

CHAPTER 2890
DEPARTMENT OF COMMERCE
PETROLEUM TANK RELEASES

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2890.0005 APPLICABILITY.

This chapter, as adopted at 28 SR 383, applies to costs incurred for work performed on or after October 6, 2003, excluding:

A. costs incurred for work performed as part of one of the steps of consultant services as described in part 2890.0075, as it existed prior to October 6, 2003, for which the applicant began incurring costs before October 6, 2003; and

B. costs incurred for work performed before the leak reporting date in 2004 as part of a contract entered into before October 6, 1995. "Leak reporting date" means the month and day that the leak was reported to the state.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.0010 Subpart 1. [Renumbered 2890.0015, subpart 1]

Subp. 2. [Renumbered 2890.0015, subp. 3]

Subp. 2a. [Renumbered 2890.0015, subp. 8]

Subp. 2b. [Renumbered 2890.0015, subp. 14]

Subp. 3. [Renumbered 2890.0015, subp. 18]

Subp. 3a. [Renumbered 2890.0015, subp. 26]

Subp. 3b. [Renumbered 2890.0015, subp. 28]

- Subp. 4. [Renumbered 2890.0015, subp. 29]
- Subp. 4a. [Renumbered 2890.0015, subp. 72]
- Subp. 5. [Renumbered 2890.0015, subp. 89]
- Subp. 5a. [Renumbered 2890.0015, subp. 91]
- Subp. 6. [Repealed, 28 SR 383]
- Subp. 7. [Repealed, 28 SR 383]

2890.0015 DEFINITIONS.

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

Subp. 2. **Active remediation.** “Active remediation” means corrective actions such as free product removal, soil vapor extraction, air sparging, soil excavation, replacement of impacted drinking water wells, groundwater pump-out, and the installation of oxygen releasing compound.

Subp. 3. **Agency.** “Agency” means the Pollution Control Agency.

Subp. 4. **Agency status update.** “Agency status update” means the labor and materials required for the consultant to notify the agency, when necessary, of the results of field work.

Subp. 5. **Air sample analysis.** “Air sample analysis” means quantifying the concentration of petroleum contaminants in an air sample.

Subp. 6. **Annual monitoring report.** “Annual monitoring report” means the form and associated attachments required by the agency to report site monitoring results annually.

Subp. 7. **Annual monitoring report preparation.** “Annual monitoring report preparation” means the labor and materials necessary to complete and submit the annual monitoring report to the agency, including, but not limited to, data analysis, data entry, drafting, photocopying, report review, shipping, and word processing.

Subp. 8. **Applicant.** “Applicant” means a person eligible under Minnesota Statutes, section 115C.09, to receive reimbursement from the petroleum tank release cleanup fund.

Subp. 9. **Applicant status update.** “Applicant status update” means a notification from the consultant to the applicant, in person or in writing, that explains the services performed, the data collected, and the recommendations for additional work.

Subp. 10. **Aquifer determination.** “Aquifer determination” means the analysis of stratigraphic data and permeability measurements to determine whether the hydrogeologic unit is an aquifer as defined by the agency program that administers petroleum tank release cleanups.

Subp. 11. **AST soil sampling.** “AST soil sampling” means soil sampling from an aboveground storage tank location.

Subp. 12. **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. 13. **Biopiling.** “Biopiling” means composting.

Subp. 14. **Board.** “Board” means the petroleum tank release compensation board.

Subp. 15. **Borehole sealing.** “Borehole sealing” means the filling and sealing of a borehole not completed as a monitoring well.

Subp. 16. **Citizen contact.** "Citizen contact" means the labor and materials required to contact residents, property owners, business owners, and others to determine whether water wells, basements, or sumps exist on their property.

Subp. 17. **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. 18. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 19. **Compaction.** "Compaction" means the densification of soils by the application of mechanical energy.

Subp. 20. **Composted soil sampling.** "Composted soil sampling" means soil sampling from the compost pile.

Subp. 21. **Composting.** "Composting" means the controlled microbial degradation of petroleum-contaminated soil. It includes the following:

- A. costs for use of land;
- B. costs for permits necessary for the composting of the petroleum-contaminated soil;
- C. costs for labor and materials required for the temporary storage of the petroleum-contaminated soil;
- D. costs for fertilizer, microbes, or other enhancer;
- E. costs for bulking agents; and
- F. all labor and materials required for the construction of the compost pile and the demolition of the compost pile.

Subp. 22. **Composting monitoring worksheet.** "Composting monitoring worksheet" means the form and associated attachments required by the agency for reporting the results of follow-up sampling of a specific batch of composted petroleum-contaminated soil.

Subp. 23. **Composting monitoring worksheet preparation.** "Composting monitoring worksheet preparation" means the labor and materials necessary to complete and submit the composting monitoring worksheet to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 24. **Composting site application.** "Composting site application" means the form and associated attachments submitted to the agency to gain approval for a specific site to be used for the composting of petroleum-contaminated soil.

Subp. 25. **Composting site application preparation.** "Composting site application preparation" means the labor and materials necessary to complete and submit the composting site application to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 26. **Consultant services.** "Consultant services" means the rendering of professional opinion, advice, or analysis regarding a release.

Subp. 27. **Contaminated stockpile soil sampling.** "Contaminated stockpile soil sampling" means soil sampling from the stockpile of petroleum-contaminated soil.

Subp. 28. **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 work, plumbing, carpentry, and equipment.

Subp. 29. **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. 30. **Decontamination.** "Decontamination" means completely cleaning down hole drilling equipment and tools to avoid cross-contamination.

Subp. 31. **Disking.** “Disking” means the periodic tilling of land-treated petroleum-contaminated soil to aerate the soil.

Subp. 32. **Draftsperson.** “Draftsperson” means a person with a trade school diploma or the equivalent in computer-assisted design.

Subp. 33. **Drilling.** “Drilling” means the advancement of one or more soil borings to determine soil structure or to monitor for the presence of contaminants in soil. It includes hand auger drilling, hand-driven drilling, hollow stem auger drilling, push probing, sonic drilling, and any alternative method approved by the agency; borehole sealing; decontamination; drilling permitting; drinking water well installation; drinking water well permitting; mobilization/demobilization; monitoring well sealing; monitoring well installation; monitoring well permitting; and temporary well installation.

Subp. 34. **Drilling oversight, field log preparation, and soil sampling.** “Drilling oversight, field log preparation, and soil sampling” means the oversight of the drilling of borings, including drilling log preparation and soil sampling.

Subp. 35. **Drilling permit.** “Drilling permit” means a document issued by a state or local government agency to allow the advancement of soil borings.

Subp. 36. **Drilling permitting.** “Drilling permitting” means the labor and materials required to obtain a drilling permit. It does not include the cost of the permit.

Subp. 37. **Drinking water well installation.** “Drinking water well installation” means the installation of a well, as part of corrective action, that provides a permanent supply of drinking water.

Subp. 38. **Drinking water well permitting.** “Drinking water well permitting” means obtaining permits to allow the drilling and installation of drinking water wells and filing well completion or installation records with state and local agencies.

Subp. 39. **Drum disposal.** “Drum disposal” means the labor, materials, and equipment necessary to load, haul, and dispose of drums containing free product or waste generated at a leak site, including petroleum-contaminated water and used equipment and field supplies.

Subp. 40. **Drum disposal management.** “Drum disposal management” means the making of arrangements for the disposal of drill cuttings, petroleum-contaminated water, or other petroleum-contaminated waste generated at a leak site.

Subp. 41. **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; or

B. at least five 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. 42. **Equipment and field supplies.** “Equipment and field supplies” means the purchase or rental of equipment and supplies necessary to perform consultant services including, but not limited to, AccuVac ampoules, carbon dioxide meters, color charts, colorimetric ampoules, coolers, coring devices, decontamination fluids, direct reading probes, dissolved iron field analysis kits, electronic water level indicators, explosimeters, filtration devices, flame ionization detectors, flow cells, ice, membrane electrode probes, oil water interface indicators, oxide semiconductor total hydrocarbon detectors, personal protective gear, pH meters, photoionization detectors, polyethylene bags, pumps, rope, sample containers, sample labels, sampling bailers, sampling gloves, steel tape, temperature probes, tubing, and water-finding paste.

Subp. 43. **Excavation.** “Excavation” means the equipment and labor required to remove petroleum-contaminated soil and any overburden and surfacing that must be displaced to access the petroleum-contaminated soil.

Subp. 44. **Excavation report.** “Excavation report” means the form and associated attachments required by the agency to document excavation and treatment of petroleum-contaminated soil.

Subp. 45. **Excavation report preparation.** “Excavation report preparation” means the labor and materials necessary to complete and submit the excavation report to the agency, including, but not limited to, data analysis, data entry, drafting, photocopying, report review, shipping, and word processing.

Subp. 46. **Excavation soil sampling.** “Excavation soil sampling” means soil sampling from the excavation.

Subp. 47. **Field technician.** “Field technician” means a person who performs environmental field work.

Subp. 48. **Field work notification and scheduling.** “Field work notification and scheduling” means the labor and materials required for the consultant to contact the applicant, the agency, and subcontractors to schedule field work; and the labor and materials required for the consultant to manage the project internally. It does not include submitting a report. .

Subp. 49. **Free product recovery report worksheet.** “Free product recovery report worksheet” means the form and associated attachments required by the agency to report interim free product recovery actions.

Subp. 50. **Free product recovery report worksheet preparation.** “Free product recovery report worksheet preparation” means the labor and materials necessary to complete and submit the free product recovery report worksheet to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 51. **Groundwater sample analysis.** “Groundwater sample analysis” means quantifying the concentration of petroleum contaminants and/or inorganic compounds present in a groundwater sample.

Subp. 52. **Groundwater sampling (other than permanent monitoring well).** “Groundwater sampling (other than permanent monitoring well)” means collecting water samples from a sampling point other than a permanent monitoring well to determine petroleum contaminant concentrations, quality assurance and quality control, and the amount of free product; filling, labeling, and preserving each sample vial; and completing chain-of-custody forms.

Subp. 53. **Groundwater sampling (permanent monitoring well).** “Groundwater sampling (permanent monitoring well)” means collecting water samples from a permanent monitoring well to determine petroleum contaminant concentrations, quality assurance and quality control, and the amount of free product; filling, labeling, and preserving each sample vial; and completing chain-of-custody forms.

Subp. 54. **Hauling.** “Hauling” means the transportation and unloading of:

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

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

Subp. 55. **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. 56. **Hydraulic conductivity field test.** “Hydraulic conductivity field test” means a test performed on a monitoring well to determine hydraulic conductivity, including a slug test, bail test, and pump test. It does not mean using a book value for hydraulic conductivity.

Subp. 57. **Investigation report.** "Investigation report" means the comprehensive form and associated attachments required by the agency to document remedial investigation activities.

Subp. 58. **Investigation report preparation (full RI).** "Investigation report preparation (full RI)" means the labor and materials necessary to complete and submit the investigation report to the agency when a full remedial investigation is necessary, including, but not limited to, aquifer determination, data analysis, data entry, drafting, photocopying, report review, shipping, and word processing.

Subp. 59. **Investigation report preparation (LSI only).** "Investigation report preparation (LSI only)" means the labor and materials necessary to complete and submit the investigation report to the agency when only a limited site investigation is necessary, including, but not limited to, aquifer determination, data analysis, data entry, drafting, photocopying, report review, shipping, and word processing.

Subp. 60. **Karst field survey.** "Karst field survey" means the labor, equipment and field supplies, and materials required to perform a qualitative survey to identify karst features and determine their landscape position; note where water moves across, into, and out of the landscape; and correlate the resulting data with information on depth to bedrock, surficial geology, and bedrock geology.

Subp. 61. **Land treatment.** "Land treatment" means the placement and incorporation of petroleum-contaminated soil into the native soil surface for biodegradation of petroleum contaminants. It includes the following costs or activities:

- A. costs for use of land;
- B. costs for any permits necessary for the land treatment of the petroleum-contaminated soil;
- C. costs for labor and materials required for the temporary storage of the petroleum-contaminated soil;
- D. costs for fertilizer;
- E. separation of rocks and debris from the petroleum-contaminated soil;
- F. spreading of petroleum-contaminated soil and incorporation with native soil;
- G. periodic disking of soil;
- H. land-treated soil sampling; and
- I. periodic reporting of the land-treated soil sampling results.

Subp. 62. **Land treatment application.** "Land treatment application" means the form and associated attachments submitted to the agency to gain approval for the land treatment of a batch of petroleum-contaminated soil at an approved land treatment site.

Subp. 63. **Land treatment application preparation.** "Land treatment application preparation" means the labor and materials necessary to complete and submit the land treatment application to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 64. **Land treatment monitoring worksheet.** "Land treatment monitoring worksheet" means the form and associated attachments required by the agency for reporting the results of follow-up sampling of a specific batch of petroleum-contaminated soil spread at a land treatment site.

Subp. 65. **Land treatment monitoring worksheet preparation.** "Land treatment monitoring worksheet preparation" means the labor and materials necessary to complete and submit the land treatment monitoring worksheet to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 66. **Land treatment site application.** "Land treatment site application" means the form and associated attachments submitted to the agency to gain approval for a specific site to be used for the land treatment of petroleum-contaminated soil.

Subp. 67. **Land treatment site application preparation.** "Land treatment site application preparation" means the labor and materials necessary to complete and submit the land treatment site application to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 68. **Land treatment spreading notification form.** "Land treatment spreading notification form" means the form and associated attachments used to notify the agency that petroleum-contaminated soil approved for land treatment has been spread.

Subp. 69. **Land treatment spreading notification form preparation.** "Land treatment spreading notification form preparation" means the labor and materials necessary to complete and submit the land treatment spreading notification form to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 70. **Land-treated soil sampling.** "Land-treated soil sampling" means soil sampling from the land treatment site.

Subp. 71. **Landfilling.** "Landfilling" means the placement of petroleum-contaminated soil into a landfill.

Subp. 72. **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. 73. **Loading.** "Loading" means the equipment and labor required to load into a truck at the leak site:

A. petroleum-contaminated soil;

B. surfacing that was removed as part of the process of excavating petroleum-contaminated soil; or

C. overburden that must be relocated within the site as part of the process of excavating petroleum-contaminated soil.

Subp. 74. **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; 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 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. 75. **Minnesota Department of Health drinking water hotline contact.** "Minnesota Department of Health drinking water hotline contact" means the labor and materials required to contact the Minnesota Department of Health drinking water hotline to find out whether the leak site is within a drinking water supply management area.

Subp. 76. **Mobilization/demobilization (drilling).** "Mobilization/demobilization (drilling)" means the preparation and transport to and from the leak site of necessary drilling equipment after the release is discovered.

Subp. 77. **Mobilization/demobilization (heavy equipment).** “Mobilization/demobilization (heavy equipment)” means:

A. the preparation and transport to and from the leak site of any necessary heavy 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 land treatment site, if applicable, of equipment necessary for spreading petroleum-contaminated soil.

Subp. 78. **Monitoring well.** “Monitoring well” means a well constructed for measuring water levels and collecting representative groundwater samples.

Subp. 79. **Monitoring well development.** “Monitoring well development” means the work required to remove the fines and, if necessary, drilling fluid and to ensure that an adequate hydraulic connection exists between a monitoring well and the aquifer.

Subp. 80. **Monitoring well installation.** “Monitoring well installation” means at-grade or above-grade completion of a monitoring well from a completed soil boring.

Subp. 81. **Monitoring well installation oversight and development.** “Monitoring well installation oversight and development” means the oversight of the at-grade or above-grade completion of a monitoring well from a completed soil boring, including monitoring well development and monitoring well installation field log preparation.

Subp. 82. **Monitoring well permitting.** “Monitoring well permitting” means the labor and materials required to obtain permits to allow the drilling and installation of monitoring wells and to file well completion or installation records with state and local agencies. It does not include the cost of the permits.

Subp. 83. **Monitoring well sealing.** “Monitoring well sealing” means the permanent discontinuation of a monitoring well according to applicable well codes.

Subp. 84. **Monitoring well sealing oversight.** “Monitoring well sealing oversight” means the time required to oversee the permanent discontinuation of a monitoring well according to applicable well codes.

Subp. 85. **Nonspecific administration.** “Nonspecific administration” means the labor, equipment and field supplies, and materials required to perform routine administrative tasks that are not otherwise billed to the applicant, such as those required for scheduling and directing staff assignments, coordinating subcontractors, accounting and payroll, ordering and receiving supplies and equipment, and on-site supervision of staff and subcontractors.

Subp. 86. **Off-site access time.** “Off-site access time” means the time spent by the consultant getting permission from property owners other than the applicant to enter their property to do a remedial investigation or carry out a corrective action plan and to provide information to the property owner about the results and activities conducted on the property.

Subp. 87. **Overburden.** “Overburden” means soil that must be removed to access the petroleum-contaminated soil.

Subp. 88. **Per diem.** “Per diem” means costs for meals and lodging when the distance to the leak site makes it more cost-effective to lodge overnight near the leak site.

Subp. 89. **Person.** “Person” means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 90. **Photocopying.** “Photocopying” means making copies of a report or worksheet submitted to the agency.

Subp. 91. **Prima facie unreasonable.** “Prima facie unreasonable” means unreasonable absent proof by a preponderance of the evidence.

Subp. 92. **Pumping of free product or petroleum-contaminated water.** “Pumping of free product or petroleum-contaminated water” means the cost to pump free product or petroleum-contaminated water from the excavation basin using a vacuum truck.

Subp. 93. **Quarterly monitoring report.** “Quarterly monitoring report” means the form and associated attachments required by the agency to report quarterly site monitoring results for the period after the investigation report is submitted until that form is reviewed by agency staff or at other times when requested to provide such information by the agency.

Subp. 94. **Quarterly monitoring report preparation.** “Quarterly monitoring report preparation” means the labor and materials necessary to complete and submit the quarterly monitoring report to the agency, including, but not limited to, data analysis, data entry, drafting, photocopying, report review, shipping, and word processing.

Subp. 95. **Report.** “Report” means a report and its associated attachments that are required by the agency as a necessary part of corrective action.

Subp. 96. **Sample shipping and transportation.** “Sample shipping and transportation” means the cost to ship or transport air, groundwater, or soil samples to a laboratory for analysis, and the labor and materials required to count, package, and prepare shipping paperwork for the samples.

Subp. 97. **Saw cutting.** “Saw cutting” means the labor, materials, and tools required to cut through asphalt, concrete, or similar surfacing as part of corrective action.

Subp. 98. **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 engineering, soil science, geology, hydrogeology, or a related science; 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 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. 99. **Shipping.** “Shipping” means mailing an agency-required form, report, or worksheet to the applicant and agency.

Subp. 100. **Soil disposal.** “Soil disposal” means:

- A. biopiling;
- B. composting;
- C. land treatment;
- D. landfilling;
- E. thermal treatment; or

F. an alternative method of treatment or disposal allowed by agency rules, excluding drum disposal.

Subp. 101. **Soil sample analysis.** “Soil sample analysis” means quantifying the concentration of petroleum contaminants and/or inorganic compounds present in a soil sample.

Subp. 102. **Soil sampling.** “Soil sampling” means field screening and collecting soil samples to determine grain size, organic vapor concentrations, quality assurance and

quality control, stratigraphy, and the amount of free product; filling, labeling, and preserving each sample vial; and completing chain-of-custody forms.

Subp. 103. **Soil test pit excavation.** "Soil test pit excavation" means the excavation, backfilling, and compaction, if necessary, of small pits in the area of maximum contamination to determine the vertical and horizontal extent of petroleum-contaminated soil.

Subp. 104. **Spreading.** "Spreading" means the labor and equipment necessary for the placement of petroleum-contaminated soil at the land treatment site.

Subp. 105. **State duty officer emergency contact.** "State duty officer emergency contact" means a telephone call placed to the state duty officer immediately after a site assessment for emergency conditions indicates that an emergency condition exists at the site. It does not include a call placed to the state duty officer to report a release.

Subp. 106. **Step of services.** "Step of services" means:

- A. limited site investigation or full remedial investigation;
- B. active remediation-initial field testing;
- C. active remediation-data evaluation/site-specific system design;
- D. active remediation-system installation, start-up, and operation and maintenance; or
- E. active remediation-system decommissioning.

Subp. 107. **Stockpiling.** "Stockpiling" means the equipment, materials, and labor necessary to temporarily store petroleum-contaminated soil on an impermeable surface and cover the petroleum-contaminated soil with plastic anchored in place to prevent exposure to the elements.

Subp. 108. **Subsurface monitoring point.** "Subsurface monitoring point" means one location comprised of three depths (bottom, mid-depth, and top) from which monitoring readings are taken.

Subp. 109. **Surface disposal tipping fees.** "Surface disposal tipping fees" means the fees paid to dispose of asphalt, concrete, sod, or other surfacing that was removed as part of corrective action.

Subp. 110. **Surface removal.** "Surface removal" means the labor, materials, and tools required to remove asphalt, concrete, sod, or other surfacing as part of corrective action.

Subp. 111. **Surface replacement.** "Surface replacement" means the labor, materials, and tools required to install appropriate base material and replace asphalt, concrete, sod, or other surfacing that was removed as part of corrective action.

Subp. 112. **Surface water receptor survey and risk evaluation.** "Surface water receptor survey and risk evaluation" means the labor, equipment and field supplies, and materials required to perform a qualitative survey to identify surface water bodies that potentially may be impacted if petroleum contamination is present.

Subp. 113. **Surveying and surveying equipment.** "Surveying and surveying equipment" means the labor, equipment and field supplies, and materials required to establish the locations and ground surface elevations of soil borings, monitoring wells, and other pertinent site features.

Subp. 114. **System installation.** "System installation" means the labor and equipment necessary to install the remediation system.

Subp. 115. **Temporary well installation.** "Temporary well installation" means the conversion of a soil boring into a temporary monitoring well.

Subp. 116. **Temporary well installation oversight.** "Temporary well installation oversight" means the oversight of the conversion of a soil boring into a temporary monitoring well.

Subp. 117. **Thermal treatment.** “Thermal treatment” means the burning of petroleum-contaminated soil by a soil roaster that has received an agency air emission permit. It includes:

A. costs for permits necessary for the thermal treatment of the petroleum-contaminated soil;

B. costs for labor and materials required for the temporary storage of the petroleum-contaminated soil; and

C. costs for taking postburn samples and reporting the results.

Subp. 118. **Thermal treatment application.** “Thermal treatment application” means the form and associated attachments submitted to the agency to gain approval for the thermal treatment of a batch of petroleum-contaminated soil at a permitted thermal treatment facility.

Subp. 119. **Thermal treatment application preparation.** “Thermal treatment application preparation” means the labor and materials necessary to complete and submit the thermal treatment application to the agency, including, but not limited to, data analysis, data entry, photocopying, shipping, and word processing.

Subp. 120. **Travel time.** “Travel time” means the time required to mobilize equipment and to travel to and from the leak site or other location necessary to provide consultant services.

Subp. 121. **Treatment of free product or petroleum-contaminated water.** “Treatment of free product or petroleum-contaminated water” means the cost to treat free product or petroleum-contaminated water recovered from the leak site, excluding free product or petroleum-contaminated water put into drums for drum disposal.

Subp. 122. **Utility backfill investigation.** “Utility backfill investigation” means the advancement of hand-driven or hand-augered soil borings in the backfill surrounding sanitary and storm sewer lines, water mains, or other utilities that intercept contaminated soil or groundwater.

Subp. 123. **Utility clearance.** “Utility clearance” means the process used by the consultant, driller, excavation contractor, or private utility coordinator to identify and locate all aboveground and underground utilities.

Subp. 124. **Vapor receptor survey and risk evaluation.** “Vapor receptor survey and risk evaluation” means the labor, equipment and field supplies, and materials required to perform a qualitative survey to identify the location and type of nearby potential vapor receptors and to evaluate the information to identify risks from petroleum vapors.

Subp. 125. **Vehicle mileage.** “Vehicle mileage” means the per-mile costs associated with providing and using a vehicle to travel to and from the leak site or other location necessary to provide consultant services.

Subp. 126. **Water well receptor survey and risk evaluation.** “Water well receptor survey and risk evaluation” means the labor, equipment and field supplies, and materials required to perform a qualitative survey to identify water wells that may be at risk from the petroleum release and to provide information regarding the geology and groundwater use near the release site. It includes Minnesota Department of Health drinking water hotline contact.

Subp. 127. **Word processing.** “Word processing” means using a computer or a typewriter to prepare correspondence or prepare a form, report, or worksheet submitted to the agency.

Subp. 128. **Word processor.** “Word processor” means a person who performs word processing.

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; 28 SR 383*

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*

History: *12 SR 2142; 28 SR 383*

2890.0030 VICE-CHAIR.

A vice-chair must be elected by the board at the first regular board meeting of each calendar year. The vice-chair must 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 must be elected at the next regularly scheduled board meeting.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 18 SR 1471; 28 SR 383*

2890.0040 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** A quorum consists of three board members.

Subp. 2. **Minutes.** Meetings must 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 must govern questions that may arise at a meeting of the board.

Subp. 4. **Abstentions.** The abstention of a board member or members does not prevent the remaining members from conducting a legal vote.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 28 SR 383*

2890.0050 CONFLICT OF INTEREST.

When a member of the board has a direct or indirect financial or employment interest relating to a matter before the board, and when that interest is reasonably likely to affect the member's impartiality or judgment in the matter, the member must reveal the interest and must not participate in, or vote upon, the matter.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 28 SR 383*

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** An 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]

Subp. 5. **Cost forgiven.** A cost that has been forgiven by a consultant or contractor is not an incurred cost for the purposes of this chapter.

Subp. 6. **Cost subject to condition.** A cost that has been made conditional by the consultant or contractor on a subsequent reimbursement determination is not an incurred cost for the purposes of this chapter.

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

History: *12 SR 2142; 13 SR 496; 14 SR 1928; 15 SR 2266; 18 SR 1471; 28 SR 383*

2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

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

A. The board must 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 corrosion protection;
- (2) by 15 percent for failure to provide leak detection;
- (3) by 15 percent for failure to provide spill and overfill protection;
- (4) by 15 percent for failure to provide secondary containment; and
- (5) by up to 50 percent for failure to comply with a state or federal rule or regulation applicable to the tank not specifically cited in this subpart.

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

C. For failure to cooperate fully with the agency in responding to the release, the board must 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 must be applied as specified in this subpart. If the board imposes more than one dollar reduction on an application, the dollar amounts must be added together and the total dollar amount of reduction must be applied to the application. If the board imposes more than one percentage reduction on an application, the percentage amounts must 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 must be applied after the percentage reductions.

Subp. 3. **Deviations.** The board may increase or decrease the amount of reduction by up to 100 percent of the original amount of reimbursement, or use either dollar amounts or percentages for a reduction, based on the following factors:

- A. the reasonable determination by the agency that the noncompliance poses a threat to the environment;
- B. whether the noncompliance was negligent, knowing, or willful;
- C. the deterrent effect of the award reduction on other tank owners and operators;
- D. the amount of reimbursement reduction recommended by the commissioner; and
- E. the documentation of noncompliance provided by the commissioner.

Subp. 4. **Supplemental applications.**

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

B. When the board imposes a reduction in the form of a dollar amount, the amount of the reduction must be a onetime penalty. That dollar amount reduction must not continue to be imposed on supplemental applications unless necessary to fully impose the reduction.

Statutory Authority: *MS s 115C.07*

History: *15 SR 2266; 18 SR 1471; 28 SR 383*

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 and geoscientific services.

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

E. Cleanup of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Cleanup 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.** The applicant must get and keep records necessary to document incurred costs submitted in an application for reimbursement for seven years from the date the application is submitted to the board. Among the records required are all invoices, time records, equipment records, receipts, proposals, and bids.

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

History: *12 SR 2142; 14 SR 1928; 15 SR 2266; 16 SR 2684; 20 SR 227; 28 SR 383*

2890.0071 [Renumbered 2890.0200]

2890.0072 [Repealed, 28 SR 383]

2890.0073 Subpart 1. [Repealed, 28 SR 383]

Subp. 1a. [Renumbered 2890.0015, subp. 2]

Subp. 1b. [Renumbered 2890.0015, subp. 4]

Subp. 2. [Repealed, 28 SR 383]

Subp. 2a. [Renumbered 2890.0015, subp. 6]

Subp. 2b. [Renumbered 2890.0015, subp. 7]

Subp. 2c. [Renumbered 2890.0015, subp. 9]

Subp. 2d. [Renumbered 2890.0015, subp. 10]

Subp. 3. [Repealed, 28 SR 383]

Subp. 3a. [Renumbered 2890.0015, subp. 11]

Subp. 4. [Renumbered 2890.0015, subp. 12]

Subp. 5. [Repealed, 28 SR 383]

Subp. 6. [Repealed, 28 SR 383]

Subp. 6a. [Renumbered 2890.0015, subp. 16]

- Subp. 6b. [Renumbered 2890.0015, subp. 20]
- Subp. 6c. [Renumbered 2890.0015, subp. 22]
- Subp. 6d. [Renumbered 2890.0015, subp. 23]
- Subp. 6e. [Renumbered 2890.0015, subp. 24]
- Subp. 6f. [Renumbered 2890.0015, subp. 25]
- Subp. 7. [Renumbered 2890.0015, subp. 27]
- Subp. 8. [Repealed, 28 SR 383]
- Subp. 9. [Repealed, 28 SR 383]
- Subp. 10. [Repealed, 28 SR 383]
- Subp. 11. [Renumbered 2890.0015, subp. 32]
- Subp. 11a. [Renumbered 2890.0015, subp. 34]
- Subp. 11b. [Renumbered 2890.0015, subp. 40]
- Subp. 12. [Renumbered 2890.0015, subp. 41]
- Subp. 13. [Renumbered 2890.0015, subp. 42]
- Subp. 14. [Renumbered 2890.0015, subp. 46]
- Subp. 15. [Renumbered 2890.0015, subp. 44]
- Subp. 15a. [Renumbered 2890.0015, subp. 45]
- Subp. 16. [Renumbered 2890.0015, subp. 47]
- Subp. 16a. [Renumbered 2890.0015, subp. 48]
- Subp. 16b. [Renumbered 2890.0015, subp. 49]
- Subp. 16c. [Renumbered 2890.0015, subp. 50]
- Subp. 17. [Repealed, 28 SR 383]
- Subp. 18. [Repealed, 28 SR 383]
- Subp. 18a. [Renumbered 2890.0015, subp. 52]
- Subp. 19. [Renumbered 2890.0015, subp. 53]
- Subp. 20. [Repealed, 28 SR 383]
- Subp. 21. [Renumbered 2890.0015, subp. 55]
- Subp. 22. [Renumbered 2890.0015, subp. 56]
- Subp. 23. [Repealed, 28 SR 383]
- Subp. 23a. [Renumbered 2890.0015, subp. 57]
- Subp. 23b. [Renumbered 2890.0015, subp. 58]
- Subp. 23c. [Renumbered 2890.0015, subp. 59]
- Subp. 23d. [Renumbered 2890.0015, subp. 60]
- Subp. 23e. [Renumbered 2890.0015, subp. 62]
- Subp. 23f. [Renumbered 2890.0015, subp. 63]
- Subp. 23g. [Renumbered 2890.0015, subp. 64]
- Subp. 23h. [Renumbered 2890.0015, subp. 65]
- Subp. 23i. [Renumbered 2890.0015, subp. 66]
- Subp. 23j. [Renumbered 2890.0015, subp. 67]
- Subp. 23k. [Renumbered 2890.0015, subp. 68]
- Subp. 23l. [Renumbered 2890.0015, subp. 69]
- Subp. 23m. [Renumbered 2890.0015, subp. 70]
- Subp. 23n. [Renumbered 2890.0015, subp. 75]
- Subp. 24. [Renumbered 2890.0015, subp. 74]
- Subp. 25. [Repealed, 28 SR 383]

- Subp. 26. [Renumbered 2890.0015, subp. 78]
- Subp. 26a. [Renumbered 2890.0015, subp. 79]
- Subp. 26b. [Renumbered 2890.0015, subp. 81]
- Subp. 26c. [Renumbered 2890.0015, subp. 84]
- Subp. 27. [Repealed, 28 SR 383]
- Subp. 27a. [Renumbered 2890.0015, subp. 85]
- Subp. 28. [Renumbered 2890.0015, subp. 86]
- Subp. 29. [Repealed, 28 SR 383]
- Subp. 30. [Renumbered 2890.0015, subp. 88]
- Subp. 30a. [Renumbered 2890.0015, subp. 90]
- Subp. 31. [Repealed, 28 SR 383]
- Subp. 32. [Repealed, 28 SR 383]
- Subp. 33. [Repealed, 28 SR 383]
- Subp. 33a. [Renumbered 2890.0015, subp. 93]
- Subp. 33b. [Renumbered 2890.0015, subp. 94]
- Subp. 34. [Repealed, 28 SR 383]
- Subp. 34a. [Renumbered 2890.0015, subp. 95]
- Subp. 35. [Repealed, 28 SR 383]
- Subp. 35a. [Renumbered 2890.0015, subp. 96]
- Subp. 36. [Renumbered 2890.0015, subp. 98]
- Subp. 36a. [Renumbered 2890.0015, subp. 99]
- Subp. 37. [Repealed, 28 SR 383]
- Subp. 38. [Repealed, 28 SR 383]
- Subp. 39. [Repealed, 28 SR 383]
- Subp. 40. [Repealed, 28 SR 383]
- Subp. 41. [Repealed, 28 SR 383]
- Subp. 42. [Repealed, 28 SR 383]
- Subp. 43. [Renumbered 2890.0015, subp. 102]
- Subp. 44. [Repealed, 28 SR 383]
- Subp. 45. [Repealed, 28 SR 383]
- Subp. 46. [Repealed, 28 SR 383]
- Subp. 47. [Repealed, 28 SR 383]
- Subp. 48. [Repealed, 28 SR 383]
- Subp. 49. [Repealed, 28 SR 383]
- Subp. 49a. [Renumbered 2890.0015, subp. 105]
- Subp. 49b. [Renumbered 2890.0015, subp. 106]
- Subp. 49c. [Renumbered 2890.0015, subp. 108]
- Subp. 49d. [Renumbered 2890.0015, subp. 112]
- Subp. 50. [Renumbered 2890.0015, subp. 113]
- Subp. 51. [Repealed, 28 SR 383]
- Subp. 52. [Repealed, 28 SR 383]
- Subp. 53. [Repealed, 28 SR 383]
- Subp. 53a. [Renumbered 2890.0015, subp. 116]
- Subp. 53b. [Renumbered 2890.0015, subp. 118]
- Subp. 53c. [Renumbered 2890.0015, subp. 119]

- Subp. 54. [Renumbered 2890.0015, subp. 120]
- Subp. 54a. [Renumbered 2890.0015, subp. 122]
- Subp. 54b. [Renumbered 2890.0015, subp. 123]
- Subp. 55. [Repealed, 28 SR 383]
- Subp. 56. [Renumbered 2890.0015, subp. 124]
- Subp. 57. [Repealed, 28 SR 383]
- Subp. 57a. [Renumbered 2890.0015, subp. 125]
- Subp. 58. [Repealed, 28 SR 383]
- Subp. 59. [Repealed, 28 SR 383]
- Subp. 60. [Repealed, 28 SR 383]
- Subp. 61. [Repealed, 28 SR 383]
- Subp. 62. [Repealed, 28 SR 383]
- Subp. 63. [Repealed, 28 SR 383]
- Subp. 64. [Repealed, 28 SR 383]
- Subp. 64a. [Renumbered 2890.0015, subp. 126]
- Subp. 65. [Repealed, 28 SR 383]
- Subp. 66. [Repealed, 28 SR 383]
- Subp. 67. [Repealed, 28 SR 383]
- Subp. 68. [Repealed, 28 SR 383]
- Subp. 69. [Repealed, 28 SR 383]
- Subp. 69a. [Renumbered 2890.0015, subp. 127]
- Subp. 70. [Renumbered 2890.0015, subp. 128]
- 2890.0074** Subpart 1. [Renumbered 2890.1000, subpart 1]
 - Subp. 2. [Renumbered 2890.1000, subp. 6]
- 2890.0075** MR 1993 [Repealed, 20 SR 227]
- 2890.0075** Subpart 1. [Renumbered 2890.1100, subpart 1]
 - Subp. 2. [Repealed, 28 SR 383]
 - Subp. 3. [Renumbered 2890.1100, subp. 2]
 - Subp. 4. [Repealed, 28 SR 383]
 - Subp. 5. [Repealed, 28 SR 383]
 - Subp. 6. [Renumbered 2890.1100, subp. 3.]
- 2890.0076** Subpart 1. [Renumbered 2890.1300, subpart 1]
 - Subp. 2. [Renumbered 2890.1400]
 - Subp. 3. [Repealed, 28 SR 383]
 - Subp. 4. [Repealed, 28 SR 383]
 - Subp. 5. [Renumbered 2890.1500]
- 2890.0077** Subpart 1. [Renumbered 2890.2000, subpart 1]
 - Subp. 2. [Renumbered 2890.2000, subp. 3]
 - Subp. 3. [Renumbered 2890.2000, subp. 4]
 - Subp. 4. [Renumbered 2890.2000, subp. 5]
 - Subp. 5. [Repealed, 28 SR 383]
 - Subp. 6. [Renumbered 2890.2000, subp. 7]
- 2890.0078** Subpart 1. [Repealed, 28 SR 383]
 - Subp. 2. [Renumbered 2890.2100, subpart 1]
 - Subp. 3. [Renumbered 2890.2100, subp. 2]

2890.0079 [Renumbered 2890.2200]

2890.0080 MR 1993 [Repealed, 20 SR 227]

2890.0080 MR 2001 [Repealed, 28 SR 383]

2890.0081 Subpart 1. [Repealed, 28 SR 383]

Subp. 1a. [Renumbered 2890.0015, subp. 5]

Subp. 1b. [Renumbered 2890.0015, subp. 13]

Subp. 1c. [Renumbered 2890.0015, subp. 15]

Subp. 2. [Renumbered 2890.0015, subp. 17]

Subp. 3. [Renumbered 2890.0015, subp. 19]

Subp. 3a. [Renumbered 2890.0015, subp. 20]

Subp. 3b. [Renumbered 2890.0015, subp. 21]

Subp. 3c. [Renumbered 2890.0015, subp. 30]

Subp. 4. [Renumbered 2890.0015, subp. 31]

Subp. 4a. [Renumbered 2890.0015, subp. 33]

Subp. 4b. [Renumbered 2890.0015, subp. 35]

Subp. 4c. [Renumbered 2890.0015, subp. 36]

Subp. 4d. [Renumbered 2890.0015, subp. 37]

Subp. 4e. [Renumbered 2890.0015, subp. 38]

Subp. 4f. [Renumbered 2890.0015, subp. 39]

Subp. 5. [Renumbered 2890.0015, subp. 43]

Subp. 5a. [Renumbered 2890.0015, subp. 51]

Subp. 6. [Renumbered 2890.0015, subp. 54]

Subp. 7. [Repealed, 28 SR 383]

Subp. 8. [Renumbered 2890.0015, subp. 61]

Subp. 8a. [Renumbered 2890.0015, subp. 71]

Subp. 9. [Renumbered 2890.0015, subp. 73]

Subp. 9a. [Renumbered 2890.0015, subp. 76]

Subp. 10. [Renumbered 2890.0015, subp. 77]

Subp. 10a. [Renumbered 2890.0015, subp. 78]

Subp. 10b. [Renumbered 2890.0015, subp. 80]

Subp. 10c. [Renumbered 2890.0015, subp. 82]

Subp. 10d. [Renumbered 2890.0015, subp. 83]

Subp. 11. [Repealed, 28 SR 383]

Subp. 12. [Renumbered 2890.0015, subp. 87]

Subp. 12a. [Renumbered 2890.0015, subp. 92]

Subp. 12b. [Renumbered 2890.0015, subp. 97]

Subp. 12c. [Renumbered 2890.0015, subp. 100]

Subp. 12d. [Renumbered 2890.0015, subp. 101]

Subp. 13. [Renumbered 2890.0015, subp. 103]

Subp. 14. [Renumbered 2890.0015, subp. 104]

Subp. 15. [Renumbered 2890.0015, subp. 107]

Subp. 15a. [Renumbered 2890.0015, subp. 109]

Subp. 15b. [Renumbered 2890.0015, subp. 110]

Subp. 15c. [Renumbered 2890.0015, subp. 111]

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Subp. 16. [Renumbered 2890.0015, subp. 114]

Subp. 16a. [Renumbered 2890.0015, subp. 115]

Subp. 17. [Renumbered 2890.0015, subp. 117]

Subp. 18. [Renumbered 2890.0015, subp. 121]

Subp. 19. [Renumbered 2890.0015, subp. 123]

2890.0082 Subpart 1. [Renumbered 2890.2400]

Subp. 2. [Renumbered 2890.2600]

Subp. 3. [Renumbered 2890.2700]

Subp. 4. [Renumbered 2890.3800]

2890.0083 [Renumbered 2890.4000]

2890.0084 Subpart 1. [Repealed, 28 SR 383]

Subp. 2. [Renumbered 2890.4100, subp. 1]

Subp. 3. [Renumbered 2890.4100, subp. 2]

2890.0085 [Renumbered 2890.4200]

2890.0086 [Renumbered 2890.4300]

2890.0089 [Repealed, 28 SR 383]

2890.0090 [Renumbered 2890.4400]

2890.0100 [Renumbered 2890.4500]

2890.0110 [Renumbered 2890.4600]

2890.0120 [Renumbered 2890.4700]

2890.0130 [Renumbered 2890.4800]

2890.0200 INELIGIBLE COSTS.

Subpart 1. **Generally.** Costs are not eligible for reimbursement when they are:

A. associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment;

B. not incurred by the applicant; or

C. not reasonable.

Subp. 2. **Specific items.** Among ineligible costs are:

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, including the applicant's purported loss of income from land used for the treatment or disposal of contaminated soil generated from the applicant's leak site;

C. attorney fees or other fees charged by an attorney or by another person for providing legal or quasi-legal advice, filing appeals, or providing legal testimony;

D. costs for permanent relocation of residents;

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

F. costs for the applicant's own time spent in planning, performing, or administering a corrective action, when the applicant is an individual;

G. costs for aesthetic or site improvements;

H. costs for 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;

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

J. costs for repair or restoration of structures, surfaces, or land damaged by equipment used in the corrective action, unless the damage was unavoidable to implement corrective action;

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 other aboveground structures; or

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

L. costs for the removal of water from an excavation basin, unless required by the agency as part of a corrective action;

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

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;

O. costs for correspondence that result from avoidable noncompliance with agency deadlines;

P. costs for priority turnaround of laboratory analysis, unless requested by the agency;

Q. late payment fees;

R. fees charged by property owners for access to their property, unless charged to preserve public safety;

S. interest costs other than those eligible for reimbursement under Minnesota Statutes, chapter 115C;

T. costs for a phase I or II environmental site assessment;

U. costs for work done solely to facilitate a property transfer;

V. costs for property acquisition;

W. administrative costs associated with acquiring business, preparing or responding to a request for proposal, or preparing invoices for services provided or performed;

X. costs for reports not submitted to the agency or not required by the agency;

Y. costs for work that the agency has determined was incompetently performed;

Z. consultant markup charges; or

AA. costs for work performed after the agency has granted full site closure, excluding:

(1) costs for well sealing; and

(2) costs for tasks or items required by the agency to dismantle an approved corrective action system after its operation is no longer necessary and to remove the dismantled system from the site.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383*

2890.1000 WRITTEN PROPOSAL AND INVOICE REQUIREMENTS FOR CONSULTANT SERVICES.

Subpart 1. **Written proposal.** Costs incurred for consultant services are prima facie unreasonable when the applicant has not obtained a written proposal for consultant services according to this part. The applicant must get proposals for consultant services only from persons who are registered with the board as consultants. A proposal for a step of services must be on the form prescribed by the board for that step of services.

Subp. 2. **Excavation and soil disposal oversight before investigation.** An applicant is not required to get a written proposal for the following consultant services when they are performed as part of excavation and soil disposal oversight that occurs before the first limited site investigation or full remedial investigation of the leak site occurs:

- A. AST soil sampling;
- B. composted soil sampling;
- C. contaminated stockpile soil sampling;
- D. excavation report preparation;
- E. excavation soil sampling;
- F. field work notification and scheduling;
- G. groundwater sampling (other than permanent monitoring well);
- H. land-treated soil sampling;
- I. sample shipping and transportation;
- J. state duty officer emergency contact; and
- K. utility clearance.

Subp. 3. **Steps of services.** A written proposal for consultant services must be approved by the applicant for each necessary step of services. The applicant must approve in writing a written proposal for a step of services before incurring costs for that step of services.

Subp. 4. **Emergency services.** An applicant is not required to get a written proposal for consultant services that are required by emergency conditions that pose such a threat to the public health and welfare or the environment that there is not sufficient time to get a proposal for the necessary services.

Subp. 5. **Notarization required.** The applicant's signature indicating acceptance of a written proposal for consultant services must be dated with the date on which the applicant approves the proposal in writing and must be notarized. If the proposal is not in compliance with any of these conditions, it is not a valid competitive proposal for the purposes of this chapter.

Subp. 6. **Invoice.** Costs incurred for consultant services that are not billed to the applicant on an invoice form prescribed by the board are prima facie unreasonable. The invoice form prescribed by the board must be according to parts 2890.1000 to 2890.2200.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383*

2890.1100 REASONABLENESS OF WORK PERFORMED FOR EACH STEP OF SERVICES.

Subpart 1. **Generally.** Costs incurred for work not covered by this part are prima facie unreasonable.

Subp. 2. **Limited site investigation or full remedial investigation.** Costs incurred for a limited site investigation or full remedial investigation other than costs for tasks or items required by the agency to investigate the release are prima facie unreasonable.

Subp. 3. **Active remediation-initial field testing.** Costs incurred for active remediation-initial field testing other than costs for tasks or items required by the agency to determine whether the technology approved by the agency after reviewing the investi-

gation report will be effective in reducing the risk associated with the release are prima facie unreasonable.

Subp. 4. **Active remediation-site-specific system design.** Costs incurred for active remediation-site-specific system design other than costs for tasks or items required by the agency to evaluate the data generated during the active remediation-initial field testing step of services, if it was conducted, or to complete and submit the site-specific system design and determine the costs associated with the design, are prima facie unreasonable.

Subp. 5. **Active remediation-system installation, start-up, and operation and maintenance.** Costs incurred for active remediation-system installation, start-up, and operation and maintenance other than costs for tasks or items required by the agency to install, start-up, operate, and maintain the approved corrective action system are prima facie unreasonable.

Subp. 6. **Active remediation-system decommissioning.** Costs incurred for active remediation-system decommissioning other than costs for tasks or items required by the agency to dismantle the approved corrective action system after its operation is no longer necessary and to remove the dismantled system from the site and restore the site are prima facie unreasonable.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.1150 MAXIMUM COSTS FOR CONSULTANT SERVICES.

Costs for consultant services are prima facie unreasonable when they do not meet the standards and requirements in parts 2890.1000 to 2890.2200.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.1300 MAXIMUM PRELIMINARY LABOR CHARGES.

Subpart 1. **General.** When a task listed in this part is performed during the limited site investigation or full remedial investigation step of services or as part of excavation and soil disposal oversight before the investigation, the cost is prima facie unreasonable when it exceeds the amount specified for it in the proposal for consultant services or the maximum cost specified for it in this part when the task was started, whichever is less.

Subp. 2. Administrative tasks.

A. Agency status update has a maximum cost of \$95 per field work event.

B. Applicant status update has a maximum cost of:

(1) \$520 per drilling event; or

(2) \$140 per quarterly sampling event.

C. Background review has a maximum cost of \$560 per leak site.

D. Drum disposal management has a maximum cost of \$280 per disposal.

E. Field work notification and scheduling has a maximum cost of \$190 per field work event for which notification and scheduling are necessary.

F. Health and safety plan has a maximum cost of \$250 per leak site.

G. Nonspecific administration has a maximum cost of \$200 per step of services.

H. Off-site access time has a maximum cost of \$1,000 per off-site property to which access is required.

I. Sample shipping and transportation has a maximum cost of \$90 per shipping event.

J. State duty officer emergency contact has a maximum cost of \$95 per call.

Subp. 3. Consultant drilling and excavation activities.

A. Drilling oversight, field log preparation, and soil sampling have a maximum cost of:

- (1) \$150 for a 25-foot or shallower boring; or
- (2) \$6 per foot for a boring deeper than 25 feet.

B. Free product recovery through hand bailing or portable pump has a maximum cost of \$105 per well per event.

C. Hydraulic conductivity field test has a maximum cost of \$140 per monitoring well for which the performance of a hydraulic conductivity field test is necessary.

D. Monitoring well installation oversight and development has a maximum cost of \$280 per well, plus \$140 per well that requires more than two hours for monitoring well development.

E. Monitoring well sealing oversight has a maximum cost of \$70 per well.

F. Surveying and surveying equipment has a maximum cost of:

- (1) \$190 per surveying event for which a licensed professional surveyor is not necessary; or
- (2) the reasonable actual cost up to \$750 per surveying event for which a licensed professional surveyor is necessary.

G. Temporary well installation oversight has a maximum cost of:

- (1) \$150 for a 25-foot or shallower well; or
- (2) \$6 per foot for a well deeper than 25 feet.

H. Utility backfill investigation has a maximum cost of \$70 per hand-auger boring.

I. Utility clearance has a maximum cost of:

- (1) the reasonable actual cost up to \$200 for each utility clearance event for which a private utility locator is not necessary; and
- (2) the reasonable actual cost up to \$500 for each utility clearance event for which a private utility locator is necessary.

Subp. 4. Field and receptor surveys.

A. Karst field survey has a maximum cost of \$1,980.

B. Surface water receptor survey and risk evaluation has a maximum cost of \$140 per leak site.

C. Vapor receptor survey and risk evaluation has a maximum cost of \$700 per leak site, plus:

- (1) \$17.50 per citizen contact beyond eight; and
- (2) \$35 per subsurface monitoring point beyond eight.

D. Water well receptor survey and risk evaluation has a maximum cost of \$752.50 per leak site, plus \$35 per citizen contact or property surveyed beyond 15.

Subp. 5. Sampling.

A. AST soil sampling has a maximum cost of \$35 per sample that is listed on the chain-of-custody form received by the laboratory.

B. Composted soil sampling has a maximum cost of \$70 per sampling event.

C. Contaminated stockpile soil sampling has a maximum cost of \$35 per sample that is listed on the chain-of-custody form received by the laboratory.

D. Excavation soil sampling has a maximum cost of:

- (1) \$70 per tank that is removed or abandoned plus \$3.50 per cubic yard excavated when a tank is being removed or abandoned; plus
- (2) \$1.40 per cubic yard excavated when a tank is not being removed or abandoned; plus
- (3) \$70 per test pit.

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E. Groundwater sampling (permanent monitoring well) has a maximum cost of \$122.50 per well per sampling event.

F. Groundwater sampling (other than permanent monitoring well) has a maximum cost of \$35 per sampling point from which a sample is taken and delivered to a laboratory for analysis.

G. Land-treated soil sampling has a maximum cost of \$70 per sampling event.

Subp. 6. Submissions to agency.

A. Annual monitoring report preparation has a maximum cost of \$1,540 per report, plus:

- (1) \$35 per well beyond three;
- (2) \$140, if follow-up vapor monitoring is performed;
- (3) \$7 per subsurface monitoring point beyond eight that had to be plotted on a site map; and
- (4) \$7 per property beyond 16 that had to be added to a property table.

B. Composting monitoring worksheet preparation has a maximum cost of \$70 per worksheet.

C. Composting site application preparation has a maximum cost of \$560 per composting site.

D. Excavation report preparation has a maximum cost of \$490 per report.

E. Free product recovery report worksheet preparation has a maximum cost of \$140 per site.

F. Investigation report preparation (full RI) has a maximum cost of:

(1) for a report recommending closure, additional vapor monitoring, or additional groundwater monitoring, \$4,742.50, plus:

- (a) \$1,320 for the karst field survey attachment;
- (b) \$150 per soil boring beyond five;
- (c) \$195 per well beyond three;
- (d) \$7 per subsurface monitoring point beyond eight that had to be plotted on a site map; and
- (e) \$7 per property beyond 16 that had to be added to a property table;

(2) for a report recommending active remediation, \$4,882.50, plus:

- (a) \$1,320 for the karst field survey attachment;
- (b) \$150 per soil boring beyond five;
- (c) \$195 per well beyond three;
- (d) \$7 per subsurface monitoring point beyond eight that had to be plotted on a site map; and
- (e) \$7 per property beyond 16 that had to be added to a property table; or

(3) for a full remedial investigation report submitted in response to a documented special request made by the agency after a limited site investigation report was submitted to the agency, the maximum cost for investigation report preparation (LSI only), plus:

- (a) \$1,120;
- (b) \$1,320 for the karst field survey attachment, if it was prepared in response to the documented special request made by the agency after a limited site investigation report was submitted to the agency;
- (c) \$150 per soil boring drilled in response to the documented special request made by the agency after a limited site investigation report was submitted to the agency; and

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(d) \$195 per well installed in response to the documented special request made by the agency after a limited site investigation report was submitted to the agency.

G. Investigation report preparation (LSI only) has a maximum cost of \$3,477.50, plus:

- (1) \$1,320 for the karst field survey attachment;
- (2) \$125 per soil boring beyond five;
- (3) \$7 per subsurface monitoring point beyond eight that had to be plotted on a site map; and
- (4) \$7 per property beyond 16 that had to be added to a property table.

H. Land treatment application preparation has a maximum cost of \$140 per application.

I. Land treatment monitoring worksheet preparation has a maximum cost of \$105 per worksheet.

J. Land treatment site application preparation has a maximum cost of \$560 per land treatment site.

K. Land treatment spreading notification form preparation has a maximum cost of \$70 per notification.

L. Quarterly monitoring report preparation has a maximum cost of \$385 per report, plus:

- (1) \$35 per well beyond three;
- (2) \$70, if follow-up vapor monitoring is performed;
- (3) \$7 per subsurface monitoring point beyond eight that had to be plotted on a site map; and
- (4) \$7 per property beyond 16 that had to be added to a property table.

M. Thermal treatment application preparation has a maximum cost of \$140 per application.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.1350 ALTERNATIVE TECHNOLOGIES.

In determining the reasonableness of a cost for a consultant services task or item that is:

- A. not an emergency response task;
- B. not listed in part 2890.1300, 2890.1500, or 2890.1600; and
- C. performed during the limited site investigation or full remedial investigation step of services or as part of excavation and soil disposal oversight before the investigation, the board will consider the prevailing market cost for the task or item and the amount charged in the same geographical area during the same time period for a substantially similar task or item.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.1400 MAXIMUM HOURLY RATES.

A. After the applicant has accepted a consultant's first written proposal for consultant services at the applicant's site, hourly rate charges for subsequent services performed at the leak site by that consultant that exceed the hourly rates listed in the consultant's first written proposal for consultant services at the applicant's site are prima facie unreasonable.

B. Notwithstanding item A, hourly rate charges that exceed by a maximum of five percent per year the hourly rates listed in the consultant's first written proposal for

consultant services at the applicant's site are not prima facie unreasonable when at least one year has passed since the applicant approved that proposal in writing.

C. Notwithstanding items A and B, hourly rate charges for consultant services in excess of the following are prima facie unreasonable: senior level professional at \$130 per hour, midlevel professional at \$95 per hour, entry level professional at \$70 per hour, field technician at \$65 per hour, draftsman at \$55 per hour, and word processor at \$40 per hour.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.1500 MAXIMUM TRAVEL AND PER DIEM CHARGES.

The cost for an item listed in this subpart is prima facie unreasonable when it exceeds the amount specified for it in the proposal for consultant services or the specified maximum cost, whichever is less.

A. Travel time has a maximum cost of:

(1) \$70 per hour for travel necessary to perform a task listed in part 2890.1300, excluding "karst field survey";

(2) \$95 per hour for travel necessary to perform "karst field survey"; and

(3) the maximum hourly rate charge specified in part 2890.1400, item C, for the traveler's level of professional expertise for travel necessary to perform a task not listed in part 2890.1300.

B. Vehicle mileage has a maximum cost of 65 cents a mile.

C. Per diem has a maximum cost of \$135 per day.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.1600 MAXIMUM EQUIPMENT AND FIELD SUPPLIES CHARGES.

Equipment and field supplies have a maximum cost of the following:

A. for a disposable item, the cost to buy the item; or

B. for a reusable item, the cost to buy 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: 28 SR 383

2890.1700 MAXIMUM LABOR CHARGES FOR WORK PERFORMED DURING ACTIVE REMEDIATION STEPS OF SERVICES.

For a task performed during active remediation-initial field testing; active remediation-data evaluation/site-specific system design; active remediation-system installation, start-up, and operation and maintenance; or active remediation-system decommissioning, the cost is prima facie unreasonable when:

(1) it exceeds the amount specified for it in the proposal approved by the board's staff under part 2890.2000, subpart 5; or

(2) the proposal that includes it is not approved by the board's staff under part 2890.2000, subpart 5.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.1800 EMERGENCY RESPONSE COSTS.

A cost for an emergency response task performed after January 31, 2003, that exceeds the amount specified for it in the Minnesota Department of Administration's "Hazardous Spill and Substance Release - Full Service Emergency Response" contract when the task was performed is prima facie unreasonable. The Minnesota Department of Administration's "Hazardous Spill and Substance Release - Full Service Emergency

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Response" contract (publ. Minnesota Department of Administration Materials Management Division, 2003) is incorporated by reference in this part and is updated biennially. Two copies of the document are located in the State Law Library.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.1850 COSTS FOR REQUIRED PERMITS.

A cost for a permit required for the performance of a consultant services task is prima facie unreasonable when it exceeds the actual cost of the permit.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.1900 ADJUSTMENT OF DOLLAR AMOUNTS.

A. The dollar amounts in parts 2890.1300 to 2890.1600 must be adjusted periodically, as provided in this part, according to and to the extent of changes in the implicit price deflator for the gross domestic product, 1996 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for the fourth quarter of 2001 is the original reference base index for purposes of this part. When the dollar amounts in parts 2890.1300 to 2890.1600 are adjusted, the index for the fourth quarter of the preceding year becomes the current reference base index for purposes of this part. The implicit price deflator for the gross domestic product (publ. United States Department of Commerce Bureau of Economic Analysis) is incorporated by reference in this part and is revised quarterly. It is available on the Internet at www.bea.doc.gov/bea/dn/nipaweb/index.asp.

B. The dollar amounts in parts 2890.1300 to 2890.1600 must be adjusted on July 1 of each year after 2002 in which the percentage of change, calculated to the nearest whole percentage point, between the index for the fourth quarter of the preceding year and the current reference base index is ten percent or more; but the part of the percentage change in the index in excess of a multiple of ten percent must be disregarded and the dollar amounts must change only in multiples of ten percent and, when they exceed \$5, must be rounded to the nearest whole dollar.

C. If the index is revised, the percentage of change under this part must be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index must be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States Department of Commerce. If the index is superseded, the index referred to in this part is the one represented by the United States Department of Commerce as reflecting most accurately changes in the purchasing power of the dollar for consumers and businesses.

D. The board must announce and publish:

(1) before July 1 of each year in which adjustments are made, the adjustments in dollar amounts required by item B; and

(2) promptly after the changes occur, changes in the index required by item C, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of the index superseding the index.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.2000 COMPETITIVE BIDDING REQUIREMENTS FOR CONSULTANT SERVICES PROPOSALS.

Subpart 1. **Generally; dollar cost bidding.** The applicant must get written competitive proposals for consultant services according to this part. Items on the consultant proposal must be bid by dollar amount per item.

Subp. 2. Prevention of collusion; requests for proposals.

A. The applicant may not request from a consultant or receive from a consultant, directly or indirectly:

- (1) a list of consultants from whom to request competitive proposals; or
- (2) any information concerning consultants from which to request competitive proposals.

B. The applicant may not request or allow a consultant to determine which other consultant receives a request for a proposal.

C. A proposal obtained in a manner prohibited by this subpart is not a valid competitive proposal for the purposes of this chapter.

Subp. 3. Excavation and soil disposal oversight before investigation. An applicant is not required to seek competing proposals from consultants for the following consultant services when the services are performed as part of excavation and soil disposal oversight that occur before the first limited site investigation or full remedial investigation of the leak site occurs:

- A. AST soil sampling;
- B. composted soil sampling;
- C. contaminated stockpile soil sampling;
- D. excavation report preparation;
- E. excavation soil sampling;
- F. field work notification and scheduling;
- G. groundwater sampling (other than permanent monitoring well);
- H. land-treated soil sampling;
- I. sample shipping and transportation;
- J. state duty officer emergency contact; and
- K. utility clearance.

Subp. 4. Limited site investigation or full remedial investigation. The applicant must get at least two written competitive proposals for services for a limited site investigation or full remedial investigation according to parts 2890.1000 to 2890.2200. The proposals must be on a form prescribed by the board according to parts 2890.1000 to 2890.2200. The proposals must comply with the requirements of parts 2890.1000 to 2890.2200. Costs for the following contractor services may be included in a proposal for the limited site investigation or full remedial investigation step of services: drilling; groundwater sample analysis; and soil sample analysis.

A. Standard scope: unless the applicant knows, determines, or reasonably suspects that an investigation conducted according to the following assumptions and scope of work would not meet its intended purpose, limited site investigation costs must be bid based on the following standard assumptions and scope of work:

- (1) Assumptions:
 - (a) push probe technology will be used;
 - (b) groundwater depth is 20 feet;
 - (c) the release is from a single source;
 - (d) utilities and subsurface obstructions do not inhibit the advancement of borings;
 - (e) water samples will be collected immediately after completion of the borings;
 - (f) free product is not present;
 - (g) level D safety precautions are adequate; and
 - (h) the work will be completed according to agency and Minnesota Department of Health guidance.
- (2) Scope of work:

- (a) perform necessary administrative tasks, including the completion of a health and safety plan;
- (b) complete necessary field and receptor surveys and risk evaluations in accordance with agency guidance;
- (c) advance push probes in accordance with agency guidance by installing four push probes to 25 feet below grade and one push probe to 40 feet below grade;
- (d) collect necessary soil and groundwater samples in accordance with agency guidance; and
- (e) prepare and submit an investigation report (LSI only) to the agency.

B. Nonstandard scope: when the applicant knows or reasonably suspects that an investigation conducted according to the standard assumptions in item A would not meet its intended purpose, the applicant must get a minimum of two written competitive proposals for a limited site investigation or full remedial investigation based on identical assumptions about the characteristics of the site. The proposals must specifically state the assumptions of the proposal concerning:

- (1) scope of work to be performed;
- (2) drilling technology to be employed;
- (3) soil conditions;
- (4) groundwater depth;
- (5) number of borings to be advanced;
- (6) drilling depths;
- (7) drilling intervals;
- (8) number of monitoring wells to be installed, their construction, depth, and protective completion;
- (9) number of soil samples to be collected;
- (10) number and type of analytes for which soil samples will be analyzed;
- (11) number of groundwater samples to be collected;
- (12) number and type of analytes for which groundwater samples will be analyzed;
- (13) number of rounds of groundwater sampling to be conducted; and
- (14) type of investigation report to be submitted to the agency.

Subp. 5. Subsequent steps of services.

A. After the limited site investigation or full remedial investigation step of services, the applicant must get a written proposal for each necessary subsequent step of services in accordance with part 2890.1000 but is not required to seek competing proposals.

Costs for the following contractor services may be included in the proposal: air sample analysis, drilling, groundwater sample analysis, soil sample analysis, and system installation. The proposal must be submitted to the board's staff for review before the commencement of the proposed work. The applicant must not approve the proposal until it has been reviewed by the board's staff. In conducting its review, the board's staff will consider the following items, if applicable to the particular proposal:

- (1) information from the agency regarding the proposed schedule and the equipment required for remediation;
- (2) historical cost data on excavation and other tasks involved;
- (3) data from cost-estimating software for active remediation tasks;
- (4) hourly rates and analytical and sample costs set by this chapter; and
- (5) maximum costs for competitively bid contractor tasks set by this chapter.

B. A written proposal for active remediation-system installation, start-up, and operation and maintenance must include the proposed costs for up to one year of system operation and maintenance. When the time period covered by the proposal expires, the applicant must obtain a new proposal for up to one year of ongoing system operation and maintenance, if necessary, until the agency determines that operation of the system can stop.

Subp. 6. **Switching consultants.** When the applicant wishes to hire a different consulting firm, the applicant must follow the procedures in items A and B.

A. If the limited site investigation or full remedial investigation step of services has not been completed, the applicant must get competitive proposals for the limited site investigation or full remedial investigation step of services according to subpart 4.

B. If the limited site investigation or full remedial investigation step of services has been completed, the applicant must get a written proposal for the appropriate step of services from the new consultant according to subpart 5.

Subp. 7. **Lowest cost proposal.**

A. Except as provided in part 2890.2100, total costs for a step of services that exceed the total costs in the lowest competitive proposal for a step of services based on identical assumptions about the characteristics of the site are *prima facie* unreasonable, unless the applicant provides documented proof to demonstrate that the selected consultant's qualifications are superior to those of the consultant who gave the lowest competitive proposal and justify the selection of a higher cost proposal. Among the factors relevant to the qualifications of a consultant are education, experience, and certifications and registrations. A prior business relationship between the applicant and consultant is not relevant to the qualifications of a consultant. The board must consider the cost for a consultant service in the lowest overall competitive proposal as a reasonable amount to charge for a specific task or item if the cost for that task or item does not exceed the maximum cost stated in parts 2890.1300 to 2890.1850.

B. When the proposals obtained by the applicant for the limited site investigation or full remedial investigation step of services are not based on identical assumptions about the characteristics of the site, the proposals are not valid competitive proposals.

Subp. 8. **Exemptions from competitive bidding requirements.** The applicant may be granted an exemption from the competitive bidding requirement of this part if the board determines that the applicant has documented that:

A. only one consultant was reasonably available to perform the necessary services and that the costs are not substantially in excess of costs typically charged for similar services by comparable consultants in the same geographical area;

B. the necessary services were required by an emergency that did not allow the applicant sufficient time to get proposals for necessary services; or

C. a standard contract entered into via an annual bidding or evaluation process results in lower corrective action costs than obtaining proposals on a per-job basis.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383*

2890.2100 DEVIATIONS FROM PROPOSED TASKS OR MAXIMUM COSTS FOR CONSULTANT SERVICES.

Subpart 1. **Deviations from proposed tasks or maximum costs after proposal approved by applicant.**

A. Costs for tasks performed that are different than or in addition to the tasks specified in a proposal for a step of services approved by the applicant are not *prima facie* unreasonable when:

(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 when the proposal was accepted by the applicant; and

(3) the applicant documents that the different or additional tasks:

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

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

B. Consultant services charges for a task that exceed the cost specified for that task in a proposal approved by the applicant are not prima facie unreasonable when:

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

(2) the higher cost for the task was required by circumstances beyond the control of the consultant or applicant that could not have been reasonably anticipated when the proposal was accepted by the applicant; and

(3) the applicant documents that the higher cost was essential to complete the objectives for that step of services.

C. The applicant must approve change orders on a form prescribed by the board. The change order must contain the following:

(1) a detailed description of the different or additional tasks;

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

(3) the amount originally proposed for each affected task and the amount actually charged for each affected task; and

(4) signatures of the applicant and the consultant.

Subp. 2. **Additional or different tasks approved by the agency.** Notwithstanding subpart 1, costs for tasks performed that are different than or in addition to those specified in a proposal for a step of services approved by the applicant are not prima facie unreasonable when the agency states in writing before the performance of those tasks 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; 28 SR 383*

2890.2200 ACTUAL CONSULTANT SERVICES COSTS.

Notwithstanding parts 2890.1000 to 2890.2100, the board must not reimburse applicants for a cost for a consultant services task that exceeds the cost for the actual hours spent by the consultant performing that task plus reasonable costs for any equipment, field supplies, and materials used in performing that task that are not separately invoiced.

Statutory Authority: *MS s 115C.07*

History: *28 SR 383*

2890.2300 MAXIMUM COSTS FOR CONTRACTOR SERVICES.

Costs for contractor services are prima facie unreasonable when they do not meet the standards and requirements in parts 2890.2400 to 2890.4300.

Statutory Authority: *MS s 115C.07*

History: *28 SR 383*

2890.2400 MAXIMUM COSTS IN "MEANS" BOOK.

Costs that exceed the amount specified in the bid for contractor services or the amount stated in the most recent edition of "Means Heavy Construction Cost Data," as of the date the task was started, whichever is less, for mobilization/demobilization over 50 miles one way; surface replacement of surfacing other than concrete and asphalt; and contractor services not otherwise listed in this part, are prima facie unreasonable.

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“Means Heavy Construction Cost Data” (ed. Kornelis Smit et al., publ. R.S. Means Company, Inc., 2002), 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.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383*

2890.2500 MAXIMUM COSTS FOR SYSTEM INSTALLATION.

System installation costs are prima facie unreasonable:

A. when they exceed the amount specified for them in the consultant services proposal approved by the board’s staff under part 2890.2000, subpart 5; or

B. when the consultant services proposal that includes them is not approved by the board’s staff under part 2890.2000, subpart 5.

Statutory Authority: *MS s 115C.07*

History: *28 SR 383*

2890.2600 MAXIMUM COSTS FOR MOBILIZATION/DEMOBILIZATION (HEAVY EQUIPMENT), SAW-CUTTING, SOIL DISPOSAL, SURFACE REMOVAL, AND SURFACE REPLACEMENT.

For a task listed in this part, the cost is prima facie unreasonable when it exceeds the amount specified for it in the bid for contractor services or the maximum cost specified for it in this part when the task was started, whichever is less.

A. Mobilization/demobilization (heavy equipment), including crew and equipment.

Equipment	Maximum cost
Dozer, loader, backhoe, or excavator, 70-250 hp. (0 to 50 miles one way)	\$180 each
Dozer, loader, backhoe, or excavator, over 250 hp. (0 to 50 miles one way)	\$270 each

B. Saw-cutting.

Surfacing material	Maximum cost
Asphalt	\$1.25 per linear foot
Concrete	\$3.60 per linear foot

C. Soil disposal.

Volume	Maximum cost
0 to 10 cubic yards	\$500
11 to 150 cubic yards	\$500 or \$40 per cubic yard, whichever is greater
151 to 500 cubic yards	\$6,000 or \$35 per cubic yard, whichever is greater
more than 500 cubic yards	\$17,500 or \$30 per cubic yard, whichever is greater

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D. Surface removal.

Surfacing material	Maximum cost
Asphalt	\$4.10 per square yard
Concrete (mesh-reinforced)	\$10.20 per square yard
Concrete (rod-reinforced)	\$13 per square yard

E. Surface replacement.

Surfacing material	Maximum cost
2-inch asphalt (including compacted gravel base)	\$2 per square foot
4-inch asphalt (including compacted gravel base)	\$4 per square foot
6-inch reinforced concrete (including a minimum of 4-inch compacted gravel base, forms, concrete in place, finish, and cure)	\$6.50 per square foot
8-inch reinforced concrete (including a minimum of 4-inch compacted gravel base, forms, concrete in place, finish, and cure)	\$8.50 per square foot

Statutory Authority: *MS s 115C.07***History:** *20 SR 227; 28 SR 383***2890.2700 MAXIMUM ANALYTICAL CHARGES.**

For a task listed in parts 2890.2800 to 2890.3000, the cost is prima facie unreasonable when it exceeds the lowest of the following: the amount specified for it in the bid for contractor services; the amount specified for it in the consultant proposal for the associated step of services; and the maximum cost specified for it in parts 2890.2800 to 2890.3000 when the task was started.

Statutory Authority: *MS s 115C.07***History:** *20 SR 227; 28 SR 383***2890.2800 AIR SAMPLE ANALYSIS.**

Air sample analysis: BTEX-air has a maximum cost of \$100 per analysis.

Statutory Authority: *MS s 115C.07***History:** *28 SR 383***2890.2900 GROUNDWATER SAMPLE ANALYSIS.**

Groundwater sample analysis:

- A. BTEX/MTBE-water has a maximum cost of \$40 per analysis;
- B. dissolved oxygen-water has a maximum cost of \$10 per analysis;
- C. DRO-water, solvent extraction, direct injection, gas chromatography, has a maximum cost of \$45 per analysis;
- D. GDPH-water has a maximum cost of \$150 per analysis;
- E. GRO-water, purge and trap, gas chromatography, has a maximum cost of \$40 per analysis;
- F. lead-water has a maximum cost of \$25 per analysis;
- G. lead, hardness-water has a maximum cost of \$17.50 per analysis;
- H. manganese-water has a maximum cost of \$25 per analysis;
- I. methane-water has a maximum cost of \$145 per analysis;

- J. nitrate-water has a maximum cost of \$20 per analysis;
- K. pH-water has a maximum cost of \$7.50 per analysis;
- L. polyaromatic hydrocarbons (PAHs)-water has a maximum cost of:
 - (1) \$135 per analysis for high performance liquid chromatography;
 - (2) \$350 for selected ion monitoring; and
 - (3) \$185 for other methods;

M. polychlorinated biphenyls (PCBs)-water has a maximum cost of \$110 per analysis;

N. RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver)-water has a maximum cost of \$150 per analysis;

O. soluble ferrous iron-water has a maximum cost of \$27.50 per analysis;

P. sulfate-water has a maximum cost of \$12.50 per analysis;

Q. sulfide-water has a maximum cost of \$40 per analysis;

R. total iron-water has a maximum cost of \$25 per analysis;

S. VOCs-water has a maximum cost of:

- (1) \$115 per analysis for gas chromatography; and
- (2) \$150 per analysis for gas chromatography/mass spectrometry.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3000 SOIL SAMPLE ANALYSIS.

A. BTEX/MTBE-soil has a maximum cost of \$40 per analysis;

B. DRO-soil has a maximum cost of \$50 per analysis;

C. GDPH-soil has a maximum cost of \$150 per analysis;'

D. grain size analysis has a maximum cost of \$150 per analysis when a hydrometer is used, and \$75 per analysis when a hydrometer is not used;

E. GRO-soil has a maximum cost of \$40 per analysis;

F. lead-soil has a maximum cost of \$35 per analysis;

G. polyaromatic hydrocarbons (PAHs)-soil has a maximum cost of \$225 per analysis;

H. polychlorinated biphenyls (PCBs)-soil has a maximum cost of \$115 per analysis;

I. RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver)-soil has a maximum cost of \$125 per analysis;

J. TCLP-soil, extraction only, has a maximum cost of \$135 per analysis;

K. VOCs-soil has a maximum cost of:

- (1) \$125 per analysis for gas chromatography/mass spectrometry; and
- (2) \$130 per analysis for purge and trap, gas chromatography.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3100 MAXIMUM DRILLING CHARGES, DIRECT PUSH TECHNOLOGY.

For a task listed in this part, the cost is prima facie unreasonable when it exceeds the lowest of the following: the amount specified for it in the bid for contractor services; the amount specified for it in the consultant proposal for the associated step of services; and the maximum cost specified for it in this part when the task was started.

The following costs include costs for decontamination, drilling permitting, monitoring well permitting, and completion of well-sealing notification forms:

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A. direct push probing, \$135 per hour if the probe unit has a retraction force of up to 15,000 pounds, or \$200 per hour if the probe unit has a retraction force of greater than 15,000 pounds;

B. one-inch well completion, \$135 per hour plus \$12.50 per foot;

C. push probe sealing, \$1 per foot;

D. mobilization/demobilization (drilling) (0 to 50 miles one way), \$250;

E. mobilization/demobilization (drilling) (51 to 500 miles one way), \$250 plus \$5 per mile over 50;

F. mobilization/demobilization (drilling) (over 500 miles one way), \$2,200; and

G. per diem, \$135 per day per person.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3200 MAXIMUM DRILLING CHARGES, OTHER TECHNOLOGIES.

For a task listed in parts 2890.3300 to 2890.3700, the cost is prima facie unreasonable when it exceeds the lowest of the following: the amount specified for it in the bid for contractor services; the amount specified for it in the consultant proposal for the associated step of services; and the maximum cost specified for it in parts 2890.3300 to 2890.3700 when the task was started.

The costs specified in parts 2890.3300 to 2890.3700 include costs for decontamination, drilling permitting, monitoring well permitting, and completion of well-sealing notification forms.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3300 SOIL BORING ADVANCEMENT.

Subpart 1. **General.** Costs for soil boring advancement are as described in this part.

Subp. 2. **Hollow-stem auger.** Hollow-stem auger drilling in sand, silt, or clay, with continuous sampling. Items A to D list the depth of the boring and the maximum cost per boring:

A. 0 - 25 feet, \$700;

B. 26 - 50 feet, \$700 plus \$24 per foot beyond 25 feet;

C. 51 - 100 feet, \$1,300 plus \$42 per foot beyond 50 feet; and

D. over 100 feet, \$3,400 plus \$53 per foot beyond 100 feet.

Subp. 3. **Mud or air rotary.** Mud or air rotary drilling in limestone or hard rock, with surface sampling only. Items A to D list the depth of the boring and the maximum cost per boring:

A. 0 - 25 feet, \$1,275;

B. 26 - 50 feet, \$1,275 plus \$40 per foot beyond 25 feet;

C. 51 - 100 feet, \$2,275 plus \$46 per foot beyond 50 feet; and

D. over 100 feet, \$4,575 plus \$60 per foot beyond 100 feet.

Subp. 4. **Air coring.** Air coring of limestone or hard rock with continuous sampling. Items A to D list the depth of the boring and the maximum cost per boring:

A. 0 - 25 feet, \$1,400;

B. 26 - 50 feet, \$1,400 plus \$45 per foot beyond 25 feet;

C. 51 - 100 feet, \$2,525 plus \$47 per foot beyond 50 feet; and

D. over 100 feet, \$4,875 plus \$67 per foot beyond 100 feet.

Subp. 5. **Rotosonic drilling.** Rotosonic drilling in sand, silt, or clay, with continuous sampling. Items A to D list the depth of the boring and the maximum cost per boring:

A. 0 - 25 feet, \$1,450;

B. 26 - 50 feet, \$1,450 plus \$59 per foot beyond 25 feet;

- C. 51 - 100 feet, \$2,925 plus \$64 per foot beyond 50 feet; and
- D. over 100 feet, \$6,125 plus \$84 per foot beyond 100 feet.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3400 ABOVEGROUND WELL INSTALLATION.

Subpart 1. **General.** Costs for well installation of an above-grade well are as described in this part.

Subp. 2. **Hollow-stem auger.** Hollow-stem auger in sand, silt, or clay, with continuous sampling:

A. subitems (1) and (2) list the depth of the well and the maximum cost per two-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$950;
- (2) 26 - 50 feet, \$950 plus \$42 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$2,000 plus \$50 per foot beyond 50 feet; and
- (4) over 100 feet, \$4,500 plus \$60 per foot beyond 100 feet;

B. subitems (1) and (2) list the depth of the well and the maximum cost per four-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$1,037.50;
- (2) 26 - 50 feet, \$1,037.50 plus \$53.50 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$2,375 plus \$60.50 per foot beyond 50 feet; and
- (4) over 100 feet, \$5,400 plus \$79 per foot beyond 100 feet; and

C. subitems (1) and (2) list the depth of the well and the maximum cost per six-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$1,900;
- (2) 26 - 50 feet, \$1,900 plus \$77 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$3,825 plus \$78 per foot beyond 50 feet; and
- (4) over 100 feet, \$7,725 plus \$90 per foot beyond 100 feet.

Subp. 3. **Mud or air rotary.** Mud or air rotary in limestone or hard rock, with surface sampling only:

A. subitems (1) to (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$1,750;
- (2) 26 - 50 feet, \$1,750 plus \$45 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$2,875 plus \$53 per foot beyond 50 feet; and
- (4) over 100 feet, \$5,525 plus \$63 per foot beyond 100 feet;

B. subitems (1) to (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,025;
- (2) 26 - 50 feet, \$2,025 plus \$59 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$3,500 plus \$65 per foot beyond 50 feet; and
- (4) over 100 feet, \$6,750 plus \$70 per foot beyond 100 feet; and

C. subitems (1) to (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,275;
- (2) 26 - 50 feet, \$2,275 plus \$79 per foot beyond 25 feet;

- (3) 51 - 100 feet, \$4,250 plus \$80 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,250 plus \$92 per foot beyond 100 feet.

Subp. 4. **Air coring.** Air coring in limestone or hard rock, with continuous sampling:

A. subitems (1) to (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,200;
- (2) 26 - 50 feet, \$2,200 plus \$57.50 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$3,637.50 plus \$67 per foot beyond 50 feet; and
- (4) over 100 feet, \$6,987.50 plus \$76 per foot beyond 100 feet;

B. subitems (1) to (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,600;
- (2) 26 - 50 feet, \$2,600 plus \$60 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,100 plus \$79 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,050 plus \$92 per foot beyond 100 feet; and

C. subitems (1) to (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,850;
- (2) 26 - 50 feet, \$2,850 plus \$90 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$5,100 plus \$98 per foot beyond 50 feet; and
- (4) over 100 feet, \$10,000 plus \$118 per foot beyond 100 feet.

Subp. 5. **Rotosonic drilling.** Rotosonic drilling in sand, silt, or clay, with continuous sampling:

A. subitems (1) and (2) list the depth of the well and the maximum cost per two-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,300;
- (2) 26 - 50 feet, \$2,300 plus \$81 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,325 plus \$84 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,525 plus \$98 per foot beyond 100 feet;

B. subitems (1) and (2) list the depth of the well and the maximum cost per four-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,750;
- (2) 26 - 50 feet, \$2,750 plus \$84 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,850 plus \$105 per foot beyond 50 feet; and
- (4) over 100 feet, \$10,100 plus \$117 per foot beyond 100 feet; and

C. subitems (1) and (2) list the depth of the well and the maximum cost per six-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$3,150;
- (2) 26 - 50 feet, \$3,150 plus \$125 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$6,275 plus \$144 per foot beyond 50 feet; and
- (4) over 100 feet, \$13,475 plus \$170 per foot beyond 100 feet.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3500 AT-GRADE WELL INSTALLATION.

Subpart 1. **General.** Costs for well installation of an at-grade well are as described in this part.

Subp. 2. **Hollow-stem auger.** Hollow-stem auger in sand, silt, or clay, with continuous sampling:

A. subitems (1) and (2) list the depth of the well and the maximum cost per two-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$1,400;
- (2) 26 - 50 feet, \$1,400 plus \$42 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$2,450 plus \$50 per foot beyond 50 feet; and
- (4) over 100 feet, \$4,950 plus \$60 per foot beyond 100 feet;

B. subitems (1) and (2) list the depth of the well and the maximum cost per four-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$1,487.50;
- (2) 26 - 50 feet, \$1,487.50 plus \$53.50 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$2,825 plus \$60.50 per foot beyond 50 feet; and
- (4) over 100 feet, \$5,850 plus \$79 per foot beyond 100 feet; and

C. subitems (1) and (2) list the depth of the well and the maximum cost per six-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,350;
- (2) 26 - 50 feet, \$2,350 plus \$77 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,275 plus \$78 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,175 plus \$90 per foot beyond 100 feet.

Subp. 3. **Mud or air rotary.** Mud or air rotary in limestone or hard rock, with surface sampling only:

A. subitems (1) to (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,200;
- (2) 26 - 50 feet, \$2,200 plus \$45 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$3,325 plus \$53 per foot beyond 50 feet; and
- (4) over 100 feet, \$5,975 plus \$63 per foot beyond 100 feet;

B. subitems (1) to (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,475;
- (2) 26 - 50 feet, \$2,475 plus \$59 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$3,950 plus \$65 per foot beyond 50 feet; and
- (4) over 100 feet, \$7,200 plus \$70 per foot beyond 100 feet; and

C. subitems (1) to (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,725;
- (2) 26 - 50 feet, \$2,725 plus \$79 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,700 plus \$80 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,700 plus \$92 per foot beyond 100 feet.

Subp. 4. **Air coring.** Air coring in limestone or hard rock, with continuous sampling:

A. subitems (1) to (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,650;
- (2) 26 - 50 feet, \$2,650 plus \$57.50 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,087.50 plus \$67 per foot beyond 50 feet; and
- (4) over 100 feet, \$7,437.50 plus \$76 per foot beyond 100 feet;

B. subitems (1) to (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$3,050;
- (2) 26 - 50 feet, \$3,050 plus \$60 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,550 plus \$79 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,500 plus \$92 per foot beyond 100 feet; and

C. subitems (1) to (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$3,300;
- (2) 26 - 50 feet, \$3,300 plus \$90 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$5,550 plus \$98 per foot beyond 50 feet; and
- (4) over 100 feet, \$10,450 plus \$118 per foot beyond 100 feet.

Subp. 5. **Rotosonic drilling.** Rotosonic drilling in sand, silt, or clay, with continuous sampling:

A. subitems (1) and (2) list the depth of the well and the maximum cost per two-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per two-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$2,750;
- (2) 26 - 50 feet, \$2,750 plus \$81 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$4,775 plus \$84 per foot beyond 50 feet; and
- (4) over 100 feet, \$8,975 plus \$98 per foot beyond 100 feet;

B. subitems (1) and (2) list the depth of the well and the maximum cost per four-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per four-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$3,200;
- (2) 26 - 50 feet, \$3,200 plus \$84 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$5,300 plus \$105 per foot beyond 50 feet; and
- (4) over 100 feet, \$10,550 plus \$117 per foot beyond 100 feet; and

C. subitems (1) and (2) list the depth of the well and the maximum cost per six-inch PVC well, and subitems (3) and (4) list the depth of the well and the maximum cost per six-inch well (steel riser with PVC screen):

- (1) 0 - 25 feet, \$3,600;
- (2) 26 - 50 feet, \$3,600 plus \$125 per foot beyond 25 feet;
- (3) 51 - 100 feet, \$6,725 plus \$144 per foot beyond 50 feet; and
- (4) over 100 feet, \$13,925 plus \$170 per foot beyond 100 feet.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3600 SOIL BORING AND MONITORING WELL SEALING.

The following tasks have a maximum cost as listed in items A to E when the wells to be sealed are located in sand, silt, or clay:

- A. soil boring sealing, \$3.50 per foot;
- B. two-inch well sealing, \$10 per foot;

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- C. four-inch well sealing, \$15 per foot;
- D. six-inch well sealing, \$20 per foot; and
- E. at-grade well pad removal, \$250 per well pad.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3700 DRILLING MOBILIZATION/DEMobilIZATION AND DRILL CREW PER DIEM FOR TECHNOLOGIES OTHER THAN DIRECT PUSH.

The following tasks have a maximum cost as listed in items A to D when one of these technologies is used: hollow-stem auger, mud or air rotary, air coring, or roto sonic, or when the tasks are necessary for well sealing:

- A. mobilization/demobilization (drilling) (0 to 50 miles one way), \$400;
- B. mobilization/demobilization (drilling) (51 to 500 miles one way), \$400 plus \$6 per mile over 50 miles;
- C. mobilization/demobilization (drilling) (over 500 miles one way), \$3,100; and
- D. per diem, \$135 per day per person.

Statutory Authority: *MS s 115C.07*

History: 28 SR 383

2890.3800 MAXIMUM COSTS FOR OTHER CONTRACTOR SERVICES.

For the following tasks, the cost is *prima facie* unreasonable when it exceeds the amount specified for it in the bid for contractor services or the maximum cost specified when the task was started, whichever is less:

- A. clean fill purchase, transportation, and installation has a maximum cost of \$15 per cubic yard;
- B. drum disposal has a maximum cost of \$150 for a drum and its contents plus \$65 per hour for the associated loading and hauling;
- C. excavation has a maximum cost of \$7 per cubic yard;
- D. hauling has a maximum cost of \$100 plus \$0.25 per cubic yard/mile;
- E. loading has a maximum cost of \$3 per cubic yard;
- F. pumping of free product or petroleum-contaminated water using a vacuum truck has a maximum cost of:
 - (1) \$85 per hour when a vacuum truck having a capacity of less than 3,000 gallons is used; or
 - (2) \$100 per hour when a vacuum truck having a capacity of 3,000 gallons or more is used;
- G. soil test pit excavation has a maximum cost of \$100 per test pit;
- H. stockpiling has a maximum cost of:
 - (1) \$3 per cubic yard, when the stockpiling takes place on the leak site or the soil disposal site, or when the stockpiling takes place on property other than the leak site or the final disposal site and it is not necessary to rent the temporary storage site; or
 - (2) \$3.50 per cubic yard, when the stockpiling takes place on property other than the leak site or the final disposal site and it is necessary to rent the temporary storage site;
- I. surface disposal tipping fees has a maximum cost of the reasonable actual cost charged by the disposal facility;
- J. treatment of free product or petroleum-contaminated water has a maximum cost of:
 - (1) \$1 per gallon or \$35, whichever is greater, for mixtures of water and light oil (diesel oil, No. 1 to No. 4 fuel oil);

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(2) \$2 per gallon or \$35, whichever is greater, for mixtures of water and heavy oil (drain oil, No. 5 and No. 6 fuel oil); and

(3) \$2 per gallon or \$35, whichever is greater, for mixtures of water and gasoline; and

K. utility clearance has a maximum cost of:

(1) the reasonable actual cost up to \$200 for each utility clearance event for which a private utility locator is not necessary; and

(2) the reasonable actual cost up to \$500 for each utility clearance event for which a private utility locator is necessary.

Statutory Authority: *MS s 115C.07*

History: *20 SR 227; 28 SR 383*

2890.3850 COSTS FOR REQUIRED PERMITS.

A cost for a permit required for the performance of a contractor services task is prima facie unreasonable when it exceeds the actual cost of the permit.

Statutory Authority: *MS s 115C.07*

History: *28 SR 383*

2890.3900 ADJUSTMENT OF DOLLAR AMOUNTS.

A. The dollar amounts in parts 2890.2600, 2890.2800 to 2890.3100, and 2890.3300 to 2890.3800 must be adjusted periodically, as provided in this part, according to and to the extent of changes in the implicit price deflator for the gross domestic product, 1996 = 100, compiled by the United States Department of Commerce, and referred to in this part as the index. The index for the fourth quarter of 2001 is the original reference base index for purposes of this part. When the dollar amounts in parts 2890.2600, 2890.2800 to 2890.3100, and 2890.3300 to 2890.3800 are adjusted, the index for the fourth quarter of the preceding year becomes the current reference base index for purposes of this part. The implicit price deflator for the gross domestic product (publ. United States Department of Commerce Bureau of Economic Analysis) is incorporated by reference in this part and is revised quarterly. It is available on the Internet at www.bea.doc.gov/bea/dn/nipaweb/index.asp.

B. The dollar amounts in parts 2890.2600, 2890.2800 to 2890.3100, and 2890.3300 to 2890.3800 must be adjusted on July 1 of each year after 2002 in which the percentage of change, calculated to the nearest whole percentage point, between the index for the fourth quarter of the preceding year and the current reference base index is ten percent or more; but the part of the percentage change in the index in excess of a multiple of ten percent must be disregarded and the dollar amounts must change only in multiples of ten percent and, when they exceed \$5, must be rounded to the nearest whole dollar.

C. If the index is revised, the percentage of change under this part must be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index must be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States Department of Commerce. If the index is superseded, the index referred to in this part is the one represented by the United States Department of Commerce as most accurately reflecting changes in the purchasing power of the dollar for consumers and businesses.

D. The board must announce and publish:

(1) before July 1 of each year in which adjustments are made, the adjustments in dollar amounts required by item B; and

(2) promptly after the changes occur, changes in the index required by item C including, if applicable, the numerical equivalent of the reference base index

under a revised reference base index and the designation or title of the index superseding the index.

Statutory Authority: *MS s 115C.07*

History: *28 SR 383*

2890.4000 COMPETITIVE BIDDING REQUIREMENTS FOR CONTRACTOR SERVICES.

Subpart 1. Generally; competitive bidding required. The applicant must get, publicly or privately, a minimum of two written competitive bids for each contractor service before incurring costs for that contractor service and must approve the winning bid in writing before incurring costs for that contractor service. Bids for contractor services must be on a form prescribed by the board according to parts 2890.2400 to 2890.4300. The applicant must get bids for contractor services only from persons who are registered with the board as a contractor.

Subp. 2. Contractor services in consultant proposals. When costs for air sample analysis, drilling, groundwater sample analysis, soil sample analysis, or system installation are included in a consultant proposal, bidding requirements for these services are not governed by subpart 1 and part 2890.4300, but are governed by parts 2890.1000 to 2890.2100 and 2890.4200.

Subp. 3. Notarization required. The applicant's signature indicating acceptance of a written bid for contractor services must be dated with the date on which the applicant approves the bid in writing and must be notarized.

A bid obtained in a manner prohibited by this subpart is not a valid competitive bid for the purposes of this chapter.

Subp. 4. Dollar cost bidding and cost per cubic yard bidding required. Items on the contractor bid must be bid by dollar amount per unit of service. For purposes of this part, one cubic yard equals 1.4 tons. The following contractor services must be itemized on a cost per cubic yard basis on the bid form for contractor services:

- A. excavation;
- B. clean fill purchase, transportation, and installation;
- C. off-site stockpiling;
- D. on-site stockpiling;
- E. loading;
- F. surface disposal tipping fees;
- G. surface removal, when the surfacing removed is reinforced concrete; and
- H. soil disposal.

Subp. 5. Lowest cost bid.

A. Except as provided in part 2890.4100, total costs for contractor services that exceed the total cost in the lowest competitive bid for contractor services are prima facie unreasonable, unless the applicant provides documented proof to demonstrate that the selected contractor's qualifications are superior to those of the contractor who gave the lowest competitive bid and justify the selection of a higher cost bid. Among the factors relevant to the qualifications of a contractor are education, experience, and certifications and registrations. A prior business relationship between the applicant and the contractor is not relevant to the qualifications of a contractor. The board must consider the cost for a contractor service in the lowest overall competitive bid as a reasonable amount to charge for a specific task or item if the cost for that task or item does not exceed the maximum cost stated in parts 2890.2400 to 2890.3850.

B. When the bids obtained by the applicant for contractor services are not based on identical assumptions about the scope of work to be performed, the bids are not valid competitive bids.

Subp. 6. **Exemptions from competitive bidding requirements.** The applicant may be granted an exemption from the competitive bidding requirements of this part if the board determines that the applicant has documented:

A. that only one contractor was reasonably available to perform the necessary service and that the costs are not substantially in excess of costs typically charged for similar services by comparable contractors in the same geographical area;

B. that the necessary services were required by an emergency that did not allow the applicant sufficient time to get bids for the necessary services; or

C. that a standard contract that was entered into via an annual bidding or evaluation process results in lower corrective action costs than obtaining bids on a per-job basis.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.4100 DEVIATIONS FROM MAXIMUM COSTS FOR CONTRACTOR SERVICES.

Subpart 1. **Bids over maximum costs owing to unavailability of contractors.** A cost for a contractor task that exceeds the maximum cost specified for that task in parts 2890.2400 to 2890.3850 is not prima facie unreasonable when:

A. the bid accepted by the applicant before 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:

(1) the applicant could not secure a bid to perform that contractor service for an amount not exceeding the maximum costs in parts 2890.2400 to 2890.3850 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. 2. **Additional costs incurred after bid approved by applicant.**

A. Costs for contractor services that exceed the amount specified in a bid approved by the applicant are not prima facie unreasonable when:

(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 or applicant that could not have been reasonably anticipated when the bid was accepted by the applicant; and

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

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

(1) a detailed description of the higher costs;

(2) the reason for the changes from the original bid;

(3) the amount originally proposed for each affected task and the amount actually charged for each affected task; and

(4) signatures of the applicant and the contractor.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.4200 ACTUAL CONTRACTOR SERVICES COSTS.

Notwithstanding parts 2890.2400 to 2890.4100, the board must not reimburse applicants for a cost for a contractor services task that exceeds the cost for the actual hours spent by the contractor performing that task when contractor services are charged based on the contractor's time.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.4300 WRITTEN INVOICE REQUIREMENTS FOR CONTRACTOR SERVICES.

Costs incurred for contractor services that are not billed to the applicant on an invoice form prescribed by the board are prima facie unreasonable. The invoice form prescribed by the board must be consistent with the bid form for contractor services and according to parts 2890.2400 to 2890.4200.

Statutory Authority: *MS s 115C.07*

History: 20 SR 227; 28 SR 383

2890.4400 APPLICATION PROCESS.

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

- A. the legal name of the person making the application;
- B. a description of the site of the release;
- C. a copy of all competitive bids and competitive proposals obtained by the applicant as required by parts 2890.2000 and 2890.4000;
- D. a copy of the proposals for each step of services as required by parts 2890.1000 to 2890.2000;
- E. a copy of all change orders, if any, as required by parts 2890.2100 and 2890.4100;
- F. a copy of all invoices as required by parts 2890.1000 and 2890.4300; and
- G. a copy of a site map that identifies the locations of any soil borings advanced and any monitoring wells installed as part of corrective action at the leak site.

Subp. 2. **Time of application; costs payable under an insurance policy.** The applicant must make reasonable efforts to collect payment from an insurer for any costs that are payable under an applicable insurance policy before applying for reimbursement for those costs.

Subp. 3. **Supplemental 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 supplemental application. An applicant may file a supplemental application only if the applicant has not submitted the costs on a previous application and the costs are not related to a new release 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, by 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 by a person whom the board of directors designates by 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, or by the duly authorized representative or agent of the principal executive officer if the representative or agent

is responsible for the overall operation of the facility that is the subject of the application.

Subp. 5. **Certification.** A person who signs an application for reimbursement must 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 a part 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 must 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.** No later than 15 days after receiving notification from the board's staff that a complete application has been received, the commissioner must provide the board with a written report on:

A. whether the corrective action was appropriate in terms of protecting public health, welfare, and the environment; and

B. the applicant's compliance or noncompliance with the requirements listed in Minnesota Statutes, section 115C.09, subdivision 3, paragraph (i). The report must include documentation supporting the commissioner's findings, if necessary.

In addition, the board may, as it considers necessary, ask for additional information from the commissioner or ask for participation of agency staff at a board meeting. Responses to requests for information must be delivered in a timely manner. The board may delegate these powers to its staff.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 14 SR 1928; 15 SR 2266; 16 SR 2684; 18 SR 1471; 20 SR 227; 28 SR 383*

2890.4500 REVIEW AND DETERMINATION.

Subpart 1. **Review.** The board's staff must review applications. When the staff finds that the application is incomplete or otherwise deficient, the staff must promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency must 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 constitute the written record.

Subp. 2. **Staff determination.** After a reimbursement application is complete and the commissioner has provided the information relevant to the application, the board's staff must determine the eligibility of the applicant and the eligibility of the costs specified in the application. The reimbursement determination that results from these determinations constitutes the reimbursement determination made by the commissioner of commerce under authority delegated by the board according to Minnesota Statutes, section 115C.09, subdivision 10.

Subp. 3. **Board determination.** When the board considers an appeal of a reimbursement determination, the board must determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination must be made on the basis of the written record. The board may also

allow supplemental information explaining the application to be presented orally. The board may establish a fair and reasonable limit on time allowed for oral presentation.

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

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 18 SR 1471; 28 SR 383*

2890.4600 RIGHT TO APPEAL.

Subpart 1. Appeal from determination of commissioner of commerce. An applicant for reimbursement may appeal to the board a reimbursement determination made by the commissioner of commerce under authority delegated by the board according to Minnesota Statutes, section 115C.09, subdivision 10, by submitting a written notice setting forth the specific basis for the appeal. The applicant for reimbursement must file written notice with the board of an appeal of a reimbursement determination made by the commissioner of commerce within 60 days of the date that the commissioner of commerce sends written notice to the applicant of the reimbursement determination. The written notice must set forth the specific basis for the appeal.

Subp. 2. Appeal from decision of the board.

A. An applicant for reimbursement may appeal a reimbursement determination of the board as a contested case under Minnesota Statutes, chapter 14. An applicant for reimbursement must provide written notification to the board of a request for a contested case, setting forth the specific basis for the appeal, within 30 days of the date that the board makes a reimbursement determination. On appeal, the Office of Administrative Hearings must determine whether the evidence submitted to the board entitles the applicant to reimbursement and whether the board's determination is otherwise consistent with or contrary to law.

B. This subpart applies to reimbursement determinations made by the board as a result of an appeal to the board under subpart 1 and reimbursement determinations made by the board when the board has not delegated its authority to make reimbursement determinations.

C. An appeal of a reimbursement determination may only be made by an applicant as defined by Minnesota Statutes, chapter 115C.

Statutory Authority: *MS s 115C.07*

History: *12 SR 2142; 15 SR 2266; 18 SR 1471; 28 SR 383*

2890.4700 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 must 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 must 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*

History: *12 SR 2142; 28 SR 383*

2890.4800 ACTION ON NOTICE OF LIEN FILING.

In accordance with Minnesota Statutes, section 514.673, the commissioner must 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 must 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*

History: *13 SR 496; 28 SR 383*