



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
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December 18, 2019

VIA ELECTRONIC MAIL

Mr. Jeremy S. Kinman
Associate Technical Director
Wilcox Environmental Consultants
Indiana Environmental Consultants Coalition
1552 Main Street, Suite 100
Speedway, IN 462124

Dear Mr. Kinman:

Re: **Request for Response's to Unanswered Questions**
11/6/2019 IDEM Consultants' Day

On November 6, 2019 the Indiana Department of Environmental Management (IDEM) held Consultants' Day. Numerous questions were received in person and online. Due to time constraints, all of the questions were not answered. On November 27, 2019, IDEM received the Indiana Environmental Consultants Coalition (IECC) *Request for Responses to Unanswered Questions* letter related to the unanswered questions from Consultants' Day. The following is a list of the requested questions taken from the webinar transcript that the IECC requested responses answered and/or addressed:

1. *Where do we go for [ELTF] cost guidelines now?*

- 328 IAC 1-3-5 provides guidelines for some reimbursable rates and activities. Additionally, both the statute and the rule limit reimbursable costs to those which are cost-effective, reasonable, appropriate, and performed only as necessary to complete corrective action.

2. *While we are waiting for 328 IAC to be re-written.....Recently, after analyzing a month of ELTF Claim reviews, the consistent type of denial is for QMR report preparation costs. The main reason for the denials is that the costs are not "reasonable" and that costs may resubmitted with justification. I have tried to analyze each claim denial and determine if there is a "common" threshold based on # of wells, or costs, etc. Unfortunately, the only items that I have noted are that some of the report prep denials, may at times, have more SPM time than the others. It does appear that certain consultants have the denials when others do not. Since the rule does not state*

a maximum allowable cost for report preparation, how is IDEM-ELTF determining which claims have the report preparation denied when there are no specific guidelines/rule line item to follow? What guidance have the claim reviewers been given to determine that denials are consistent for every owner/consultant?

- IDEM is reviewing the labor performed and invoiced by consultants to determine if the work was performed and meets the definition of “reasonable”. Namely, that review is analyzing whether the work was indeed necessary. As you state, there is not a specific common threshold and the necessity is based on all applicable factors that could affect completion of a specific task known to the agency at the time of the determination. Variability in approvals/denials are the result of the specific facts relating to the incident, site, and project overall. Many reports received by the agency are either subsequent revisions of previously drafted reports where new data is incorporated into a pre-existing document or the reports consist largely of “cut and pasted” material from previous reports – which is a reasonable method of drafting since certain information such as site history, presumably does not change. Given these facts, the labor requested in some claims is inherently unreasonable unless further explanation regarding necessity and reasonableness is provided.

3. Why haven't reasonable cost standards been passed by the FAB pursuant to Ind. Code 13-23-11-7? In fact, I notice that the FAB has not met since 2018- why? IC 13-23-11-7 Duties of board; department consultation with board; reports on condition of ELTF Sec. 7. (a) The board shall do the following:(1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to do the following:(A) Carry out the duties of the board under this article.(B) Establish standards and procedures under which:(i) eligible parties may submit ELTF claims; and(ii) the administrator of the ELTF may pay ELTF claims.(C) Establish standards for determining the reasonableness and cost effectiveness of corrective action for purposes of reimbursement from the ELTF under IC 13-23-9-1.5(a)(1).

- The rulemaking to address these issues has been started. The first notice and comment period on the rule ended in September of this year. IDEM anticipates the second notice will be ready for publication early in 2020. At that point, there will be specific rule language for everyone to review and provide comment on, including board members. When the rule will be ready for the board to preliminarily adopt depends largely on the number of comments received and whether discussions with stakeholders lead to workgroups on particular topics of interest within the rules.

4. Since you don't currently have cost guidelines which confuses consultants, should all consultants submit cost preapprovals before work is performed? See 328 IAC 1-3-1.6

Preapproval of work (b) The administrator shall issue a preapproval letter stating how much of the work is preapproved as reasonable and cost effective.

- See the answer to #1 regarding cost guidelines.
- For the past 3 years, IDEM has publicly and consistently encouraged consultants, owners, and operators to seek preapproval of all costs related to site investigations and corrective action to increase certainty and limit risks related to managing projects from inception through NFA.

5. IDEM states that its mission is to protect Hoosiers and the Environment. Why is IDEM allowing 5,000-10,000 PPB of benzene (a known carcinogen) to remain in-place without further remediation? I am seeing that IDEM is quick to request ERCs in order to issue premature NFAs. Why is this okay?

- House Enrolled Act 1162 codified risk-based remediation and closure of contaminated or potentially contaminated sites. Relatively high levels of a contaminant can remain in-place if there is not an unreasonable threat of exposure to human health or the environment. Evaluation of risk is based on the known contaminants and assessment of exposure pathways. As directed by the Indiana Legislature, IDEM cannot demand a party perform corrective action if there is no exposure to the contaminant, any exposure is mitigated, and/or future exposure prevented by institutional controls, such as an ERC.

6. Since the rule does not state a maximum allowable cost for report preparation, how is IDEM-ELTF determining which claims have the report preparation denied when there are no specific guidelines/rule line item to follow? What guidance have the claim reviewers been given to determine that denials are consistent for every owner/consultant?

- See responses to #1 and #2.

7. Is it a new policy of IDEM to allow closure of sites without ERCs even when there is groundwater above tap, both on-site and off-site? This appears to have happened in several cases recently.

There is no new “policy” for closure with/without ERCs. As has been the case in the past, the process and determination for whether an ERC is required is based on risk-based corrective action. RPs (and off-site parties) may have been more willing to place ERCs on their parcels in order to achieve NFA in the past, but if a party does not wish to place the ERC on their parcel **and** it is not necessary to control the risk at the site, then the site can close without one. The tap groundwater screening level is based on actual ingestion and therefore only applies if someone is drinking the water or there is a risk one could ingest it in the future. Therefore, for a party on municipal water with no private source, the risk of that exposure pathway being completed is significantly reduced and we may *evaluate* for closure without the ERC, for instance. It is not the sole component, but it is a component.

Mr. Jeremy S. Kinman

Page 4 of 4

If you have any questions concerning this matter, please contact me via email jtmorris@idem.in.gov or phone at (317) 234-0892.

Sincerely,



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Petroleum Branch Chief
Office of Land Quality
JTMorris@idem.in.gov

cc: Golars, LLC – Attention: Mr. Justin Barrett
Creek Run LLC – Attention: Mr. Jason Lenz
Mundell & Associates – Attention: Mr. John Mundell
Thompson Environmental – Attention: Mr. Alan Jones
Pace Analytical – Attention: Mr. Karl Anderson
Sesco Group – Attention: Mr. Darren Reese