

1 Petroleum Tank Release Compensation Board

2

3 Adopted Permanent Rules Relating to Petroleum Tank Releases

4

5 Rules as Adopted

6 2890.0010 DEFINITIONS.

7 [For text of subps 1 to 2a, see M.R.]

8 ~~Subp. 2b. Clear and convincing evidence. "Clear and~~
 9 ~~convincing evidence" means evidence that clearly and directly~~
 10 ~~establishes a position with a high probability, and is more than~~
 11 ~~just reasonable evidence but less than proof beyond a reasonable~~
 12 ~~doubt.~~

13 [For text of subps 3 to 5, see M.R.]

14 Subp. 5a. Prima facie unreasonable. "Prima facie
 15 unreasonable" means unreasonable absent proof beyond a
 16 reasonable doubt by a preponderance of the evidence.

17 ~~Subp. 5b. Reasonable evidence. "Reasonable evidence"~~
 18 ~~means evidence that is rational and appropriate to justify a~~
 19 ~~position, but is less than clear or convincing evidence or proof~~
 20 ~~beyond a reasonable doubt.~~

21 [For text of subps 6 and 7, see M.R.]

22 2890.0070 ELIGIBLE COSTS.

23 [For text of subpart 1, see M.R.]

24 Subp. 3. Documentation of eligible costs. It is the
 25 responsibility of the applicant to obtain and maintain all
 26 records that document incurred costs ~~including, but not limited~~
 27 ~~to.~~ Among the records required are all invoices, time records,
 28 equipment records, receipts, proposals for consultant services,
 29 and bids for contractor services.

30 2890.0071 INELIGIBLE COSTS.

31 All costs associated with actions that do not minimize,
 32 eliminate, or clean up a release to protect the public health
 33 and welfare or the environment are ineligible costs. Among
 34 ineligible costs include, but are not limited to, the following:

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

4 B. loss of income;

5 C. attorney's fees;

6 D. permanent relocation of residents;

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

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

11 G. aesthetic or site improvements;

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

16 I. ~~overtime-pay, unless the agency declared the site~~
17 ~~to be an emergency prior to the applicant incurring the costs~~
18 ~~for overtime pay;~~

19 ~~±~~ per diem charges for sites less than 60 miles from
20 an office of the person providing consultant services or
21 contractor services;

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

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

30 (1) clean overburden;

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

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

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

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

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

7 ~~O. mark-up charges, including, but not limited to,~~
8 ~~mark-up charges on contractor services, equipment, materials,~~
9 ~~travel, and per diem charges, or~~

10 P. N. administrative costs incurred in obtaining
11 reimbursement from the board, including, but not limited to,
12 ~~charges for obtaining proposals or bids, accounting for~~
13 ~~consultant services or contractor services,~~ compiling materials
14 for and preparing applications to the board for reimbursement,
15 responding to inquiries from the board or its staff, or
16 appearing before the board.

17 2890.0072 OVERVIEW OF RULES GOVERNING REASONABLENESS OF COSTS
18 FOR CONSULTANT SERVICES.

19 The board shall approve for reimbursement only those costs
20 for consultant services that meet the standards and requirements
21 in parts 2890.0073 to 2890.0079. Part 2890.0073 sets forth the
22 definition of terms related to consultant services. Parts
23 2890.0074 to 2890.0076 establish the requirement of a written
24 proposal and invoice for each step of consultant services and
25 the standard tasks and maximum costs for each step of consultant
26 services. Part 2890.0077 states the requirements for
27 competitive bidding in proposals for consultant services, and
28 part 2890.0089 establishes standards for exemption from the
29 competitive bidding requirement. Part 2890.0078 establishes
30 criteria for the board in evaluating costs for consultant
31 services that deviate from either the standard tasks or maximum
32 costs for consultant services, or are higher than the costs
33 stated in the written proposal for consultant services. Part
34 2890.0079 states the requirement for costs to be reasonable and
35 necessary.

1 ~~Parts-2890.0072-to-2890.0079-shall-be-effective-for-any~~
2 ~~contract-for-consultant-services-entered-into-on-or-after-the~~
3 ~~effective-date-of-those-parts.~~

4 CONSULTANT SERVICES REIMBURSEMENT

5 2890.0073 DEFINITIONS RELATED TO CONSULTANT SERVICES.

6 Subpart 1. **Scope.** As used in this part and parts
7 2890.0074 to 2890.0079, the terms defined in this part have the
8 meanings given them.

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

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

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

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

1 ~~Parts-2890.0072-to-2890.0079-shall-be-effective-for-any~~
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31 installation notification worksheet" means the completion and
32 submission to the agency of a form that provides notification of
33 Corrective Action Design (CAD) system start up, verifies system
34 construction, and documents initial system emissions and
35 operating parameters.

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

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

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

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

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

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

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

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

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

- 1 (1) report preparation;
- 2 (2) field work preparation and planning;
- 3 (3) supervision of site assessment activities;
- 4 (4) system installation oversight;
- 5 (5) limited data review and analysis; and
- 6 (6) monitoring activities.

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

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

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

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

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

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

1 discharge requirements.

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

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

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

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

19 Subp. ~~21~~ 22. **Hydraulic conductivity estimate.** "Hydraulic
20 conductivity estimate" means determining the rate at which
21 groundwater can move through subsurface material.

22 Subp. ~~22~~ 23. **Infiltration test.** "Infiltration test"
23 means the performance and oversight of a test to determine the
24 rate which water introduced at the surface will infiltrate to
25 the subsurface.

26 Subp. ~~23~~ 24. **Midlevel professional.** "Midlevel
27 professional" means a person with:

28 A. a college degree in agricultural engineering,
29 chemical engineering, civil engineering, environmental
30 engineering, geological engineering, geotechnical engineering,
31 soil science, geology, hydrogeology, or a related science;
32 registration as a professional engineer or other professional
33 certification, if such certification is available; and at least
34 four years of experience in performing one or more of the
35 activities listed in this subpart; or

36 B. a graduate degree in the environmental sciences;

1 registration as a professional engineer or other professional
2 certification, if such certification is available; and at least
3 three years of experience in performing one or more of the
4 following activities;

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

13 Subp. ~~24~~ 25. Mileage. "Mileage" means a charge per mile
14 to transport individuals to or from the leaksite or other
15 location necessary to provide consultant services.

16 Subp. ~~25~~ 26. Monitoring well. "Monitoring well" means a
17 well constructed for the purpose of measuring water levels and
18 collecting representative groundwater samples.

19 Subp. ~~26~~ 27. MPCA conference call. "MPCA conference call"
20 means a conference call among the agency, the applicant, and the
21 consultant.

22 Subp. ~~27~~ 28. Off-site access. "Off-site access" means
23 the process of obtaining permission from property owners other
24 than the applicant to enter their property for the purpose of
25 doing a remedial investigation or implementing a corrective
26 action plan.

27 Subp. ~~28~~ 29. Passive bioremediation risk assessment.
28 "Passive bioremediation risk assessment" means the analysis of
29 the effectiveness and risks involved in allowing microorganisms
30 to break down petroleum products in the soil and groundwater
31 naturally without the use of any corrective action technology.

32 Subp. ~~29~~ 30. Per diem. "Per diem" means per day costs
33 incurred by the consultant for meals and lodging when the
34 distance to the leaksite makes it more cost-effective for the
35 consultant to lodge overnight near the leaksite.

36 Subp. ~~30~~ 31. Piezometer installation. "Piezometer

1 installation" means the conversion of a small diameter soil
2 boring to a nonpumping well used to measure the elevation of the
3 water table or potentiometric surface.

4 Subp. ~~31~~ 32. Piezometer installation oversight.

5 "Piezometer installation oversight" means the oversight of the
6 conversion of a small diameter soil boring to a nonpumping well
7 used to measure the elevation of the water table or
8 potentiometric surface.

9 Subp. ~~32~~ 33. Project management and administration.

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

15 Subp. ~~33~~ 34. Remedial action decision. "Remedial action
16 decision" means the conferences between the consultant and the
17 applicant at which the assessment data is discussed and, if
18 appropriate, a conference call among the agency, the applicant,
19 and the consultant.

20 Subp. ~~34~~ 35. RI/CAD report. "RI/CAD report" means
21 compilation of all data at the time the vertical and horizontal
22 extent of the petroleum contamination has been determined. The
23 CAD portion of the report must include all reduced data from the
24 CAD field tests.

25 Subp. ~~35~~ 36. Senior level professional. "Senior level
26 professional" means a person with:

27 A. a college degree in agricultural engineering,
28 chemical engineering, civil engineering, environmental
29 engineering, geological engineering, geotechnical engineering,
30 soil science, geology, hydrogeology, or a related science;
31 registration as a professional engineer or other professional
32 certification, if this certification is available; and at least
33 eight years of experience in performing one or more of the
34 activities listed in this subpart; or

35 B. a graduate degree in the environmental sciences;
36 registration as a professional engineer or other professional

1 certification, if the certification is available; and at least
 2 seven years of experience in performing one or more of the
 3 following activities:

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

10 Subp. ~~36~~ 37. Site monitoring worksheet. "Site monitoring
 11 worksheet" means the preparation and submission to the agency of
 12 a form providing information about groundwater or vapor impact.

13 Subp. ~~37~~ 38. Soil boring drilling. "Soil boring drilling"
 14 means the drilling of holes in the ground to determine soil
 15 structure or to monitor for the presence of contaminants in soil.

16 Subp. ~~38~~ 39. Soil boring oversight. "Soil boring
 17 oversight" means the oversight of the drilling of borings,
 18 including soil sampling, logging, and field screening of
 19 materials encountered during the installation of borings.

20 Subp. ~~39~~ 40. Soil borings. "Soil borings" means holes
 21 drilled in the ground to determine the lithologic log or monitor
 22 for the presence of contaminants in soil.

23 Subp. ~~40~~ 41. Soil excavation corrective action plan.
 24 "Soil excavation corrective action plan" means the design of a
 25 remediation technology that removes petroleum contaminated soils
 26 from the ground and treatment by landfarming, thin spreading,
 27 composting, incineration, or other agency-approved methods.

28 Subp. ~~41~~ 42. Soil field screening and sampling. "Soil
 29 field screening and sampling" means the collection and screening
 30 of soil samples that are not collected or screened as part of
 31 excavation basin soil sampling, soil boring oversight, soil test
 32 pit oversight, or contaminated soil stockpile sampling.

33 Subp. ~~42~~ 43. Soil sampling. "Soil sampling" means the
 34 collection of soil samples and the filling and, if necessary,
 35 preserving of each sample vial.

36 Subp. 44. Soil sampling analysis. "Soil sampling analysis"

1 means quantifying the concentration of petroleum contaminants
2 and inorganic compounds present in a soil sample.

3 Subp. ~~43~~ 45. **Soil test pit oversight.** "Soil test pit
4 oversight" means the oversight of soil test pits as defined in
5 part 2890.0081, including soil sampling.

6 Subp. ~~44~~ 46. **Soil treatment permitting.** "Soil treatment
7 permitting" means preparation of the application for treatment
8 of petroleum contaminated soil to be submitted to government and
9 regulatory bodies.

10 Subp. ~~45~~ 47. **Soil vapor extraction system design.** "Soil
11 vapor extraction system design" means the design of a
12 remediation technology that induces air flow from the subsurface
13 and brings contaminants to the surface where they can be treated
14 if necessary and discharged.

15 Subp. ~~46~~ 48. **Soil vapor extraction system with**
16 **groundwater sparging design.** "Soil vapor extraction system with
17 groundwater sparging design" means the design of a remediation
18 technology that removes volatile organic compounds from
19 groundwater by forcing an air flow through a well screen placed
20 in the aquifer which causes a bubbling effect in the groundwater
21 and forces contaminants into the soils above the aquifer.

22 Subp. ~~47~~ 49. **Sparging test.** "Sparging test" means the
23 design and implementation of a site-specific saturated zone air
24 injectability test and the collection of data gained from the
25 test including flow rates, pressure requirements, and radius of
26 influence of the system.

27 Subp. ~~48~~ 50. **Surveying.** "Surveying" means surveying the
28 locations and elevations of the soil borings and monitoring
29 wells and preparing site maps. The locations of the site
30 boundaries, aboveground features, and belowground features must
31 be known with reasonable accuracy.

32 Subp. ~~49~~ 51. **System installation oversight.** "System
33 installation oversight" means the consultant's monitoring of the
34 remedial system installation activities performed by the
35 contractor to ensure that all design specifications are met, and
36 discussion with the contractor of any design modifications or

1 system layout changes.

2 Subp. ~~50~~ 52. System operation and maintenance. "System
3 operation and maintenance" means the operation and any necessary
4 maintenance of the remediation system.

5 Subp. ~~51~~ 53. System startup/initial discharge sampling.
6 "System startup/initial discharge sampling" means a one-day
7 trial run of the remediation system to ensure that the system
8 and all its components are in proper running condition, and the
9 collection of any initial discharge samples required by the
10 agency.

11 Subp. ~~52~~ 54. Travel time. "Travel time" means the time
12 spent by the consultant to mobilize equipment and to travel to
13 and from the leaksite or other location necessary to provide
14 consultant services.

15 Subp. ~~53~~ 55. Vacuum enhanced groundwater extraction
16 system design. "Vacuum enhanced groundwater extraction system
17 design" means the design of a combined remediation technology in
18 which groundwater recovery is supplemented by applying vacuum
19 pressure to a recovery well. Vacuum extraction may also
20 remediate petroleum contaminated soil above the water table in
21 the same manner as a soil vapor extraction system.

22 Subp. ~~54~~ 56. Vapor risk assessment and survey. "Vapor
23 risk assessment and survey" means the making of a determination
24 whether the petroleum release has or could cause petroleum vapor
25 accumulation in basements, sewer lines, or other confined spaces.

26 Subp. ~~55~~ 57. Vehicle cost. "Vehicle cost" means the cost
27 of a van or truck used to carry to the leaksite tools or
28 equipment which cannot reasonably fit into a passenger car.

29 Subp. ~~56~~ 58. Vent point. "Vent point" means a borehole
30 screened in the subsurface, typically in the unsaturated zone,
31 and used to extract petroleum vapors and induce clean air in the
32 subsurface.

33 Subp. ~~57~~ 59. Vent point installation. "Vent point
34 installation" means the completion of a vent point from a
35 completed soil boring.

36 Subp. ~~58~~ 60. Vent point installation oversight. "Vent

1 point installation oversight" means the oversight of the
2 completion of a vent point from a completed soil boring.

3 Subp. ~~59~~ 61. Venting test. "Venting test" means the
4 design and implementation of a site-specific vapor extraction
5 test and the collection of data gained from the test, including
6 radius influenced by the system, discharge rates, and
7 contaminant emission rate.

8 Subp. ~~60~~ 62. Waste disposal. "Waste disposal" means the
9 making of arrangements for the disposal of all waste generated
10 at a leaksite, including disposable bailers, rubber gloves,
11 bailer rope, and petroleum contaminated drill cuttings during
12 assessment activity.

13 Subp. ~~61~~ 63. Water discharge compliance permitting.
14 "Water discharge compliance permitting" means preparation of an
15 application for water discharge approval to the appropriate
16 regulatory authorities.

17 Subp. ~~62~~ 64. Water level measurement. "Water level
18 measurement" means the calculation of groundwater elevation
19 referenced to an established elevation.

20 Subp. ~~63~~ 65. Well abandonment. "Well abandonment" means
21 the permanent discontinuation of a well according to applicable
22 well codes.

23 Subp. ~~64~~ 66. Well abandonment oversight. "Well
24 abandonment oversight" means the time required to solicit
25 competitive bids for the permanent discontinuation of a well
26 according to applicable well codes.

27 Subp. ~~65~~ 67. Well installation. "Well installation"
28 means the completion of a monitoring well from a completed soil
29 boring.

30 Subp. ~~66~~ 68. Well oversight and development. "Well
31 oversight and development" means the oversight of the conversion
32 of completed soil borings to monitoring wells.

33 Subp. ~~67~~ 69. Well permitting. "Well permitting" means
34 obtaining permits to allow the drilling and installation of
35 monitoring wells and filing well completion/installation records
36 with state and local agencies.

1 Subp. ~~68~~ 70. **Word processor.** "Word Processor" means a
2 person who operates a computer for word processing spreadsheets,
3 statistical typing, correspondence, and report generation.

4 2890.0074 WRITTEN PROPOSAL AND INVOICE REQUIRED FOR CONSULTANT
5 SERVICES.

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

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

28 2890.0075 REASONABLENESS OF WORK PERFORMED; STANDARD TASKS FOR
29 EACH STEP OF CONSULTANT SERVICES.

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

33 Subp. 2. **Underground storage tank removal assessment.**
34 Notwithstanding part 2890.0071, item A, costs for an underground
35 storage tank removal assessment may be incurred before an

1 initial site assessment, but only when an underground storage
2 tank is being removed and the site is discovered to have
3 petroleum contaminated soil. The objectives of the underground
4 storage tank removal assessment are to determine the volume of
5 petroleum contaminated soil, determine the feasibility of
6 excavating the petroleum contaminated soil, and allow for the
7 excavation of petroleum contaminated soil to accommodate new
8 tanks.

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

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

- 31 A. project management and administration;
- 32 B. health and safety plan;
- 33 C. background review;
- 34 D. soil field screening and sampling;
- 35 E. soil treatment permitting;
- 36 F. well permitting;

- 1 G. surveying;
- 2 H. soil test pit oversight;
- 3 I. soil boring drilling;
- 4 J. soil boring oversight;
- 5 K. well installation;
- 6 L. well oversight and development;
- 7 M. groundwater sampling;
- 8 N. piezometer installation;
- 9 O. piezometer installation oversight;
- 10 P. vapor risk assessment and survey;
- 11 Q. groundwater receptor survey;
- 12 R. water level measurement;
- 13 S. data reduction;
- 14 T. waste disposal;
- 15 U. delineation decision/work plan;
- 16 V. remedial action decision, if applicable; and
- 17 W. soil sampling analysis;
- 18 X. groundwater sampling analysis; and
- 19 Y. other:
- 20 (1) travel time;
- 21 (2) mileage;
- 22 (3) vehicle cost;
- 23 (4) per diem; and
- 24 (5) equipment.

25 Subp. 4. **Additional site assessment.** Costs for an

26 additional site assessment may be incurred only if the initial

27 site assessment failed to determine the vertical and horizontal

28 extent of petroleum contaminated soil. The objectives of the

29 additional site assessment are the same as the objectives for

30 the initial site assessment. The additional site assessment

31 shall consist of up to three soil borings, with all completed as

32 monitoring wells if the petroleum is found to be in contact with

33 the groundwater. The applicant shall continue to obtain a

34 proposal for each additional site assessment until the vertical

35 and horizontal extent of petroleum contamination has been

36 determined. The board shall consider as prima facie

1 unreasonable costs incurred for an additional site assessment
 2 other than costs for the following tasks or items:

- 3 A. project management and administration;
- 4 B. soil field screening and sampling;
- 5 C. well permitting;
- 6 D. off-site access;
- 7 E. surveying;
- 8 F. soil boring drilling;
- 9 G. soil boring oversight;
- 10 H. well installation;
- 11 I. well oversight and development;
- 12 J. groundwater sampling of wells installed in the
 13 additional site assessment;
- 14 K. groundwater sampling on a quarterly basis of wells
 15 installed in the initial site assessment;
- 16 L. piezometer installation;
- 17 M. piezometer installation oversight;
- 18 N. water level measurement;
- 19 O. data reduction;
- 20 P. waste disposal;
- 21 Q. delineation decision/work plan;
- 22 R. remedial action decision; and
- 23 S. soil sampling analysis;
- 24 T. groundwater sampling analysis; and
- 25 U. other:
 - 26 (1) travel time;
 - 27 (2) mileage;
 - 28 (3) vehicle cost;
 - 29 (4) per diem; and
 - 30 (5) equipment.

31 Subp. 5. Remedial investigation/corrective action design
 32 report. The objective of the remedial investigation/corrective
 33 action design report is to prepare a report either recommending
 34 no further corrective action or recommending a specific plan for
 35 further corrective action. If the consultant recommends no
 36 further corrective action, the board shall consider as prima

1 facie unreasonable costs incurred for a remedial
2 investigation/corrective action design report other than costs
3 for the submission to the agency of an RI/CAD report which
4 proposes and provides justification for no further action.

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

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

- 21 A. project management and administration;
- 22 B. aquifer test:
 - 23 (1) hydraulic conductivity estimate;
 - 24 (2) soil boring drilling;
 - 25 (3) well installation;
 - 26 (4) well oversight and development;
 - 27 (5) well permitting;
 - 28 (6) data reduction;
- 29 C. piezometer installation;
- 30 D. piezometer installation oversight;
- 31 E. venting test:
 - 32 (1) soil boring drilling;
 - 33 (2) vent point installation;
 - 34 (3) vent point installation oversight;
 - 35 (4) data reduction;
- 36 F. sparging test:

- 1 (1) soil boring drilling;
- 2 (2) well installation;
- 3 (3) well oversight and development;
- 4 (4) data reduction;
- 5 G. infiltration;
- 6 H. groundwater sampling;
- 7 I. surveying;
- 8 J. data reduction;
- 9 K. corrective action alternative;
- 10 L. passive bioremediation risk assessment;
- 11 M. site monitoring worksheet;
- 12 N. MPCA conference call;
- 13 O. RI/CAD report;
- 14 P. waste disposal; and
- 15 Q. soil sampling analysis;
- 16 R. groundwater sampling analysis; and
- 17 S. other:
 - 18 (1) travel time;
 - 19 (2) mileage;
 - 20 (3) vehicle cost;
 - 21 (4) per diem; and
 - 22 (5) equipment.

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

35 The board shall consider as prima facie unreasonable costs
 36 incurred for remedial design/maintenance other than costs for

- 1 the following tasks or items:
- 2 A. project management and administration;
- 3 B. groundwater pump and treat system design;
- 4 C. soil excavation corrective action plan;
- 5 D. soil vapor extraction system design;
- 6 E. soil vapor extraction system with groundwater
- 7 sparging design;
- 8 F. vacuum enhanced groundwater extraction system
- 9 design;
- 10 G. system installation oversight;
- 11 H. system startup/initial discharge sampling;
- 12 I. air emission testing;
- 13 J. water discharge compliance permitting;
- 14 K. CAD installation notification worksheet;
- 15 L. groundwater sampling;
- 16 M. soil field screening and sampling;
- 17 N. water level measurement;
- 18 O. site monitoring worksheet;
- 19 P. CAD system monitoring worksheet;
- 20 Q. system operation and maintenance;
- 21 R. data reduction;
- 22 S. well abandonment;
- 23 T. well abandonment oversight; and
- 24 U. soil sampling analysis;
- 25 V. groundwater sampling analysis; and
- 26 W. other:
- 27 (1) travel time;
- 28 (2) mileage;
- 29 (3) vehicle cost;
- 30 (4) per diem; and
- 31 (5) equipment.

32 2890.0076 MAXIMUM COSTS FOR CONSULTANT SERVICES.

33 Subpart 1. **Maximum labor charges.** The board shall
34 consider as prima facie unreasonable costs incurred for
35 consultant services either in excess of the amounts specified in

1 the proposal for consultant services or in excess of the
2 following maximum charges, whichever is less:

3 A. air emission testing has a maximum cost of two
4 hours per technology employed at the leaksite per quarter;

5 B. aquifer tests have a maximum cost of 24 hours per
6 test;

7 C. background review has a maximum cost of eight
8 hours per leaksite;

9 D. CAD installation notification worksheet has a
10 maximum cost of six hours per report;

11 E. CAD system monitoring worksheet has a maximum cost
12 of two hours per worksheet per technology employed at the
13 leaksite;

14 F. contaminated soil stockpile sampling has a maximum
15 charge of four hours per leaksite;

16 G. corrective action alternative has a maximum cost
17 of \$1,000 per leaksite;

18 H. data reduction has a maximum cost of six hours
19 plus six hours per technology employed at the leaksite per test;

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

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

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

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

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

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

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

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

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

- 1 R. MPCA conference call has a maximum cost of two
2 hours per leaksite;
- 3 S. off-site access has a maximum cost of ten hours
4 per leaksite;
- 5 T. passive bioremediation risk assessment has a
6 maximum cost of \$1,000;
- 7 U. piezometer installation oversight has a maximum
8 cost of four hours per piezometer;
- 9 V. project management and administration shall be
10 reimbursed only for actual hours spent on this task with a
11 maximum cost of (1) ~~±5~~ 20 percent of total consultant services
12 labor charges, inclusive of the cost for hours spent on project
13 management and administration, or (2) \$200 per proposal,
14 whichever is greater;
- 15 W. remedial action decision has a maximum cost of
16 four hours per leaksite;
- 17 X. RI/CAD report has a maximum cost of 50 hours if
18 the report recommends no further corrective action and a maximum
19 of 65 hours if the report recommends further corrective action;
- 20 Y. site monitoring worksheet has a maximum cost of
21 four hours per worksheet;
- 22 Z. soil boring oversight has a maximum cost of two
23 hours per boring;
- 24 AA. soil excavation corrective action plan has a
25 maximum cost of \$500;
- 26 BB. soil field screening and sampling shall be
27 reimbursed only for actual hours spent on this task;
- 28 CC. soil test pit oversight has a maximum cost of one
29 hour per test pit;
- 30 DD. soil treatment permitting has a maximum cost of
31 two hours per leaksite;
- 32 EE. soil vapor extraction system design has a maximum
33 cost of \$3,000;
- 34 FF. soil vapor extraction system with groundwater
35 sparging design has a maximum cost of \$3,500;
- 36 GG. sparging test has a maximum cost of 16 hours per

1 leaksite;

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

4 II. system installation oversight shall be reimbursed
5 only for actual hours spent on this task with a maximum cost of
6 25 percent of the contractor's time on site installing the
7 system;

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

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

13 LL. travel time has a maximum cost per ~~trip-of-(1)~~
14 ~~for-the-first-two-hours-of-travel, the hourly rate normally~~
15 ~~charged-for-the-traveler's-services, and-(2)-for-each-additional~~
16 hour of ~~travel, \$30-per-hour-or~~ the maximum hourly rate normally
17 charged specified for the traveler's services, ~~whichever-is-less~~
18 in subpart 2;

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

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

23 OO. vent point installation oversight has a maximum
24 cost of ~~1-1/2~~ two hours per vent point;

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

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

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

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

34 TT. well abandonment oversight has a maximum cost of
35 .5 hours per well;

36 UU. well oversight and development has a maximum cost

1 of four hours per well, except when done in connection with
 2 aquifer tests when it shall have a maximum cost of eight hours
 3 per well; and

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

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

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

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

- 27 (1) a senior level professional;
- 28 (2) a midlevel professional;
- 29 (3) an entry level professional;
- 30 (4) a field technician;
- 31 (5) a draftsman; and
- 32 (6) a word processor.

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

- 35 (1) a senior level professional;
- 36 (2) a midlevel professional;

1 (3) an entry level professional; and

2 (4) a field technician.

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

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

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

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

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

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

4 A. mileage has a maximum cost of ~~27-cents~~ the rate
 5 per mile specified as the business standard mileage rate for
 6 passenger automobile use in Internal Revenue Service Procedure
 7 94-73, 1994-52 I.R.B. 23, which is incorporated by reference in
 8 this part, and was issued in 1994 by the Internal Revenue
 9 Service under authority in Code of Federal Regulations, title
 10 26, section 1.274(d)-1, and is updated on an annual basis by the
 11 Internal Revenue Service. Two copies of the document are
 12 located in the state law library;

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

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

17 D. equipment has a maximum cost of the following:

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

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

23 2890.0077 COMPETITIVE BIDDING REQUIREMENTS FOR CONSULTANT
 24 SERVICES PROPOSALS.

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

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

32 Subp. 3. **Initial site assessment.** The applicant shall
 33 obtain at least two written competitive proposals for consultant
 34 services for an initial site assessment according to parts
 35 2890.0072 to 2890.0079. The proposals shall be on a form

1 prescribed by the board according to parts 2890.0072 to
 2 2890.0079. The proposals shall comply with all requirements of
 3 parts 2890.0072 to 2890.0079.

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

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

10 B. the consultant that performed services for the
 11 prior step does not increase its hourly rates, ~~or increase its~~
 12 ~~soil-boring-drilling-or-well-installation-charges,~~ over the
 13 amounts stated in that consultant's proposal for the prior step;
 14 and

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

20 If the applicant seeks competitive proposals after the
 21 initial site assessment step, the applicant shall obtain at
 22 least two written proposals for consultant services for the
 23 appropriate step of consultant services according to parts
 24 2890.0072 to 2890.0079. The proposals shall be on a form
 25 prescribed by the board according to parts 2890.0072 to
 26 2890.0079, and the proposal shall comply with all requirements
 27 of parts 2890.0072 to 2890.0079.

28 Subp. 5. **Drilling costs.**

29 A. Soil boring drilling shall be bid based on the
 30 assumption of drilling to a depth of 30 feet in unconsolidated
 31 soil with sampling at five-foot intervals. However, if the
 32 applicant knows, determines, or reasonably suspects that the
 33 specific site does not contain unconsolidated soil or that
 34 borings of a depth of 30 feet with sampling at five-foot
 35 intervals would not meet the purpose of drilling the borings,
 36 the applicant must make substantial efforts to obtain a minimum

1 of two written competitive proposals for consultant services
2 based on substantially similar assumptions as to the
3 characteristics of the site. These proposals shall specifically
4 state the assumptions of the proposal as to soil conditions,
5 drilling depths, and drilling intervals, and provide a detailed
6 explanation of the basis for those assumptions.

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

9 Subp. 6. **Lowest cost proposal.** Except as provided in part
10 2890.0078, the board shall consider as prima facie unreasonable
11 total costs for consultant services in excess of the total cost
12 in the lowest competitive proposal for consultant services based
13 on the use of the same technology, and in the case of proposals
14 involving soil borings, substantially similar assumptions as to
15 number of soil borings, number of monitoring wells, soil
16 conditions, drilling depth, and sampling intervals, unless the
17 applicant ~~presents clear and convincing evidence~~ demonstrates
18 that the services to be performed or the selected consultant's
19 qualifications ~~justified~~ justify the selection of a higher cost
20 proposal. Among the factors relevant to the qualifications of a
21 consultant include, but are not limited to, education,
22 experience, certifications and registrations, health and safety
23 training, insurance, availability, and references. The board
24 shall consider costs for a consultant service in the lowest
25 overall competitive proposal as a reasonable amount to charge
26 for a specific task or item if the costs for that task or item
27 do not exceed the maximum costs stated in part 2890.0076.

28 2890.0078 DEVIATIONS FROM STANDARD TASKS AND MAXIMUM COSTS FOR
29 CONSULTANT SERVICES.

30 Subpart 1. **Deviations from standard tasks in proposals.**

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

34 (1) the tasks and associated costs to implement
35 that alternative technology are identified in the proposal prior

1 to approval by the applicant; and

2 (2) the board determines that the applicant has
3 established ~~by-reasonable-evidence~~ that the alternative approach:

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

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

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

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

16 (2) the ~~board-determines-by-clear-and-convincing~~
17 ~~evidence~~ applicant demonstrates that the additional or different
18 tasks:

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

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

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

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

35 (2) the ~~board-determines-by-clear-and-convincing~~
36 ~~evidence~~ applicant demonstrates that the ~~additional-or-different~~

1 ~~tasks~~ higher number of hours or dollar costs:

2 (a) ~~met-the-objectives-for-that-step-of~~
3 ~~consultant-services~~ were justified by unusual conditions
4 existing at the applicant's site; and

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

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

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

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

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

23 (4) the ~~board-determines~~ applicant demonstrates
24 that the applicant has established ~~by-reasonable-evidence~~ that
25 the costs incurred for consultant services related to drilling
26 were reasonable given the actual conditions for drilling at that
27 site.

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

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

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

36 (2) the different or additional tasks were

1 required by circumstances beyond the control of the consultant
2 or applicant that could not have been reasonably anticipated at
3 the time the proposal was accepted by the applicant; and

4 (3) the ~~board-determines~~ applicant demonstrates
5 that the applicant has established ~~by-clear-and-convincing~~
6 ~~evidence~~ that the different or additional tasks:

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

9 (b) were essential to complete the
10 objectives for that step of consultant services or were more
11 cost-effective than the standard tasks for that step of
12 consultant services.

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

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

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

25 (3) the ~~board-determines~~ applicant demonstrates
26 that the applicant has established ~~by-clear-and-convincing~~
27 ~~evidence~~ that the higher number of hours or dollar costs were
28 essential to complete the objectives for that step of consultant
29 services.

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

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

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

5 (3) the change order is limited to:

6 (a) depth of drilling greater than specified
7 in the proposal;

8 (b) redrilled borings due to subsurface
9 conditions; and

10 (c) other greater drilling costs due to type
11 of soil other than that assumed in the proposal; and

12 (4) the ~~board-determines~~ applicant demonstrates
13 that the applicant has established ~~by-reasonable-evidence~~ that
14 the higher number of hours were essential to complete the
15 objectives for that step of consultant services.

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

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

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

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

25 (4) signatures of the applicant and the
26 consultant.

27 Subp. 3. **Additional or different tasks approved by the**
28 **agency.** Notwithstanding subparts 1 and 2, the board shall not
29 consider as prima facie unreasonable tasks performed that are
30 different than or in addition to those specified in part
31 2890.0075 or specified in a proposal for consultant services
32 approved by the applicant if the agency states in writing that
33 the performance of those tasks is necessary and appropriate for
34 the completion of the corrective action.

35 2890.0079 REASONABLE, NECESSARY, AND ACTUAL CONSULTANT SERVICES

1 COSTS.

2 Notwithstanding parts 2890.0073 to 2890.0078, the board
 3 shall reimburse applicants only for consultant services tasks
 4 and costs necessary for corrective action at the applicant's
 5 site, only for consultant services costs that are reasonable,
 6 and only for actual hours spent by the consultant performing
 7 tasks when consultant services are charged based on the
 8 consultant's time. ~~The board shall not consider as prima facie~~
 9 ~~unreasonable performance of fewer tasks or lower hours or costs~~
 10 ~~to complete a task than as specified in parts 2890.0075 and~~
 11 ~~2890.0076.~~

12 CONTRACTOR SERVICES STANDARDS

13 2890.0080 OVERVIEW OF RULES GOVERNING REASONABLENESS OF COSTS
 14 FOR CONTRACTOR SERVICES.

15 The board shall approve for reimbursement only those costs
 16 for contractor services that meet the standards and requirements
 17 in parts 2890.0081 to 2890.0086. Part 2890.0081 sets forth the
 18 definitions of terms related to contractor services. Part
 19 2890.0082 states the maximum costs for specific contractor
 20 services. Part 2890.0083 establishes the requirement of
 21 competitive written bids for contractor services, and part
 22 2890.0089 establishes standards for exemption from the
 23 competitive bidding requirement. Part 2890.0084 establishes
 24 criteria for the board in evaluating costs for contractor
 25 services that deviate from the maximum costs for contractor
 26 services. Part 2890.0085 states the requirements for costs to
 27 be reasonable and necessary. Part 2890.0086 states the need for
 28 use of a standardized invoice form.

29 ~~Parts 2890.0081 to 2890.0086 shall be effective for any~~
 30 ~~contract for contractor services entered into on or after the~~
 31 ~~effective date of parts 2890.0081 to 2890.0086.~~

32 2890.0081 DEFINITIONS RELATED TO CONTRACTOR SERVICES.

33 Subpart 1. **Scope.** As used in this part and in parts
 34 2890.0082 to 2890.0086, the terms defined in this part have the
 35 meanings given them.

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

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

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

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

14 Subp. 6. ~~Groundwater-sampling-analysis--"Groundwater~~
 15 ~~sampling-analysis"--means-quantifying-the-concentration-of~~
 16 ~~petroleum-contaminants-and/or-inorganic-compounds-present-in-a~~
 17 ~~groundwater-sample.~~

18 Subp. ~~7.~~ Hauling. "Hauling" means the transportation and
 19 unloading of:

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

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

25 Subp. ~~8.~~ 7. Landfarmed soil sampling. "Landfarmed soil
 26 sampling" means the periodic collection and testing of soil
 27 samples from the landfarming site.

28 Subp. ~~9.~~ 8. Landfarming. "Landfarming" consists of the
 29 following costs or activities:

30 A. costs for use of land;

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

33 C. costs for fertilizer;

34 D. separation of rocks and debris from the petroleum
 35 contaminated soil;

36 E. spreading of petroleum contaminated soil and

1 incorporation with native soil;

2 F. periodic disking of soil;

3 G. landfarmed soil sampling; and

4 H. periodic reporting of the landfarmed soil sampling
5 results.

6 Subp. ~~10~~ 9. **Loading.** "Loading" means all necessary
7 equipment and labor required to:

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

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

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

14 Subp. ~~11~~ 10. **Mobilization.** "Mobilization" means:

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

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

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

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

28 Subp. ~~12~~ 11. **Off-site stockpiling.** "Off-site stockpiling"
29 means:

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

33 B. the cost to rent the temporary storage site.

34 Subp. ~~13~~ 12. **Overburden.** "Overburden" means any soil
35 which must be replaced in order to access the petroleum
36 contaminated soil.

1 ~~Subp. 14. Soil sampling analysis. "Soil sampling analysis"~~
 2 ~~means quantifying the concentration of petroleum contaminants~~
 3 ~~and/or inorganic compounds present in a soil sample.~~

4 Subp. 15. 13. Soil test pits. "Soil test pits" means the
 5 excavation, backfilling, and compaction, if necessary, of small
 6 pits around the tank basin at the time of tank removal to
 7 determine the vertical and horizontal extent of petroleum
 8 contaminated soil.

9 Subp. 16. 14. Spreading. "Spreading" means the labor and
 10 equipment necessary for the placement of petroleum contaminated
 11 soil at the landfarming site.

12 Subp. 17. 15. Stockpiling. "Stockpiling" means the
 13 temporary storage of petroleum contaminated soil.

14 Subp. 18. 16. System installation. "System installation"
 15 means the labor and equipment necessary to install the
 16 remediation system.

17 Subp. 19. 17. Thermal treatment. "Thermal treatment"
 18 means the burning of petroleum contaminated soil.

19 Subp. 20. 18. Treatment of petroleum contaminated water
 20 from the excavation basin. "Treatment of petroleum contaminated
 21 water from the excavation basin" means the cost to treat
 22 petroleum contaminated water from the excavation basin.

23 Subp. 21. 19. Utility clearance. "Utility clearance"
 24 means the process of locating aboveground and belowground
 25 utilities and identifying all underground storage tanks and
 26 associated lines, pumps, and dispensers.

27 2890.0082 MAXIMUM COSTS FOR CONTRACTOR SERVICES.

28 Subpart 1. Maximum costs in "Means" book. The board shall
 29 consider as prima facie unreasonable costs incurred either in
 30 excess of the amounts specified in the bid for contractor
 31 services or in excess of the amounts stated in the most recent
 32 edition of "Means Heavy Construction Cost Data," as of the date
 33 the costs were incurred, whichever is less, for mobilization;
 34 hauling; and cutting, removal, and replacement of concrete and
 35 asphalt. "Means Heavy Construction Cost Data" (ed. Kornelis

1 Smit et al., publ. R.S. Means Company, Inc., 1993), is
2 incorporated by reference in this part, and is updated on an
3 annual basis. Two copies of the document are located in the
4 State Law Library.

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

12 A. soil test pits has a maximum cost of \$100 per test
13 pit;

14 B. excavation has a maximum cost of \$7 per cubic
15 yard;

16 C. loading has a maximum cost of \$3 per cubic yard;

17 D. clean fill purchase, transportation, and
18 installation has a maximum cost of \$15 per cubic yard;

19 E. off-site stockpiling has a maximum cost of \$2.50
20 per cubic yard;

21 F. landfarming has a maximum cost that shall be
22 determined by the county of disposal site as follows:

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

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

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

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

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

10 Subp. 3. Maximum analytical, drilling, and well charges.
11 To the extent that groundwater sampling analysis, soil sampling
12 analysis, soil boring drilling, piezometer installation, vent
13 point installation, well abandonment, and well installation
14 constitute contractor services, reimbursement of costs for these
15 services shall be governed by parts 2890.0072 to
16 2890.0079. Analytical services performed as part of landfarmed
17 soil sampling shall be governed by parts 2890.0080 to 2890.0086.

18 Subp. 4. Maximum costs for all other contractor services.
19 For contractor services not otherwise listed in this part,
20 ~~including, but not limited to, groundwater sampling analysis,~~
21 ~~soil sampling analysis,~~ such as treatment of petroleum
22 contaminated water from the excavation basin, and system
23 installation, the board shall consider as prima facie
24 unreasonable costs incurred in excess of the amount specified in
25 the bid for contractor services.

26 2890.0083 COMPETITIVE BIDDING REQUIREMENTS FOR CONTRACTOR
27 SERVICES.

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

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

6 A. hauling;

7 B. excavation;

8 C. clean fill purchase, transportation, and
 9 installation;

10 D. off-site stockpiling;

11 E. landfarming, including a breakdown by cost per
 12 cubic yard for each of the tasks listed in part 2890.0081,
 13 subpart 9 8; and

14 F. thermal treatment.

15 Subp. 3. Lowest cost bid. Except as provided in part
 16 2890.0084, total costs in excess of those in the bid of the
 17 lowest qualified bidder shall be considered prima facie
 18 unreasonable by the board, unless the applicant demonstrates
 19 that the services to be performed or the selected contractor's
 20 qualifications justify the selection of a higher cost bid.
 21 Among the factors relevant to the qualifications of a contractor
 22 are education, experience, certifications and registrations,
 23 health and safety training, insurance, availability, and
 24 references. The board shall consider costs for a contractor
 25 service in the lowest overall competitive bid as a reasonable
 26 amount to charge for a specific task or item if the costs for
 27 that task or item do not exceed the maximum costs stated in part
 28 2890.0082.

29 2890.0084 DEVIATIONS FROM MAXIMUM COSTS FOR CONTRACTOR SERVICES.

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

34 A. the bid accepted by the applicant prior to the
 35 provision of contractor services specifically states that the

1 amount exceeds the maximum cost limits and provides a detailed
2 explanation of the reasons for costs in excess of the maximum
3 cost limits; and

4 B. ~~the board-determines-by-clear-and-convincing~~
5 ~~evidence~~ applicant demonstrates that the higher costs:

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

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

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

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

19 B. the applicant demonstrates by reasonable evidence
20 that:

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

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

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

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

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

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

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

5 (3) the ~~board-determines~~ applicant demonstrates
6 that the applicant has established ~~by-clear-and-convincing~~
7 ~~evidence~~ that the higher costs were essential to complete the
8 corrective action properly.

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

12 (1) a detailed description of the higher costs;

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

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

17 (4) signatures of the applicant and the
18 contractor.

19 2890.0085 REASONABLE, NECESSARY, AND ACTUAL COSTS.

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

26 2890.0086 INVOICE.

27 The board shall consider as prima facie unreasonable costs
28 incurred for contractor services that are not billed to the
29 applicant on an invoice form prescribed by the board. The
30 invoice form prescribed by the board shall be consistent with
31 the bid form for contractor services and according to parts
32 2890.0081 to 2890.0085.

33 2890.0089 EXEMPTIONS FROM COMPETITIVE BIDDING.

34 The applicant shall be granted an exemption from the

1 competitive bidding requirement of parts 2890.0077 and 2890.0083
2 if:

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

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

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

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

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

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

26 2890.0090 APPLICATION PROCESS.

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

31 [For text of items A to C, see M.R.]

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

1 E. a copy of all competitive bids and competitive
2 proposals obtained by the applicant as required by parts
3 2890.0077 and 2890.0083, or documentation of an exemption from
4 these requirements under part 2890.0089;

5 F. a copy of the proposals for each step of
6 consultant services as required by parts 2890.0074 to 2890.0077
7 and a copy of all change orders, if any, as required by parts
8 2890.0078 and 2890.0084; and

9 G. a copy of all invoices as required by parts
10 2890.0074 and 2890.0086.

11 [For text of subps 2 to 6, see M.R.]

12 REPEALER. Minnesota Rules, parts 2890.0075~~7~~ and 2890.0080~~7~~
13 ~~and-2890-0095~~, are repealed.

14

15 EFFECTIVE DATE. These rules are effective for all contracts
16 entered into on or after 60 days after notice of adoption is
17 published in the State Register.