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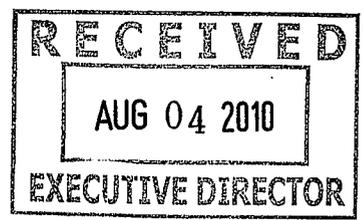
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August 2, 2010

Mr. Mark Vickery, P.G.
Executive Director
Texas Commission On Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087



RE: Rulemaking Petition submitted by Talon/LPE, Grimes & Associates, and Ranger Environmental Services, Inc. Requesting the Adoption of an Amendment to Subchapter M. Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program, 30 TAC Chapter 334

Dear Mr. Vickery:

Enclosed for filing please find a Petition For Rulemaking, in the above-referenced matter.

I am available to discuss this matter with the staff if there is any interest in doing so.

Sincerely,

A handwritten signature in black ink, appearing to be "WWT", with a long horizontal line extending to the right.

William W. Thompson, III
WWT:mlc

RULEMAKING PETHION SUBMITTED BY TALON/LPE, GRIMES & ASSOICATES,
and RANGER ENVIRONMENTAL SERVICES, INC. REQUESTING THE ADOPTION
OF AN AMENDEMENT TO SUBCHAPTER M. REIMBURSEABLE COST
SPECIFICATIONS FOR THE PETROLEUM STORAGE TANK REIMBURSEMENT
PROGRAM, 30 TAC CHAPTER 334

I. EXPLANATION OF RULE

The proposed rule amendment requested by this Petition will revise several sections to Subchapter M Reimbursable Cost Specifications for The Petroleum Storage Tank Reimbursement Program, 30 TAC §334.560. The Commission has authority to make this amendment to Subchapter M pursuant to §26.3573, of Chapter 26 of the Texas Water Code.

In 1989 the Petroleum Storage Tank Reimbursement Fund was created by the Texas Legislature in response to growing concerns for the public health, environment and financial impacts resulting from leaking petroleum storage tanks (LPSTs). The Reimbursement Program, 30 TAC 334.301-334.22, was created in 1990, and these rules outline the requirements for an owner or operator of an LPST site to be reimbursed for certain activities associated with assessment and corrective action at LPST sites.

In 1992 the "Reasonable Costs Guidelines" were issued. The Guidelines were an attempt to put a reasonable cost to a particular task or event associated with the remediation and/or assessment of an LPST site. Generally speaking an owner or operator would be reimbursed for the expenses incurred in addressing its LPST site, as long as the expense did not exceed the cost stated in the Guidelines. The guidelines stated that "a reasonable cost is that amount or range of expense which is commensurate with the level of corrective action necessary to properly respond to a tank release". The Reasonable Cost Guidelines examined the average market rates for all costs associated with assessment and remediation activities associated with LPST sites, at that time, and gave a maximum allowed reimbursable rate for such activities. The Reasonable Cost Guidelines were revised, and renamed the "Reimbursable Cost Guidelines" in 1997. There was another revision in 2004, and the Guidelines became the "Reimbursable Cost Specifications" 30

TAC §334.560. There have been no revisions to the rule since 2004, even though average market rates for certain LPST tanks have increased over the past six (6) years.

The Petitioners for these requested amendments to the Reimbursable Cost Specifications are Talon/LPE, 921 North Bivins, Amarillo, Texas; Ranger Environmental Services, Inc., P.O. Box 201179, Austin, Texas 78720; and Grimes & Associates, P.O. Box 65, Wolfforth, Texas 79382.

All of the Petitioners do large amounts of reimbursable LPST work on behalf of owners and operators of LPST sites in the State. The Petitioners' clients are currently encountering serious problems with three specific reimbursable costs:

1. Offsite access fees to municipalities;
2. Waste disposal costs; and
3. Per diem costs.

II. MUNICIPALITY FEES

This is a fee which certain municipalities charge the owners or operators of an LPST site for the right to drill a soil boring or groundwater monitoring well on city owned property. The Reimbursable Cost Specifications currently allow for the reimbursement of "up to Five Hundred Dollars (\$500.00) per well or boring, as specified by permit, for the installation of monitor wells and/or borings on property owned by a municipality or government agency".

The current reimbursement rate of Five Hundred Dollars (\$500.00) per well or boring on city owned property is inadequate. Examples of cities which charge in excess of this amount are the City of Midland, and Andrews which both require a One Thousand Five Hundred (\$1,500.00) access fee per site, per year until all wells are plugged. The cities of Plainview, and Amarillo charge a Two Hundred Fifty (\$250.00) application fee, plus Two Hundred Fifty (\$250.00) annually. The city of San Angelo requires a Two Hundred Fifty (\$250.00) permit fee, with a fee of One Hundred (\$100.00) per well per year fee.

Since the publication of the Reimbursable Cost Specifications in 2004, many cities have begun to charge excessive permit application fees and have begun to charge annual permit fees.

Both of these issues were not prevalent in 2004, but have started to occur much more since that time, so they could not have been taken into consideration during the last reimbursable cost revision. Therefore, a one-time Five Hundred Dollar (\$500.00) reimbursable cost is not accurate to the permitting situation that is currently occurring with many municipalities in Texas. Numerous municipalities charge access fees in excess of the Five Hundred Dollar (\$500.00) currently considered reimbursable pursuant to the Reimbursable Cost Specifications, and the Petitioners are requesting that the actual costs charged by a municipality for access should be the allowed rate of reimbursement.

III. WASTE DISPOSAL COSTS

Waste generated at LPST sites consists of soil cuttings from monitoring well installations, purge waters from groundwater monitoring events, and phase separated hydrocarbons from Mobil Dual Phase Extraction (MDPE) events.

The cost for the disposal of LPST wastes are made up of three main components: (1) vacuum truck rental, (2) liquid disposal costs, and (3) soil disposal costs.

Vacuum Truck reimbursable costs were Sixty-Eight (\$68.00) per hour in 1992. This amount was increased to Seventy-Five Dollars (\$75.00) per hour in 1997, but reduced to Seventy Dollars (\$70.00) per hour in the 2004 amendments to the Reimbursable Cost Specifications. The current market rate for vacuum truck rental, ranges from Seventy-Five Dollars (\$75.00) to One Hundred Five Dollars (\$105) per hour, which exceeds the current reimbursable amount.

The existing rule allows for reimbursement of Forty Cents (\$.40) per gallon for liquid waste disposal. The rate for the disposal of liquid waste has not changed since the cost guidelines were first published eighteen (18) years ago, while the current market rate for liquid waste disposal is now at least twice as much as the Forty Cents (\$.40) per gallon allowed as per the Reimbursable Cost Specifications.

Soil disposal rates were set in 1997 at Forty-Five Dollars (\$45.00) per drum. The current market rate for disposal of contaminated soil from LPST sites ranges from Fifty Dollars (\$50.00)

to Sixty-Three Dollars (\$63.00) per drum of soil and Twenty-Five Dollars (\$25.00) to Thirty-Five Dollars (\$35.00) per Yd³, which is in excess of the current reimbursement amount.

IV. PER DIEM

The amount reimbursed for food and lodging to employees of companies such as Petitioners while performing work at LPST sites is currently Ninety Dollars (\$90.00) per day/per person, as per the Reimbursable Cost Specifications. The current reimbursable per diem has only been adjusted one time since 1992, and has only increased Ten Dollars (\$10.00) since that time. The Ninety Dollars (\$90.00) per day/per person is not reflective of current market rates for food and lodging which averages significantly higher than the current rate of reimbursement. Hotel prices alone range between Seventy Dollars (\$70.00) and One Hundred Thirty Dollars (\$130.00) per night, leaving Twenty Dollars (\$20.00) per day to eat, or requiring the environmental company to pay the additional expenses, plus pay for employee meals.

The per diem of Ninety Dollars (\$90.00) per day per person in the Reimbursable cost Specifications is unreasonable, and should be amended to refer to the current per diem as set by the Texas Comptroller of Public Accounts.

Failure to adopt this amendment will cause undue financial hardships on the owners and operators of LPST sites in Texas, who will be forced to pay all charges not considered reimbursable.

TEXT OF PROPOSED RULE TO AMEND 30 TAC §334.560.

Reimbursable Cost Specifications

Activity 04: Site Assessment Notes (10):

The agency will approve ~~up to \$500.00~~ **the actual cost** per well or boring, as specified by permit, for the installation of monitor wells and/or borings on property owned by a municipality or government agency. This cost is in addition to the \$320.00 per property allowed for offsite access. Documentation of all permit fees is required. Markup is not allowed on this cost. Any additional annual fees will not be eligible for reimbursement.

Part C: Waste Management Costs

| | | |
|--|-----------|---|
| Vacuum Truck (fluids Transport for Disposal) | Unit Cost | \$70.00/hr \$100.00/hr |
| Fluids Disposal | | \$.40/gal \$.85/gal |
| Soils Disposal | | \$250.00 base + \$45.00/drum \$250.00 base + \$50.00/drum \$250.00 base + \$10.50/Yd³ \$250.00 base + \$35.00/Yd³ |

Part E: Travel Costs

| | |
|---------------------|--|
| Per Diem: | \$90.00/person |
| Lodging | Current Texas Comptroller of Public Accounts Rate |
| Meals | Current Texas Comptroller of Public Accounts Rate |
| Non-overnight meals | Current Texas Comptroller of Public Accounts Rate |

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