



Post Office Box 114
Montpelier, Indiana 47359

2328 North US 35, Unit A
LaPorte, Indiana 46350

November 24, 2021

RECEIVED

NOV 30 2021

Asst. Commissioner's Office
Office of Land Quality

Ms. Peggy Dorsey – *via email*
PDorsey@idem.IN.gov
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

RE: Excess Liability Trust Fund Cost Guidance Comments and Request
for Clarification
Nonrule Policy Document # Waste-0078-NPD

Dear Ms. Dorsey,

Creek Run L.L.C. Environmental Engineering (Creek Run) has completed a review of the pending Excess Liability Trust Fund Cost Guidance nonrule policy (Policy Number: Waste-0078-NPD) provided by IDEM for public comment. Following our review, we have comments and recommendations for changes as well as notes where IDEM may consider providing additional information or clarity within the document. Some comments include questions. While answers to our questions are appreciated, Creek Run is recommending IDEM consider modifying the language and/or providing additional language in the final version of the document to address such questions within the document and alleviate confusion.

The following list of comments include the portion of the nonrule policy document (NPD) to which the comment pertains in bold, followed by the comment, recommendation, and/or questions.

1. **Page 1, Section 1.0 Purpose, "The purpose of this policy is to provide a process for expedited payment for certain claims submitted to the Excess Liability Trust Fund (ETLF)."**

Page 2, Section 3.0 summary, "This nonrule policy document (NPD) provides a streamlined process for submittal, review, and reimbursement of certain specific tasks commonly performed at petroleum UST corrective action sites."

Will IDEM still require a \$5,000 minimum to submit a claim for reimbursement consideration? If it's IDEM's intent to expedite and

streamline payment of certain claims, then IDEM should allow submittal of claims for the tasks outlined in the NPD (i.e., preparation of Initial Site Characterization Reports, Further Site Investigation Reports, Quarterly Monitoring Reports, preparation and planning of quarterly monitoring events, and ELTF claim preparation) be submitted and processed even if the claim totals less than \$5,000. If all ELTF claims were processed within the 45-day timeframe as mandated in IC 13-23-8-4, UST owners would benefit by being able to make timely business decisions that would encourage work be performed in an efficient manner. Creek Run also encourages more open communication from ELTF claim reviewers to claim preparers to eliminate untimely delays in processing claims.

Will IDEM review claims with costs that follow the NPD proposed fixed fees with the same level of scrutiny as claims submitted with costs exceeding the proposed fixed fees? Is it IDEM's intent to perform a cursory review of claims submitted in compliance with proposed fixed fees outlined in the NPD?

- 2. Page 1, Section 2.0 Scope, second paragraph: “The following tasks are covered by this NPD: drafting of Initial Site Characterization (ISC) reports; drafting of Further Site Investigation (FSI) reports; project planning and preparation of quarterly groundwater monitoring events, drafting of Quarterly Monitoring reports (QMRS); monthly operation and maintenance costs (O&M); drafting of No Further Action (NFA) request reports; and ELTF claims preparation.”**

IDEM has not provided any fixed-fee pricing for tasks associated with monthly O&M within this NPD.

- 3. Section 4.1 Preparation of an Initial Site Investigation Report:**

Creek Run agrees that \$6,800 is an acceptable amount for preparation of an Initial Site Investigation Report. Since the initial site investigation scope of work is standard (installation of three soil borings and three monitoring wells), why has IDEM not provided a fixed-fee amount for preparation and planning for initial site investigations? Additionally, will IDEM consider developing an all-inclusive form for the initial investigation report similar to the Ohio Bureau of Underground Storage Tank Regulations (BUSTR) *Tier 1 Notification Form 2017* in lieu of a written report? This will further streamline report preparation as well as IDEM's review.

- 4. Section 4.2 Preparation of a Further Site Investigation Report:**

Further Site Investigation (FSI) scopes of work can vary greatly from site to site such as the number of soil borings, monitoring wells, and sample



analyses needed to define a contaminant plume and the potential need to perform vapor intrusion investigation. Creek Run requests clarification from IDEM on the scope of work that is expected to be documented in a FSI report for the total sum of \$4,500.

Additionally, will IDEM consider developing an all-inclusive form for the FSI report similar to BUSTR's *Tier 1 Investigation Form 2017* in lieu of a written report and to further streamline report preparation and IDEM's review?

5. Section 4.3 Project Planning and Preparation for a Quarterly Groundwater Monitoring Event:

Creek Run agrees that \$800 is an acceptable amount for preparation/planning for quarterly groundwater monitoring events at sites with a total of 12 or less monitoring wells and assuming the events are not the initial quarterly event. Does the \$800 planning and preparation fixed fee assume the site has a total of 12 or less monitoring wells? For sites in which a consultant needs to rent field equipment to perform the field activities, will shipping charges and/or labor to pick-up rental equipment be included in the \$800 fixed fee?

6. Section 4.4 Preparation of a Quarterly Monitoring Report:

Creek Run requests clarification to the statement "This task-based reimbursement cost for QMR writing assumes a site has up to 12 monitoring wells". Please provide clarification if this statement means 12 *total* monitoring wells, 12 monitoring wells *sampled*, or 12 monitoring wells *gauged*?

Assuming IDEM means 12 *total* wells, will IDEM provide what metrics/framework it will use to determine cost effectiveness for sites with greater than 12 wells?

Would IDEM consider allowing more than \$1,600 for preparation of a QMR if contaminants of concern (COCs) analyzed during a specific quarter include more than just volatile organic compounds (VOCs)? Analyzing for other COCs such as polynuclear aromatic hydrocarbons (PAHs) and lead cause additional time for tabulation and evaluation of those results. A budget of \$1,600 for QMR preparation at a site with a total of 12 wells would not allow for adequate time for evaluation and interpretation of field data or documentation of other activities completed during the quarter such as O&M data.

Will IDEM consider developing an all-inclusive form for QMRs in lieu of a written report that would not require any interpretation/evaluation of data?



The \$1,600 fixed fee is not sufficient for the initial, annual, or final QMR as those milestone reports may need additional preparation time.

7. Section 4.5 Preparation of a No Further Action Report:

Creek Run has no comment on the proposed fixed fees for preparation of a NFA report for sites eligible for unconditional closure or for NFA reports using lines of evidence. The proposed fixed fee of \$5,500 to prepare NFA reports and ERCs, perform revisions of ERCs, and record ERCs may be appropriate at sites in which the ERC is only required for the on-site property. However, for incidents that require one or more off-site property owners to record ERCs, additional time than what is provided for within the \$5,500 fee will likely be needed. Creek Run requests additional fixed fee allotments/budgets be provided based on the number of off-site ERCs that will be needed for closure of an incident.

Creek Run recommends adding the task of “preparing notice of contamination letter(s)” as potential activities/items that may be needed as part of this phase.

8. Section 4.6 ELTF Claim Preparation:

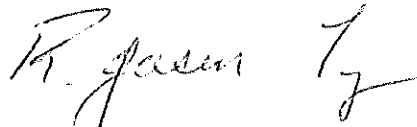
Please provide clarification and/or examples as to the nature of “additional information” and “backup documentation” that could be requested by ELTF under the second and third bullet points, respectively, in the last paragraph of this section. What documentation or clarification will be required to justify claim preparation costs if the \$475 budget is exceeded?

We thank you for allowing us to provide the above comments. If you have any questions or need clarification on any of the comments, please do not hesitate to contact us.

Sincerely,



Lisa Hendershot, CHMM
Chief Operating Officer



R. Jason Lenz, Ph.D.
Chief Operating Officer

