

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD      JUN 22 2004**

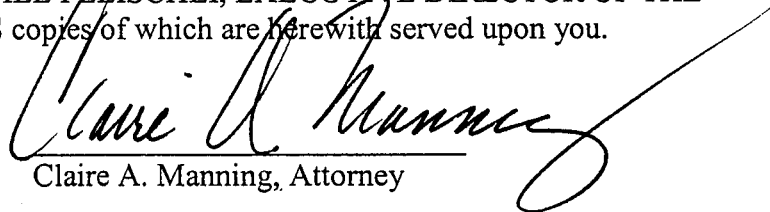
IN THE MATTER OF:	)		STATE OF ILLINOIS
	)		Pollution Control Board
PROPOSED AMENDMENTS TO:	)	R04-22	
REGULATION PETROLEUM LEAKING	)	(Rulemaking – UST)	
UNDERGROUND STORAGE TANKS	)		
35 ILL. ADM. CODE 732	)		

IN THE MATTER OF :	)		
	)		
PROPOSED AMENDMENTS TO:	)	R04-23	
REGULATION PETROLEUM LEAKING	)	(Rulemaking – UST)	
UNDERGROUND STORAGE TANKS	)	Consolidated	
35 ILL. ADM. CODE 734	)		

To:	Dorothy M. Gunn, Clerk	Ms. Marie E. Tipsord
	Illinois Pollution Control Board	Illinois Pollution Control Board
	James R. Thompson Center	James R. Thompson Center
	100 W. Randolph, Suite 11-500	100 West Randolph, Suite 11-500
	Chicago, Illinois 60601	Chicago, IL 60601

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on June 18, 2004, via UPS Next Day Air, I filed with the Clerk of the Illinois Pollution Control Board, via fax and an original and nine (9) copies via U.S. Mail the PRE-FILED TESTIMONY OF BILL FLEISCHLI, EXECUTIVE DIRECTOR OF THE ILLINOIS PETROLEUM MARKETER'S copies of which are herewith served upon you.



Claire A. Manning, Attorney

**CLAIRE A. MANNING**  
 Posegate & Denes, P.C.  
 111 N. Sixth Street, Suite 200  
 Springfield, Illinois 62701  
 (217) 522-6152  
 (217) 522-6184 (FAX)  
 claire@posegate-denes.com

## PROOF OF SERVICE

The undersigned, being duly sworn, states that a true and correct copy of the foregoing PRE-FILED TESTIMONY OF BILL FLEISCHLI, EXECUTIVE DIRECTOR OF THE ILLINOIS PETROLEUM MARKETER'S with the CLERK and the HEARING OFFICER of the ILLINOIS POLLUTION CONTROL BOARD, was served on the individuals as listed below, by mailing via the United States postal service, Springfield, Illinois on June 21, 2004:

Gina Roccaforte  
Kyle Rominger  
IEPA  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794

Thomas G. Safley  
Hodge, Dwyer, Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705

William G. Dickett  
Sidley, Austin, Brown & Wood  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60603

Barbara Magel  
Karaganis & White, Ltd.  
414 North Orleans St., Suite 810  
Chicago, IL 60610

Bill Fleischli  
Illinois Petroleum Marketers Association  
112 West Cook Street  
Springfield, IL 62704

Joe Kelly, PE  
United Science Industries, Inc.  
P.O. Box 360  
6295 East Illinois Highway 15  
Woodlawn, IL 62898-0360

Robert A. Messina, General Counsel  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, IL 62703

Kenneth James  
Carlson Environmental, Inc.  
65 E. Wacker Place, Suite 1500  
Chicago, IL 60601

Lisa Frede  
Chemical Industry Council of IL  
2250 E. Devon Ave., Suite 239  
DesPlaines, IL 60018

Carolyn S. Hesse  
Barnes & Thornburg  
1 North Wacker Drive, Suite 4400  
Chicago, IL 60606

Michael W. Rapps  
Rapps Engineering & Applied Science  
821 S. Durkin Drive  
P.O. Box 7349  
Springfield, IL 6279107349

Joel J. Sternstein  
Office of the Attorney General  
Environmental Bureau  
188 West Randolph, 20<sup>th</sup> Floor  
Chicago, IL 60601

Tom Herlacher  
Herlacher Angleton Associates, LLC  
8731 Bluff Road  
Waterloo, IL 62298

Jennifer Goodman  
Herlacher Angleton Associates  
522 Belle Street  
Alton, IL 62002

James E. Huff, PE  
Huff & Huff, Inc.  
512 W. Burlington Ave., Suite 100  
LaGrange, IL 60525

Scott Anderson  
Black & Veatch  
101 N. Wacker Dr., Suite 1100  
Chicago, IL 60606

Melanie LoPiccolo, Office Manager  
Marlin Environmental, Inc.  
1000 West Spring St.  
South Elgin, IL 60177

Brian Porter  
Terracon  
870 40<sup>th</sup> Avenue  
Bettendorf, IA 52722

Jonathan Furr, General Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702

Joe Kelly, VP Engineering  
EcoDigital Development LLC  
P.O. Box 360  
6295 East Illinois Highway 15  
Woodlawn, IL 62898

Glen Lee, Manager  
Wendler Engineering Services, Inc.  
1770 West State St.  
Sycamore, IL 60178

A.J. Pavlick  
Great Lakes Analytical  
1380 Busch Parkway

Buffalo Grove, IL 60089

Joseph W. Truesdale, PE  
CSD Environmental Services  
2220 Yale Blvd.  
Springfield, IL 62703

Ron Dye, President  
CORE Geological Services, Inc.  
2621 Monetga, Suite C  
Springfield, IL 62704

Monte Nienkerk  
Clayton Group Services, Inc.  
3140 Finley Road  
Downers Grove, IL 60515

Kurt Stepping  
PDC Laboratories  
2231 W. Altorfer Drive  
Peoria, IL 61615

Thomas M. Guist, PE  
Atwell-Hicks, Inc.  
940 E. Diehl Road, Suite 100  
Naperville, IL 60563

Jeff Wienhoff  
CW<sup>3</sup>M Company, Inc.  
701 S. Grand Ave. West  
Springfield, IL 62704

Jarrett Thomas, V.P.  
Suburban Laboratories, Inc.  
4140 Litt Drive  
Hillside, IL 60162

Dan King  
United Science Industries, Inc.  
6295 East Illinois Highway 15  
Woodlawn, IL 62898

Richard Andros, PE  
Environmental Consulting &  
Engineering, Inc.  
551 Roosevelt Rd., #309

Glenn Ellyn, IL 60137

Terrence W. Dixon  
MACTEC Engineering & Consulting, Inc.  
8901 N. Industrial Road  
Peoria, IL 61615

Steve Gobelman  
Illinois Dept. of Transportation  
2300 Dirksen Parkway  
Springfield, IL 62764

Collin W. Gray  
SEECO Environmental Services, Inc.  
7350 Duvon Drive  
Tinley Park, IL 60477

George Moncek  
United Environmental Consultants  
119 E. Palatine Road, Suite 101  
Palatine, IL 60067

David Rieser  
McGuire Woods LLP  
77 W. Wacker, Suite 4400  
Chicago, IL 60601

Tina Archer  
Greensfelder, Hemker & Gale  
10 S. Broadway, Suite 2000  
St. Louis, MO 63104

**CLAIRE A. MANNING**  
111 N. Sixth Street, Suite 200  
Springfield, Illinois 62701  
(217) 522-6152  
(217) 522-6184 (FAX)  
[claire@posegate-denes.com](mailto:claire@posegate-denes.com)

Erin Curley  
Midwest Engineering Services, Inc.  
4243 W. 166<sup>th</sup> St.  
Oak Forest, IL 60452

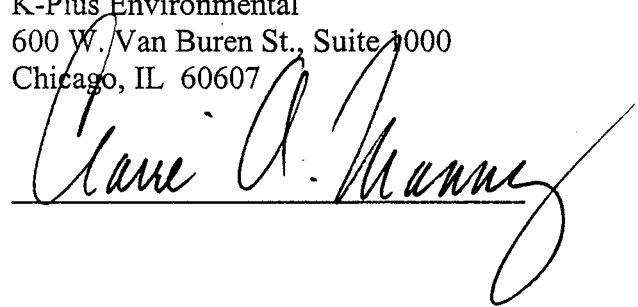
Ken Miller, Regional Manager  
American Environmental Corp.  
3700 W. Grand Avenue, Suite A  
Springfield, IL 62707

Russ Goodiel  
Applied Environmental Solutions, Inc.  
P.O. Box 1225  
Centralia, IL 62801

Daniel Goodwin  
Secor International, Inc.  
400 Bruns Lane  
Springfield, IL 62702

Eric Minder  
Caterpillar, Inc.  
100 N.E. Adams St.  
Peoria, IL 61629

Daniel Caplice  
K-Plus Environmental  
600 W. Van Buren St., Suite 1000  
Chicago, IL 60607



A handwritten signature in cursive script, reading "Claire A. Manning", is written over a horizontal line. The signature is positioned to the right of the typed name and address of Daniel Caplice.

**RECEIVED**  
CLERK'S OFFICE

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**JUN 22 2004**

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Consolidated

TESTIMONY OF BILL FLEISCHLI, EXECUTIVE DIRECTOR, ILLINOIS  
PETROLEUM MARKETERS

Chairman Novak and Members of the Illinois Pollution Control Board. My name is Bill Fleischli. I am the Executive Director of the Illinois Petroleum Marketers, known as IPMA. IPMA has been in existence since 1921, representing the interests of owners and operators of gasoline retail stores, basically gasoline and convenience stores. I have been asked by PIPE to come and give my testimony at this Board hearing on EPA's proposed Underground Storage Tank Rules, and I am happy to do so.

As you know, IPMA has had a large role in the creation and implementation of the underground storage tank fund. The fund was established with the enactment of Public Act 86-25 in July of 1989. The Act provided that a tax of \$.003 per gallon on the sale of certain petroleum products would be collected (largely, from our membership and other petroleum retail distributors), deposited in the Department of Revenue and distributed. Later, in 1995, an environmental impact fee (\$60 per tank truck delivered at retail) was assessed, for a total revenue stream into the fund on an average of over 6 million per month, or about \$70,000,000 a year. Whatever money isn't used in servicing the bond, or paying for the state administrative costs of the program, is supposed to be used to remediate properties contaminated by leaking underground storage tanks.

Over the course of the last several years, the fund grew at a rate greater than the claims against it were reviewed and paid. Thus, while the fund never had a "surplus" because all dollars were committed to future and current reimbursement projects, in the last fiscal year alone, the administration removed at least \$25,000,000 from the fund for general revenue purposes, apparently with no expectation of putting it back.

IPMA has continually been a proponent of protecting the fund for the purposes intended. However, the IEPA cannot simply expect to realize those lost dollars by ratcheting down the costs of legitimate businesses doing remediation for reasonable rates.

There are several points IPMA would like the Board to consider in this rulemaking prior to adopting the rates and pricing structure advanced by the IEPA.

PIPE has legitimate concerns that the Board should address. These companies provide needed services to IPMA. The companies who are part of PIPE are companies I believe to be knowledgeable, professional and expert at the job of remediating LUST sites. They are companies I recommend to my members. I encouraged these companies to organize as PIPE and to present their concerns to the Board regarding the EPA's proposed rules because it's important that they be able to do the job my members hire them to do. On behalf of my members, I sat in the meetings that PIPE had with the EPA.

The pricing and rate structure that the Board sets up in these rules has to be fairly established. While no one is opposed to rates and payment structures, those rates need to reflect industry standards and the going rate for doing business in Illinois. They cannot be based upon someone at EPA picking random files of old LUST sites. Both the Illinois Department of Transportation and the Capital Development Board are state agencies that set construction and building rates as part of their agency function. The Board ought to look to those agencies to see how those agencies develop fair rate structures.

The review and reimbursement process needs to be quicker and easier. One of the major reasons money was taken from the fund was because it had built up over time because there was a delay in reviews and payments. Delays add extra costs, because financing becomes necessary. The EPA says that these rules are intended to streamline the process and that's a good thing but, given the controversy with these rules, I don't see that happening, and my members are caught in the middle. They are the liable parties, but the PIPE members are the companies they hire to certify that the remediation is done in an environmentally protective manner. When the companies and the EPA disagree on the amount of work that needs to be done, or the costs associated with the project, my members are caught. Should they appeal the EPA's decision? Who should pay the costs of such an appeal?

We proposed that the EPA consider an external review process, much like the one in place at IDOT – so that there's someone independent looking at costs. Instead, I understand that the EPA compared this rule to an HMO. A streamlined process isn't going to come out of a rule that takes the same type of approach to cost containment that's occurring in the medical profession. We have an industry here that does a legitimate job, solves a legitimate problem and needs to be reimbursed fairly for it. Many of these companies have outstanding liabilities and are in the middle of huge projects. The fund was established to remediate these sites, and the companies who perform the work need to be fairly compensated for it. I don't believe that the EPA has shown that this rule will do that.