eligible costs may apply for reimbursement of those costs by filing a subsequent application. An applicant may file a subsequent application only if the applicant has not submitted the costs on a previous application and the costs are not related to any new releases at the site.

Subp. 4. **Signatures.** An application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if

the representative or agent is responsible for the overall operation of the facility that is the subject of the application or a person whom the board of directors designates by means of a corporate resolution;

B. for a partnership, sole proprietorship or individual; by a general partner, the proprietor, or individual respectively; or

C. for a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

Subp. 5. **Certification.** A person who signs an application for reimbursement shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I certify that if I have submitted invoices for costs that I have incurred but that remain unpaid, I will pay those invoices within 30 days of receipt of reimbursement from the board. I understand that if I fail to do so, the board may demand return of all or any portion of reimbursement paid to me and that if I fail to comply with the board's demand, that the board may recover the reimbursement, plus administrative and legal expenses in a civil action in district court. I understand that I may also be subject to a civil penalty."

Additionally, if the applicant is not an individual, the person authorized under subpart 4 shall make the following certification: "I further certify that I am authorized to sign and submit this application on behalf of (entity)."

Subp. 6. **Report of the commissioner.** Upon notification by the board's staff that a complete application has been received, the commissioner shall, in a timely manner, provide the board with a written report on the applicant's compliance or noncompliance with Minnesota Statutes, section 115C.09, subdivision 2, paragraphs (b) and (c). The report shall include documentation supporting the commissioner's findings. The commissioner shall file the report with the board no later than 15 days after notification.

In addition, the board may, as it deems necessary, request additional information from the commissioner or can request participation of agency staff at a board meeting. All responses to requests for information shall be delivered in a timely manner. The board may delegate these powers to its staff.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 14 SR 1928; 15 SR 2266; 16 SR 2684; 18 SR 1471; 20 SR 227*

2890.0100 REVIEW AND DETERMINATION.

Subpart 1. **Review.** The board's staff shall review all applications. If the staff finds that the application is incomplete or otherwise deficient, the staff shall promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner constitutes the written record.

Subp. 2. **Staff recommendation.** After a reimbursement application is complete and the commissioner has provided the information relevant to the application, the board's staff shall make a recommendation as to the eligibility of the applicant and the costs specified in the application.

Subp. 3. **Board determination.** The board shall determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination shall be made on the basis of the written record. The board may also allow supplemental information explaining the application to be

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presented orally. The board may establish a fair and reasonable limit on time allowed for oral presentation.

The applicant shall be notified in writing within ten business days of the board's decision. If the board rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 18 SR 1471*

2890.0110 RIGHT TO APPEAL.

A person may appeal within 30 days a determination by the board as a contested case hearing under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 15 SR 2266; 18 SR 1471*

2890.0120 FUNDING OF MPCA ACTIONS.

In accordance with Minnesota Statutes, section 115C.10, subdivision 1, paragraph (a), the agency may apply to the board for money to pay for actions taken under Minnesota Statutes, section 115C.03, if all other state and federal funds appropriated for such actions have been exhausted. The application shall consist of a written statement of proposed corrective actions, an itemized estimate of costs for the proposed actions, and documentation that applicable state appropriations and federal awards have been exhausted by actions authorized under Minnesota Statutes, section 115C.03.

The board shall pay the agency the cost of the proposed actions if the board determines that:

- A. applicable state and federal funds are exhausted;
- B. the agency's proposed actions are authorized under Minnesota Statutes, section 115C.03; and
- C. an adequate amount exists in the fund to pay for the proposed actions.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0130 ACTION ON NOTICE OF LIEN FILING.

In accordance with Minnesota Statutes, section 514.673, the commissioner shall send written notice of intent to file an environmental lien notice to each board member. If a regular meeting of the board is to be held within 30 days of receipt of the commissioner's notice, the approval of the lien filing must be considered at the next regular meeting. If no regular meeting is scheduled within the 30 day period, a special meeting to consider approval of the lien filing shall be scheduled at the request of at least one board member. If the board takes no action on the matter within the 30 day period, the commissioner may file the lien notice.

Statutory Authority: *MS s 115C.07 subd 3*

History: *13 SR 496*