October 2001

NATIONAL OILHEAT RESEARCH ALLIANCE

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AGENDA
BOARD OF DIRECTORS
October 2, 2001
Washington, DC

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MINUTES
NATIONAL OILHEAT RESEARCH ALLIANCE
JUNE 12, 2001
BOSTON, MA
HINES CONVENTION CENTER
2-5 P.M.

I. INTRODUCTION

Mr. Robert Greenes called the meeting to order at 2. p.m. Mr. Greenes directed Mr. Huber to call the roll, and report whether a quorom was present. Mr. Huber called the roll; the following members of the Board were present.

Mr. Don Allen
Mr. Jeff Arntson
Ms. Debbie Baker
Mr. Rudy Ballard
Mr. John Beckett
Mr. Carl Benker
Mr. Marc Bingham
Mr. Bob Boltz
Mr. Roth Bullock
Mr. Peter Carini
Mr. Don Farrell
Mr. Ray Albrecht for Mr. Bill Flynn
Mr. Boyd Foster
Mr. John Fuquay
Mr. Joe Glick
Mr. Bob Greenes
Mr. Kurt Haab
Mr. Daryl Hackman
Ms. Allison Heaney
Mr. Michael Hopsicker
Mr. Gene Jacobus
Mr. Chris Keyser
Mr. Anthony Losquadro
Mr. Bob Luby
Mr. William McCarthy
Mr. Michael Meadvin
Mr. Ed Miller
Mr. Ralph Mills
Mr. Tom Murray
Mr. Ed Noonan
Mr. Frank Olivo
Mr. Jim Pierson
Mr. Ron Sabia
Mr. John Santa
Mr. Ed Scott
Mr. Frank Sestito
Mr. Don Craft for Mr. Irik Sevin
Mr. Chris Smart
Mr. Donald W. Steward
Mr. Dennis Straw
Mr. Jack Sullivan
Mr. Douglas Woosnam
Mr. John Huber, President
Mr. John Maniscalco, Treasurer
Mr. Edward Newberry, Counsel
Mr. Ron Raven, Collections Adviser
Mr. Mark Henry, Accountant
Mr. Robert Hedden, Program Manager

II. APPROVAL OF MINUTES – Ms. Allison Heaney moved that the minutes of the meeting held in February be approved as submitted to the Board of Directors. The motion was seconded and approved by voice vote.

III. CHAIRMAN'S REMARKS – Mr. Robert Greenes indicated his sincere pleasure with the accomplishments of the volunteer leaders of the Alliance. He stated that the

Board should be pleased with the accomplishments. However, he noted that most Board members were serving as volunteers and thus the accomplsihments are shared.

Mr. Greenes noted that while much had been achieved, it had been achieved through efficient work, and through considered decisionmaking.

IV. PRESIDENT'S REMARKS – Mr. John Huber indicated that the last quarter had been very successful. The collections system was up and running, and that a sucessful outreach by Ron Raven, John Zinkand and himself had led to strong compliance. He reported that the office had been opened, and that NORA was up and running. Additionally, he reported that a very successful collection had ensued and collections had met expectations. Thus, it appears that NORA is destined to be a successful program.

V. REPORT OF COLLECTIONS COMMITTEE – Mr. Mike Hopsicker, the Chairman of the Committee, indicated that the Committee was very pleased with the status of collections. That a very viable and strong system had been developed. Since the meeting, the committee had met twice by teleconference, and that a culminating meeting had occurred on May 31, 2001 in Pittsburgh. He then requested that Mr. Ron Raven review the recommendations of the Collections Committee. Mr. Raven directed the Board to Attachment 1, proposed instructions. Mr. Raven described the changes which were italicized. He noted these instructions were designed to provide guidance for collectors. Mr. Raven noted that the most significant change involved kerosene. Under the law, the National Oilheat Research Alliance is to collect on heating oil, which includes #1 distillate and all products destined for use as a heating oil. Kerosene which is #1 distillate was not covered by the previous instructions, but will now be listed as a covered fuel when it is dyed.

Mr. Raven, then stated that collecting on dyed low sulfur diesel destined for heating oil presented some problems. He indicated that the committee recommended that retailers collect the fee on that product.

Finally, he stated that the committee developed a list which more clearly indicated which uses should be assessed, and which should not.

After discussion, it was moved and seconded that the following resolution be adopted,

RESOLVED

The Collection System and its effective start date of March 1, 2001 have been processed successfully and the budget anticipated by that start date has accomplished the goals of the Board of Directors.

However, a number of situations that would improve the collections system and ensure fair treatment are necessary to accomplish the goals of NORA to have a fair and complete collection system.

The items which have been identified and which the Board desires actions on are kerosene, common reference names, clarification of forms, a better understanding of exemptions, and better information for the Oilheat community.

To accomplish these objectives, the Collections Committee has held a series of meetings to develop solutions to these problems. Their solutions are more fully described in the Exhibits furnished with this Board packet, which is hereby included as an Exhibit.

Resolved: That the NORA fee be extended to that product commonly labeled and identified as kerosene, so long as it is dyed for federal excise tax collection purposes, and that this extension occur by October 1, 2001.

Resolved: That the expanded and more complete identification of products identified in the exhibits become part of the forms for NORA.

Resolved: That miscellaneous changes described in the instructions including due dates, late fees, billed gallons and bad debts be incorporated into the forms, and that a new multi-state form be accepted for processing.

Resolved: That those retailers that have imported product from states not participating in NORA or from foreign countries in tanker or less than tanker loads be included in the system as direct payers for the volumes that they importing and that outreach occurs to accomplish that goal.

Resolved: That an exemption form allowing motor fuels distributors who sell no heating oil to purchase fuel without the NORA assessment.

Resolved: That the staff of NORA disseminate the forms to Oil heating, Oil and Energy, Fuel Oil News and on its website and receive comments on these changes.

Be it further Resolved: That the Executive Committee review any comments and make appropriate technical and conforming changes by August 1, 2001.

Be it further Resolved: That the staff disseminate information regarding these changes to appropriate information sources in a timely manner.

Mr. Greenes then indicated that the State of Indiana had requested a change from a wholesale system to a retail system. He noted that such a change met the criteria for the Act in that it would be more efficient, and that a change appeared appropriate, and that such a change should occur expedituosly, and that July 1st appeared to be appropriate. Mr. Greenes moved that Indiana be moved to a retail system effective July 1st, 2001. The motion was seconded, and approved.

V. REPORT OF FINANCE COMMITTEE – Mr. Don Allen, the Finance Committee Chairman, indicated that the Committee had met on several occassions to develop a true budget for NORA. He noted that preparing a budget was difficult because only one month of financial information had been processed. He stated the committee had closely examined the data and the need to ensure that states could develop budgets which would roll into the NORA budget as required by law.

Mr. Allen indcated that insurance at an appropriate level was in place, and that the budget would continue to be evaluated to ensure it matched reality.

Mr. Allen then requested John Maniscalco to review the budget. Mr. Maniscalco described each line of the proposed budget and explained the variances. He noted that the most significant changes were to legal, accounting, professional travel and website. Mr. Maniscalco indicated that by law, expenses for collection and assessment were not part of the budget providing for a 7 percent cap and were to be treated separately. Thus, legal and accounting are apportioned between the collection function, and the operating budget. He indicated that the start up costs listed as $235,000 were those expenses related to the referendum and operations between passage of NORA and the establishment of NORA. He then noted the allocation to research and development, educationa and training, and state grants. The state grants line will require further explanation and information will be solicited from the states At that point the budget will be published for comment in accordance with the law.

The following resolution was made by Mr. Allen, seconded and aporoved by voice note.

RESOLVED

In accordance with the statute for the National Oilheat Research Alliance, the Finance Committee on behalf of the Executive Committee presents this budget for approval of the Board of Directors.

The budget presented complies with the statutory requirements for allocations for Administration.

Further, the budget will now be presented and distributed to the states, with a request that information be provided as to what projects will be funded in their state by area including, research and development, education and training, and consumer education.

That once these allocations are received, that this budget will be published, and comments requested. That the Finance Committee shall review those comments and incorporate necessary changes. At that point, the Committee shall submit the budget to the Department of Energy. After receiving comments from the Secretary of Energy, the Finance Committee shall incorporate appropriate changes and report those changes to the Board of Directors, so that the budget for 2001 and 2002 may be approved.

In reviewing the budgets, the Board of Directors should recognize that the budget is an accrual budget, and that the most significant collections for NORA are anticipated to occur in January 2002 and May 2002, and that financing may be appropriate and necessary to ensure that NORA programs commence expeditiously.

Don Allen indicated that the financing decision will be driven by the consumer education piece, if it is suitable, then the Board will look into financing.

VI. CONSUMER EDUCATION COMMITTEE

Mr. Jim Pierson the Chairman of the Committee discussed the activities of the Consumer Education Committee. He stated that a committee had been established that will guide all activities. Under that committee two subcommittees had been formed. The first is the Research Agency selection committee, that committee will select a research agency which willl provide better and more complete information about consumer attitudes towards our product. That committee is scheduled to interview firms and select one by July 1, 2001, at which time they will begin their work.

The Agency selection committee will begin its selection process on June 19th. Over 20 firms have indicated that they are interested in the account. NORA is receiving papers and tapes from each of these firms. On June 19th, Michael Ferrante, Irik Sevin, Jim Townsend, Jim Pierson, and Allison Heaney will review the materials provided and identify 8 firms that will be scheduled for a credentials review on June 25, 2001. At that point, a few firms will be scheduled for a more extensive interview, and a firm will be selected.

The following resolution was moved by Jim Pierson, seconded and passed.

RESOLVED

The Consumer Education Committee recommends that $200,000 be voluntarily contributed by the participating states in a ratio to their fair share turnback. Such funds shall be used for the preparation of research that shall guide a consumer education campaign. The Consumer Education Committee also recommends that the solicitation of research firms and advertising agencies commence immediately, that request for proposals be generated, and that recommendations be made by a subcommittee at the next meeting of the full consumer education committee meeting which shall be scheduled for August.

Mr. Huber reported that there were a number of related activites including public service activities, and brochure preparations that were underway. He also noted that the National Fuel Funds Network is interested in working with the industry to assist low income consumers. Ms. Heaney asked about the recipients of the funds, and Mr. Huber indicated he thought they were distributed on a non-discriminatory basis, but that would be evaluated. The Board consensus was that this project was worth exploring.

VII. Report of Education and Training Committee

Mr. Bob Boltz began the discussion of this committee and the tremendous opportunity that it presented. He noted that he thought this area might provide the biggest possibilities for improving the product to the customer. While the funds are modest, they are considerably larger than what the industry is used to. Thus, the industry must be very cautious in its expenditures. Mr. Boltz then presented an extensive report to the Board for its consideration. This report summarizes the activities that the committee has been exploring. The most important project that Mr. Boltz has been working on was establishing the technical training center. Establishing a center for education which would cover certification and updating all records was critical. The lack of funds at PMAA has inhibited this program and it is now at a critical juncture. NORA by proving funding will ensure that a positive result occurs.

Mr. Boltz then moved that the report be made a part of the record and that the expenditures described be authorized by the Board. This motion was seconded and after discussion was approved.

NORA Education and Training Committee

The Education and Training Committee moves that the Board authorize an expenditure not to exceed $373,000 to develop the following programs and initiatives. Such authorization will require the Committee to clearly define the projects, provide public notice of the objectives, receive comments and respond appropriately, and then issue a request for proposals to accomplish these projects. After review of proposals, the Chair shall submit to the Executive Committee the proposed projects that may be approved if they are within the authorized amount described above. At that time, the Chairman and President shall be empowered to enter into contracts. Further, the Finance Committee shall include all authorized expenditures within its budget, and they shall be considered to be liabilities until the funds are paid or the project is suspended. A report on any such contracts shall be made at the next Board Meeting.

Technician Certification Program

1. The Committee purposes to purchase the Technician Certification Program from PMAA. The Committee plans to out source the administration of the Certification Program to an established Oilheat Industry Association with a long and proven track record of successfully administrating technical education programs, specifically the PMAA Silver and Gold Technician Certification Program. The Committee envisions that the successful bidder will serve as a repository and distributor for all of our educational offerings, as well as a primary provider of training. To do so they must have an existing administrative infrastructure, warehouse space, an in-house training laboratory with at least 20 functioning heating units and have built up and have experience administrating at least four satellite operations. They must have the ability to house transient students. It will be expected that the successful bidder maintain total fiscal accountability, therefore they must demonstrate that they have the infrastructure in place to achieve this end. Maintaining and manipulating a data base of all certified technicians, and all certified trainers, proctors, and continuing education courses and credits will require that a dedicate computer and printer as well as a phone and fax line be provide for this program by the successful bidder.

The tasks involved with administration include but are not limited to: creating and maintaining the data base of certified technicians; maintaining a list of certified courses, proctors, and instructors; print, inventory and handle Gold and Silver Book sales; receive and forward orders for tests to Ferris State; handle billing for books and tests. The successful bidder will hire at least one person who will be available to answer questions and solve problems related to the certification program during normal business hours. The successful bidder will need to straighten out misunderstandings about certification CEU's and update each technician's file. They will need to track credits, get a better handle on and expand certified courses, and explore the idea of increasing the number of CEU credits required (currently 24 hours in 5 years). The estimate for the cost to launch and administer this program- $150,000 for the balance of 2001.

2. PMAA and OMA are currently rewriting *The Oilheat Technicians Manual* (the Silver Book). The Committee proposes to assume PMAA's financial responsibility for this project. NORA's share of the cost of rewriting the Silver Book will be $5,000. (OMA is paying the majority of the cost for this project.) Once the book is finished the Committee will need to proofread the book, test the tests, print the book and tests, and market the program to the industry and to consumers. The Committee envisions the cost to accomplish this to be less than $10,000.

Once the book is printed the Committee plans to make a modest profit on the sales of books and test that will be used to reduce the cost of administering this program. We will have a volume discounted retail price and will offer NORA State Associations a wholesale price that will allow them a modest profit for marketing the books and other NORA educational materials.

3. The Committee proposes to create a new Gold Book and Test, and to extend the scope from conservation to also include heating systems, improved reliability, performance, and comfort. The Oilheat Technician Program has two stages, silver

and gold. The Gold Book, *Advanced Oilheat, A Guide to Improved Efficiency*, is due to be redone. John Batey and Roger McDonald wrote the book in 1994 and it is due to be refreshed. We have the opportunity to build on this successful program. John and Roger wrote the book for Brookhaven and the DoE. PMAA adopted it as the advanced course text as a way to demonstrate to the DoE that the Brookhaven R&D Program was worthwhile and accepted by the Oilheat Industry. Having NORA fund the rewrite will be a good way to show the government that NORA funds can be used to accomplish tasks the DoE might otherwise do, in this case rewriting its book.

While we are at it we will expand the focus of the book to make the Gold Program even better. It is also a chance to integrate with the Silver program in a way that strengthens both of them. The Silver Program deals with oil burners, tune ups and trouble shooting. The Gold Program will cover heating systems, installations, efficiency, energy conservation and heat loss calculations.
Costs: Approximately $30,000 to rewrite the book and create the new Gold test.

Industry Survey

Thanks to the NORA referendum process; we have a complete Oilheat Industry mailing list. The Committee proposes to do an Education Needs Analysis Survey of the Industry. It will determine: the number of Front line heroes (FLH)- technicians, drivers, and CSR's in the field, the current demand for FLH, the average age of the FLH, and amount of experience. We will also ask how many FLH would be let go if we only had any alternatives. This will help us determine the extent of the FLH shortage, if the current FLH needs more training, and experience, how many replacements will we need, and when will we need them. We will also ask for education requirements, and ask about delivery technology opinions. We will create and disseminate a detailed report of the survey results. To minimize costs, we plan to include the survey with the Fall NORA Newsletter mailing.
Cost: Approximately $10,000

Catalog and Calendar

The Committee proposes to create a catalog of Oilheat Education resources. It will include a list of the industry trainers, and the courses they offer, it will list all the manufacturer's trainers, and the courses they offer, it will also include a listing of all the books, videos, CD/ROM's, "seminars in a box," and Oilheat websites, as well as a listing of all the training facilities, labs, and scholarships.

We will also create an Oilheat Training Master Calendar posted on the NORA website. To accomplish this we will develop a survey to be directed towards manufacturers, State Associations, Service Manager Chapters, Independent Trainers, and Technical Schools. The survey will include questions about: what materials exist, in what forms, what training programs are available, or conducted, and key contact persons.

The Catalog will be finished by September so the NORA State Associations will know what Education resources are available to them while they are creating their NORA budgets. Cost: Approximately $15,000.

Training Videos

There are several old training videos for Oilheat. We propose to update four of them:

- A video on how to make a proper oil delivery. Rumor has it that there is a company in Pennsylvania with a proprietary video that shows how to confirm the delivery address, how to listen for the vent whistle, etc. We can include the check lists from the PMAA Oil Tank Project.
- A what to do in the case of an oil spill video, in the late 70's FMA created such a video, we plan to update it.
- A video on how to do a proper tune-up
- A video on the proper action response to a no heat call. NEFI did both of these videos in the early 80's, we plan to update them.
- We also plan to create a new video on the Benefits of Oilheat based upon OMA's booklet. It will be used for employee recruiting and orientation, as well as educating people in the industry.

Costs: The videos will probably cost about $25,000 each for a total of $125,000.

Technician Recruiting

Technician recruiting is a major challenge for our Industry. This will be one of the major ongoing projects for this committee. To get started we are working with NAOHSM on their Careers in Oilheat Project and plan to create a poster to accompany the CD that can be displayed in classrooms about the advantages of a career in the Oilheat Industry. We will also assist NAOHSM in the distribution of the material. Cost: Approximately $26,000.

VIII. Report of Research and Development Committee

Mr. Douglas Woosnam the Chairman opened the discussion by describing the series of meetings that had occurred. These meetings have been open and covered a lot of areas. Mr. Woosnam indicated a complicating factor was the interplay between NORA and the Department of Energy and the uncertainty of the Department's budget. Mr. Woosnam then directed the Board to the report submitted by the Committee, and requested that Mr. Boltz describe its contents. Mr. Hedden indicated that the Committee had decided to focus on fuel quality. It is the estimate of the industry that this is a $110 million per annum problem. Thus, the committee wants to dedicate a substantial expenditure to this effort.

Mr. Woosnam then moved that the following report be accepted by the Board and that the expenditures be authorized. The motion was seconded and approved.

NORA Research and Development Committee Proposal

The Research and Development Committee moves that the Board authorize expenditure not to exceed $300,000 for 2001 to begin to develop the following programs and initiatives. Such authorization will require the Committee to clearly define the projects, provide public notice of the objectives, receive comments and respond appropriately, and then issue a request for proposals to accomplish these projects. After review of proposals, the Chair shall submit to the Executive Committee the proposed projects that may be approved if they are within the authorized amount described above. At that time, the Chairman and President shall be empowered to enter into contracts. Further, the Finance Committee shall include all authorized expenditures within its budget, and they shall be considered to be liabilities until the funds are paid or the project is suspended. A report on any such contracts shall be made at the next Board Meeting.

Fuel Performance Test Development and Field Studies

The Oilheat Industry's top two service priorities are improved reliability and reduced heating equipment service costs. It is the opinion of this Committee, backed up by a recent small scale study, that as many as half of all residential emergency no heat service calls are fuel related. The Committee has estimated that fuel performance problems cost the industry as much as $110 million a year. Our first job is to better define the magnitude, the nature of the fuel performance problems, and location of this problem. It appears that fuel problems vary in different parts of the country. Further study of the geographic diversity of the problem may give us important clues leading to solutions.

There are many types of fuel performance problems: the effects of sulfur, nitrogen, cold flow properties, odor, bottom sediment and water, storage stability, biologicals, inorganics (dirt & rust), water and emulsions, and thermal stability. Given the extreme cost in terms of time. money, and consumer confidence the Committee proposes to initially focus on problems that manifest themselves as no heat calls caused by plugged nozzles, strainers, and filters. It appears that most of these are caused by a combination of thermal and storage instability, micro-biological activity, bottom sediment, water, emulsions, and inorganics (dirt, rust, and fibers) in the fuel.

Some work has already been done on this problem. Santa Fuel has led the way in this initiative. Their experience indicates that a well-planned additization program along with good housekeeping, installing filters on all their customers' burners, and an aggressive problem-tank cleaning or replacement program can cut fuel related service calls in half. The big question is what is causing the other half of the problems? Tom Santa has also found that there is a seasonal nature to this problem. He has the most fuel related problems in October, and the least in the spring. Therefore, this study must be conducted over an entire heating season.

The objectives for the program are: to ascertain the leading causes of fuel degradation, to measure the effects on performance caused by changes in fuel characteristics brought on by the use of fuel additives, to develop methods that will improve fuel quality and stability, and to investigate alternative fuel storage systems. This effort will lead to the development of an industry-wide consistent set of practices that will reduce fuel related service calls.

A field study of fuel characteristics, supported by industry participants, is needed to assess the changes in fuel quality from the source to the end user. Participation across the supply chain from fuel producers to wholesalers, retailers, and service organizations is considered a critical part of this effort. This task would involve a pilot program to establish parameters then selected large scale sampling, field and laboratory testing for specific fuel performance indicators. Required will be the development of field test procedures, coordination of data collection, analyses and reporting. The project will include an evaluation of fuel performance on a regional, local, and distribution level (that is, pipeline, terminal, retail, and homeowners tanks). Field experience indicates that fuel performance problems are not restricted to older tanks. Problems are also known to develop with fuel in new replacement tanks. Study of the performance of steel versus fiberglass and plastic tanks could provide important clues as to the cause of these problems.

Role of the Fuel Performance Subcommittee: The subcommittee will review the basic concept for this field study and revise as necessary. The Subcommittee will then develop a more detailed plan for implementation of the study.

Objectives of the Fuel Study:

1. There is too much idle conjecture about the causes of the fuel problem. This study is intended to clear up widely held misconceptions.
2. A comprehensive assessment of the condition of heating oil and storage tanks at end use locations.

3. Identification and measurement of precursors to fuel performance problems.
4. Analysis of fuel quality changes through the supply chain, and the heating season.
5. Analysis of major factors, including additive programs, storage and maintenance programs, regional, and company practices that statistically impact end-use quality.
6. Development of specific tools and programs for improving fuel performance.

Major Program Steps

1. Review what other groups of middle distillate users (the transportation industry, stand-by diesel powered electric generators, the military, and the European Oilheat Industry) are doing about fuel performance problems.
2. Identify key criteria for the proposed field study. Early Action: Develop a purely objective, repeatable methodology for measuring the magnitude of fuel problems; using this methodology determines problem magnitude by specific subsets of region, supply network and company. Additionally, measure magnitude as a function of end-user components, tankage, oil piping, filtration, nozzle size/type etc.
3. Definition of the test methods and test plan development that includes specific and detailed tasks that are quantifiable and repeatable. Analysis will include basic properties, stability, tank water content, sludge content, and microbes present.
4. Development of a small group of service organizations to participate in the pilot program. Select service organizations will be invited to participate. For those willing to participate and selected, their operations will be reviewed for compatibility with the program. Some of the factors we want to evaluate: regional differences, different types of filters, two pipe versus one pipe, barge versus pipeline, blended versus segregated fuels, steel versus plastic and fiberglass tanks, and underground versus above ground, versus indoor tanks. A meeting will be held with participating organizations to fully brief them on the work plan and to provide them information and equipment needed to assist with the sampling. Service organizations will be expected to share with the program, on a confidential basis, their service database to enable correlations of service requirements with fuel quality.
5. Development of the group of participating majors and terminal operators.
6. Sampling at the pilot service organizations. Most of the planned sampling work will be done by the service organizations. Sampling would be done on no heat calls caused by fuel problems. Sampling would involve collecting the nozzle, strainer, filter and fuel samples from the top and bottom of the tank, as well as a description of the installation, the amount of oil in the tank, the K factor, and the date of the most recent delivery. We will need to closely supervise the field data collection to ensure accuracy and objectivity. On a periodic basis the companies will be visited to review sampling procedures, make spot checks on tanks, and address questions.
7. Sampling at the majors and terminals to establish the characteristics of the base line fuels.
8. Management and Analysis of collected data.
9. Roll out to a larger sample of service organizations as suggested by what we discover during the pilot program.

10. Development of specific recommendations for improved operations and service tools.
11. Work with the NORA Education and Training Committee to educate the industry about our findings and prescriptions for improving fuel performance.
12. After this study is completed it is envisioned that a study on additives will follow.

IX. Report of Grants Committee

Mr. Huber described the activities of the Grants Committee. He noted that the single most important issue which has been addressed is the need to benefit the entire industry. While state associations have traditionally benefited only their members, the NORA program and its rules ensure that everyone benefits from the program and the rules clearly indicate that.

A question was raised regarding what would occur if a state misuses the funds. Mr. Huber indicated that rules were being established, and anyone receiving funds will be required to follow the rules which will also be part of the contract. Anyone violating the contract or the law will be required to return the fees or could be subject to litigation.

After discussion, a motion was made to accept the rules enclosed with the package and the application form. After a second, the motion was accepted.

X. New Business

Mr. Ed Newberry was requested to make remarks. Mr. Newberry commended the group for its activities and said that he was impressed that things were moving smoothly. Mr. Newberry also indicated that NORA was behaving in accordance with the instructions that he had provided earlier in the year, essentially an organization that operated openly and that process was observed.

XI. Old Business

There was no old business.

XII. Adjournment

XIII.

Mr. Greenes indicated that the next meeting of the Board woulb be October 2, 2001 in Washington, D.C., and the next meeting thereafter would be in April, also in Washington, D.C.

Secretary

2001 Budget

July, 2001

The National Oilheat Research Alliance Act of 2000 (Public Law 106-469) requires the National Oilheat Research Alliance (the Alliance) to publish a budget for public comment before August 1st of each year. That budget shall include the probable costs of all programs, projects, and contracts and other agreements.

Following public review and comment, the Alliance is required to submit a proposed budget to the Secretary of Energy and to the Congress.

<u>Part I. Assessment Rate and Income</u>

The Alliance has two sources of income. The first is federally authorized assessment on Oilheat sold in the states participating in NORA at $.002 per gallon. In addition the Alliance receives interest income on the investment of assessment funds.

Assessment Collections

The Alliance estimates that revenues from assessments will be $11,055,556.

Interest

The Alliance estimates that interest income shall be $$64,215 in 2001.

<u>Part II. General Expenditures and Capital Investments</u>

Administrative Expenses in 2001 are anticipated to be $773,000. This is approximately 7 percent of anticipated assessments. By statute, these expenses are not to exceed 10 percent in the first year.

Assessments and Collections.

The Alliance anticipates expenditures of $250,000 for collection expenses. These costs include processing of collections, publicizing the collection system, and providing attorney's fees to ensure that the system is effective.

Depreciation Expenses. The Alliance anticipates depreciation expenses for furniture and equipment to be $8,889.

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Part III. State Rebates

The Alliance has endeavored to ensure that the funds generated benefit consumers and the oilheat industry. The limitation on Administration contained in the Act and the current status of the industry also indicates that allowing local decision-making is the best way to maximize value, and to ensure that consumers of oilheat in particular markets benefit from the Alliance's activities. To that end, the Alliance therefore intends to return a substantial portion of the funds for use in the state where they are generated. The following chart indicates the funds that will be expended in the states participating in NORA and the likely allocations by project goals.

FY-
2001

	Research & Development	Education & Training	Consumer Education
ID	0.00	$7,440.01	$22,320.02
DC	$3,715.00	$4,729.43	$25,336.24
DE	$6,193.00	$7,882.39	$42,227.06
IN	$8,928.01	$40,176.03	$40,176.03
KY	$0.00	$10,777.96	$43,111.82
MA	$49,506.20	$200,005.06	$740,612.81
MD	$36,805.00	$46,843.89	$250,949.40
ME	$0.00	$88,314.89	$353,259.54
NH	$5,131.59	$100,066.07	$151,382.01
NJ	32,896.92	98,690.00	526,350.28
NY	$96,920.76	$403,688.30	$1,276,864.33
OH	0.00	$42,146.63	$168,586.52
OR	$4,898.34	$17,494.07	$47,583.87
PA	$53,915.51	$498,993.58	$546,857.35
RI	$0.00	$52,361.56	$122,176.97
VA	$0.00	$71,745.79	$286,983.16
VT	$26,703.06	$21,363.88	$85,451.52
NC	$12,507.25	$87,550.78	$150,087.05
NV	0.00	$3,217.30	$12,869.20
WI	0.00	$48,862.74	$146,588.23
WA	$11,340.98	$18,145.57	$83,923,.27
CT	$27,958.34	$167,750.02	$503,250.07

Part IV. Program and Project Expenditures

The Act requires the Alliance to develop programs and projects and enter into contracts or other agreements with other persons and entities for implementing this title.

The Act is designed to benefit consumers of oilheat by allowing the industry to develop the proper mix of consumer education, research and development and education and training to benefit consumers.

The Alliance has established three advisory committees to develop programs in research and development, education and training, and consumer education. Additionally, these committees will review any proposals developed independently. All funding decisions are subject to the approval of the Alliance; however, the Executive Committee has limited authority to initiate expenditures.

The programs described below are programs that have been developed by the advisory committees. Additionally, since the Alliance has only been active for six months, many projects described herein will not be approved until the next meeting of the Alliance in October.

Education and Training.

The Act requires the Alliance to enhance consumer and employee safety and training. The Education and Training Advisory Committee has met on a number of occasions to accomplish this goal. The following describes the goals and tasks that are envisioned to occur over the next eighteen months.

It is anticipated that **$2,394,555.47** will be spent on education and training programs.

Technician Certification Program

The Alliance has concluded that a rigorous certification and training program is essential to improving employee training which will improve consumer value and safety. To this end, the Alliance will assume responsibility for the Technician Certification Program currently operated by the Petroleum Marketers Association of America.

Once purchased, the Alliance will enter into a long-term agreement with an established Oilheat Industry Association with a long and proven track record of successfully administrating technical education programs, specifically the PMAA Silver and Gold Technician Certification Program. That contractor will serve as a repository and distributor for all of our educational offerings, as well as a primary provider of training. The Board has provided for financing of $150,000 for the Administration of this contract.

1) A video on how to make a proper oil delivery.
2) A what to do in the case of an oil spill video.
3) A video on how to do a proper tune-up
4) A video on the proper action response to a no heat call
5) A video on the Benefits of Oilheat.

The Alliance has allocated $125,000 for these projects.

Technician Recruiting

Technician recruiting is a major challenge for our Industry and is necessary to ensure that customers have good service that improves safety. A CD will be widely distributed and this will cost approximately $26,000.

State Rebates

A significant portion of the Alliance generated funds will be returned to the states in conformance with the law to accomplish the objectives of the Act. The states are currently developing detailed plans for these expenditures that will be subject to public notice, consideration of the Board, and contractual stipulations.

Preliminary budgets indicate that approximately $2,466,022. will be spent on improving education in the oilheat industry. These expenditures will include development of technical training facilities, and purchases of equipment at vocational schools. Additionally, the need to recruit technicians will be enhanced by lowering the cost of training through scholarships.

Research and Development

The Act requires the Alliance to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment. The Alliance anticipates expending **$743,077.30** for research and development activities in 2001.

The Alliance believes that fuel issues are currently the most important issue facing the industry. Therefore, the Alliance has authorized an expenditure of $300,000 for expenditures in 2001 to accomplish the following.

1) Better define the magnitude, the nature of the fuel performance problems, and location of this problem.
2) Conduct a field study of fuel characteristics, supported by

3) industry participants, is needed to assess the changes in fuel quality from the source to the end user

The Alliance will also conduct a wide-ranging consumer study to determine what issues affect the utilization of modern oilheating equipment. This study will be made available to the oilheat industry, and will be essential to encouraging consumers to improve the efficiency of the equipment that they use. The Alliance has authorized $200,000 for this study.

Consumer Education

The Act authorizes the Alliance to engage in consumer education and Congress found Oilheat to an efficient economical energy source. The Alliance is currently reviewing the abilities of different firms that may undertake consumer education activities on behalf of the Alliance. However, there is significant uncertainty as to the best way to inform consumers as to the positive attributes of Oilheat and Congress's findings. The Alliance however expects that a coordinated effort will result from these activities that will include traditional consumer outreach activities as well as better and more complete information to oilheat companies and their employees, and greater outreach to affiliated industries that provide information to consumers. The Alliance intends that in keeping with the goal of benefiting consumers and society, that the consumer education campaign will include information on energy conservation measures.

The Alliance expects that approximately **$5,609,589.37** will be expended in 2001 for these activities.

Part V. Allowance

The Alliance in its budget development recognizes that there is significant variability in fuel consumption related to weather events which could affect assessment income. To protect against shortfalls, the Alliance has deferred allocating expenditures of 10 percent of the expected collections or $1,105,556.

Part VI. Referendum and Start Up Costs

The Alliance incurred expenses of $235,000 for the accounting and documentation of the referendum and start up costs including development of appropriate legal documents. These expenses are properly reimbursable by the Alliance.

Part VII. Budget Summary

Revenues:

Assessment Collections	**$11,055,556**
Interest Income	**64,215**
Total Revenues	**$11,197,771**
Allowances	
10 Percent	**$ 1,105,556**

Expenditures

Administrative Expenses:	**$ 773,100**
Start Up Costs and Referendum	**235,000**
Depreciation	**8,889**
Assessments and Collections	**250,000**
Research and Development	**743,077.30**
Education and Training	**2,394,555.47**
Consumer Education	**5,609,589.37**
Total Expenditures	**$10,014,211.14**

2002 Budget

July, 2001

The National Oilheat Research Alliance Act of 2000 (Public Law 106-469) requires the National Oilheat Research Alliance (the Alliance) to publish a budget for public comment before August 1st of each year. That budget shall include the probable costs of all programs, projects, and contracts and other agreements.

Following public review and comment, the Alliance is required to submit a proposed budget to the Secretary of Energy and to the Congress.

Part I. Assessment Rate and Income

The Alliance has two sources of income. The federally authorized assessment on Oilheat sold in the states participating in NORA at $.002 per gallon. In addition the Alliance receives interest income on the investment of assessment funds.

Assessment Collections

The Alliance estimates that revenues from assessments will be **$16,296,296.**

Part II. General Expenditures and Capital Investments

Administrative Expenses in 2002 are anticipated to be $1,026,000. This is less than 7 percent of anticipated assessments. By statute, these expenses are not to exceed 7 percent in the first year.

Assessments and Collections.

The Alliance anticipates expenditures of **$346,000** for collection expenses. These costs include processing of collections, publicizing he collection system, and providing attorney's fees to ensure that the system is effective.

Depreciation Expenses. The Alliance anticipates depreciation expenses for furniture and equipment to be **$13,333.**

Part III. State Rebates

The Alliance has endeavored to ensure that the funds generated benefit consumers and the oilheat industry. The limitation on Administration contained in the Act and the current status of the industry also indicates that allowing local decision-making is the best way to maximize value. To that end, the Alliance therefore intends to return a substantial portion of the funds for use in the state where they are generated. The following chart indicates the funds that will be expended in the states participating in NORA and the likely allocations by project goals.

FY'2002

	Research & Development	Education & Training	Consumer Education
CT	$42,311.84	$253,871.06	$761,613.17
DC	$7,668.72	$10,224.96	$33,231.11
DE	$12,781.20	$17,041.59	$55,385.18
ID	$0.00	$11,259.62	$33,778.87
IN	$6,755.77	$60,801.97	$67,557.75
KY	$0.00	$16,311.24	$65,244.96
MA	$50,947.06	$224,766.45	$1,222,729.49
MD	$75,956.82	$101,275.76	$329,146.21
ME	$0.00	$133,654.79	$534,619.14
NC	$18,928.34	$132,498.39	$227,140.10
NH	$7,766.10	$151,438.91	$229,099.88
NJ	$49,785.80	$149,357.40	$796,572.78
NY	$74,012.25	$464,258.66	$2,153,083.65
NV	$0.00	$4,869.03	$19,476.11
OH	$0.00	$63,784.25	$255,137.00
OR	$9,531.12	$15,885.20	$80,485.01
PA	$0.00	$293,076.46	$1,372,130.70
RI	$0.00	$79,243.41	$184,901.29
VA	$0.00	$108,579.30	$434,317.19
VT	$40,412.00	$32,330.00	$129,321.00
WA	$17,163.32	$27,461.31	$127,008.56
WI	$0.00	$73,948.34	$221,845.03

Part IV. Program and Project Expenditures

The Act requires the Alliance to develop programs, and projects and enter into contracts or other agreements with other persons and entities for implementing this title.

The Act is designed to benefit consumers of oilheat by allowing the industry to develop the proper mix of consumer education, research and development and education and training to benefit consumers.

The Alliance has established three advisory committees to develop programs in research and development, education and training, and consumer education and review any proposals developed independently. All funding decisions are subject to the approval of the Alliance, however, the Executive Committee has limited authority to initiate expenditures.

The programs described below are programs that have been developed by the advisory committees. Additionally, since the Alliance has only been active for six months, many projects described herein will not be approved until the next meeting of the Alliance in October.

Education and Training.

The Act requires the Alliance to enhance consumer and employee safety and training. The Education and Training Advisory Committee has met on a number of occasions to accomplish this goal. The following describes the goals and tasks that are envisioned to occur over the next eighteen months.

It is anticipated that **$2,977,538.00** will be spent on education and training programs.

Technician Certification Program

The Alliance has concluded that a rigorous certification and training program is essential to improving employee training which will improve consumer value and safety. To this end, the Alliance will assume responsibility for the Technician Certification Program currently operated by the Petroleum Marketers Association of America.

Once purchased, the Alliance will enter into a long-term agreement with an established Oilheat Industry Association with a long and proven track record of successfully administrating technical education programs, specifically the PMAA Silver and Gold Technician Certification Program. That contractor will serve as a repository and distributor for all of our educational offerings, as well as a primary provider of training. The Board will authorize continuing expenditures for this project in 2002.

New Training Materials.

The Alliance will continue to develop training materials and course materials for the industry. These will include new tests, teaching materials, and other materials that will benefit the industry.

The Alliance will continue to revise and improve the Advance Oilheat Manual. This manual is designed to assist technicians in whole house view of heating and ways to ensure that efficiency is maximized.

Industry Survey

The Alliance will survey and work to ensure that the needs of the industry are continuously evaluated so that materials that benefit the industry and consumers are developed.

Catalog and Calendar

The Alliance proposes to create a catalog of Oilheat Education resources. It will include a list of the industry trainers, and the courses they offer, it will list all the manufacturer's trainers, and the courses they offer, it will also include a listing of all the books, videos, CD/ROM's, "seminars in a box," and Oilheat websites, as well as a listing of all the training facilities, labs, and scholarships. In 2002, the Alliance will work to expand this catalog and improve its accessibility by maximizing interactive resources and its website.

The Alliance will maintain its Oilheat Training Master Calendar.

Training Videos

The Alliance believes that developing new video training materials will enhance training in the industry.

The Alliance intends to develop five principal videos. Several of these videos will have been developed in 2001, those which were not completed, will be completed in 2002, and the Alliance will then dedicate the necessary resources to ensure that they are widely distributed.

1) A video on how to make a proper oil delivery.
2) A what to do in the case of an oil spill video.
3) A video on how to do a proper tune-up
4) A video on the proper action response to a no heat call
5) A video on the Benefits of Oilheat.

Technician Recruiting

Technician recruiting is a major challenge for our Industry and is necessary to ensure that customers have good service that improves safety. A CD was widely distributed in 2001. The Alliance will continue its efforts in this area to ensure that potential workers understand this career choice.

State Rebates

A significant portion of the Alliance generated funds will be returned to the states in conformance with the law to accomplish the objectives of the Act. The states are currently developing detailed plans for these expenditures that will be subject to public notice, consideration of the Board, and contractual stipulations.

Preliminary budgets indicate that approximately $3 million will be spent on improving education in the oilheat industry. These expenditures will include development of technical training facilities, and purchases of equipment. Additionally, the need to recruit technicians will be enhanced by lowering the cost of training through scholarships.

Additionally, the states will luse the funds provided to increase recruitment of technicians through communications with vocational and trade schools, public schools and other sources of qualified applicants.

Research and Development

The Act requires the Alliance to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment. The Alliance anticipates expending approximately $1 million for research and development activities in 2002.

The Alliance believes that fuel issues are currently the most important issue facing the industry. Therefore the Alliance has authorized an expenditure of $300,000 for expenditures in 2001 to accomplish the following.

1) Better define the magnitude, the nature of the fuel performance problems, and location of this problem.
2) Conduct a field study of fuel characteristics, supported by industry participants, is needed to assess the changes in fuel quality from the source to the end user.

The Alliance will evaluate the results of that study and determine what further research should be undertaken.

The Alliance Research and Development Advisory Committee is currently working with the Department of Energy to develop a vision and a long term plan for research and development in the industry. The first major event in that effort will occur on August 2, 2001. The Alliance intends to coordinate its research agenda with the Department of energy to ensure that research dollars are maximized. Additionally, the Alliance will be able to utilize the Department's administrative resources to ensure that the Alliance minimizes administrative expenses.

The Alliance is also investigating and evaluating the role of sulfur in oilheat. Currently the New York State Energy Research and Development Administration is conducting studies. NORA will evaluate whether support for that research is appropriate for this study and further studies in this area.

Consumer Education

The Act authorizes the Alliance to engage in consumer education and Congress found Oilheat to be an efficient and economical energy source. The Alliance is currently reviewing the abilities of different firms that may undertake consumer education activities on behalf of the Alliance. However, there is significant uncertainty as to the best way to inform consumers as to the positive attributes of oilheat and how to best use this resource. The Alliance however expects that a coordinated effort will result from these activities that will include traditional consumer outreach activities as well as better and more complete information to oilheat companies and their employees, and greater outreach to affiliated industries that provide information to consumers.

The Alliance expects that approximately **$9,333,824.21** will be expended in 2001 for these activities.

Part V. Allowance

The Alliance in its budget development recognizes that there is significant variability in fuel consumption related to weather events. To protect against shortfalls, the Alliance has deferred allocating expenditures of 10 percent of the expected collections or **$1,629,630.**

Part VI. Budget Summary

Revenues:

Assessment Collections	**$16,296,296**
Allowances **10 Percent**	**$ 1,629,630**

Expenditures

Administrative Expenses:	**$ 1,026,000**
Start Up Costs and Referendum	**-0-**
Depreciation	**13,333**
Assessments and Collections	**346,000**
Research and Development	**966,835.34**
Education and Training	**2,977,538.00**
Consumer Education	**9,333,824.21**
Total Expenditures	**$ 14,663,530.55**

National Oilheat Research Alliance
Statement of Activities
For the Period from Inception to August 31, 2001

	2001	%	Budget	%
COLLECTION REVENUES, NET:				
Collection Revenues, net of refunds	$5,103,152	121.24%	$5,111,110	120.55%
Less: Assessments and Collection	(147,957)	(3.52%)	(125,000)	(2.95%)
Start-up Costs	(235,000)	(5.58%)	(235,000)	(5.54%)
Net Collection Revenue	4,720,195	112.14%	4,751,110	112.05%
Less: Allowance for Collections *	(511,111)	(12.14%)	(511,111)	(12.05%)
Net Allocable Revenues	4,209,084	100.00%	4,239,999	100.00%
Grants and State Rebates:				
Research and Development	159,476	3.79%	144,061	3.40%
Education and Training	159,476	3.79%	144,061	3.40%
State Rebates	3,577,721	85.00%	3,604,000	85.00%
Total Grants and State Rebates	3,896,673	92.58%	3,892,122	91.80%
OPERATING EXPENSES:				
Administrative Expenses:				
Salaries and Consultants	89,948	2.14%	91,083	2.15%
Employee Taxes	4,864	0.12%	6,708	0.16%
Health Insurance	5,002	0.12%	5,252	0.12%
Retirement Plan	5,994	0.14%	8,040	0.19%
Rent and Telephone	22,428	0.53%	20,300	0.48%
Telephone				
Postage and Mailings	31,946	0.76%	20,000	0.47%
Office Supplies	7,390	0.18%	12,500	0.29%
Equipment Maintenance			2,500	0.06%
Printing Annual Report & Other	5,348	0.13%	15,000	0.35%
Insurance (D & O, L)	5,709	0.14%	7,500	0.18%
Dues and Memberships	300	0.01%	6,000	0.14%
Subscriptions			2,000	0.05%

Public and Staff Travel	21,813	0.52%	20,000	0.47%
Meeting Expense	6,627	0.16%	17,500	0.41%
Legal	74,097	1.76%	79,000	1.86%
Accounting Fees	20,566	0.49%	25,000	0.59%
Professional Travel	2,925	0.07%	12,500	0.29%
Web Site	6,999	0.17%	15,000	0.35%
Total Administrative Expenses	311,956	7.41%	365,883	8.63%
Other (Income)/Expenses:				
Interest Income/Expense **	32,521	0.77%	22,451	0.53%
Depreciation and Amortization	(454)	(0.01%)	(4,445)	(0.10%)
Total Other Expenses	32,067	0.76%	18,006	0.42%
TOTAL OPERATING EXPENSES	279,889	6.65%	347,877	8.20%
TOTAL EXPENDITURES	4,176,562	99.23%	4,239,999	100.00%
INCREASE/(DECREASE) IN NET ASSET	$32,522	0.77%		

Restricted for Management's Use Only
See Accountants' Compilation Report

Footnotes:

*Allowance for Collections - This item is designed to represent and be responsive to potential weather events that could alter collections. To address this, NORA will budget collections based on 90 percent of Oilheat sales in the latest year for which data is available. These funds shall be allocated to the primary purposes of NORA of consumer education, research and development, and education and training, and that state rebates shall continue to represent the significant majority of these available funds.

** Interest - The funds generated as interest on NORA collections have not been allocated to specific projects. The uncertainty of cash flow and the need for stable budgeting precludes such allocation until NORA has completed two budget cycles. However, any interest will be utilized for the primary purposes of NORA of consumer education, research and development, and education and training, and that state rebates shall continue to represent the majority of these funds.

National Oilheat Research Alliance
Refunds by State
For the Month Ending August 31, 2001

	April	May	June	July	August
Connecticut	$222	$3,929	$1,059	$1,461	$2,255
District of Columbia			94		
Delaware	30	343	292	307	158
Illinois	3	211	87	65	199
Indiana	5,851	17,405	16,519	12,506	12,669
Kentucky	7,160	19,467	27,894	9,552	30,589
Massachusetts	1,597	543	4,084	3,736	9,557
Maryland	73	1,571	2,708	2,285	2,307
Maine		20	15	2	82
North Carolina	6,796	18,072	10,248	15,679	17,042
New Hampshire	57	337	467	758	2,039
New Jersey	338	4,537	5,002	1,688	4,221
New York	59	3,889	4,060	2,715	4,500
Ohio	6,681	17,527	20,096	11,562	20,634
Oregon					60
Pennsylvania	3,359	16,269	21,540	9,741	21,642
Rhode Island	30			2,364	1,836
South Carolina		31	50	17	44
Tennessee	35		123	46	
Virginia	5,531	14,940	17,654	11,077	25,221
Vermont	152	709	485	88	424
Washington State					345
West Virginia	731	2,788	3,722	17	2,800
Wisconsin	1,417	7,707	12,754	7,845	11,613
Other			280	36	10
TOTALS	$40,122	$130,295	$149,233	$93,547	$170,247

YTD Total
$8,926
94
1,130
565
64,950
94,662
19,517
8,944
119
67,837
3,658
15,786
15,223
76,500
60
72,551
4,230
142
204
74,423
1,858
345
10,058
41,336
326
$583,444

National Oilheat Research Alliance
Summary of Cash Activity
For the Period from Inception to August 31, 2001

Sources of Cash:		
Gross cash receipts from assessments	$ 5,273,472	
Interest income	32,521	
Total sources of cash		$ 5,305,993
Uses of Cash:		
Refunds	606,632	
Payroll and related taxes	62,331	1.6
Other expenses	570,396	
Total uses of cash		(1,239,359)
Total cash available at 8/31/01		$ 4,066,634

4,000,000

ROSS, LANGAN &
McKENDREE, L.L.P.
CERTIFIED PUBLIC ACCOUNTANTS
6829 ELM STREET • McLEAN, VIRGINIA 22101-3845 • (703) 893-2660 • FAX (703) 893-2123

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MARK D. MYERS, CPA
COLETTE D. CAHILL, CPA, MBA

THOMAS P. LANGAN, CPA, CFP, Consultant
IRVING B. ROSS, CPA, Consultant
DORIS C. ROSS, CFP, Consultant

September 4, 2001

Mr. John Huber, President
National Oilheat Research Alliance
211 North Union Street
Suite 100
Alexandria, VA 22314

Dear Mr. Huber:

We are please to submit this proposal for professional services for the National Oilheat Research Alliance (NORA) for the year ending December 31, 2001. This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will audit the statement of financial position of NORA and the related statements of activities and cash flows for the year ending December 31, 2001, in accordance with generally accepted auditing standards. Our audit will include tests of your accounting records and other procedures we consider necessary to enable us to express an unqualified opinion that your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles. If our opinion is other than unqualified, we will discuss the reasons with you in advance.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected creditors and banks. We may request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. However, because of the concept of reasonable assurance and because we will not perform a detailed examination of all transactions, there is a risk that material errors, irregularities, or illegal acts, including fraud or defalcations, may exist and not be detected by us. We will inform you, however, of any matters of that nature that come to our attention, unless they are clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We understand that you will provide us with the basic information for our audit and that you are responsible for the accuracy and completeness of that information. We will advise you about appropriate accounting principles and their application and will assist in the preparation of your financial statements, but the responsibility for the financial statements remains with you. This responsibility includes the maintenance of adequate records and related controls, the selection and application of accounting principles, and the safeguarding of assets. Management is also responsible for identifying and ensuring the organization complies with applicable laws and regulations.

Mr. John Huber, President
ational Oilheat Research Alliance
Alexandria, Virginia
September 4, 2001
Page Two

Our audit is not specifically designed and cannot be relied on to disclose reportable conditions, that is, significant deficiencies in the design or operation of the internal control structure. However, during the audit, if we become aware of such reportable conditions or ways that we believe management practices can be improved, we will communicate them to you in a separate letter unless they are clearly inconsequential.

Our fee for these services will be billed at our standard hourly rates, plus any out of pocket costs, if any. We estimate the total fee will approximate $8,000, based upon the accounting books and records being in a condition suitable for audit. This estimate does not include accounting services performed by us to render the records suitable for audit, should such services be required. Such accounting services will be provided only upon your approval.

Our standard hourly rates currently in effect are as follows:

Partners	$ 155 - $ 180
Senior Associates	$ 125 - $ 145
Associates	$ 65 - $ 120
Paraprofessionals	$ 34 - $ 75

Invoices are issued monthly as services are provided and are payable upon receipt. A service charge of 1½ percent per month will be added to any balance outstanding beyond thirty days. By approving this engagement, you expressly agree that reproductions of any financial statements with which our firm is associated will be distribute only in their entirety.

If the above terms are acceptable to you and the services described are in accordance with your requirements, please sign the attached copy of this letter and return it to me. Thank you very much for this opportunity, and we look forward to working with you.

Sincerely,

ROSS, LANGAN & McKENDREE, L.L.P.

Mark D. Myers

Mark D. Myers, Partner
Certified Public Accountant

MDM:kr:pro\au\natoil
APP:MDM/JPH

Enclosures

Ross, Langan & McKendree, L.L.P.
Certified Public Accountants

The above proposal is accepted.

Date

Signature/Title

EXHIBIT A

ENGAGEMENT TEAM RESUMES

ENGAGEMENT PARTNER
QUALITY CONTROL PARTNER
AUDIT ASSOCIATE

Mark D. Myers, CPA
Engagement Partner

Education: West Virginia University, Bachelor of Science Degree in Business Administration, 1984
CPA Designation, 1988

Experience: In the practice of accounting since 1984, including one year as a staff accountant and one year as a senior accountant with a Fairfax, Virginia accounting firm, one year as a contract accountant with the American Petroleum Institute, and with Ross, Langan & McKendree, L.L.P. since 1988.

Professional Activities: Member, American Institute of Certified Public Accountants
Member, Virginia Society of Certified Public Accountants

Civic & Industry Activities: Washington Metropolitan Chapter of Community Associations Institute

Responsibilities: Mr. Myers is the partner in charge of the firm's audit department and the partner in charge of nonprofit audits at RLM. He works with a variety of clients including nonprofit organizations, condominium/cooperative/homeowner associations, government contractors, trade associations, and small and medium sized businesses. He is also a member of the management advisory services department and assists clients in the areas of internal controls and inventory evaluations. Mr. Myers is our in-house authority on issues involving government grants, fund auditing, and other matters related to government compliance regulations. He is a member of the firm's quality control committee and the executive committee. He is responsible for educating staff and senior level accountants regarding a variety of audit and financial statement issues.

Jeffrey P. Hayden, CPA, MBA
Quality Control Partner

Education:	Syracuse University, Bachelor of Science Degree in Journalism, 1973 State University of New York at Buffalo, Masters of Business Administration, 1977 CPA Designation, 1979
Experience:	In the practice of accounting with Ross, Langan & McKendree, L.L.P. and its predecessor firms since 1977.
Professional Activities:	Member, American Institute of Certified Public Accountants Member, Maryland Association of Certified Public Accountants
Civic & Industry Activities:	Treasurer, Montgomery Youth Hockey Association
Responsibilities:	Mr. Hayden is the partner in charge of the firm's quality control committee. These responsibilities include assuring that the firm understands and complies with the many complex regulations and procedures continuously set forth by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants. Mr. Hayden is also partner in charge of the firm's management advisory services department. His expertise includes auditing, reviews, compilations, tax, small business consulting, business start-up, litigation support, and computer accounting systems design, installation, and training. His clientele includes small and medium sized businesses, common interest realty associations, nonprofit organizations, professional service firms, government contractors, and individuals.

NATIONAL OILHEAT RESEARCH ALLIANCE
211 North Union Street, Suite 100, Alexandria, VA 22314 / Phone: 703-519-4204 / Fax: 703-519-4205 / E-mail to: info@nora-oilheat.org

Compilation of known education and training resources for the Oilheat industry

NORA Education Committee
Robert Boltz, Chairperson

Second Edition 9/7/01

RE: Compilation of known education and training resources for the Oilheat industry

Assigned by the Education Committee of the National Oilheat Research Alliance, Alexandria, VA

Second Edition 9/7/01

Background Information

Greystone Services was assigned to compile a listing of education and training resources for the Oilheat industry. The primary objective was to identify and catalog sources that are available to individual retail oil heating marketers for the purposes of educating personnel at the management, technical, fuel delivery and customer representative level. Given the perceived shortage of qualified technical personnel and the somewhat dispersed geography of training locations, the primary emphasis was placed on obtaining data from known resources for technical education and relevant materials, i.e., Oilheat trade associations that have training programs, manufacturer literature and multimedia items, and chapter activities of the National Association of Oil Heating Service Managers (NAOHSM) For subject areas other than technical training, we referred to private training contractors, known schools and associations, and several other resources.

To achieve this objective within a roughly 60-day time frame, we assembled a contact list of over one thousand companies known to either manufacture products, represent manufacturers, or otherwise provide a service to the Oilheat industry. These firms were obtained via the current and prospective advertising database of Oil&Energy Magazine, and the current and prospective exhibitor list for NAOHSM's annual trade exposition. Each of these companies was issued a one-page survey form that requested information on education materials available via their company.
The 1,000+ survey forms were sent via first-class mail, along with an advance e-mail notice of the survey to some one hundred and sixty parties for whom we had a valid e-mail address on file. The response rate was about 8% from the manufacturing/vendor group, and about 11% overall for all groups.

In addition, all state/regional associations affiliated with the NORA program were surveyed, as were all chapters of NAOHSM, and private training contractors that were identified and/or referred to us.

All parties receiving the survey had the option of reporting by mail, or via form fill on a specially designated website. To accumulate data and compile the listings, we established June 15, 2001 as the response cutoff date, though we accepted, developed, and encouraged filing of data through to July 20.

How The Data Is Organized

We have grouped the data into these components:

A. The state association technical training schools and courses, with an addendum of known secondary schools, technical colleges, and training centers that offer courses with an Oilheat and/or HVAC component

B. The NAOHSM chapter programs

C. The manufacturers, product vendors and service entities that conduct business within the Oilheat industry

D. Private consultants, training resources known to the Oilheat industry

E. Other resources that may be of interest

F. A supplement of a listing compiled by Home Energy Magazine of specific HVAC, energy auditing, home energy evaluation, and contemporary approaches to energy use education. (See discussion).

An index is provided by categories of products and services referenced in this document.

NORA newsmemo

NATIONAL OILHEAT RESEARCH ALLIANCE

ISSUE NUMBER 2 SEPTEMBER, 2001

NORA COLLECTION SYSTEM UPDATE

Reminder: Dyed Kerosene Assessed as of October 1.

The collection system for the NORA assessment is working very well. To date, the collections have met budget expectations, and every wholesaler of hea**ng oil has made the n ary efforts to ensure t ppropriate amounts are being paid.

Similarly, NORA's streamlined system for processing refunds has been most successful. In many cases, refunds are paid within forty eight hours of arrival at the processing center.

NORA is in the process of carefully reviewing all refunds and payments to ensure that no errors are encountered. NORA and/or its accounting firm is likely to contact many retailers and wholesalers to ensure hat the system continues o work effectively.

Everyone participating n the system is reminded of nportant change that on October 1, 2001. at date, kerosene that s dyed red will be subject o the NORA assessment nd all rules regarding collections and refunds will pply to that product.

(continued on page 2)

Your NORA Funds At Work!

NORA calendar

September 19, 2001
Pacific Oil Conference

September 26, 2001
Pennsylvania Petroleum Marketers and Convenience Store Association

October 2, 2001
NORA Board of Directors Meeting, Washington, D.C.

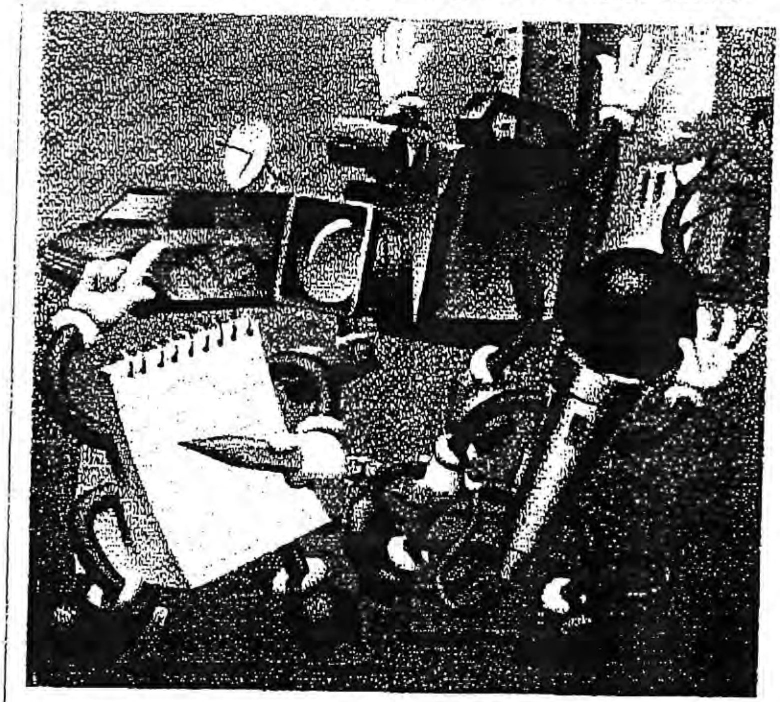
November 5-6, 2001
Oilheat Vision Workshop, College Park, MD

If you have events that you would like included, please e-mail to prichardson@nora-oilheat.org

NORA Selects Fallon New York as Advertising Agency of Record

Major Oilheat Advertising Campaign Anticipated For Early In '02

Strategies For Creating Brand Awareness



The National Oilheat Research Alliance has hired Fallon New York to be its advertising agency of record. Fallon will develop high quality consumer educational materials which will be suitable for use on television, as well as print materials that retailers will be able to use.

Fallon is considered to be one of the most creative firms in the country and has an outstanding reputation for strategic planning. The agency has led campaigns for Holiday Inn, EDS, Conseco, and MTV. In hiring Fallon, John Huber praised Fallon for its understanding of the strong relationships that dealers have with their customers, but also that the overall public perception of Oilheat is not accurate. A contemporary effort designed to bring the American consumer more in touch with the advantages of Oilheat, aimed at boosting market share, is the primary objective.

(continued on page 2)

letter from the chair

As the peak heating season approaches, NORA has been up and running for nearly four months. In keeping with the intended goals to improve the industry and improve value for consumers, several initiatives will soon be acted upon.

Many of the programs that NORA will offer will come from partnerships; i.e., partners that have expertise in training and education, research, and in consumer education. As many in the industry know, there are many good programs in the industry and a wealth of experience. However, the lack of full funding and the inability to develop a coherent outreach effort has left many good ideas not fully implemented and incapable of full outreach in the past. As you will read below, NORA has already moved forward on two fronts to address some of those issues.

You will find an "Introduction To Oilheat" CD enclosed with this newsletter. The CD is enclosed for your company's use. We also hope that you make the CD available to technical and other schools (i.e., career days at virtually any grade level) or at other facilities (i.e., Rotary, realtor, civic presentations) in your area. Any opportunity to show the CD as a starting ground for potential employees is welcomed. The CD can also serve to acquaint your new employees to Oilheating until such time as we develop a more e' 've video. (The National Association of Oil Heating Service Managers (NAOHSM) de-..ped this CD in response to a pressing need to communicate about Oilheat to v. .tional students. NORA's assistance is being provided to ensure distribution throughout all segments of the industry.)

Additionally, NORA is now completing a study of all known educational materials that are available to you within the Oilheat industry. This will allow you to organize training for your company and region, avoid duplication of training efforts, and ensure that you are aware of available content and services. This catalog will be posted at www.nora-oilheat.org and updated regularly.

As you can see from the above, NORA is putting collected monies to work in earnest in the education and training segments of the industry. Your continued input is invaluable in this regard. To that end, please complete and return the training needs survey within these pages.

With NORA funding and your participation we will be able to utilize the strengths we know exist, and also share and develop new training resources. Internal education and training go hand-in-hand with the image that the consuming public will see when NORA's Oilheat advertising campaign is released early next year.

Robert Greenes, Chairman / John Huber, President

P.S. ..s recently posted on our website the entire set of grant applications received by \ A as of August 30, '01. We encourage you to visit the website; it contains a wealth of nformation pertaining to NORA's objectives and how NORA works on behalf of Oilheat.

www.nora-oilheat.org

Dyed Kerosene Is Assessed As Of October 1.

(from page 1)

Additionally, as the winter collection system ended, it was realized that in some cases heating oil is imported from non-NORA states or Canada. Generally, product that is sold in the United States is subject to destination state rules, and therefore suppliers generally assess the product. However, in some cases marketers may buy and store product in Michigan and then transfer it into a NORA state such as Ohio. In such cases, retailers should use form 782B for reporting and remitting the fee.

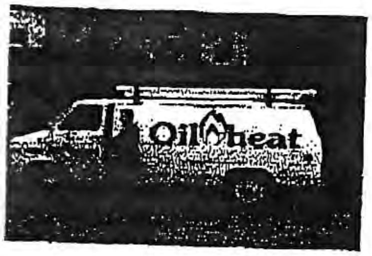
Similarly, retailers who buy product in Canada and then import it into the United States should use form 782B to remit the fees on the product that is used for heating purposes.

All forms and instructional materials are on the NORA website and can be downloaded by accessing www.nora-oilheat.org. The forms are in PDF format which can be opened in Adobe Acrobat. If you do not already have a version of Acrobat Reader installed on your computer, the website instructs you on how to obtain a free download while online.

NORA Education and Training (E&T) Committee Report

The NORA E&T Committee is moving projects forward in many areas, several having reached fruition as this newsletter went to press.

Technician Certification



NORA has assumed the administration of the Technician Certification Program from PMAA and has outsourced the day-to-day operation of the Certification Program to New England Fuel Institute's training center.

NORA and the Oilheat Manufacturer's Association (OMA) are rewriting *The Oilheat Technicians Manual* (the Silver Book), to be available in 2002 for the next round of training, so that all new entrants are trained in new equipment and technologies.

"Apprentice Level" for technicians: This bronze level certification will give apprentices recognition and further incentive to train. To receive Bronze Certification an apprentice must have at least 80 hours of formal classroom training in a NORA approved program and pass the Silver Test. After 3 years of experience in the field and another 24 hours of NORA approved Continuing Education Credits they may apply for Silver Certification.

The number of hours for a seminar to count as a Continuing Education Course has been lowered from 6 hours to 2 hours. It is still required that a test be given at the end of the course, and the technician must pass the test in order to get credit. For a course to become an approved Continuing Education Course the person or firm offering the course must submit a course outline and a copy of the test to the NORA certification subcommittee for approval. The course must cover some aspect of servicing or installing Oilheat equipment and air conditioning equipment installed with a furnace or part of an oil powered hydro-air system and may include customer service skills. It must have strong universal content and cannot be sales oriented for a specific brand of equipment.

Oilheat Education & Training Materials Catalog

A catalog of Oilheat Education resources produced by NORA is now available It includes a list of the items available from industry manufacturers, trade schools and associations, independent trainers and consultants, and related resources. Availability of training literature, CDs, videos, classroom seminars and the like are duly noted. The trade schools listed are for generic Oilheat education, whereas manufacturers items are related for the most part to the products at hand. A PDF version of the entire catalog (readable/printable via Adobe Acrobat Reader) is now available at the NORA website.

Training Videos

NORA is in the process of updating and improving several **primary Oilheat video tapes.** These videos will serve to improve company training/retraining as the winter season begins. Topics include:

— How to make a proper oil delivery

— Proper response in the case of an oil spill

— Basic and correct burner tune-ups

— Action response to a no heat call

We are planning to produce a new video on the "Benefits of Oilheat" based upon OMA's booklet, to be used for employee recruiting and orientation, as well as educating people in the Industry.

Technician Recruiting

Technician recruiting continues to be a major challenge for our Industry. This will be one of the ongoing projects for this committee. To get started, NORA is working with the National Association of Oil Heating Service Managers (NAOHSM) on their "Careers in Oilheat" project. **The "Introduction to Oilheat" CD enclosed with this newsletter is part of this project**

Fallon New York To Create Major A-- npaign To Promote Oilheat

fr[illegible] je 1)

NORA and Fallon intend to show the American consumer that having Oilheat in their home keeps them warm and comfortable, and that they should be pleased hat Oilheat is at work in their home. NORA and the gency are now at work on the campaign, with extensive ndustry input about Oilheat's ties to the consumer, helping o ensure the success of the campaign, slated for early '02.

Before selecting Fallon, the NORA Consumer Education Committee reviewed materials from 24 firms, interiewed seven, and then chose four for a second round f interviews. Dealers met and isited each of the four finalists. The full selection committee nterviewed each and received a omprehensive presentation rom each on how they would pproach the assignment.

Oilheat's message will reach out to a diverse population, aimed to influence families with home buying potential as well as existing homeowners.

The Consumer Education ommittee also selected *
?SOS-NPD of (city, state) to onduct consumer research n behalf of the industry. he[illegible] earch will identify it [illegible] approach for con- [illegible] education and will lso provide critical informaon to retailers on their istomers, which should lead to nprovements in service for Oilheat consumers.

The Chairperson of NORA's consumer education comittee is Jim Peirson, (oil co. name and city), New Jersey.

llon New York is currently developing a media and consumer ucation plan for the Oilheat industry. Concepts and an overall ew of creative production are expected to be developed by cember 1, 2001. If you have a particular interest in this and uld like to receive information on creative development, please nail jhuber@nora-oilheat.org.

* John / please identify

[illegible]

spelling?

NORA Confers With DOE About Direction Of No. 2 Fuel Use In USA

At a one-day meeting with the Oilheat industry, the Dept. of Energy (DOE) and representatives of NORA met to discuss the future of the industry and what research steps could be taken to ensure that Oilheat provides a substantial part of the nation's energy future. The industry represented by Oilheat dealers, association personnel and John Huber, President of NORA, discussed NORA's present research plan. DOE and representatives from Brookhaven National Laboratory voiced many of the issues that are holding back Oilheat.

Much of the conversation focused on the public's perception of Oilheat. There is a view that further research was necessary to improve the environmental attributes of using Oilheat. However, the participants believed that the advantages of Oilheat, its ease of storage and transportation, its high energy content and its flexibility provide some natural advantages.

The DOE noted that with the current energy situation in America, No. 2 oil could provide value in providing for heating, as well as being used for air conditioning, and even electricity generation. A research plan will develop from these discussions and NORA will begin work on it soon.

About NORA's Website

The NORA website is serving its purpose to educate marketers about the NORA program and what is going on in the Oilheat industry. However, as NORA becomes the focus of consumer education for the industry about the benefits of Oilheat, we will need to become much more customer friendly. NORA is now beginning a major redesign of the site and we encourage you to visit the site.

Your suggestions, and/or information that you believe should be on the NORA website, can be sent via e-mail to: jhuber@nora-oilheat.org

NORA
[illegible]TIONAL OILHEAT RESEARCH ALLIANCE
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NORA Education and Training

…A Education and Training Committee Needs Analysis Heating Oil Retailers Survey

To better serve the Oilheat Industry, the NORA Education and Training Committee needs your help. Please fill out this survey and return it to us. Your individual response will be held in strictest confidence; your company and your name, though appreciated, are optional. We do need to know what states you do business in.

We will use this information to compile a report on the education and staffing needs for Oilheating. The report will be widely disseminated and available to anyone who requests a copy. The information will help us prioritize how to best invest the NORA funds earmarked for education. Thank you for taking the ti… to fill out the survey.

…l complete please send th… …vey via mail or fax to the …ddress shown. If you have …uestions or comments, contact …ob Hedden at 802-325-3509; …-mail bhedden@sover.net

…ist the states you do business in:

…ompany, name, phone, e-mail are …ptional, but very helpful to NORA)

…ur company ____________

…ur name ____________

…one ____________

…m: ____________

1. Does your company offer oil burner service and installations? Yes ___ No ___

If No: Would you be interested in NORA creating a program to teach you how to create a profitable service department? Yes ___ No ___

If Yes: Do you use primarily employees or subcontractors for service? Emp ___ Subs ___

2. If you subcontract your service, are you having difficulty finding and holding good subs?* Yes ___ No ___

* If you use employees to do service, are you having difficulty finding qualified technicians? Yes ___ No ___

We prefer to hire apprentices and train them __ (check if Yes)*

* Are you having difficulty finding people you can train to become technicians? Yes ___ No ___

We do not hire apprentices, we look for experienced techs ___*

*Do you participate in the PMAA technician certification program? Yes ___ No ___

If No, now that NORA is responsible for the program would you consider participating in the national NORA technician certification program? Yes ___ No ___

3. Are your oil delivery people employees or subcontractors? Emp. ___ Subs. ___

Are you having difficulty finding qualified drivers with CDL's? Yes ___ No ___

4. Are you having difficulty finding customer service and sales reps? Yes ___ No ___

5. How many openings do you currently have for: Techs ___ Drivers ___ CSR & Sales ___

6. How many technicians do you employ? ___ How many subcontractor technicians do you use? ___

7. How many drivers do you employ? ___ How many subcontracted drivers do you use? ___

8. How many customer service representatives (CSRs) and sales people do you employ? ___

9. How many technicians (employees and subs) are in the following age brackets? under 30 ___ 30-50___ 50-60___ over 60___

10. How many drivers (employees and subs) are in the following age brackets? under 30 ___ 30-50___ 50-60___ over 60___

11. How many customer service representatives and sales people are in the following age brackets? under 30 ___ 30-50___ 50-60___ over 60___

12. Average years experience in heating oil industry? Techs ___ Drivers ___ CSRs & Sales ___

13. How many people would you replace if qualified people applied for the job? Technicians ___ Drivers ___ CSR & Sales ___

14. Are you having trouble finding potential new managers? Yes ___ No ___

15. What level of technical training does your company provide your people? Low ___ Average ___ High ___

Please rate the following topics on a scale of 1 to 5:
1 being unimportant
5 being very important

16. What education delivery technologies would you take advantage of?
- On-site seminar by a professional instructor ___
- Public seminars within a 2 hour drive ___
- Videos ___
- Interactive CD/ROMs ___
- Video conference ___
- Website ___
- Web TV ___
- Do-it-yourself seminars, NORA provides flip charts, teacher's instructions, handouts ___
- Books, booklets, and pamphlets ___

17. Technical Training: Rate the importance of the following:
- Electrical troubleshooting ___
- Combustion efficiency improvements and testing ___
- Heating system installation and service ___
- Air conditioning service ___
- Customer relations skills for technicians ___
- Sales skills for technicians ___

18. Non-Technical Training: Rate the importance of the following:
- CDL and defensive driving training for delivery people ___
- Management and leadership skills ___
- General accounting skills ___
- Technical training for non-technical people ___
- Customer relations ___
- Credit and collections ___
- Selling Oilheat and heating equipment ___

19. How important is it that all seminars are offered less than a

…E COMPLETE AND MAIL OR FAX SURVEY TO:
…ducation Center, P.O. Box 505, Watertown, MA 02471-0405
…866-924-1100, Fax: 1-866-924-1200

NORA Research and Development (R&D) Committee Report

To date, the NORA R&D Committee has held two open information sharing meetings with representatives of the US Dept. of Energy (DOE) and Brookhaven National Laboratory (BNL). As a result, separate initiatives for NORA research and development have been identified.

1. Work with the Department of Energy to implement a 5-year research plan. This process has started.

2. Decide how to invest NORA's National R&D Budget. n February of this year, the NORA Board voted to invest up to $300,000 of this year's budget in a cooperative program with BNL on a Fuel Performance Study (as laid out n BNL's 5-year plan.) The project will begin this fall; preiminary results should be available next summer.

The Oilheat Industry's top two service priorities are mproved reliability and reduced heating equipment service costs. NORA has found that as many as half of all esidential emergency no heat service calls are fuel rea')RA has estimated that fuel performance problems he industry as much as $110 million a year, $10 a ustomer. Our first job is to better define the magnitude nd nature of the fuel performance problems and locaions. Because fuel problems vary in different parts of the ountry, study of the geographic diversity of the problem nay give us important clues leading to solutions.

Given the extreme cost in terms of time, money, and onsumer confidence the Committee proposes to initially ocus on problems that manifest themselves as no heat alls caused by plugged nozzles, strainers, and filters. It ppears that most of these are caused by a combination of hermal and storage instability, microbiological activity, ottom sediment, water, emulsions, and inorganics (dirt, rust, and fibers) in the fuel. There appears to be a seasonal nature to this problem, requiring the study to be conducted over an entire heating season.

The objectives for the program are:

- Clear up the ~~excessive idle conjecture about the~~ causes of fuel problems and correct widely held misconceptions.
- Ascertain the leading causes of fuel degradation.
- Do a comprehensive assessment of the condition of heating oil and storage tanks at end use locations and measure the effects on performance caused by changes in fuel characteristics brought on by the use of fuel additives.
- Identification and measurement of precursors to fuel performance problems.
- Analysis of fuel quality changes through the supply chain and during the heating season.
- Analysis of major factors, including additive programs, storage and maintenance programs, regional and company practices that statistically impact end use quality. Investigate alternative fuel storage systems.
- Develop methods that will improve fuel quality and stability, and create specific tools and programs for improving fuel performance. This aims to lead to developing a consistent set of industry-wide practices that would reduce fuel related service calls.
- Work with the NORA Education and Training Committee to educate the industry about the findings and proscriptions for improving fuel performance.

How heating oil is stored, transported, and consumed will be focal points of fuel quality studies to be conducted under a NORA budget allocation.

PATTON BOGGS LLP
ATTORNEYS AT LAW

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Privileged and confidential attorney work product

MEMORANDUM

To: John Huber, President
From: Patton Boggs L.L.P.
Date: September 10, 2001
Subject: Administrative Expenses

The National Oilheat Research Alliance Act (NORA Act, Public Law 106-469) contains a provision limiting the administrative expenses of operating the National Oilheat Research Alliance (the "Alliance") to not more than 7 percent of the "funds collected in any fiscal year," except that administrative expenses shall not exceed 10 percent of the amount of assessments during the first year of the Alliance's operation. This provision was designed to encourage the Alliance to keep administrative costs as low as possible so that assessment funds would be maximized in fulfilling the objectives of the NORA Act.

In its entirety, this provision reads:

> "(d) ADMINISTRATIVE EXPENSES.-
> (1) IN GENERAL.-The administrative expenses of operating the Alliance (not including costs incurred in the collection of assessments under section 707) plus amounts paid under paragraph (2) shall not exceed 7 percent of the amount of assessments collected in any calendar year, except that during the first year of operation of the Alliance such expenses and amounts shall not exceed 10 percent of the amount of assessments." Sec. 706(d).

Issue: How should the NORA Alliance interpret the NORA Act's cap on administrative expenses?

Short Answer: Our review of the NORA Act, the Act's legislative history, and related case law indicates that there is no clear-cut legal answer to the question of how Congress intended for the NORA Alliance to interpret the cap on "administrative expenses." Administrative expenses are not defined in the NORA authorizing statute and therefore may be defined by the Alliance. So long as the definition applied by the Alliance is acceptable to its accounting professionals and does not contradict any portion of the Act, it should withstand legal scrutiny. The following analysis and recommendations for the NORA Alliance are intended to bring some consistency to this issue and diminish the ambiguity and the opportunity for controversy and criticism.

Defining "Administrative Expenses"

The NORA statute and the Act's legislative history provide no guidance on what constitute "administrative expenses." Black's Law Dictionary suggests that "administrative costs" may be synonymous with "overhead," which is defined as:

> All administrative or executive costs incident to the management, supervision, or conduct of the capital outlay, or business; distinguished from "operating charges," or those items that are inseparably connected with the productive end and may be seen as the work progresses, and are the subject of knowledge from observation. Continuous expenses of a business; the expenses and obligations incurred in connection with operation; expenses necessarily incurred in organization, office expenses, engineering, inspection, supervision, and management during construction; and general expenditures in financial or industrial enterprise which cannot be attributed to any one department or product, excluding cost of materials, labor, and selling. . . .
>
> Any cost not specifically or directly associated with the production of identifiable goods and services. Sometimes called "burden" or "indirect costs" . . . Black's Law Dictionary 1103 (6th ed. 1990) (emphasis added; citations omitted).

Costs Incurred in the Implementation of NORA Programs and Projects

The NORA Act gives the Alliance broad leeway in making expenditures for programs and projects. In describing the functions of the Alliance, Section 706 of the NORA Act mandates:

> "[t]he Alliance-(A) shall develop programs and projects and enter into contracts or other agreements with other persons and entities for implementing this title, including programs-(i) to enhance consumer and employee safety and training; (ii) to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment; and (iii) for consumer education; and (B) may provide for payment of the costs of carrying out subparagraph (A) with assessments collected under section 707.

Implicit in this provision is that some expenditures will be necessary both for developing programs and projects and for implementing them. In fact, Section 706(B) highlights that the Alliance may provide funds to cover costs of "carrying out" the functions described in Section 706(A).

Analysis and Guidelines for the Alliance

There can be substantial diversity in what are considered administrative expenses. For the purposes of the NORA Act, the definition of administrative expenses must be one that is acceptable to the Council's accounting professionals and which does not contradict any portion of the NORA authorizing statute. While this determination is ultimately one for the administrators of the NORA program to make, we believe the threshold questions are 1) the administrative intensity of the expense, and 2) how directly related the expense is to the operation of the Alliance.

The NORA Act's Oversight Provisions Ensure that Assessment Funds Will Be Well Spent

The NORA Act provides thorough protections to ensure that funds collected under the program are used solely to benefit the oilheat industry and its consumers. The Act includes general "sunshine" and other provisions that will ensure thorough oversight of NORA's expenditures by the oilheat industry, consumers, and Congress. For example, the NORA Alliance is required to annually publish its proposed budget for public review and comment. The Alliance also must submit the proposed budget to both Congress and the Secretary of Energy for review. The NORA Act also calls on the Alliance to make public the books and records that clearly reflect all of the acts and transactions of the Alliance. These books and reports are to be audited annually. This oversight provision is another protection to ensure proper use of program funds. Further, all meetings of the Alliance are open to the public and minutes of such meetings will be made readily accessible to the public

These oversight provisions will help ensure that the Alliance fulfills all of its statutory responsibilities, including the requirement that the Alliance keep administrative expenses for operating the Alliance to not more than 7 percent of the funds collected in any year (10 percent during the first year of the Alliance's operation).

Conclusion

"Administrative expenses" is not a term defined in the NORA Act and accordingly, the Alliance has the authority and responsibility to develop and apply a definition of administrative expenses. The definition that is developed must be on that is both acceptable to the Alliance's accounting professionals and one that does not contradict any other portion of the NORA authorizing statute.

OCTOBER 2001 PART II

NORA
Grantee Procedures

GRANTEE DELIVERABLE PROCEDURES:

Throughout contract performance and as part of the scope of the work, the Grantee may be required to submit and deliver certain Deliverables including documents, reports or other tangible evidence that it is completing or has completed the required work.

All Deliverables by the Grantee shall be on the forms and follow the procedures instructed by the Alliance and satisfy the requirements contained herein.

Unless specifically authorized by the Alliance, on a case by case basis, all Deliverables shall be computer generated and shall not be handwritten.

If the Alliance reasonably determines that any material aspect of a Deliverable is inadequate or incomplete, the Grantee shall make any corrections and/or additions and resubmit the Deliverable at no additional cost to the Alliance. The Grantee shall submit an action plan indicating ways and means to recover lost time due to Grantee-caused delays. Additional time will be granted to the Grantee if it is determined by the Alliance that the delay is legitimate and meets the conditions set forth herein for a time extension; provided the Grantee has prudently exercised all reasonable and economical options within its authority and ability to avert such delays.

PROGRESS AND OTHER REPORTING REQUIREMENTS:

In addition to the periodic meetings between the Grantee's and the Alliance's authorized representatives, the Grantee shall also submit to the Council, on a semi-yearly basis or otherwise agreed to period a mutually agreed status or Progress Report. In such Progress Report, Grantee shall provide an account of work performed to date by the Grantee under the Contract. Such Progress Report shall be provided in addition to any other Deliverable that is required to be submitted in accordance with the contract's work schedule. Along with the final invoice, and any other Deliverabies required to be submitted under the Contract, the Grantee shall submit a final report in writing to the Alliance setting forth the results achieved under and pursuant to the Contract ("Final Report"). The Final Report on the Contract shall include: a complete summary of the work, including the research, study or analysis carried out, including the research performed during the course of the work. To the extent the Alliance reasonably determines that such Deliverables, Progress Reports or Final Report on the contract are inadequate, the Grantee shall be required to make all appropriate adjustments or corrections in the Deliverables or Reports before the

Alliance shall be required to issue a Certificate of Final Completion and make final payment to the Grantee.

Grant request information:

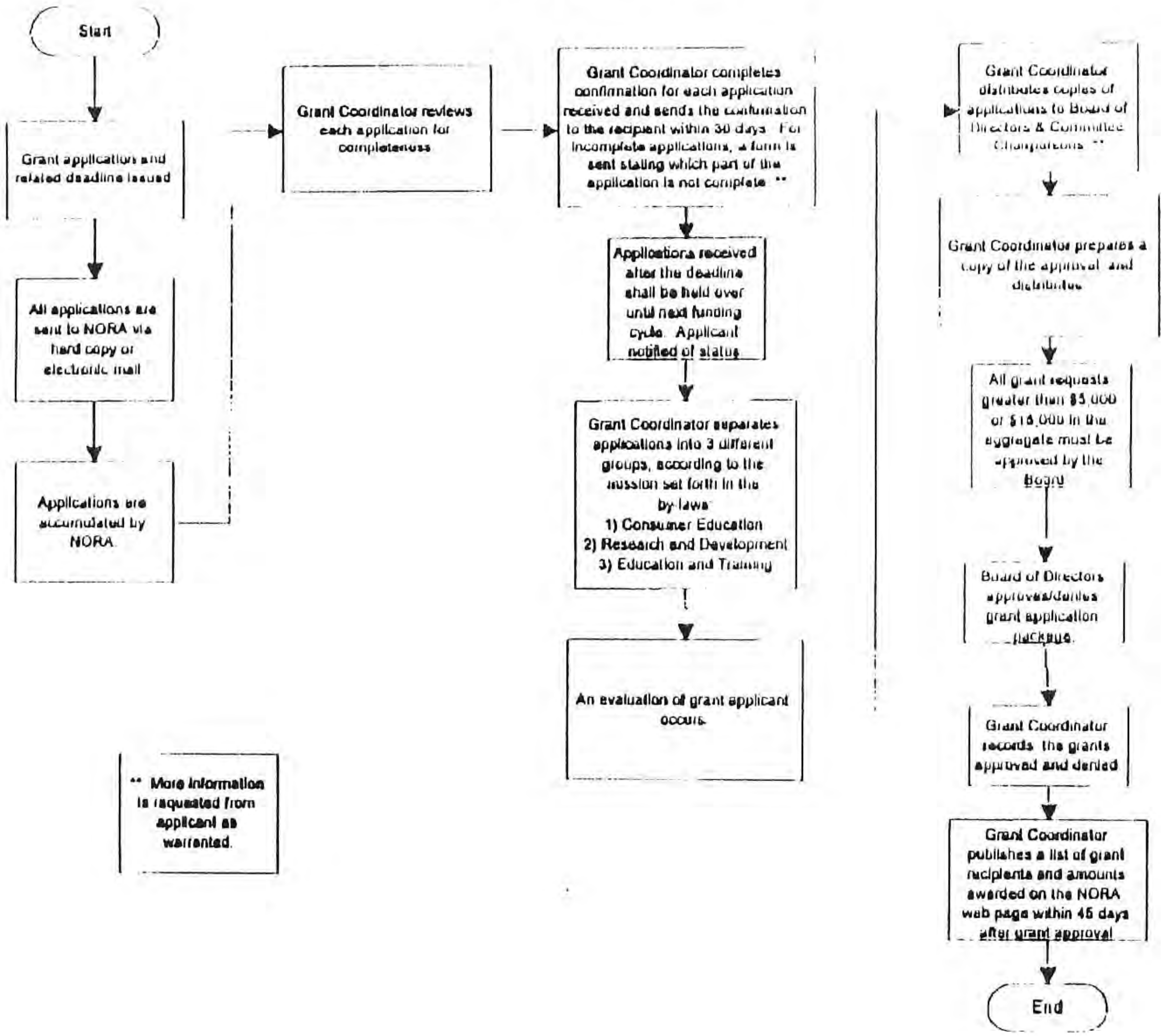
Statement of the Project – Background information, direct benefits, goals, objectives, anticipated results
Timeline for the Project – Start date, anticipated completion date, key stages and activities
Date that Deliverables will be presented to the Alliance
Budget and Statement of Costs – Direct costs, salaries, overhead and subcontractor costs, fees and expenses
Cost-Benefit Analysis – e.g. benefits to safety, consumer awareness, etc.
Evaluation Statement – methods to evaluate the impact of the project

Contract

Upon acceptance of Grant, the Alliance shall provide a contract to the grantee. This contract shall require the following.

1) Full compliance with all governing laws.
2) Any consumer education materials to be reviewed by and approved by Counsel
3) A prohibition on using the funds to influence elections or legislation.
4) Insurance and Indemnification Requirements, including adequate bonding.
5) Adequate Accounting systems to track funds received from NORA, Quiken, Great Plains, Peachtree are acceptable, other systems should be approved by Arthur Andersen.
6) A requirement that any interest earned be utilized for grant purposes.
7) A requirement that all grantee funds be used to accomplish NORA objectives. Such funds may include costs for personnel who supervise the activities of program staff, or any direct costs for personnel who perform fiscal and reporting activities related to the grant. Costs for contracted services associated with the program, costs for supplies and materials, other operating costs.
8) A requirement that grant funds not be used for Administration expenses as described in the Act which shall include the costs of operating and maintaining a facility that is not dedicated NORA purposes, general administration and general expenses such as budgeting, accounting, human resources, legal and purchasing.
9) Access to records. In connection with the work performed, Payment Requests, Grantee Claims, Change Requests, Changes, and terminations, the Grantee shall grant the Alliance access to and permit copies to be made of Grantee's books and records, including records of reimbursable and other expenses.
10) A provision regarding sales, licenses or other use of work created by the NORA grant.
11) A Progress Payment Schedule. NORA shall establish payment terms that closely mirror the expenses incurred by grantees, and reflect the payment terms that grantees shall be subject to.

NORA Grant Applications



GRANT AGREEMENT

This GRANT AGREEMENT ("Agreement"), is made this __ day of ______, 200_ by and between the National Oilheat Research Alliance, Inc., a District of Columbia non-profit corporation, whose address is 211 North Union Street, Suite 100, Alexandria, Virginia, 22314 ("Alliance") and ________________________, a ________________________ [*Type of business entity*] whose address is ________________________ (the "Grantee"), and shall govern the performance, services and other activities required under this Agreement. The Alliance and the Grantee are hereinafter referred to collectively as the "Parties" and individually as the "Party."

RECITALS

A. Pursuant to the National Oilheat Research Alliance Act of 2000 (the "Act"), Title VII of Public Law No. 106-469, the Alliance is required to develop programs and complete projects for the purpose of enhancing consumer and employee safety and training on the use of heating oil; ensuring the performance of productive research focused on the development of clean and efficient heating oil utilization equipment; and informing and educating the public about safety and other issues associated with the use of heating oil.

B. In furtherance of the development of such programs and projects and the Act's statutory mandate, the Alliance desires to provide funding to the Grantee, and the Grantee desires to accept such funds from the Alliance, all in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Alliance and the Grantee hereby agree as follows:

1. **Scope of the Work.**

1.1. The Grantee shall furnish and perform [for the Alliance] all of the research and other professional services required by the terms and conditions of this Agreement as well as the instructions, specifications, schedules, exhibits and other documents referenced herein or attached hereto, including, but not limited to, the services and work to be fully performed as set forth in **Schedule I** to this Agreement. All such exhibits, schedules and referenced documents are incorporated herein by reference and made a part of this Agreement. This Agreement, all schedules and exhibits hereto and all referenced documents and requirements are hereinafter referred to collectively as the Agreement or the "Transaction Documents." All services, research and work-product required to be completed under this Agreement and the Transaction Documents (including work required by change orders) shall be referred to herein as the "Work." The requirements of this Agreement shall be broadly construed to ensure that the services, research and Work meets applicable industry standards for professional services and work of the same or a similar nature and that such work complies in all respects with the terms of the Transaction Documents. This Agreement will be narrowly construed as it relates to Grantee's compliance with the requirements and intent of the Act, and the Alliance's bylaws, policies, rules and procedures currently in force and as amended (set forth under **Exhibits A and B**). Without exception, the Grantee shall provide all of the services and perform all of the Work proposed in **Schedule I** and set forth in **Schedule II**; and Grantee shall do so in accordance with and in the manner prescribed by this Agreement and as required under federal, state and local law, including, without limitation, the requirements under the Act and the Alliances bylaws, policies, rules, and procedures that are set forth under **Exhibits A and B**. Grantee represents to the Alliance that it has fully reviewed and agrees to fully comply with each of the following in performing this Agreement: (1) the Alliance's bylaws (set forth under **Exhibit A**); (2) Alliance's policies, rules and procedures (set forth under **Exhibit A**); (3)the Act (set forth under Exhibit A); and (4) the Grantee policies, rules and procedures, which are set forth under **Exhibit B**. The Alliance will make available to Grantee any amendments or other revisions to the Alliance bylaws, policies or rules, which will be fully applicable to Grantee and the Work performed under this Agreement.

1.2. The Scope of Work is not intended to limit the Grantee's ability to incorporate unique or beneficial features into its Work. Variation from the Scope of Work will be considered by the Alliance, if the proposed change is within the Agreement budget limitations, meets the objectives for the Agreement and results in an improved Work product. All proposed Changes (defined in Article 16) in the Scope of Work must be approved in accordance with Article 16.

1.3. This and all other Transaction Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Agreement or Transaction Documents irreconcilably conflicts with another provision, the provision imposing the greater duty or obligation on the Contractor shall govern.

2. **General Performance Obligations.**

2.1. **Work and Capabilities.** In completing the Work required under this Agreement, including any permitted modification, the Grantee shall provide all management, supervision, manpower, administrative support, insurance, materials, supplies, know-how, technology, equipment and all other materials and services, and shall plan, schedule, coordinate and ensure effective and timely performance of all specified services within the fixed or other pricing of the Agreement.

2.2. **Reviews.** The Alliance's review, approval, acceptance of, or payment for any of the Work required under this Agreement, shall not be construed as a waiver by the Alliance of any obligation of Grantee under this Agreement.

2.3. **Professional Quality.** The Grantee is responsible for the professional quality, technical accuracy and coordination of the Work. The Grantee shall, without additional funding, address questions and concerns raised by the Alliance or its agents or representatives and correct or revise errors or deficiencies in the Work furnished under this Agreement or have payment withheld pursuant to Article 19.

2.4. **Communications.** While the Grantee may communicate with other representatives of the Alliance, the Grantee shall proceed with Work based solely on the directions, instructions and/or comments of the Alliance's Authorized Representative as referenced in Article 28 and as otherwise agreed to herein. Before proceeding with any directions or instructions issued by a Party other than the Alliance's Authorized Representative, the Grantee shall first obtain the approval and consent of the Alliance in writing.

2.5. **Meetings and Documentation.** Throughout Agreement performance, the Alliance may schedule periodic meetings with the Grantee through the Parties' Authorized Representatives for the purposes of discussing Work status, procedures, progress, problems, scheduling, cost issues and other pertinent matters involving the Work. The Grantee shall attend and participate in such meetings. The Grantee shall also attend meetings where questions or problems arise concerning the Grantee's Work and as otherwise requested by the Alliance.

2.6. **Project Issues.** The Grantee shall immediately notify the Alliance in writing of any problems, issues, delays or concerns involving its Work. Grantee shall promptly make recommendations concerning solutions, cost controls, scheduling, and levels of effort, while maintaining the approved Agreement completion dates, interim and otherwise. The Grantee shall also promptly advise the Alliance in writing of any relevant problems of which it becomes aware which are outside of the Grantee's Scope of Work or Agreement requirements and shall offer solutions for such problems, and follow-up as required by the Alliance.

2.7. **Data Collection, Analysis, Recommendations and Deliverables.** Grantee shall have the sole responsibility to obtain all information required to successfully complete the Work in accordance with requirements under this Agreement. The Grantee's draft Progress Reports (defined in Article 4) and Final Reports (defined in Article 4) and other submissions that are required to be delivered under the Agreement ("Deliverables") are to be prepared based on all information available in the relevant scientific communities as well as on appropriate research, surveys, conferences, and factual information from other data sources. All Deliverables shall be made available to the Alliance and all others on the most current Project Distribution List attached hereto as **Schedule II**, for review and approval in such time so as not to delay completion of the Work. Such Deliverables shall give full consideration and demonstrate responsiveness to all of the views and comments expressed by all reviewing Parties. [**Confirm or revise as necessary.**]

2.8. **Interactions and Proceedings.** The Grantee shall establish all necessary liaisons, coordination, and support with any agencies or representatives at the federal, state, regional, and local levels, and as otherwise required by the Alliance. The Grantee shall prepare and provide all information and submissions required for approvals by governmental authorities or others having jurisdiction over the Work, except information that the Alliance agrees in writing to provide. Unless the Alliance provides otherwise in writing, the Grantee shall be solely responsible for actively participating in all such proceedings associated with obtaining such approvals or otherwise complying with all applicable federal, state and local laws, codes and regulations.

3. **Grantee Deliverable Procedures.**

3.1. In performing under this Agreement and as part of the Scope of Work, the Grantee may be required to submit and deliver certain Deliverables upon request of the Alliance, including documents, reports or other tangible evidence that it is completing or has completed the required Work.

3.2. All Deliverables by the Grantee shall be on the forms and follow the procedures instructed by the Alliance and satisfy the requirements contained in Article 2.

3.3. Unless specifically authorized by the Alliance, on a case by case basis, all Deliverables shall be computer generated and shall not be handwritten.

3.4. If the Alliance reasonably determines that any material aspect of a Deliverable is inadequate or incomplete, the Grantee shall make any corrections and/or additions and promptly resubmit the Deliverable to the Alliance at no additional cost to the Alliance. The Grantee shall submit an action plan indicating ways and means to recover lost time due to Grantee caused delays. Additional time will be granted to the Grantee if it is determined by the Alliance that the delay is reasonable; provided the Grantee has prudently exercised all reasonable and economically viable options within its authority and ability to avert such delays.

3.5. The Grantee is responsible for properly protecting all Deliverables transmitted to the Alliance.

4. **Progress and Other Reporting Requirements.**

In addition to the periodic meetings between the Grantee's and the Alliance's Authorized Representatives referenced in Articles 2 and 28, the Grantee shall also submit to the Alliance, on a periodic basis (not less than quarterly throughout the Agreement performance period on or before January 10, April 10, July 10, October 10) and as mutually agreed, a status or progress report ("Progress Report"). In such Progress Report, Grantee shall provide an account of Work performed to date by the Grantee and Work yet to be performed under the Agreement, current research being conducted, if any, the costs incurred by Grantee to date and any other material information that should be reported to the Alliance. Such Progress Report shall be provided in addition to any other Deliverable that is required to be submitted in accordance with the Work Schedule (defined in Article 6). Along with the final invoice, and any other Deliverables required to be submitted under the Agreement, the Grantee shall submit a final report in writing to the Alliance setting forth the results achieved under and pursuant to the Agreement ("Final Report"). The Final Report on the Agreement shall include: A complete summary of the Work, including the research, study or analysis carried out, detailed experimental protocols including the research performed during the course of the Work, and a full explanation and accounting of the use of the Alliance's funding for the Work.

To the extent the Alliance reasonably determines that such Deliverables, Progress Reports or Final Report on the Agreement are inadequate, the Grantee shall be required to make all appropriate adjustments or corrections in the Deliverables or Reports before the Alliance shall be required to issue a Certificate of Final Completion and make final payment to the Grantee. In addition to periodic meetings, Progress Reports, Final Report and other Deliverables, the Grantee shall provide to the Alliance copies of all data and other information in connection with the Work including, without limitation, all raw data and working papers obtained as a result of studies or analyses conducted in the course of Agreement performance, including all experimental procedures employed or performed in sufficient written detail to permit the Alliance or its future grantees to use such procedures in their own research. Grantee shall maintain accounting systems to track the Grant (defined in Article 5) and such systems should be either Quicken, Great Plains or Peachtree or such other program approved by the Alliance.

5. **Grant.** [Revise as Necessary]

5.1 The Alliance agrees to grant to the Grantee the sum of _______________ dollars ($ _______________) to perform the Work required under this Agreement (the "Grant"). The Grant will be paid to Grantee over time according to the progress payment schedule set forth in Article 7. The Grant shall be used solely for the Work. The Grant delivered to Grantee by the Alliance may include costs for personnel, contracted services related to the Work, supplies and materials and other operating costs that Grantee budgeted for in its Work Schedule (defined in Article 6). The Grant will not include funding for administrative expenses as described in the Act (attached hereto as Exhibit A) which include costs of operating and maintaining a facility that is not dedicated to the Alliance and the Act, general administration and general expenses such as budgeting, accounting, human resources, legal and purchasing.

5.2 The Grant shall only be used for the Work or as otherwise permitted herein. At no time will any portion of the Grant (defined in Article 5) be used by Grantee for any campaign, legislation or other political purpose.

5.3 The Alliance may cease payment of Grant at any time in its sole and absolute discretion.

6. **Agreement Performance Period and Scheduling.**

The Work to be performed under this Agreement shall begin on ______________ and shall be finally completed by ______________, plus any applicable extension of time granted by the Alliance. Prior to the award of this Agreement, the Grantee shall submit for the Alliance's approval a schedule for the performance of the Grantee's Work and shall include allowances for periods of time required for review of the Grantee's Work by the Alliance, other entities or individuals. The schedule shall also break down the Grantee's Work effort into significant activities and Deliverables, and shall identify cost or pricing amounts for each activity listed, which shall in total equal the total amount of this Agreement ("Work Schedule"). The Work Schedule shall be attached hereto as **Schedule II**. The Grantee shall submit to the Alliance a complete update of **Schedule II** along with each required submission under Article 4. The Parties agree that time is of the essence for the Grantee's performance under this Agreement.

7. Progress Payments.

Except as otherwise agreed by the Parties in writing, the Alliance shall make payments on account of this Agreement as follows: On the fifteenth day of each calendar month commencing with ____________, 200_, the Grantee shall present to the Alliance a monthly statement, on forms provided or approved by the Alliance, of all amounts claimed for the preceding month. This statement shall be accompanied by any required Deliverables and a listing of all Deliverables previously provided, copies of supporting invoices, detailed time sheets and billing records, together with any other information or documentation that the Alliance may require to allow it to verify the accuracy of the statement or the amount claimed and that all subcontractors have been timely paid. Any costs or amounts which are not properly documented, verified or are not permitted under the Act shall not be paid by the Alliance. Where a third Party will be providing matching funds or services, the Grantee shall be required to provide the Alliance with adequate assurances that such matching funds and services are being provided timely and properly. Failure to submit may at the sole discretion of the Alliance result in suspension of payments under the Grant until such accounting documents are furnished.

Within thirty (30) days after receipt and verification of such statement, the Alliance shall pay the Grantee the Grantee the amount included on the Grantee's monthly statement, less any sums that the Alliance determines are not properly documented, verified or are not permitted to be paid for under the Act. Grantee agrees that any interest earned on the progress payments of the Grant will be used for the Work.

8. Acceptance and Final Payment.

Upon receipt of the final Deliverables, including the Final Report on the Work and written notice from the Grantee that the Work is complete and ready for final, review, inspection, testing and acceptance ("Review"), the Alliance shall make such Review within a reasonable time. The Grantee shall include along with its Final Report **[twenty-five (25)]** copies of the Final Deliverable required under the Agreement. If and when the Alliance, in its reasonable discretion, determines that all Work is fully performed and acceptable and that all terms and conditions of the Agreement have been satisfied, the Alliance shall pay to the Grantee the remaining balance under the Agreement.

[9. Proceeds from Sale. License or Other Use of the Work.

In the event the Alliance does not exercise its right of first refusal and any embodiment or manifestation of the Work is sold, licensed or otherwise used, the Alliance and Grantee shall enter into an agreement to provide for, among other terms (1) the sharing of profits and (2) the distribution of any such embodiment or manifestation of Work.]

10. Status and Responsibility of the Grantee and its Personnel.

It is understood and agreed that the Grantee will perform the Work required by this Agreement as an independent Contractor and that during the performance of this Agreement, the Grantee's employees will not be considered employees of the Alliance within the meaning or the application of any federal, state or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, workers' compensation, industrial accident, labor or taxes of any kind. The Grantee's personnel who are to perform the Work to be provided by Grantee hereunder are and shall be deemed under the employment and ultimate control, management and supervision of the Grantee. It is understood and agreed that Grantee's employees shall not be considered the Alliance's employees within the meaning or application of Customer/employee fringe benefit programs or for purposes of vacations, holidays, pension, group life insurance, accidental death, medical, hospitalization and surgical benefits. Grantee and its employees and agents shall not represent themselves or hold themselves out as employees of the Alliance at any time.

11. Compliance with Law.

11.1 Compliance by Grantee of Laws. The Grantee shall perform all Work in strict compliance with all federal, state and local laws, rules, regulations, standards, codes and other governmental requirements that are applicable to the performance of the Work on the effective date of this Agreement and throughout Agreement performance as well as in compliance with the Alliance's document entitled "Policies, Rules and Procedures", Grantee Policies, Rules and Procedures (attached as Exhibit B)and the Act.

[12 Consumer Education Materials Compliance.

12.1 Grantee agrees that any materials to be used for consumer education (as such term is defined and referenced in the Act for purposes of this Section 11.2) shall be prepared by Grantee in full compliance with (i) the Act and any restrictions thereunder and (ii) all other applicable federal and state laws.

12.2 Grantee agrees to submit all consumer education materials to the Alliance prior to any use of such materials by Grantee or its representatives. The Alliance will have the right, in its sole and absolute discretion, to amend, modify or prohibit the use of consumer education materials by Grantee or its representatives. Under no circumstance will Grantee use any consumer education materials without the consent of the Alliance.]

13. Environmental, Safety and Health Provisions.

Throughout the performance of this Agreement, the Grantee agrees to comply with: (a) all applicable safety and health protection procedures, laws and regulations of federal, state and local governmental agencies, including but not limited to, OSHA and/or its state or local equivalents; (b) all applicable environmental protection laws, procedures and regulations enforced by federal, state and local governmental agencies including, but not limited to, the U.S. EPA and/or its state or local equivalents; and (c) all of the Alliance's bylaws, policies, rules and procedures.

14. **Employment and Related Laws.**

To the extent applicable as a matter of law to the Work and/or the subcontracting of the Work hereunder, the following provisions are incorporated by reference and the Grantee represents that it will comply with them: The Equal Employment Opportunity Act, E.O. 11246 and 41 C.F.R. §. 60-1.4 and 60-1.7; the Employment of Veterans Act, 41 C.F.R. §. 60-250; and the Employment of Handicapped Act, 41 C.F.R. § 741-4, Drug Free Workplace Act of 1988 (Pub.L. 100-690); Service Agreement Act of 1965, as amended, 41 U.S.C. 351, et seq.; Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and such other laws or regulations as the federal government may require the Alliance to flow down to its contractors; and all rules and regulations issued pursuant to the foregoing.

15. **Protection of the Public and the Work.**

The Grantee shall take all reasonable and necessary precautions for the protection and safety of: the public, the Grantees employees, representatives and agents, and all other personnel performing the Work. The Grantee shall take reasonable precautions to protect the Work and the Work of the Alliance's other grantees from loss, damage or destruction arising from any act or omission of the Grantee, any subcontractor, or any other conditions affecting the Work.

16. **Changes in the Work and Claims.**

16.1 The Alliance's Authorized Representative may at any time initiate changes in the Work that alter, add to or delete Work required under this Agreement ("Change"). The "Authorized Representative" shall be the then acting President of the Alliance or his designees. If such a Change affects the cost or the time required for completion of the Work, then the Agreement Price and Agreement Performance Period shall be increased or decreased as appropriate and in accordance with the terms of this Article 16. The Alliance will initiate the change process by providing a written description of the Change to be made by the Grantee on a document entitled "Proposed Change Order." The Grantee shall submit promptly to the Alliance a document entitled "Change Order Proposal" itemizing the reasonable and necessary adjustment in the Agreement Price and Agreement Performance Period to correspond to the Change. If the Alliance and the Grantee cannot agree on the appropriate adjustment in the Agreement Price or Agreement Performance Period, the Grantee shall nevertheless proceed with the Work associated with the Change, and the disagreement on the adjustment shall be resolved in accordance with Paragraph C below and Article 24 on Disputes.

16.2 The Grantee may initiate a Change or assert a claim for damages, loss or increased performance costs arising from or relating to the Agreement ("Change Request" or "Claim") only by submitting to the Alliance a document entitled "Grantee Change/Claim Proposal." The Grantee shall have no right to relief for a Grantee initiated

Change Request or a Claim unless the Grantee submits a Grantee Change/Claim Proposal to the Alliance within fifteen (15) days of the date that the Grantee first learns of the occurrence of the events giving rise to the Change Request or Claim. Unless directed in writing by the Alliance to proceed, the Grantee shall not proceed with the Work that is the subject of a Change Request or Claim unless the Alliance and the Grantee have entered into a written change order fully memorializing the agreed-to adjustment in the Agreement Price and Agreement Performance Period. In the event the Alliance and the Grantee cannot agree upon: whether work involves a Change to the Agreement; whether or not a Claim is valid; or the appropriate adjustment in the Agreement Price or Performance Period associated with a Claim or Change Request, then the Grantee shall nevertheless proceed with the Work associated with the Change Request or Claim and the disagreement shall be resolved in accordance with Section 15.3 below and Article 24 on Disputes.

16.3 Any dispute as to the appropriate adjustment in the Agreement Performance Period or Agreement Price associated with a Change, Change Request or Claim shall be settled in accordance with Article 24 hereof and the terms of this Section 15.3. Under no circumstances shall the Grantee be entitled to recover any amount more than a reasonable adjustment in the Agreement Price based upon costs reasonably and necessarily incurred by the Grantee in connection with a Change, Change Request or Claim. The adjustment shall be determined in accordance with the terms and rates specified in **Schedule II**. Under no circumstances shall the Grantee be entitled to recover consequential, exemplary or punitive damages from the Alliance. All Grantee Change/Claim Proposals shall be submitted in writing, and shall include the relief requested, a detailed explanation of the basis for the Claim or Change and complete supporting documentation.

16.4 Notwithstanding the foregoing, if the Grantee is delayed, disrupted or interfered with or suffers damage or loss of any kind during the progress of the Work as a result of a *force majeure* event as defined in Article 27, or as a result of the action or inaction of the Alliance or its agents or representatives the Grantee may submit a Change Request or Claim and its sole and exclusive remedy against the Alliance shall be the award of relief extending the Agreement Performance Period for a reasonable time. Under no circumstances shall the Grantee be entitled to recover consequential, exemplary or punitive damages from the Alliance.

17. Grantee's Continuing Obligation.

Neither inspection by the Alliance, nor issuance of any payment to the Grantee, termination of this Agreement, nor any provision of this Agreement, statement or conduct of the Alliance shall relieve the Grantee of liability for failing to satisfy its obligation under this Agreement or otherwise performing faulty or inadequate services. The obligations under Articles 10, 11, 13, 14, 16, 20, 21, 22, 24, 25 and 32 shall survive completion of the Work and termination of this Agreement.

18. **Alliance's Right to Terminate Agreement for Cause and Convenience.**

18.1. **Termination For Cause.** The Alliance may terminate or cancel this Agreement in whole or in part for cause, if: (a) Grantee's performance does not conform in all respects to the terms of this Agreement; (b) Grantee fails to timely and satisfactorily provide its Deliverables or services to the Alliance, as time is of the essence under this Agreement; (c) Grantee's violation of any applicable laws, ordinances, rules, regulations, instructions and/or other Agreement performance requirements; or (d) any question arises concerning Grantee's financial condition or solvency. Where a basis for termination exists, the Alliance will give the Grantee written notice, specifying the cause(s) for such dissatisfaction. If the deficiencies are not corrected to the satisfaction of the Alliance within seven (7) days of the date contained on the Alliance's written notice, or such other time period set forth in the Alliance's notice, the Grantee will be given written notice of the Alliance's termination of this Agreement for cause. Any notice of termination or cancellation shall specify the extent to which performance under the Agreement is terminated, and the effective termination or cancellation date.

18.2. **Termination for Convenience.** The Alliance may, at any time, terminate the Grantee's services under the Agreement for any reason whatsoever or for its convenience by giving the Grantee not less than fifteen (15) days' written notice of termination setting forth the effective date of termination.

18.3. **Termination Compensation.** In the event the Agreement is terminated for cause or convenience, the Alliance shall pay to the Grantee the balance due, if any, on the Agreement price for Work actually performed, accepted and approved by the Alliance prior to the effective date of termination, less payment previously made by the Alliance on account thereof and less any damages or loss the Alliance may have incurred as a result of the Grantee's performance or conduct. The Grantee shall not be entitled to recover lost profits on uncompleted Work, nor shall the Grantee be entitled to recover any damages (consequential or otherwise), compensation or indemnity of any kind as a consequence of such termination.

19. **Payments Withheld.**

The Alliance may withhold all or part of any payment to the extent necessary to protect the Alliance from loss or damage on account of: (a) Defective Work not remedied; (b) Claims filed or reasonable evidence indicating probable filing of claims by other Parties against the Grantee or the Alliance; (c) Failure of the Grantee to make payments properly to subcontractors; (d) A reasonable doubt that this Agreement can be completed for the balance then unpaid or within the time specified; (e) Damage to the Work, to the Alliance's property, the work of the Alliance's other contractors or other contractors, or the failure to protect against such damage; (f) Failure of the Grantee to make satisfactory progress or to meet the established performance schedule; (g) The Grantee's violation of any applicable laws, ordinances, rules, regulations, instructions and/or other Agreement performance requirements; and (h) Any other penalty, fine, damage or cost incurred or sustained by the Alliance or that may be incurred or sustained.

20. **Insurance.**

20.1 **Liability Insurance**

The Grantee shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Work will be performed and which carry a Best's Rating of A - VII or higher or are otherwise acceptable to the Alliance, such insurance as will protect the Grantee from the claims set forth below which may arise out of or result from the Grantee's operations under the Agreement and for which the Grantee may be legally liable, whether such operations be by the Grantee or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) Claims for workers' compensation, coverage or relief; (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Grantee's employees; (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Grantee's employees; (d) Claims for damage insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Grantee, or (2) by another person; (e) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; (f) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (g) Claims involving obligations under the Indemnification Article of this Agreement to the extent Grantee causes personal injury or property damage.

The insurance required above shall be written for not less than the limits of liability set forth below, however, Grantee shall have the responsibility to increase insurance coverages as Grantee deems necessary to perform the Work or as otherwise directed by the Alliance. Coverages shall be maintained without interruption from date of commencement of the Work until date of final payment, and termination of any coverage required to be maintained after final payment.

A. **Workers' Compensation**

Statutory for all states where Work is being performed or where employees are hired or where employees reside.

Employers Liability Limits: $[1,000,000] - Per Accident; $[1,000,000] - Disease-Policy Limit; and $[1,000,000] - Disease-Each Employee.

B. **Commercial General Liability**

Include the following terms and conditions: (a) Premises operations (including XCU coverages); (b) Independent Contractors; ; (c) Broad Form Property Damage including completed operations; (d) Blanket Contractual; (e) Occurrence Form; (f) Incidental Medial Malpractice; (g) Personal Injury with employment and contractual exclusions deleted; and (h) General Aggregate shall apply separately to each project. Limits: $[1,000,000] - Each Occurrence: $[2,000,000] - General Aggregate: and $[2,000,000] - Products/Completed Operations.

20.2 Professional Liability Insurance

The Grantee shall maintain Professional Liability Insurance for errors and omissions and which includes coverage for personal injury and property damage. Limits: $[1,000,000] - per claim: $[1,000,000] - General Aggregate. Such insurance shall be maintained by the Grantee throughout the performance of the Work and for a period of three (3) years from the date of final completion of the Work.

20.3 General Terms and Conditions

The Alliance and Grantee shall also be bound by the following terms and conditions: (a) The Grantee shall name the Alliance as an additional insured on all policies except Workers' Compensation: (b) A waiver of subrogation in favor of the Alliance shall be included on all policies including Workers' Compensation; (c) All required insurance shall be primary over any insurance or self-insurance program maintained by the Alliance; (d) Insurance held or procured by the Grantee at Grantee's sole expense shall not reduce or limit the Grantee's contractual obligations to indemnify and defend the Alliance for claims made or suits brought which result from or are in connection with the performance of this Agreement; (e) Before commencing Work on the Project, the Grantee shall provide the Alliance with certificates evidencing the Grantee's purchase of all insurance and coverage required by this Agreement; (f) Acceptance of any certificate of insurance evidencing the insurance coverages and limits required in the Agreement does not constitute approval or agreement by the Alliance that the insurance requirements have been met or that the insurance policies shown are in compliance with the Agreement requirements; and (g) The insurance policies and Certificate of Insurance shall contain a provision that coverages afforded under the policies will not be canceled, modified or allowed to expire until at least 60 days prior notice has been given to the Alliance. In case of the breach of this provision, the Alliance, at its option, may take out and maintain, at the expense of the Grantee, such insurance as the Alliance may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Grantee under the Agreement.

21. <u>Warranty and Quality</u>.

The Grantee warrants that all Work, services, products and materials shall: conform to the Scope of Work agreed to by the Grantee and the Alliance; meet the applicable industry standards for professional quality, merchantability and fitness for their intended purpose and fully comply with all applicable laws and regulations. If any Work performed including Work product is defective or otherwise not in conformity with the requirements of this Agreement, the Alliance, in addition to its other rights, may reject the same for full reimbursement of funds expended by the Alliance for the particular defective or non-conforming Work or Work product, or require proper correction, replacement or completion thereof at the Grantee's expense to occur not more than 20 days after such rejection. All costs and expenses to conform Work shall be at the sole expense of Grantee. The Grantee's duty to perform correction and replacement Work shall survive the Alliance's Review, inspections, tests and acceptance for a period of twelve (12) months from the date the Alliance issues a Certificate of Final Completion covering the Work.

22. **Indemnity by the Grantee.**

22.1. The Grantee agrees to indemnify, defend and hold harmless the Alliance, its directors, officers, agents, staff, and employees (all such Parties are hereinafter referred to collectively as the "Indemnified Parties") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs, and expenses (including reasonable attorney's fees and court costs), arising directly or indirectly out of the Grantee's performance or the performance of Grantee's officers, directors, employees, agents, representatives, contractors and sub-contractors, suppliers or other affiliates under the Agreement, including, without limitation, performance of the Work and the design, manufacture, sale or use of any embodiment or manifestation of the Work.

22.2. The Grantee agrees to supply all monies necessary to provide a diligent defense against any and all liability, claims, lawsuits, losses, demands, damages, costs, and all other expenses (including attorney's fees and court costs and costs of settlement), brought against the Indemnified Parties with respect to the subject of the indemnity, whether such claims or actions are rightfully or wrongfully brought or filed. Any Indemnified Party wishing to be indemnified shall:

a) promptly after receipt of notice of any and all liability, claims, lawsuits losses, demands, damages, costs, and expenses, or after the commencement of any action, suit, or proceeding giving rise to the right of indemnification, notify the Grantee, in writing, of said liability, claims, lawsuits, losses, demands, damages, costs, and expenses and send to the Grantee a copy of all papers served on the Indemnified Party;

b) permit the Grantee to retain qualified counsel of the Alliance's choosing to represent the Indemnified Party (but in the event that the Grantee does not select counsel to represent the Indemnified Party within ten (10) days, the Indemnified Party may select its own counsel, the fees and all costs of which will be borne by the Grantee); and

c) allow the Grantee to retain exclusive control of any such liability, claims, lawsuits, losses, demands, damages, costs, and expenses, including the right to make any settlement, except that the Grantee will not have the right to make any settlement or take any other action which would be deemed to confess wrongdoing by any of the Indemnified Parties or could reasonably be expected to have a negative effect on the reputation of one of the Indemnified Parties, without the prior written consent of the Alliance and the Indemnified Party involved.

23. **Subcontractors and Suppliers/Flow Down Obligation.**

The Grantee agrees to be solely responsible for any failure by its subcontractors or consultants to comply with the terms and conditions of this Agreement. Nothing herein shall be deemed to create a contractual relationship between any such subcontractor and the Alliance or provide a basis for any claim by a subcontractor against the Alliance. All of the Grantee's subcontractors and consultants shall be apprised of the terms and conditions of this Agreement and shall be held liable, accountable for and subject to these terms and conditions in their own subcontract work and contracts to the same extent and degree that the Grantee is or would be liable, accountable for and subject to these terms and conditions in its Agreement Work. It shall be the Grantee's duty to ensure that its subcontractors and consultants accept and comply with all of the terms and conditions of this Agreement and are fully insured and or bonded.

24. **Disputes.**

Claims, disputes or other matters in question between the Parties to this Agreement that cannot be resolved by good faith negotiations shall be subject to mediation, and if necessary, mediation or arbitration. A demand for mediation shall be made within thirty (30) days after one Party has notified the other Party in writing of its belief that a dispute cannot be resolved by negotiation. After the expiration of the thirty (30) day period, the Parties may nevertheless agree in writing to submit the dispute to mediation. Any mediation shall be held in accordance with the Mediation Rules of the American Arbitration Association in effect when the dispute arises, unless the Parties mutually agree otherwise in writing. The mediation shall take place at a mutually convenient location in the District of Columbia. Demand for mediation shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. Any dispute or difference arising out of or in connection with this Agreement which cannot be amicably settled by mediation within sixty (60) days after a demand for mediation is issued, shall be finally settled by arbitration under the Rules of Commercial Arbitration of the American Arbitration Association. The arbitration shall take place at a mutually convenient location in the District of Columbia. The resulting decision of the arbitrators shall be final and binding on the Parties. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In no event shall the demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The prevailing Party in any arbitration will have all costs and expenses of such proceeding paid for by the other Party, including, without limitation, legal fees.

25. **Non-Disclosure Agreement and Publications.**

25.1. The Grantee and all individuals conducting the Work, whether paid under this Agreement or otherwise, may not engage in similar Work performed independently under other grants, contracts, or agreements with Parties other than the Alliance without the prior written consent of the Alliance which shall not be unreasonably withheld. The Grantee agrees to use its best efforts to prevent disclosure of information arising from or relating to this Agreement which is designated in writing as being "CONFIDENTIAL" or is otherwise known to be confidential by the Grantee.

25.2. The Grantee further agrees that, except as provided below and in paragraph 25.5, it will not use or disclose to any third Party, any of the results of the Work. However, such information may be disclosed insofar as such disclosure is necessary to allow either the Grantee or the Alliance, as the case may be, (i) to defend itself against litigation, (ii) to file and prosecute patent, copyright or trademark applications on any invention or other intellectual property conceived or reduced to practice under the Agreement, or (iii) to comply with any judicial decree or government action. Notwithstanding the above, such obligation of confidentiality shall not apply to information that at the time of disclosure: (a) is in the public domain; (b) has come into the public domain through no fault of the Grantee; (c) was known to the receiving Party prior to its disclosure by the disclosing Party; (d) is disclosed by a third Party not under an obligation of nondisclosure; (e) is required by law or legal process to be disclosed; or (f) written permission for disclosure has been granted to the disclosing Party by the Grantee or the Alliance, as the case may be.

25.3. The Grantee shall have the right to publish in scientific or other journals, or to present at professional conferences or other meetings, the results of the Work conducted under this Agreement following the submission of the Final Report and written approval of the Alliance, provided however, that such publication or presentation clearly recognizes and acknowledges the Alliance as the sponsor of the Work and provided that the publication or presentation is not used as a marketing or promotional piece by or for the benefit of the Grantee. Throughout Agreement performance, the Alliance shall have an option and right of first refusal to retain in their entirety or share in the intellectual property rights corresponding to all Work performed, including all publications and other Deliverables. In order to provide the Alliance the opportunity to properly protect intellectual property and proprietary rights relating to the Work, a copy of each proposed publication shall be provided to the Alliance within a reasonable time in advance of submission for publication to permit the Alliance time in which to prepare application(s) which cover the subject matter of such publication. Any final proposed publication provided to the Alliance shall be considered as acceptable for submission for publication unless the Alliance notifies the Grantee within thirty (30) days of receipt of the proposed publication that it requires additional time to secure intellectual property rights on such publication, in which case the Alliance shall have an additional sixty (60) days to undertake such action before publication. the Alliance shall also receive final drafts of any proposed publication, and the Alliance shall be named in the publication as the sponsor of the Project. In the case of publication or presentation, the Alliance will provide the Grantee with the means or method to identify the Alliance as the sponsor of such research.

25.4. Regardless of whether the Alliance retains the ownership rights in the Work, the Alliance shall have an irrevocable transferable license to use the Work or work product produced under this Agreement in connection with the work of other Alliance grantees and in the Alliance's activities, including but not limited to the right to use and disseminate the Work or work product on the Alliance's Internet web page.

25.5. In any such publication and any related promotional material, the Grantee (unless otherwise instructed by the Alliance) shall include the following disclaimer in any publication: "The material and other information included in this publication/presentation is intended to provide general guidance only on the subject matter addressed by the publication/presentation. It is not intended to be a substitute for the personal instruction, guidance and advice of a professional with training and experience in the safe and proper use of heating oil."

26. **Ownership of the Work.**

Where the Alliance has exercised its right of first refusal and the option to retain intellectual property rights in the Work (or any part thereof), the Alliance shall have the sole and exclusive right, title and interest in and to the Work (or part thereof) and any invention or development of a product, device, process, or method, whether able to be protected by patent, trademark, copyright or otherwise that may arise from performance under the Agreement. To the extent requested by the Alliance, the Alliance shall own all intellectual property rights, including patents, copyrights and trademarks, related to the Work. Grantee acknowledges that the Work performed under the Agreement is a "work for hire" and agrees to take all action necessary to ensure that the Alliance has all right, title and interest in and to all of the intellectual property rights related to the Work and any results or inventions arising out of the Work, including assigning to the Alliance all rights it may hold. Grantee acknowledges that the results of the Work and Agreement performance and any inventions, products or services arising from the Agreement will be made available to all members of the heating oil industry on equal terms and in no event may such results or inventions be restricted to any group of industry members or may pricing of the product discriminate among distinct groups of industry members. To the extent the Alliance seeks to retain intellectual property rights, the Alliance shall be responsible for the preparation, filing, and prosecution of all patent, trademark and copyright applications covering any invention, product or service arising out of the Work, as well as all costs and fees associated therewith. The Grantee and its employees shall assist the Alliance in the preparation, filing and prosecution of such applications. The Alliance shall own all right, title, and interest in any regulatory approvals which are obtained by or on behalf of the Alliance, to the extent such approvals are transferable otherwise Grantee will fully cooperate with the Counsel to obtain any required approvals. The Grantee and its employee shall assist the Alliance with respect to any filings which may be required by appropriate health or regulatory authorities.

27. **Force Majeure.**

Neither Party shall be responsible for performing under this agreement due to any cause beyond the control of the Alliance and the Grantee for which they could not have reasonably foreseen and guarded against, which acts shall include acts of God, fires, floods, wind storms, ice storms, labor disputes, court orders, fires, riots, civil unrest, incendiarism, interference by civil or governmental authorities (not due to violation of any provision of this Agreement), and acts of war. Grantee, in good faith, shall makeevery effort to continue to perform under this Agreement.

28. **Notice and Authorized Representative.**

Written notice shall be deemed to have been duly served when received by hand delivery or when received by certified or registered mail, overnight delivery service (i.e. FedEx) or facsimile in each case to: (1) the "Company General Counsel/Senior Executive Officer" at the address set forth on the first page of this Agreement; and (2) to the Authorized Representative of the Alliance at the address below, including all copies, and the Grantee. Each Party shall advise the other in writing of any applicable address change.

The Alliance's Authorized Representative:

Name:	National Oilheat Research Alliance, Inc.
Address:	211 North Union Street, Suite 100 Alexandria, VA 22314
Phone:	703-519-4204
Fax:	703-519-4205

With Copy to :

Name:	Patton Boggs LLP
Address:	2550 M Street, NW Washington, DC 20037
Phone:	202-457-6000
Fax:	202-457-6315
Attn:	Edward J. Newberry, Esq.

29. **Governing Law.**

This Agreement, including all performance requirements and disputes hereunder, shall be governed by and construed in accordance with the laws of the District of Columbia.

30. **Entirety Clause/Severability.**

The terms and conditions of this Agreement constitute the sole, exclusive and entire agreement between the Alliance and the Grantee. Any modifications must be set forth in writing and signed by the Alliance's and the Grantee's duly Authorized Representative. If any provision herein is held to be invalid by any competent court or arbitration tribunal, the remaining provisions of this Agreement shall survive and remain in full force and effect. The Parties hereto shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, with the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

31. **Waiver.**

No waiver shall be deemed to have been made by either Party unless expressed in writing and signed by the waiving Party. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the terms or provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy hereunder or at law. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

32. **Miscellaneous Provisions.**

32.1. **Access to Records.** In connection with the Work performed, Payment Requests, Grantee Claims, Change Requests, Changes, and terminations, the Grantee shall grant the Alliance access to and permit copies to be made of Grantee's books and records, including records of reimbursable and other expenses.

32.2. **Taxes.** The Agreement Price includes and the Grantee shall pay, all sales, consumer, use and all other taxes, fees, assessments and levies required by law.

32.3. **Authority.** The officers or partners of the Alliance and the Grantee, respectively, signing this agreement represent and warrant that they have the power and authority to execute the Agreement on behalf of the Alliance or the Grantee, as applicable, and to bind the Alliance or the Grantee, as applicable, herein.

32.4. **Permits and Notices.** The Grantee shall obtain all permits and licenses required as a matter of law or regulation and necessary for the proper completion of all Work under this Agreement. The Grantee shall provide all notices required by law which bear on the performance of the Work.

32.5. **Inspection and Testing of Work.** Upon written request, the Alliance and its representatives shall at all reasonable times during normal business hours have access to and the right to inspect the Work. Such inspections or verbal approval are not to be interpreted as the Alliance's acceptance of the Work or a waiver of Agreement requirements.

32.6. **Assignment.** The Grantee shall not assign or sublet this Agreement in whole or in part, nor shall the Grantee assign any monies due or to become due hereunder, without the prior written consent of the Alliance. Upon thirty (30) days notice to Grantee, the Alliance may assign this Agreement to another individual or entity.

32.7. **Use of Institution Name/Public Statements.** The Grantee agrees to make no public presentations about the Work outside of appropriate scientific meetings, to issue no news releases about the Work, and the Grantee shall not make use of the

Alliance's name in any form of public information without the written permission of the Alliance.**[Confirm]**

32.8. **Relationship.** Nothing herein contained shall be construed to imply a joint venture, partnership or principal-agent relationship between the Alliance and the Grantee, and neither Party shall have the right, power or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

32.9. **Legal Rights.** The rights and remedies of the Alliance provided for under this Agreement are in addition to any other rights and remedies provided by law.

32.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by the Alliance and/or Grantee shall be deemed the original signature of such Party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties by their duly Authorized Representatives have executed this Agreement and entered into this Agreement on the dates set forth below. The date provided below by the final signatory to this Agreement shall be the effective date of this Agreement.

National Oilheat Research Alliance, Inc.	______________________
"Alliance"	**"Grantee"**
By: ______________________	By: ______________________
Print Name: ______________	Print Name: ______________
Address: ________________ ________________	Address: ________________ ________________
Title: ___________________	Title: ___________________
Date: ________	Date: ________

Professional service costs.

a. Costs of ***professional and consultant services*** rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to **subparagraphs** b **and** c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. ***In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:***

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Nora's award.

(4) The impact of Nora awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Nora's work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in **subparagraph b**, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

National Oilheat Research Alliance

SEMIMONTHLY PERSONNEL ACTIVITY REPORT
EXEMPT PERSONNEL

EMPLOYEE NAME	DEPARTMENT ACCOUNT NUMBER	PERIOD ENDING
	- -	

DATE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
HOURS																	

SL=Sick Leave DL=Disability Leave HL=Holiday Leave V=Vacation

PROJECT NAME	PROJECT ACCOUNT NUMBER	PERCENTAGE WORKED
	- -	
	- -	
	- -	
	- -	
	- -	
	- -	
	- -	
	- -	
		100%

I certify that the foregoing is a true record of my time worked and a reasonable estimate of the percentage of the time dedicated to each project during the period of the report.

Employees Signature	Date

I certify that to my knowledge the forgoing is a true record of the time worked and a reasonable estimate of the percentage of the time devoted to each project during the period of the report.

Supervisors Signature	Date

NATIONAL OILHEAT RESEARCH ALLIANCE
(NORA)

REPORT DATE:________ DOCKET #__________

STATE REBATE Final Accounting Report

Return one (1) signed original "hardcopy" and one (1) electronic diskette - Microsoft Word Format
Including all supporting documents and attachments
to:
National Oilheat Research Alliance
Attention: State Rebate Final Report
211 N. Union Street. Suite 100
Alexandria, VA 22314
Tel: 703-519-4204 – Fax: 703-519-4205 or www.nora-oilheat.org

Project Performance Period: (Start Date) __________ (Completion Date) __________

1. Name of Grantee:	
2. Title or short name of project:	
3. Total estimated cost of the project: $	4. Amount of funding received from the Council: $
5. Actual cost of the project: $	6. Amount of "unused funding" returned to Council $

Project Report Attachments & Checklist:

NOTE: Please include project Docket # in TOP Left Corner of each attachment.

☐ **I. Detailed timeline of the project, from organization to completion, including project stages and activities.**

☐ **II. Goals and objectives:**

A. Were the goals and objectives outlined in the original funding request achieved as a result of this project? Please explain.

B. Were there any goals and objectives not achieved through the implementation of the project? Please explain.

C. Statement of methods used to evaluate the success of the project.

☐ **III. Complete a detailed statement of the cost of the project and final budget accounting.**

- Specifically include; direct costs, salaries, overhead and subcontractor costs, fees and expenses.
- Statement of how much the state contributed toward the cost of the project in cash, kind and services.

☐ **IV. If applicable, attach a check for the "unused" project rebate dollars. This money will be returned to your state's account and used for future rebate funding.**

☐ **V. Statement of plans to enhance and/or continue project with future rebate funds.**

☐ **VI. Five (5) copies of any written materials (i.e., newsletters, pamphlets, brochures, schedules, etc.) and five (5) copies of audio or video tapes, or deliverables produced as part of the project Work under the contract. Also, attach one copy of any written materials on an electronic diskette in Microsoft Word format.**

☐ **VII. Check for "unused funding" if applicable, to be returned to your state or regional account.**

Final Review and Acceptance:

Upon receipt of the Final Report and Deliverables, and written notice from the Grantee that the Work is complete, within a reasonable time, the Council shall review the Work and determine if all Work was fully performed and acceptable and that all terms and conditions of the Contract have been satisfied. Upon making such a determination, the Council shall issue to the Grantee a letter certifying completion of the contract.

Verification:

I verify that I am authorized to make this final report, and that the statements made herein, including all attachments and exhibits, are true and correct to the best of my knowledge.

________________________ [date of signing]

________________________ [signature of contact individual]

________________________ [printed name]

PERC Quarterly Report
June 30,2001
Prepared by
XXXXXXXXXXXXXX

Project Title:
"Development and Production Plan for a low Emissions Propane Engine for Irrigation and off-road Industrial Applications".

Project Description:
Through a cooperative funding agreement between PERC/DOE & XXXXXX Inc., XXXXX is prepared to develop on "2004 XXX EPA Certified Engine Platform" (XX 5.7L.) This engine package is scheduled to commercialize on OCT. 2, 2001. Propane will be the fuel of choice. This certified engine will exhibit the latest gaseous fuel technology producing ultra low emissions. The prime market for these engines will be in the irrigation and industrial marketplace.

March 30, 2001 Status:

The following project development steps have been completed:

A/ Project Start-up & System Design

- ❑ Detailed Proposal preparation
- ❑ Review & Sign-off of Proposal
- ❑ Develop Use Cases
- ❑ Review Specifications & Options
- ❑ Validation of Test Cases
- ❑ Complete Design Review

B/ Engine Preparation & Fuel System Design

- ❑ Order & Ship engine to ESD in Sterling Heights MI.
- ❑ Design & Build XXXX Mounting hardware
- ❑ Install Engine on XXXX
- ❑ Specify Closed Loop XXXX System
- ❑ Procure Closed Loop XXXX Hardware
- ❑ Design Application HW (brackets. adapters etc
- ❑ Design Application wiring harness
- ❑ Install Prototype System on Test Engine

June 30, 2001 Status:

The following project development steps have been completed since March , 30, 2001.

C/ Air Fuel Trimming System Hardware Development

- ❑ Obtain Trimming Components
- ❑ Evaluate System
- ❑ Source Trimming Options
- ❑ Decision on Air Fuel Trimming Options
- ❑ Develop software
- ❑ Test Air Fuel System
- ❑ Durability Testing of Air Fuel System

D/ Closed Loop Software Development

- ❑ Develop software
- ❑ Test software

E/ Integrated Ignition

- ❑ Select Coils
- ❑ Determine Location for Pickup
- ❑ Design 24X pickup and Hardware
- ❑ Build Prototype Unit
- ❑ Bench Test prototype Hardware
- ❑ Develop Production Intent Components

F/ Develop Engine Calibration

- ❑ Determine Proof of Concept
- ❑ Finalize Engine Calibration

G/ Engine Testing

- ❑ Bench testing
- ❑ Durability Testing
- ❑ Design Review and Sign-off Approval
- ❑ Complete XXXX & EPA, C2, ISO, Emission Test
- ❑ Complete all power, Torque, Heat, Etc. Testing

H/ Application for CARB Executive Order

- ❑ Complete application for certification approval

I/ Field Testing

- ❑ Completed build up of 2 Test Engines for field testing
- ❑ Currently working on locating 2 test sights

Summary:

We have completed our testing, finalized our certified package and are submitting our application for XXXX for approval to obtain the Executive Order. We are expecting this approval within 6 weeks trusting no backlog on XXXX/s behalf.

Our final steps of this project will be to set up two test engines for field demonstration and review the test results. We have these engines ready and are confirming a test sight to run these engines.

We will also be completing System Documentation. System Drawings and developing our manufacturing process. The final stage will be the final testing review and sign-off for production.

We anticipate at this time, that we will finish this project just ahead of schedule, unless XXXXX holds us up because of a backlog of applications.

Financial Status:

In reference to the budget on this development, XXXXXXX has contributed the following expenses to-date into this project, with no other financial support.

Labor Costs	$63,000
Durability & Demonstration	$48,000
Material Costs	$27,500
Prototype Hardware	$17,900
Travel Costs	$0
Total	**$156,400**

We feel that we are 75 to 80% complete on this project.

If you or anyone has any questions, please forward those questions to me.

Sincerely,

XXXXXXXX

PROPANE education & research COUNCIL

REPORT DATE: 8/30/00   DOCKET # XXXXX

PROJECT EVALUATION Report

*Return one (1) signed original **hardcopy** and one (1) electronic diskette -Microsoft Word Format*
Including all supporting documents and attachments.
Attention: Consumer Education Project Evaluation Report
Propane Education & Research Council
1776 K Street, NW, Suite 204
Washington, DC 20006
Tel: 202-452-8975 – Fax: 202-452-9054 or www.propanecouncil.org.

Project Performance Period: (Start Date) 10/8/98 (Completion Date) 12/31/99

1. **Name of Grantee:** XXXXXXXXXX	
2. **Title or short name of project:** Propane Container Purging Procedure	
3. **Total estimated cost of the project:** $ 59,405	4. **Amount of funding received from the Council:** $ 59,405
5. **Actual cost of the project:** $ 63,338.56	6. **Amount of "unused funding" returned to Council** $0

Project Report Attachments & Checklist:

NOTE: Please include project docket # in TOP left corner of each attachment.

☒ **I. Detailed timeline of the project, from organization to completion, including project stages and activities.**

See Attachment #1

☒ **II. Goals and objectives:**

A. Were the goals and objectives outlined in the original funding request achieved as a result of this project? Please explain and quantify. Also include anecdotes, quotes, and/or testimonials to support answer.

B. Did this project meet the goals of the consumer education mission of the Propane Education & Research Council's Strategic Plan—i.e., enhance awareness and increase propane demand?

C. Were there any goals and objectives not achieved through the implementation of the project? Please explain.

D. Statement of methods used to evaluate the success of the project. Please quantify the results.

☐ III. Complete a detailed statement of the cost of the project and final budget accounting.

- Specifically include: direct costs, salaries, overhead and subcontractor costs, fees and expenses.

☐ V. Statement of plans to enhance and/or continue project with future funds.

☐ VI. Five (5) copies of any written materials (i.e., newsletters, pamphlets, brochures, schedules, etc.) and five (5) copies of audio or videotapes, or deliverables produced as part of the project work under the contract. Also, attach one copy of any written materials on an electronic diskette in Microsoft Word format.

☐ VII. Check for unused funding, if applicable, to be attached.

Final Review and Acceptance:

Upon receipt of the Final Report and deliverables, and written notice from the grantee that the work is complete, within a reasonable time, the Council shall review the work and determine if all work was fully performed and acceptable and that all terms and conditions of the contract have been satisfied. Upon making such a determination, the Council shall issue to the grantee a letter certifying completion of the contract.

Verification:

I verify that I am authorized to make this final report, and that the statements made herein, including all attachments and exhibits, are true and correct to the best of my knowledge.

August 30, 2000
[date of signing]

[signature of contact individual]

Bruce Swiecicki
[printed name]

I. Timeline

The following milestones represent the history of the Container Purging Project:

- The project originated with discussions in XXXXXX Odorization Task Force, which began in 1997
- The project was prepared for submittal to PERC in the Summer of 1998
- The project was approved by PERC in October 1998
- The contract between PERC and the XXXXXX was signed 10/31/98
- The contract between XXXXXXX and XXXXXXXX was signed in January 1999
- Work began in January 1999
- XXXXX Staff visited the laboratory in Cleveland on March 2, 1999
- Laboratory work was completed in April 1999
- Analysis of data was completed in August 1999
- Final report was issued in January 2000

II. Goals and Objectives

A. The goals of the project were defined in the application as follows:

1. *To arrive at alternative procedures for purging propane containers which would allow purging to be accomplished more expeditiously, but without sacrificing effectiveness.*

The data generated from this project will lead to revised procedures for purging propane containers. The results indicated that effective purging of containers is dependent on the temperature when a propane container is open to the atmosphere and to a lesser degree the humidity. This project demonstrated that flexibility in choosing purging methods and procedures is available to the propane marketer, and he can alter the purging procedure to achieve higher efficiency in his operation.

2. *To provide a quantified baseline for what constitutes an effective purge. In other words, how much air can remain in the container without constituting either an overpressure hazard or an unacceptable influence on appliance performance.*

This goal was at least partially met with the data generated from the laboratory simulation and testing. The results indicated that purging a container at 0 °F and leaving an amount of residual air equal to 15% of the container volume would result in a container pressure of 306 psig should the temperature of the contents of the container reach 130 °F. This is important information because on DOT cylinders, the pressure relief devices are set to relieve at 375 psig. Coupled with other results from the report which indicate which purging methods can achieve an end result of 15% air in the container, an amount of flexibility for choosing purging procedures is provided to the marketer to suit his resources.

The second part of this goal addressed the amount of residual air in the container which would not lead to unsafe operation of an appliance. In other words, the "first use" of gas would be somewhat diluted by the residual air in the container, and the mixture that an appliance pilot ignition system would receive would be "leaner" than the typical 2500 Btu/cubic foot of propane. The laboratory was not confident in making a statement on the maximum amount of residual air in the cylinder due to the variability of appliance ignition technologies and the unknown effects of leaner "first use" gas.

B. This project was not related to the consumer education mission of the PERC.

C. This project did not result in a recommendation for purging propane containers by the test laboratory. The laboratory testing and modeling was intended to provide a basis for revising XXXX's Technical Assistance Bulletin T133 on purging containers. The information from this project has been forwarded to XXXXX's Education, Training and Safety Committee for incorporation into a revised bulletin.

D. The success of this project was determined by establishing a correlation between the mathematical model derived by the laboratory and the results of the physical testing that took place. There was found to be a good correlation between the testing data and the model and therefore, the project was deemed to be successful. Based on this correlation, we now have the ability to mathematically model the purging process under any number of temperature/humidity conditions.

Another gage of success will be how well the information from this project can be transferred into the revised technical assistance bulletin. This will not be known until the XXXX Education, Training and Safety Committee completes its work on the project.

III. Statement of Costs

The following represents the detailed description of costs associated with PERC Project #XXXXX:

Amount of Funding Received from PERC:	$59,405.00
Expenditures:	
- Contract Fees with CSA Laboratories	$55,900.00
- XXXX Staff Administration	$ 6,488.75
- XXXX Staff Travel	$ 298.50

-	Administration Overhead Allocation	$ 592.50
-	Phone	$ 56.75
-	Printing/Copying	$ 2.06
Total Expenditures		$63,338.56
Amount Contributed by XXXX		$ 3,933.56

IV. Future Plans

At this time, the XXXX Technology and Standards Committee is considering two projects to address container preparation and use. One would be to investigate the amount of odorant to be added to a container above and beyond any odorant that would be adsorbed, absorbed or oxidized by the walls of the container. The second project would investigate the performance of compounds used to "passivate" the walls of a container in order to prevent odorant from being adsorbed, absorbed or oxidized by the walls.

	Ed. & Train	90,077.00	90,077.00	ET-01-NC-001	
NC	Cons. Ed	60,250.00	100,417.00	CE-01-NC-001	#11
	Ed. & Train	40,167.00	100,417.00	ET-01-NC-001	
NY	Cons. Ed	0122 43,700.00	1,222,437.00	CE-01-NY-001 6224	#12
	Ed. & Train	358,250.00	358,250.00	ET-01-NY-001	
NH	Cons. Ed	150,267.65	150,267.65	CE-01-NH-001	#13
	Ed & Train	76,289.73	76,289.73	ET-01-NH-001	
	Res. & Dev.	4,623.62	4,623.62	RD-01-NH-001	
CT	Cons. Ed	736,000.00	736,000.00	CE-01-CT-001	#14
	Ed. & Train	252,000.00	252,000.00	ET-01-CT-001	
	Res. & Dev.	63,100.00 300K	63,100.00	RD-01-CT-001	
NJ	Cons. Ed	474,024.00	474,024.00	CE-01-NJ-001	#15
	Ed. & Train	88,880.00 60	88,880.00	ET-01-NJ-001	
	Res. & Dev.	29,626.00	29,626.00	RD-01-NJ-001	
OH	Cons. Ed	135,000.00	190,126.00	CE-01-OH-001	#16
	Ed & Train	55,000.00	55,000.00	ET-01-OH-001	
IN	Cons. Ed.	38,000.00	50,000.00	CE-01-IN-001	#17
	Ed. & Train	38,000.00	50,000.00	ET-01-IN-001	
RI	Cons. Ed.	246,220.00	246,220.00	CE-01-RI-001	#18
	Ed. & Train	105,524.00	105,524.00	ET-01-RI-001	
VT	Cons. Ed	22,000.00	22,000.00	CE-01-VT-001	#19
	Ed. & Train	32,000.00	102,000.00	ET-01-VT-001	
	Res. & Dev.	12,000.00	12,000.00	RD-01VT-001	
WI	Cons. Ed	131,991.00	131,991.00	CE-01-WI-001	#20
	Ed & Train	32,997.00	32,997.00	ET-01-WI-001	
NV	Cons. Ed.	7,500.00	7,500.00	CE-01-NV-001	#21

Ed. & Train	6,500.00	6,500.00	ET-01-NV-001

Resolution #1

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NJ-01-001 Build with Oil is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #3

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as KY-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #4

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as ME-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #5

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as MD/DC/DE-01-001 are hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #6

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as PA-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #7

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as OR-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #8

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NY-01-001 (Brookhaven) is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #9

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as MA-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #10

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as WA-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #11

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NC-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #12

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NY-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #13

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NH-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #14

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as CT-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #15

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NJ-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #16

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as OH-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #17

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as IN-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #18

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as RI-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #19

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as VT-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #21

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as NV-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

Resolution #20

The National Oilheat Research Alliance from its inception has considered the state associations to be one of the strongest forces in the oilheat industry and that effective use of their resources will help advance the goals of NORA. The Board also finds that the following grant was subjected to public comment and that no adverse comments were made. To this end, the Board of Directors hereby:

Resolved: That the grant request identified as WI-01-001 is hereby approved.

Be it further resolved: That the President of NORA enter into a contract with the grant applicant identified in the grant to effectuate the purposes of the grant.

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MEMORANDUM

Privileged and confidential attorney work product

To: NORA
From: PATTON BOGGS LLP
Date: September 18, 2001
Subject: *United Foods*: Case Analysis and Implications for NORA

I. The Supreme Court's Treatment of Checkoff Programs

The Supreme Court has now twice considered First Amendment challenges to agricultural checkoff programs. In *Glickman v. Wileman Bros & Elliott, Inc.*, 521 U.S. 457 (1997), the Court found no First Amendment offense from mandatory assessments that funded a California fruit tree regulatory regime. Among the program's activities was generic advertising intended to stimulate demand generally for tree fruit.

On June 25, 2001, the Supreme Court considered a First Amendment challenge to mandatory assessments under the Mushroom Promotion, Research, and Consumer Information Act of 1990. *United States v. United Foods, Inc.*, No. 00-276, slip op. (2001). "[M]ost monies raised by the assessments are spent for generic advertising to promote mushroom sales." This time, six Justices found a First Amendment offense.[1]

The core constitutional principle at issue in both cases is the right not to be forced to speak something with which one disagrees. "The essential thrust of the First Amendment is to prohibit improper restraints on the voluntary public expression of ideas. ... There is necessarily ... a concomitant freedom not to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect." *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 524, 559 (1985). This freedom from forced speech necessarily extends to forced contribution of money that funds disagreeable speech. The principle harkens back to Thomas Jefferson's view that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." I. Brant, JAMES MADISON: THE NATIONALIST 354 (1948) (quoted in *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35 (1977) (public union could not expend dissenting individual's dues for ideological activities not "germane" to collective bargaining purpose.))

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1 Justices Kennedy and Stevens, who had joined the five-Justice majority in *Glickman* upholding the fruit checkoff program, joined the four *Glickman* dissenters to form the majority in *United Foods*.

While it is obviously a stretch to conceive checkoff programs as vehicles of sin and tyranny, the law has evolved to embrace a particular sensitivity to forcing speech, even in commercial contexts. *See, e.g., Pacific Gas & Elec. Co. v. Public Util. Comm'n*, 475 U.S. 1 (1986). As the Supreme Court observed, "[o]ur precedents concerning compelled contributions to speech provide the beginning point for our analysis. The fact that speech is in aid of a commercial purpose does not deprive respondent of all First Amendment protection." *United Foods*, slip op. at 4. Yet the Supreme Court found one checkoff program constitutional (*Glickman*) and one checkoff program unconstitutional (*United Foods*). In the latter case, the Supreme Court reaffirmed the validity of its earlier holding and analysis in *Glickman*, yet found the mushroom program sufficiently distinct to justify a different result.

Comparing the Mushroom Council's activities with the fruit marketing promotional activities upheld in *Glickman*, the *United Foods* Court observed: "The program sustained in *Glickman* differs from the one under review in a most fundamental respect. In *Glickman*, the mandated assessments for speech were ancillary to a more comprehensive program restricting marketing autonomy. Here, for all practical purposes, the advertising itself, far from being ancillary, is the principal object of the regulatory scheme." *United Foods*, slip op. at 5. The tree fruit producers compelled to contribute funds "d[id] so as a part of a broader collective enterprise in which freedom to act independently [wa]s already constrained by the regulatory scheme," and "their mandated participation in an advertising program with a particular message was the logical concomitant of a valid scheme of economic regulation." *Glickman*, 521 U.S. at 469 (quoted in *United Foods*, slip op. at 5-6).

In other words, the tree fruit producers had essentially traded their First Amendment freedom to object to generic advertising for the broader economic benefits of collective activity—and this broader collective activity included generic advertising. Conversely, no such voluntary subordination of First Amendment rights to a higher purpose existed in the mushroom case. Instead, "for all intents and purposes, the advertising itself, far from being ancillary, is the principal object of the regulatory scheme." *United Foods*, slip op. at 5. This distinction, while subtle, is critical to assessing which checkoff programs may pass constitutional muster.

At first glance, it appears odd to predicate the result upon determining whether the challenged advertising is "principal" or "ancillary." If the core principal is prohibition of forced speech, "ancillary" forced speech and "principal" forced speech seem equally "forced." The key resides in the role that broader collective action plays in the regulatory regime—and the extent to which one obtains a measurable benefit, apart from the benefit of the speech itself, from collectivization. Essentially, government cannot say, "pay dues for speech you may not like." But the government can say, "pay dues in exchange for substantial and well-recognized benefits of associating together, and if the dues then, in part, fund speech that is 'germane' to these intended benefits, there is no constitutional violation."

This framework of economic and constitutional "tradeoffs" occurs in other arenas as well. For example, the Constitution protects against uncompensated taking of private property. U.S. CONST. amend. 5. Where regulation has the effect of diminishing the value of property (as opposed to destroying it altogether), courts employ a less stringent "regulatory taking" framework. One factor considered is whether a property-holder had "a reasonable investment-backed expectation that the property would be free of regulatory interference." *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984).

In *Monsanto*, plaintiff sought to protect its trade secrets from disclosure by the EPA, claiming that such disclosure would destroy its trade secret "property" and constitute an uncompensated taking. The plaintiff had submitted its trade secrets as part of a broad regulatory regime for pesticides. The Supreme Court characterized the transaction between the EPA and Monsanto as a "voluntary submission of data by an applicant in exchange for the economic advantages of a [pesticide] registration." *Id.* at 1007. In exchange for its confidential data, Monsanto received a valuable ten-year period of exclusive use of new active ingredients and compensation by other applicants for use of the data for fifteen years after original submission of the data. *Id.* at 994.

Thus did Monsanto undertake a voluntary exchange for a valuable government benefit. Upon engaging in that exchange, Monsanto forfeited its constitutional right to preservation of its property inviolate. *See also Uniroyal Chem. Co. v. Drexel Chem. Co.*, 931 F. Supp. 132, 139 (D. Conn. 1996) ("an original data submitter abandons certain state law property rights in its data when it submits the data to the EPA in exchange for registration and the federal protections provided by FIFRA.")

By analogy, the Supreme Court appears to be saying that checkoff programs may fund speech where the participants have joined together for a larger beneficial purpose, and the speech is an incident to that larger beneficial purpose. In so associating—and enjoying the valuable benefits of that association—checkoff participants, such as the California tree fruit producers, surrender their constitutional right to object to funded speech that advances the program goals. In other words, by embracing the larger benefits, of which generic advertising is a subset, checkoff participants necessarily embrace generic advertising. "[T]heir mandated participation in an advertising program with a particular message was the logical concomitant of a valid scheme of economic regulation." *Glickman*, 521 U.S. at 469 (quoted in *United Foods*, slip op. at 5-6).

Conversely, government cannot simply compel assessments for speech itself. In such a case—as with the mushroom industry—participants cannot be said to have ever embraced any higher purpose of which speech is a subset. In *United Foods*, "almost all of the funds collected under the mandatory assessments are for one purpose: generic advertising." Slip op. at 6. Thus, "[t]he only program the Government contends the compelled contributions serve is the very advertising scheme in question." Slip op. at 9.[2] Stripped to essentials, the mushroom association was an instance of government saying, "pay dues for speech you may not like." The First Amendment forbids such naked coercion of speech.

Thus do two critical questions emerge from the Supreme Court's treatment of checkoff programs:

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2 The Court noted that "[a]lthough greater regulation of the mushroom market might have been implemented under the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U.S.C. Sec. 601 *et seq.*, the compelled contributions for advertising are not part of some broader regulatory scheme." Slip op. at 9.

- Is the advertising part of a broader regulatory association that confers meaningful benefits upon its members *apart* from the benefits of advertising?
- If yes, is the advertising "germane" to the larger purposes that warranted the collective association?

In addressing the second question, the *United Foods* majority drew upon its "associational" jurisprudence for the principle that "objecting members [a]re not required to give speech subsidies for matters not germane to the larger regulatory purpose which justified the required association." *United Foods*, slip op. at 8 (citing *Keller* v. *State Bar of California*, 496 US 1 (1990) (lawyers mandated by statute to join and contribute money to the state bar, which in turn sponsored outside political speakers)); *see also Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977) (teacher challenged Michigan statute mandating collective bargaining agreement on grounds that teacher's union was engaged in political activities).

The question of germaneness arises only if a court finds that the larger regulatory purpose is sufficiently distinct from the naked interest in advertising. Thus, the *United Foods* majority held that a checkoff program cannot bootstrap germaneness simply by declaring that the program *is* "speech," and the expenditures thus "germane" to the program. "Were it sufficient to say speech is germane to itself, the limits observed in *Abood* and *Keller* would be empty of meaning and significance." Slip op. at 9. Thus did the Court cite with approval the Government's statement in its reply brief in *Glickman* that the compelled contributions for advertising were "part of a far broader regulatory system that does not principally concern speech." Slip op. at 9. In analyzing checkoff programs in the wake of *United Foods*, therefore, it will be critical to identify a "broader regulatory system that does not principally concern speech."

Three Justices—Breyer, Ginsberg, and O'Connor—dissented, and may therefore presumably be expected to approve virtually any otherwise legitimate checkoff program. "The Court, in my view … introduces into First Amendment law an unreasoned legal principle that may well pose an obstacle to the development of beneficial forms of economic regulation." *United States* v. *United Foods, Inc.*, No. 00-276, slip op. at 1 (2001) (Breyer, J., dissenting).

The three dissenters argued that the activities of the Mushroom Council were similar to the activities of the tree fruit producers upheld in *Glickman*, in that (1) the checkoff program imposed no restraint on communication, (2) the checkoff program did not compel anyone to engage in actual or symbolic speech and (3) they did not compel the participants in the program to endorse or finance any political or ideological views. *United Foods*, slip op. at 2 (Breyer, J., dissenting). Drawing from legislative history and the language of the statute establishing the Mushroom Council, the three dissenters found that the Mushroom Council's promotional programs related to a larger regulatory goal of "maintaining and expand[ing] existing markets and uses for mushrooms." Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U.S.C. Sec. 6101(b)(2) (cited in *United Foods*, slip op. at 4., (Breyer, J., dissenting)). The dissent maintained that *Abood* and *Keller* both involved compelled political speech, as opposed to compelled commercial speech and were therefore not controlling precedent for a case involving mushroom advertising. *See United Foods*, slip op. at 5-6., (Breyer, J., dissenting). Finally, the dissent argued that, "Compared with traditional 'command and control' price, or output regulation, this kind of regulation—which relies upon self-regulation through industry trade associations and upon the dissemination of information—is more consistent, not less consistent with producer choice." *United Foods*, slip op. at 4, (Breyer, J., dissenting).

In an additional section of the dissenting opinion, the three dissenters found that even if the speech at issue were analyzed under the Court's commercial speech framework—in which restrictions are permissible where "they 'directly advance' a 'substantial' government interest that could not 'be served as well by a more limited restriction,'"—the mushroom checkoff would still pass constitutional muster. *United Foods*, slip op. at 11 (Breyer, J., dissenting) (quoting *Central Hudson Gas & Elec.* v. *Public Serv. Comm'n*, 447 U.S. 557, 564 (1980)). The dissenters indicated that the free rider problem involved was sufficiently serious to qualify as a substantial government interest, and that testimony showing that a system of voluntary contributions had failed illustrated that the structure of the mushroom checkoff program was proportionate to the legitimate promotional goals of the program. *See United Foods*, slip op. at 12 (Breyer, J., dissenting).

Significantly, the majority declined to analyze the case under the commercial speech doctrine because the Government itself did "not rely upon *Central Hudson* to challenge the Court of Appeals' decision." *United Foods*, slip op. at 3.[3] The Court accordingly had no occasion to "consider whether the Government's interest could be considered substantial for purposes of the *Central Hudson* test." *Id.* Whether the result might have been different if the Government had pressed its case under the *Central Hudson* test is an interesting question—and taken up briefly below in analyzing the checkoff program of the National Oilheat Research Alliance.

In a section of the dissent which Justice O'Connor did not join, Justices Breyer and Ginsberg argued that checkoff programs should be characterized as a form of economic regulation warranting no special First Amendment scrutiny. *See United Foods*, slip op. at 7 (Breyer, J., dissenting). Breyer and Ginsberg insisted that the majority's decision actually "creates an incentive to increase the Government's involvement in any information-based regulatory program, thereby unnecessarily increasing the degree of that program's restrictiveness." *United Foods,* slip op. at 11 (Breyer, J., dissenting).

II. The Constitutionality of NORA's Statutory Framework and Activities in Light of United Foods

In deciding *Glickman*, the Supreme Court emphasized "the importance of the statutory context in which it arises." 521 U.S. at 469. In *United Foods*, the Court reiterated that "the entire regulatory program must be considered in resolving the case." Slip op. at 5.

The threshold question of "forced speech" jurisprudence is always whether anything has been "forced." While there is no doubt that assessments are compelled by statute, an overwhelming majority of heating oil producers and retail marketers voted to create the NORA Alliance. In addition, the National Oilheat Research Alliance Act (NORA Act) requires a two-thirds majority to

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[3] The Court likewise declined to consider the argument that the generic advertising was a form of government speech because some of the Alliance's activities were subject to government control. The Government failed to raise that argument in the lower court, and the Supreme Court accordingly deemed the argument waived.

establish the Alliance and only a simple majority to terminate activities. (NORA Act, Public Law No. 106-469, Sec. 704.) NORA could accordingly argue that the expressly democratic structure for creating the Alliance takes it outside the ambit of forced speech jurisprudence. While the "tyranny of the majority" principle might encourage a court to consider NORA activities under forced speech jurisprudence anyway, certainly the considerably lesser degree of direct government coercion would be a favorable factor for NORA.[4]

As to "purpose," the NORA statute differs from both the fruit tree program upheld in *Glickman* and the Mushroom Council statute authorizing the activities struck down in *United Foods*. Safety, research and development, and training are prominently included as priorities in NORA's authorizing statutory language, providing a broader regulatory context for NORA's promotional activities. The statute states that NORA shall conduct activities, "including programs to enhance consumer and employee safety and training," ... "to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment," ... and "for consumer education." NORA Act, Sec. 706(a)(1)(A)(i) – (iii).

The NORA Act also contains a section outlining priorities. Issues related to "research, development, and demonstration; safety; consumer education; and training" shall be given priority by the Alliance in the development of its programs and projects. NORA Act, Sec. 706(b)(1)-(4).

Finally, the "Congressional Findings" section of the authorizing statute states:

"The Congress finds that—

(1) oilheat is an important commodity relied on by approximately 30,000,000 Americans as an efficient and economical energy source for commercial and residential space and hot water heating;

(2) oilheat equipment operates at efficiencies among the highest of any space heating energy source, reducing fuel costs and making oilheat an economical means of space heating;

(3) the production, distribution, and marketing of oilheat and oilheat equipment plays a significant role in the economy of the United States, accounting for approximately $12,900,000,000 in expenditures annually and employing millions of Americans in all aspects of the oilheat industry;

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[4] The Supreme Court in *Keller* (bar association dues) clarified proper procedures for unions to apply to ensure germaneness as outlined in *Abood*, recommending that, "fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Keller*, 496 U.S. at 19 (citing *Teachers* v. *Hudson*, 475 US 292, 310 (1986)). While the amount of the assessment here is determined by statute, a fair provision for challenging the assessment on other grounds, as well as an escrow arrangement, might further minimize the appearance of suspect coercion.

> (4) only very limited Federal resources have been made available for oilheat research, development, safety, training, and education efforts, to the detriment of both the oilheat industry and its 30,000,000 consumers; and
>
> (5) the cooperative development, self-financing, and implementation of a coordinated national oilheat industry program of research and development, training, and consumer education is necessary and important for the welfare of the oilheat industry, the general economy of the United States, and the millions of Americans that rely on oilheat for commercial and residential space and hot water heating."

These congressional findings are significant given the emphasis in the *United Foods* opinion on promotional activities serving a broader regulatory purpose.

It is also worth noting that the legislation authorizing the Mushroom Council which was struck down in *United Foods* contains provisions related to activities other than promotion. The Mushroom Council statute establishes the council to conduct mushroom, "promotion, research, consumer information and industry information." Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-497, § 1922(b). However, unlike the NORA Act, the Mushroom Council had no broader statutory public safety mandate, and there is much more emphasis in the mushroom statutory language on promotion and consumer information than in the NORA statute. Moreover, as the Court noted at several junctures, in reality, nearly all of the funds collected were used for generic advertising—and whatever else the statute authorized, the mushroom statute appeared to be simply a vehicle for funding generic advertising.

Significantly, NORA establishes that if the five-year rolling price index of consumer grade oilheat exceeds an energy price benchmark by more than 10.1 percent, the activities of the Alliance shall be restricted to research and development, training and safety matters. NORA Act, Sec. 708. Congress clearly intended that the program serve a larger regulatory purpose than generic advertising alone, as Congress specifically provided that rather than imperil the entire program because of heating oil price increases, the Alliance would eliminate advertising from its budget. This express subordination of advertising to the larger regulatory purposes of the program distinguishes NORA from the mushroom program.

On the other hand, NORA plainly does not possess the characteristics deemed significant by the *Glickman* majority in analyzing the tree fruit program. *See* 521 U.S. at 461, 469. As summarized by the *United Foods* majority:

> The California tree fruits were marketed "pursuant to detailed marketing orders that ha[d] displaced many aspects of independent business activity." *Id.* at 469. Indeed, the marketing orders "displaced competition" to such an extent that they were "expressly exempted from the antitrust laws." *Id.* at 461. The market for tree fruit regulated by the program was characterized by "[c]ollective action, rather than the aggregate consequences of independent competitive choices."

> *Ibid.* The producers of tree fruit who were compelled to contribute funds for use in cooperative advertising "d[id] so as a part of a broader collective enterprise in which their freedom to act independently [wa]s already constrained by the regulatory scheme." *Id.* at 469.

None of the foregoing characteristics describe the heating oil program. There is no significant government regulation, no "marketing orders," no exemption from antitrust laws, and no aspect of the heating oil program significantly constrains any heating oil business' freedom to act independently. In sum, the heating oil industry remains very much a private enterprise, and demonstrates none of the indicia of cooperative or collective association that characterized the California tree fruit program.

At first blush, therefore, NORA looks manifestly more like the mushroom program than the tree fruit program.[5] The question therefore becomes whether the decisive features of a checkoff program are (a) the features present in the tree fruit program; or (b) the features absent from the mushroom program. In other words, will checkoff programs have to show heavy regulation, antitrust exemption, and dense collectivization, or may it suffice to show a broad regulatory program of which advertising is a subset? The answer probably dwells in the middle.

While the *United Foods* majority reiterated the dispositive factors in *Glickman*, it does not follow—nor did the Court expressly say—that these features *must* be present for a checkoff program to survive constitutional scrutiny. The underlying principle is not heavy regulation *per se* or exemption from antitrust laws *per se*—but subordination of advertising to a higher regulatory purpose from which members derive measurable benefits. Thus may they be said to "trade" their First Amendment rights for valuable benefits independent of advertising.

Thus, the more visible the larger regulatory purpose of NORA—and the corresponding benefits of that larger purpose—the more likely that NORA would survive a constitutional challenge. Put another way, if a challenger demonstrated that whatever NORA's authorized activities, its primary undertaking was generic advertising, the program would likely not survive the force of *United Foods*.

We consider the following factors favorable to NORA in any effort to distinguish that program from the mushroom program in *United Foods*.

- Heating oil, unlike the agricultural products at issue in *Glickman* and *United Foods*, is an essential fuel, and indeed a critical energy source in many parts of the country. Thus,

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5 It bears emphasis, as a practical matter, that a mechanical analysis (as might be evident in lower courts) poses a greater risk of reflexive application of *United Foods* to the NORA program. The superficial similarities of the mushroom program and the NORA program—in contrast to the heavy-handed collective-market regulation in *Glickman*—may well prove tempting indicia for lower courts more inclined to find factual similarities than to examine underlying principles. Journalistic treatment of *United Foods* underscores this practical risk. The Associated Press' June 25, 2001 story reported, "Kennedy said the mushroom case is different, because the mushroom market is less regulated and mushroom producers do not cooperate the way the fruit producers do." By that superficial analysis, the NORA program would likewise fail.

while agricultural regulation typically addresses the volatility of markets for nonessential commodities, energy regulation typically addresses basic access to and information about an essential energy source. There is no need to stabilize these markets in the manner of agricultural subsidy programs. There **is**, however, a need to ensure that a critical energy source such as heating oil is well understood and consumed safely.

- Production and consumption of the products in the agricultural checkoff programs do not serve important purposes independent of benefiting the industry itself. In contrast, Congress expressly found that heating oil is essential, that it offers an efficient and economical source of energy, and that it is clean and can reduce pollution. Thus, safe use of heating oil has collateral benefits to Americans that justify greater solicitude for promotion of it.
- Consistent with the foregoing regulatory need, the NORA program first and foremost embraces safety, training, and research and development. Indeed, much of the generic advertising presumably provides important information to potential and actual consumers of heating oil—without which their energy-consumption decisions could be either misdirected or even dangerous. In other words, NORA's generic advertising is not merely generic heating oil cheerleading (such as "Got Milk?" "Beef: It's what's for dinner," and similar generic promotions).
- Consistent with the legitimate emphasis on safety, training, and R&D, Congress expressly provided that the first budget casualty in the event of a price rise would be advertising. Thus did Congress make plain the importance of the program continuing even in the absence of any ability to engage in generic advertising. Put another way, Congress made plain that NORA's overriding purpose would *not* be generic advertising.
- NORA's budgets should demonstrate that promotional advertising is not the overriding purpose of the program. As the NORA Alliance makes its budget determinations, it should be aware that increases in funding for promotional activities such as generic advertising will make NORA more vulnerable to constitutional challenge—simply because NORA then appears increasingly similar to the challenged mushroom program.[6]
- While the assessments are mandatory—once the NORA program is established—the procedure for establishing the NORA program requires supermajority support, while the procedure for ending the program is a simple majority. Thus the degree of direct government coercion is relatively minimal.

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[6] As a general proposition, advertising is a perennial scapegoat, and its quintessential visibility aggravates the ease with which it becomes a target. Witness the enormous controversy over "vice" advertising, such as tobacco. NORA should accordingly consider carefully the extent to which advertising becomes a more prominent feature of its budget. Families USA, a consumer group critical of rising drug costs, recently received media attention for its report that drug companies spend nearly twice as much to advertise their medicines as to research and develop them. In this regard, the fact that NORA includes a provision eliminating advertising in the event of a material price rise is helpful.

- Unlike certain agricultural products (including mushrooms), there is no industry conflict as to "branding" or otherwise differentiating qualitative categories of heating oil, such that "generic" advertising might in fact be expected to benefit some producers or distributors at the expense of others. Generic heating oil advertising may reasonably be expected to benefit heating oil producers and distributors uniformly. It is accordingly less likely—though not inconceivable—that anyone paying the assessment would have a legitimate objection to the advertising, apart from a general objection to paying the assessment.[7]

III. The Potential Significance of the Commercial Speech Doctrine

To the foregoing favorable factors for NORA may be added a very good case for the program under the commercial speech doctrine—*if* the doctrine properly applies to commodity checkoff programs. As noted, the *United Foods* majority declined to analyze the case under the commercial speech doctrine because the Government itself did "not rely upon *Central Hudson* to challenge the Court of Appeals' decision." *United Foods*, slip op. at 3. While the Court's decision to sidestep the commercial speech doctrine is somewhat curious[8]—especially given the dissent's embrace of that analysis—it is true that analysis under the commercial speech doctrine is heavily fact-dependent. Even more curious, therefore, is the Government's apparent decision to sidestep the doctrine. The Court could hardly assess the factual underpinnings of a claim to legitimate commercial speech regulation if the Government itself declined to proffer any meaningful justification under the enumerated factors of the doctrine.

Central Hudson set forth four factors for analyzing the legitimacy of government interference with free commercial speech:

- whether the commercial speech concerns lawful activity and is not misleading;
- whether the asserted governmental interest is substantial;
- whether the regulation directly advances the governmental interest asserted; and
- whether the regulation is no more extensive than necessary to serve that interest.

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7 *Cf. Glickman*, 521 U.S. at 470 ("Indeed, since all of the respondents are engaged in the business of marketing California nectarines, plums, and peaches, it is fair to presume that they agree with the central message of the speech that is generated by the generic program.") By contrast, after *United Foods* was issued, the Campaign for Family Farmers noted "the parallels between the mushroom and pork and beef checkoffs ... with all three programs spending the vast majority of funds on advertising programs that benefit corporate producers and processors instead of independent family farmers."

8 Shortly after releasing the *United Foods* decision, the Supreme Court released the much-anticipated *Lorillard Tobacco Co. v. Reilly* decision, which included application of the commercial speech doctrine to the tobacco advertising context. Despite being urged by petitioners and numerous amicus parties to abandon *Central Hudson*'s cumbersome commercial speech test, the Court declined to "break new ground." *Lorillard*, No. 00-596 and 00-597, slip op. at 24-25.

447 U.S. at 566. Ordinarily, commercial speech cases concern government initiatives to *restrict* advertising. Indeed, as Justice Breyer noted in his *United Foods* dissent, "[w]hen purely commercial speech is at issue, the Court has described the First Amendment's basic objective as protection of the consumer's interest in the free flow of information." Slip op. at 9 (Breyer, J., dissenting) (citing, *inter* alia, *Edenfield v. Fane*, 507 U.S. 761, 766 (1993)). Justice Breyer then pointedly notes that the majority holding "will likely make less information, not more information, available," which is perhaps why the "Court has not previously applied 'compelled speech' doctrine to strike down laws requiring provision of additional commercial speech." Slip op. at 9 (Breyer, J., dissenting).

Justice Breyer may indeed have identified one basis for the majority's reluctance to consider the commercial speech doctrine. It does not easily accommodate a government initiative designed to provide *more* information to consumers. Indeed, as to NORA activities, it may likewise certainly be concluded that if the program were struck down, the result would be *less* information to consumers—and very likely substantially less information. It is the national aggregate of assessments that permit the industry to pay the substantial costs of advertising—costs that individual distributors could often ill-afford.

In *Glickman*, the Supreme Court expressly questioned "why the *Central Hudson* test, which involved a restriction on commercial speech, should govern a case involving the compelled funding of speech." 521 U.S. at 474, n.18. However, in *Glickman*, the Ninth Circuit had used the *Central Hudson* test to invalidate the generic advertising program, and the Supreme Court held that because the compelled funding at issue was part of a far broader regulatory regime, it constituted "a species of economic regulation that should enjoy the same presumption of validity that we accord other policy judgments made by Congress." *Id.* at 477. In other words, stringent First Amendment analysis—even the more lenient analysis under the commercial speech doctrine—was inappropriate to what was essentially economic regulation.

Interestingly, the mushroom case posed the opposite circumstance: there appeared to be little, if any, "economic regulation" at issue. Thus, the majority was forced to acknowledge the potential applicability of the *Central Hudson* test, but evidently was unready to plunge into that arena without a better factual and procedural context. Thus, more like the mushroom program than the tree fruit program, NORA's relative lack of collective and cooperative economic regulation makes *Central Hudson* a more significant analytical framework. But the far-reaching government control that characterized the tree fruit program likewise made it much more vulnerable under *Central Hudson* than NORA's program—which involves little, if any, direct government regulation. In sum, the *Abood* "germaneness" test proved more lenient than *Central Hudson* to far-reaching and intrusive economic regulation, while *Central Hudson* may well be more lenient to programs with relatively little direct government involvement.

As to the first *Central Hudson* factor, it cannot be disputed that the advertising concerns lawful activity and is not misleading. It is likewise probable that the government's interest in enacting NORA would qualify as "substantial." Promotion of heating oil for its collateral benefits to society, coupled with the compelling interest in disseminating safety information—information that otherwise might never reach consumers and thus occasion many more avoidable injuries—should qualify as a substantial governmental interest.

The third and fourth factors (typically the locus of dispute in commercial speech cases)—whether the regulation directly advances the governmental interest asserted, and whether the regulation is no more extensive than necessary to serve that interest—likewise do not appear to pose formidable challenges for NORA. The justifications adduced by Justice Breyer in his *United Foods* dissent apply with even greater force to NORA:

> At the legislative hearings that led to enactment of the [mushroom] Act, industry representatives made clear that pre-existing efforts that relied upon voluntary contributions had not worked. Thus, compelled contributions may be necessary to maintain a collective advertising program in that rational producers would otherwise take a free ride on the expenditures of others.

Slip op. at 12 (Breyer, J., dissenting). Similarly, voluntary contribution programs will not work in the heating oil industry, and precisely the same free-rider problem undermines any such effort. Moreover, the actual degree of government interference is *de minimis*. Unlike the mushroom program (and other checkoff programs), the government plays no role in approval or disapproval of the advertising. This critical fact would strongly reinforce NORA's claims that the regulation is no more extensive than necessary to serve the governmental interest. The government is simply not meaningfully involved.[9]

IV. Conclusion

The superficial similarities between the mushroom program struck down in *United Foods* and the NORA program—or more precisely, the significant differences between the NORA program and the extensive regulatory collectivization and control in the tree fruit program that the *Glickman* Court upheld—suggest reflexive application of the result in *United Foods* to the NORA program. However, insofar as the NORA program embodies a legitimate and substantial purpose independent of generic advertising—and the advertising is germane to that purpose—the program can be harmonized with the underlying First Amendment principles.

Moreover, given the minimal and narrowly tailored government involvement in the NORA program, application of the commercial speech doctrine to the NORA program yields a more compelling case for NORA than for most other checkoff programs.

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[9] Conversely, for this same reason, the NORA program would not likely have any claim to protection as "government speech"—the doctrine that the Government failed to raise timely in *United Foods*, but that other checkoff programs anticipate raising in the event of further constitutional challenges.

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