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SEP 23 2004

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R04-22
REGULATION OF PETROLEUM) (Rulemaking - Land)
LEAKING UNDERGROUND STORAGE)
TANKS (35 ILL. ADM. CODE 732))

PC#4

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

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Post Hearing Comments, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: *Kyle Rominger*
Kyle Rominger
Assistant Counsel

Dated: September 22, 2004
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
POST HEARING COMMENTS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Kyle Rominger, and submits the following post-hearing comments:

The Illinois EPA would like to thank the Board, Hearing Officer Tipsord, and the Board staff for their attention and patience in this rulemaking proceeding. The Illinois EPA would also like to thank all of the parties that contributed to this proposal through discussions with the Illinois EPA and through comments and testimony provided to the Board.

As stated in the hearings held in this rulemaking, a portion of the outreach process that the Illinois EPA normally conducts prior to submitting proposed rules to the Board did not occur in this rulemaking due to anti-trust concerns expressed by outside parties. This uncommon curtailment of the Illinois EPA's outreach meant that many issues usually discussed and settled prior to the submission of rules to the Board were raised in

the hearings. As discussed in the hearings, and as evidenced by the Illinois EPA's three errata sheets and the additional changes proposed in this document, the Illinois EPA has made significant changes to its proposal in response to the suggestions and concerns raised by the Board and interested parties. The result is a proposal that improves upon the original and continues to benefit all parties involved in the Leaking Underground Storage Tank ("LUST") Program. The proposal not only reflects the statutory changes made to the LUST Program in 2002, but it also streamlines the LUST Program in a way that allows for (1) quicker and easier submittals of plans, budgets, reports, and applications for payment by owners and operators, (2) quicker and easier reviews of such submittals by the Illinois EPA, and (3) fewer appeals to the Board.

The remainder of this document is divided into three sections. The first section contains additional comments on the Illinois EPA's proposal, including additional explanation of, or information about, the proposal as requested by the Board and interested parties. The second section contains a few additional changes to the Illinois EPA's proposal as a result of the last hearing. The Illinois EPA believes these changes will further improve the LUST rules. Finally, the last section of this document contains a few brief comments on the alternative proposal submitted at the last hearing by the Professionals of Illinois for the Protection of the Environment ("PIPE").

While many issues and suggestions deserving of a comment or response have been raised in this rulemaking, time does not permit the Illinois EPA to comment on, or respond to, all of them in this document. Moreover, if all of issues and suggestions were addressed in detail, the usefulness of this document would be diminished by its length. The absence of a comment or response by the Illinois EPA should not be construed as

acquiescence in, or support for, changes to the LUST Program other than those proposed by the Illinois EPA.

I. THE PROPOSED AMENDMENTS

1. The 92nd General Assembly's Multiple Amendments to Title XVI.

At the last hearing, PIPE stated that the Public Acts amending Title XVI in 2002 were conflicting, and that the Public Acts signed into law later in the year amended the Public Acts that were signed into law earlier in the year. Tr. of August 9, 2004, hearing at 144. A review of the Public Acts and the law on statutory construction reveals that the Public Acts are not inconsistent with each other, and that they must be interpreted in a manner that gives each its full effect.

In 2002 the 92nd General Assembly amended Title XVI by the following four Public Acts:

- Public Act 92-0574, which implemented recommendations from the Illinois Regulatory Review Commission by amending several Titles of the Act. Title XVI was amended by changing “the effective date of this amendatory Act of 1993” to “September 13, 1993” in Sections 57.7(c)(4)(D), 57.13(a), and 57.13(b), and by deleting the handling charges provision of Section 57.8(f).
- Public Act 92-0651, the First General Revisory Act of 2002, which changed a reference to the Underground Storage Tank Fund from “Leaking Underground Storage Tank Fund” to “Underground Storage Tank Fund” in Section 57.7(c)(4)(B).

- Public Act 92-0735, which amended Titles XVI and XVII by adding provisions that allow Licensed Professional Geologists to perform certain work and provide certain certifications previously limited to Licensed Professional Engineers. In Title XVI, Licensed Professional Geologists were given the ability to perform the same work and provide the same certifications as Licensed Professional Engineers, other than the certification of corrective action completion reports.
- Public Act 92-0554, which amended Title XVI by deleting provisions requiring physical soil classification, site classification, and classification-based remediation and replacing them with provisions requiring only site investigation and corrective action. The numerous Licensed Professional Engineer supervision and certification requirements that were spread throughout the physical soil classification, site classification, and classification-based remediation provisions were replaced with a single, general supervision and certification requirement in Section 57.7(f). In addition, the aggregate payment caps set forth in Section 57.8(d) were increased by one million dollars each and the individual occurrence payment caps set forth in Section 57.8(g) were increased by \$500,000 each.

The above Public Acts were passed by the legislature and signed into law at various times. Because they were all passed during the same legislative session,

however, the general rule of interpreting their changes chronologically based upon the date they became law does not apply. Section 6 of the Statute on Statutes [5 ILCS 70/6], entitled "Multiple amendments of same subject matter – Conflicts," states the following:

Two or more Acts which relate to same subject matter and which are enacted by the same General Assembly shall be construed together in such manner as to give full effect to each Act except in case of an irreconcilable conflict.

An irreconcilable conflict between 2 or more Acts which amend the same section of an Act exists only if the amendatory Acts make inconsistent changes in the section as it theretofore existed.

The rules of construction provided for in this section are applicable to Acts enacted by the same General Assembly throughout the 2 year period of its existence.

When reviewing multiple bills passed in the same legislative session that pertain to the same subject matter or amend the same statute, courts hold that the primary question is the legislature's intent rather than the technical priority of the passage of the acts. People v. Chicago and North Western Railway Co., 20 Ill.2d 462, 467, 170 N.E.2d 614, 617 (Ill. 1960) (same subject matter); People v. Southern Railway Co., 17 Ill.2d 550, 554-55, 162 N.E.2d 417, 420 (Ill. 1959) (same subject matter or same statute). In determining the legislature's intent, the whole legislative record is open to examination. Southern Railway, 612 N.E. 2d at 420. Once the legislature's intent is ascertained, it will be given effect irrespective of the bills' priority of enactments. Id. If the two enactments can be construed so that both may stand, the court must so construe them. Chicago and North Western Railway, 170 N.E.2d at 617; Southern Railway, 612 N.E. 2d at 420. A later enactment will not, by implication, repeal an earlier one unless there is such total

and manifest repugnance that the two cannot stand together. Southern Railway, 612 N.E. 2d at 420.

In the current situation, the Public Acts listed above do not make inconsistent changes to Title XVI as it existed at the start of the 92nd General Assembly. The changes made by Public Acts 92-0574 and 92-0651 clearly do not create irreconcilable conflicts, and therefore will not be addressed further. The changes made by Public Acts 92-0554 and 92-0735 also do not create irreconcilable conflicts. The legislative record, which is open to examination in determining the legislature's intent, reveals that Public Acts 92-0554 and 92-0735 were passed to make separate and distinct changes to the LUST Program. According to discussions in both chambers of the General Assembly, Public Act 92-0554 (House Bill 4471) was intended to streamline the cleanup process for LUST sites by replacing the site classification system with site investigation and remediation, and to increase payments from the Underground Storage Tank Fund. Tr. of 92nd General Assembly House of Representatives, Regular Session, 109th Legislative Day at 105 (March 21, 2002) (statements of Rep. Hassert); Tr. of 92nd General Assembly Senate, Regular Session, 88th Legislative Day at 16-17 (April 18, 2002) (statements of Sen. Jacobs). In contrast, Public Act 92-0735 (Senate Bill 1968) was passed to bring Titles XVI and XVII up to date with the Professional Geologist Licensing Act by allowing Licensed Professional Geologists to perform certain work and provide certain certifications. Tr. of 92nd General Assembly Senate, Regular Session, 82nd Legislative Day at 68-69 (April 4, 2002) (statements of Sen. Welch). "When the original [Titles XVI and XVII were] passed allowing engineers to do the site investigations, geologists weren't licensed. Since that time, they've been licensed, and this bill will bring the – site

investigation statute up to date.” Id. Copies of the legislative transcript pages cited above are provided in Attachments A, B, and C of this document.

As noted in the legislative record, Public Acts 92-0554 and 92-0735 were passed to amend Title XVI for distinctly different reasons. There is not such total and manifest repugnance between the two Public Acts that they cannot stand together. Because the two Public Acts make changes to Title XVI that do not irreconcilably conflict, they must be construed together in a manner that gives each its full effect. Specifically, the site classification system was replaced with the site investigation and remediation requirements of Public Act 92-0554, and Licensed Professional Geologists were added to the Licensed Professional Engineer supervision and certification requirements as provided in Public Act 92-0735.

After the Public Acts were signed into law, the Illinois EPA carefully researched and studied how the amendments to Title XVI must be interpreted and applied. The Illinois EPA has been very careful to ensure that both its proposal and its implementation of Title XVI are consistent with the changes made by the Public Acts and the legislature’s intent.

2. The Proposed Maximum Payment Amounts.

As explained in the hearings, the Illinois EPA believes the maximum amounts set forth in its proposal are reasonable for the work being performed, unless a higher amount is justified through bidding or because of unusual or extraordinary circumstances.

Several questions were raised about the Illinois EPA’s development of the proposed maximum amounts. Many of these questions concerned the use of historical information and whether the amounts developed from such information reflect current market prices.

Although the Illinois EPA used historical information in its development of some of the maximum amounts, the amounts set forth in the proposal are generally consistent with the amounts owners and operators request for reimbursement and the amounts the Illinois EPA approves for payment from the Underground Storage Tank Fund ("UST Fund"). See, e.g., Exhibit 4 at.3; Exhibit 10 at 2; Exhibit 12 at 6. The Illinois EPA believes the maximum amounts set forth in its proposal are not out of date and do not need to be increased by any inflationary rate to make them consistent with current market prices. The amounts proposed are already consistent with the current market.

While there has been much discussion about the development of the proposed maximum amounts, very little has been said about the amounts themselves. Some evidence has been presented to show that the maximum amounts should be something other than what the Illinois EPA proposes. So far, however, neither alternative amounts (other than personnel and lab rates listed in the appendices) nor adequate justification for alternative amounts have been submitted to the Board. While the Illinois EPA has remained open to discussing alternative amounts with interested parties as long as the amounts can be justified, it too has not been provided with alternative amounts (other than personnel and lab rates listed in the appendices) or adequate justification for alternative amounts.

Although the proposed rules set forth maximum amounts that will be paid for certain tasks, owners and operators are not constrained by these amounts. These "default" maximum amounts can be exceeded through bidding or through site-specific approval when unusual or extraordinary circumstances are encountered. The addition of bidding, which the Board suggested as an option, is one of the most significant changes

to the Illinois EPA's proposal. Bidding adds incredible flexibility to the rules by allowing owners and operators to tailor maximum reimbursement amounts to the specific circumstances of their own site. They can exceed any or all of the "default" maximum amounts set forth in the rules as long as they justify higher amounts with at least three bids.

Allowing owners and operators to determine reasonable payment amounts through bidding will allow reimbursements from the UST Fund to be responsive to site specific-conditions and to accurately reflect current market prices. It will also help the Illinois EPA monitor market prices and determine when the "default" maximum amounts in the rules no longer reflect the current market.

Taken as a whole, Subpart H provides a flexible and immediately implementable method for determining whether amounts requested by owners and operators are reasonable, and therefore can be reimbursed from the UST Fund. The testimony provided by BP Products North America, Inc., at the June 22, 2004, hearing notes the need for flexibility and cites the Tiered Approach to Corrective Action Objectives ("TACO") rules of 35 Ill. Adm. Code 742, as a model of flexibility for both the regulated community and the Illinois EPA. See Exhibit 72. The TACO rules provide three different methods, or Tiers, for developing remediation objectives. Subpart H provides a similar amount of flexibility by providing three different methods for determining whether amounts requested for reimbursement are reasonable. The "default" maximum amounts set forth in Subpart H are similar to the Tier 1 remediation objectives in TACO. Both owners and operators and the Illinois EPA only need to compare corrective action costs to the maximum amounts in Subpart H to determine whether the costs are

reasonable. Similar to Tier 2 of TACO, the bidding provisions of Subpart H allow owners and operators to exceed the “default” maximum amounts and tailor the amounts considered reasonable for reimbursement purposes to site-specific circumstances. Finally, the unusual and extraordinary circumstances provision gives owners and operators a third way to determine maximum payment amounts if the first two are insufficient. These three alternatives will ensure that, in accordance with Title XVI, owners and operators will receive reimbursement from the UST Fund for reasonable costs of corrective action.

3. Reimbursement to Tier 2 Remediation Objectives On-site and Required Use of Available Groundwater Ordinances.

In its Third Errata Sheet the Illinois EPA proposes to limit reimbursement to the achievement of Tier 2 remediation objectives, and to make groundwater remediation ineligible if a groundwater ordinance already approved by the Illinois EPA can be used as an institutional control. There appeared to be some confusion and concern about these provisions at the last hearing. Since the last hearing the Illinois EPA has continued to discuss these provisions with interested parties to help clear up the confusion and address the parties’ individual concerns.

a. Limiting the reimbursement of on-site corrective action to the achievement of Tier 2 remediation objectives.

The Illinois EPA proposes to limit the reimbursement of on-site activities to the achievement of Tier 2 remediation objectives to help ensure that the UST Fund’s resources are used in the most cost-effective manner. Limiting reimbursement to Tier 2 objectives will not result in less protective cleanups. Rather, the use of Tier 2 objectives

will ensure that UST Fund resources are not used for cleanups that are more stringent than necessary to protect human health, and therefore more expensive.

From a human health perspective, remediation to Tier 2 remediation objectives is as equally protective as remediation to Tier 1 (and Tier 3) objectives. The only difference is that Tier 2 objectives are developed from site-specific information, and therefore tailored to site-specific circumstances. The Tier 1 objectives are "default" objectives that were developed using conservative assumptions so that they would be acceptable to use at any site. As a result, the achievement of Tier 1 objectives often means that an owner or operator has performed more cleanup than is necessary to adequately protect human health.

From a cost perspective, remediation to Tier 2 objectives is generally less expensive than remediation to Tier 1 objectives. The lower cost is the reason responsible parties in the Site Remediation Program, where the State does not reimburse corrective action costs, overwhelmingly use Tier 2 instead of Tier 1 objectives. The LUST Program in Illinois is designed to ensure that sites are cleaned up in accordance with TACO to levels that protect human health, and to ensure that owners and operators are reimbursed for the reasonable costs of such cleanups. It is not designed to cover the costs of additional remediation, such as remediation needed to make a site more marketable or to increase a site's property value. Limiting reimbursement to the achievement of Tier 2 remediation objectives on-site will help ensure that the UST Fund's limited resources are not used to pay for more remediation than is necessary to protect human health.

The limitation of on-site reimbursement to the achievement of Tier 2 remediation objectives has somehow become associated with a required use of institutional controls.

and engineered barriers. Although institutional controls and engineered barriers can be used to develop Tier 2 remediation objectives, the Illinois EPA is not proposing to require their use.¹ An owner or operator can develop Tier 2 objectives and cleanup to those objectives without the use of any institutional controls or engineered barriers.

b. Requiring the use of available groundwater ordinances as an institutional control.

The Illinois EPA's proposal to use a groundwater ordinance when one is available is the one instance where the use of an institutional control would be required. The Illinois EPA is proposing this amendment as a means of ensuring that the UST Fund's limited resources are not used to cleanup groundwater that cannot be used as a source of potable water due to local groundwater use restrictions. Under this proposal, an owner or operator would not be required to seek the passage of a local groundwater ordinance or Illinois EPA approval of such an ordinance. The use of a local groundwater ordinance would be required only if such an ordinance has already been passed by the local government and approved by the Illinois EPA for use as an institutional control (e.g., an ordinance that covers an entire city was previously approved for use as an institutional control at another site).

4. Appeals of Unreasonable Costs.

At the last hearing, Doug Clay provided several examples of unreasonable costs that have been submitted to the Illinois EPA: See Tr. of August 9, 2004, hearing at 27-32. Mr. Clay was later asked to investigate whether any of the Illinois EPA's decisions regarding those costs have been appealed to the Board. Id. at 112-113. The Illinois EPA

¹ As discussed in the next paragraph, the Illinois EPA is proposing a separate amendment that requires the use of a groundwater ordinance as an institutional control under certain circumstances. Any required use of a groundwater ordinance under that amendment is independent of, unrelated to, this amendment.

subsequently reviewed the examples provided by Mr. Clay at the hearing. None of the Illinois EPA's decisions regarding the examples have been appealed to the Board.

5. Changes in Risk Factors.

At the last hearing, Harry Walton with the Illinois Environmental Regulatory Group questioned the Illinois EPA about the risk posed by cleanups to Tier 2 remediation objectives versus cleanups to Tier 1 remediation objectives. In one question Mr. Walton asked the Illinois EPA to evaluate the change in risk for the inhalation pathway with respect to the f_{oc} , or fraction of organic carbon. Tr. of August 9, 2004, hearing at 63. The Illinois EPA has evaluated the change in the fraction of organic carbon and determined that a site-specific f_{oc} value will increase the contaminant concentration that is allowed in the soil. The risk for the inhalation pathway, however, would not increase because the contaminant concentration cannot exceed the soil saturation concentration, or C_{SAT} .

II. ADDITIONAL CHANGES TO THE ILLINOIS EPA'S PROPOSAL

The Illinois EPA proposes the following additional changes to its proposal:

1. In response to comments regarding the use of "may" in the second sentence of each of the following Sections, the Illinois EPA proposes to change "may" to "shall" so that the Sections read as follows.

Section 732.202(h)(1):

- 1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. The Agency shall allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

Section 732.202(h)(2):

- 2) At a minimum, for each UST that remains in place, the owner or operator shall collect and analyze soil samples as follows. The Agency shall allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

Section 734.210(h)(1):

- 1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. The Agency shall allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

Section 734.210(h)(2):

- 2) At a minimum, for each UST that remains in place, the owner or operator shall collect and analyze soil samples as follows. The Agency shall allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

2. In conjunction with the proposed amendments to Sections 732.606(kk) and 734.630(gg), and the proposed additions of Sections 732.606(ggg) and 734.630(ddd), set forth below, the Illinois EPA proposes to amend the Board Note in Sections 732.408 and 734.410 to the following:

Section 732.408 Remediation Objectives

For sites requiring High Priority corrective action or for which the owner or operator has elected to conduct corrective action pursuant to Section 732.300(b), 732.400(b) or 732.400(c) of this Part, the owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 shall determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)

Soil bulk density (ρ_b)

Soil particle density (ρ_s)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Sections 732.606(ggg) and (hhh) of this Part.

Section 734.410 Remediation Objectives

The owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 shall determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)
Soil bulk density (ρ_b)
Soil particle density (ρ_s)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Sections 734.630(ddd) and (eee) of this Part.

3. In conjunction with the addition of Sections 732.606(ggg) and 734.630(ddd) set forth below, the Illinois EPA proposes to amend Sections 732.606(kk) and 734.630(gg) to the following to allow owners and operators to seek reimbursement of costs associated with the achievement of Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders such remediation:

Section 732.606(kk):

kk) Costs incurred ~~for additional remediation~~ after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (kk) does not apply to the following:

- 1) Costs, except costs incurred for MTBE remediation pursuant to Section 732.310(i)(2) of this Part;
- 2) Monitoring well abandonment costs;
- 3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;
- 4) Costs associated with seeking payment from the Fund; and
- 5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release.

Section 734.630(gg):

- gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:
- 1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;
 - 2) Monitoring well abandonment costs;
 - 3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;
 - 4) Costs associated with seeking payment from the Fund; and
 - 5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release.

4. The Illinois EPA proposes to add the following Sections 732.606(ggg) and 734.630(ddd) to limit the reimbursement of on-site corrective action activities to the achievement of Tier 2 remediation objectives. Exceptions are provided for sites where Karst geology prevents the development of Tier 2 remediation objectives, and where a

court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site.

Section 732.606(ggg):

(ggg) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (ggg) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

Section 734.630(ddd):

(ddd) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (ddd) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

5. The Illinois EPA proposes to amend Sections 732.800 and 734.800 to the following to provide a better “roadmap” for Subpart H.

Section 732.800 Applicability

a) This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 732.810 through 732.850 of this Part. The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

As an alternative to using the amounts set forth in Sections 732.810 through 732.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 732.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 732.810 through 732.850, the amount in Sections 732.810 through 732.850 of this Part may be used instead of the lowest bid. Finally, the third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 732.860 of this Part.

- b) The costs listed under each task set forth in Sections 732.810 through 732.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.
- c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment shall be determined in accordance with Subpart F of this Part.

Section 734.800 Applicability

- a) This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850 of this Part. The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

As an alternative to using the amounts set forth in Sections 734.810 through 734.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 734.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 734.810 through 734.850, the amount in Sections 734.810 through 734.850 of this Part may be used instead of the lowest bid. Finally,

the third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 734.860 of this Part.

- b) The costs listed under each task set forth in Sections 734.810 through 734.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.
- c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment shall be determined in accordance with Subpart F of this Part.

6. In response to comments about a time-frame for submitting the results of the Illinois EPA's triennial reviews of the "default" maximum payment amounts to the Board, the Illinois EPA proposes to amend Sections 732.875 and 734.875 to the following:

Section 732.875 Agency Review of Maximum Payment Amounts

No less than every three years the Agency shall review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report shall identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates.

Section 734.875 Agency Review of Maximum Payment Amounts

No less than every three years the Agency shall review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report shall identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates

III. COMMENTS ON PIPE'S ALTERNATIVE PROPOSAL

As stated above, the Illinois EPA has made significant changes to its proposal in response to the concerns and suggestions raised in the hearings, including those raised by

PIPE. Since the last hearing, the Illinois EPA and PIPE met to discuss PIPE's remaining issues in an effort to see if any areas of disagreement could be narrowed further. The meeting ended with the confirmation that each party continues to hold the same positions that were expressed in the last hearing. Discussion was hampered to a certain extent because of the incompleteness of PIPE's alternative proposal. However, the Illinois EPA agreed to further discussions with PIPE if PIPE could provide the dollar figures left out of its proposal, or sufficient justification for alternative amounts in the Illinois EPA's proposal.

At the last hearing Doug Clay and Gary King provided comments on many of the issues that have been raised by PIPE. See Tr. of August 9, 2004, hearing at 19-27, 32-38, and 55-60; Exhibit 88 at 3-19. For brevity, most of those comments will not be repeated here. However, the Illinois EPA respectfully requests that the Board review those comments along with the following additional comments on PIPE's alternative proposal:

1. UST Remediation Applicant

PIPE's alternative proposal borrows the term "Remediation Applicant" from Title XVII and adds such persons to the LUST rules. See Exhibit 90 at 9. The Illinois EPA believes this addition is inappropriate. As explained by Gary King in the last hearing, the term "remediation applicant" is used in Title XVII so that anyone with potential liability for contamination can enter the Site Remediation Program. Tr. of August 9, 2004, hearing at 57-60. Under the federal UST regulations and Title XVI of the Act, only UST owners and operators are liable for UST releases and eligible for reimbursement from the UST Fund. The LUST rules should continue to stay narrowly focused on UST owners and operators in order to maintain consistency with federal and State law. Furthermore,

anyone desiring to assume responsibility for a particular UST, and access the UST Fund for corrective action costs associated with a release from the UST, can already do so by becoming an owner or operator of the UST.

2. Free product removal

PIPE's alternative proposal requires the removal of free product "as required to address the health and safety of the site." Exhibit 90 at 13. This standard is inconsistent with the federal rules, which requires that free product be removed "to the maximum extent practicable." 40 C.F.R. § 280.64 (2004). As Doug Clay stated at the last hearing, inconsistency with the federal rules would jeopardize USEPA's authorization of the Illinois LUST Program. Tr. of August 9, 2004, hearing at 42. The LUST rules should continue to require free product removal to the maximum extent practicable so that they remain consistent with federal law. The Illinois EPA's proposal, as amended by the errata sheets, requires such removal. See proposed amendments to Section 732.203 and proposed Section 734.215.²

3. Reviews of plans, budgets, reports, and applications for payment.

a. 45-Day reviews

The shortened review times in PIPE's alternative proposal are inconsistent with the statutorily prescribed review times for documents submitted under Title XVI. Title XVI sets a review time of 120 days. 415 ILCS 5/57.7(c)(4) and 57.8(a)(1) (as amended by P.A. 92-0554).³ Under PIPE's proposal, however, the Illinois EPA must review

² The one-eighth of an inch measurement proposed by the Illinois EPA in Sections 732.203 and 734.215 is not intended to define when free product removal is practicable, but rather the amount of free phase hydrocarbons that must be present in order for the free product removal requirements of Sections 732.203 and 734.215 to apply.

³ The 120-day timeframes were not altered by any of the Public Acts amending Title XVI in 2002.

applications for payment within 45 days after their receipt. Exhibit 90 at 18 (proposed Section 734.505(c)). In addition, if the Illinois EPA intends to reject or require the modification of a plan, budget, or report, it must notify the owner or operator of its intention within 45 days after receipt of the document. Exhibit 90 at 18 (proposed Section 734.505(d)). In order for the Illinois EPA to determine whether it intends to reject or require the modification of a plan, budget, or report it must review the plan, budget, or report. This, in effect, reduces the Illinois EPA's review time to 45 days. Such a short timeframe will be extremely difficult for the Illinois EPA to meet for all of its reviews. Compare PIPE's proposed alternative 45-day review time with the LUST Section's current review times provided by Doug Clay. See Exhibit 88 at 6. The LUST rules should continue to provide 120-day review times so that they remain consistent with Title XVI.

b. Draft review letters

Along with the shortened review times, the written notification that PIPE's alternative proposal requires the Illinois EPA to provide when the Illinois EPA intends to modify or reject a plan, budget, or report is inconsistent with Title XVI. The Illinois EPA is not required to provide the owner or operator with such a "draft" decision letter. Title XVI only requires the Illinois EPA to issue a final decision within 120 days. Otherwise, the submittal is denied by operation of law. 415 ILCS 5/57.7(c)(4) (as amended by 92-0554).

The idea of "draft" review letters in the LUST Program is borrowed from the Illinois EPA's permit program, where draft permits are sometimes issued prior to the final grant of a permit. Although Illinois EPA decisions in the LUST Program can be

appealed to the Board in the same manner as provided for permit decisions, broad analogies between decisions in the LUST Program and decisions in the permit program are inappropriate. There are significant distinctions between the two programs. For example, the workload of the Illinois EPA's LUST Section is much greater than the workload of the Illinois EPA's Land Permit Section. The LUST Section has an exponentially higher number of sites to deal with than the Permit Section. The number of plans, budgets, reports, and applications for payment reviewed in the LUST Section far exceeds the number of permit applications reviewed in the Permit Section. And, only a few permits are typically sought for a permitted facility over an extended period of time, while in the LUST Program there are many plans, budgets, reports, and applications for payment submitted for a single site in a relatively short period of time. Extensions of time are routinely granted for permit reviews, and the permit review clock re-starts with each submission of new or additional information. In the LUST Program, however, the clock never stops or re-starts. All LUST submittals must be reviewed within 120 days after their receipt. Finally, there are mandatory and time-critical aspects of the LUST Program that do not exist in the permit program. Permit applicants seek permits voluntarily. The length time an applicant takes to complete the permitting process is not critical because if the permit is never issued and the permitted facility is never constructed or operated, no potential threat to human health and the environment will arise. In contrast, the LUST Program is designed to respond to existing threats to human health and the environment. Owners and operators in the LUST program are required to take corrective action to remediate these threats. The Illinois EPA and the people of the State of Illinois have a strong interest in seeing that this remediation is undertaken and

completed as quickly as possible. The issuance of “draft” review letters would only create additional work for the Illinois EPA and delay its review and approval of plans, budgets, and reports. The ultimate result would be a delay in the cleanup of contaminated sites. Because of the above noted differences and others that exist between the LUST Program and the permit program, the required issuance of “draft” review letters should not be added to the LUST Program.

PIPE suggests that the “Wells letters” used in the Illinois EPA’s permitting process would be appropriate in the LUST Program. A review of caselaw shows that “Wells letters” are inapplicable to the decisions made in the LUST Program. What became known as the “Wells letter” emanated from Wells Manufacturing Co. v. IEPA, 195 Ill.App.3d 593, 552 N.E.2d 1074, 142 Ill. Dec. 333 (1st Dist. 1990). In that case the Agency had received numerous complaints about the operation of the permitted facility and denied the renewal of its operating permit based upon alleged violations of the Act. Id., 552 N.E.2d at 1076, 142 Ill. Dec. at 335. The only information Wells had submitted to the Illinois EPA to renew its permit was a required two-page form in which it certified that there had been no changes to its equipment. Id., 552 N.E.2d at 1075, 142 Ill. Dec. at 334. The court found that the Illinois EPA had not given Wells an opportunity to present evidence that it was not a polluter prior to denying its application. Id., 552 N.E.2d at 1076, 142 Ill. Dec. at 335. “In effect, it denied Wells the right to operate its business because it may be violating the Act, but never gave it an opportunity to submit information which would disprove the allegation.” Id., 552 N.E.2d at 1077, 142 Ill. Dec. at 336. A denial or modification of a plan, budget, or report in the LUST Program is not the same as the denial of a permit, which in the Wells case resulted in a denial of the right

to operate a business. The denial or modification of plan only means that the owner or operator must change the method by which he or she proposes to investigate or cleanup a release. The denial or modification of a budget only means that the Agency has not approved proposed costs that have not yet been incurred. And, the denial or modification of a report merely means that additional work is needed to meet the requirements of the Board's rules and Title XVI. Decisions in the LUST Program do not deny owners and operators the right to operate a business.

The Wells case has come to stand for the proposition that "it is improper for the Agency to deny a permit based upon potential violation of the Act without providing the applicant an opportunity to submit information which would disprove the potential violation." ESG Watts, Inc. v. IEPA, PCB 94-243, 94-306, 94-307, 94-308, 94-309, 95-133, and 95-134 (consolidated) (March 21, 1996) at 8. This does not equate to a requirement that the Illinois EPA must issue a "Wells letter" prior to every final decision. For example, in Community Landfill Co. and City of Morris v. IEPA, PCB 01-170 (December 6, 2001), Community Landfill Co. ("CLC") argued that the Illinois EPA was required to issue a "Wells letter" to inform CLC that its surety was no longer on the list of approved surety companies. Id. at 12. The Board rejected CLC's argument, explaining that:

[e]ssentially, a "Wells letter" provides a permit applicant with the opportunity to respond when the Agency seeks information beyond the contents of the permit application. In this case, there is no question that CLC understood the financial assurance requirements of Section 811.712(b) in that CLC needed to provide proof of financial assurance. . . . In this instance, the financial information submitted by CLC was the basis for the denial; the Agency did not rely on information outside of the application when it denied the permit on the basis of [the surety company] being removed from the 570 list.

Id. This analysis is directly applicable to the Illinois EPA's decisions in the LUST Program. Decisions in the LUST Program are based upon information submitted by the owner or operator. The Illinois EPA reviews that information and determines whether it satisfies the requirements of the Act and the Board's rules. If it does, the submittal is approved. If it does not, the submittal is denied or modifications are required. Because the Illinois EPA does not rely upon outside information when reviewing LUST Program submittals, there is no outside information that the owner or operator needs an opportunity to rebut, and therefore no need for a "Wells letter."

c. Shifting the burden of proof

PIPE's alternative proposal also provides a burden of proof that is inconsistent with current law. Title XVI provides that owners and operators may appeal Illinois EPA decisions to the Board in accordance with the same procedures provided for permit appeals under Section 40 of the Act. 415 ILCS 5/57.7(c)(4) and 57.8(i) (as amended by P.A. 92-0554).⁴ As reflected in the Board's procedural rules, Section 40 of the Act places the burden of proof upon the petitioner. 415 ILCS 5/40; 35 Ill. Adm. Code 105.112. In the LUST Program the burden of proof is on the petitioning owner or operator. See, e.g., Ted Harrison v. IEPA, PCB 99-127 (July 24, 2003); Platolene 500, Inc. v. IEPA, PCB 92-9 (May 7, 1992) 99-127 (July 24, 2003). PIPE's alternative proposal, however, shifts the burden of proof to the Illinois EPA. See Exhibit 90 at 18 (proposed Section 734.505(b)). In order to maintain consistency with the Act and the Board's procedural rules, the LUST rules should not shift the burden of proof on appeal to the Illinois EPA.

⁴ Provisions regarding the appeal of Illinois EPA decisions under Title XVI were not altered by any of the Public Acts passed in 2002.

d. Agency denial of submittals after 120 days

PIPE's alternative proposal allows the Illinois EPA, at the end of the 120-day review period, to deem that submittals should be rejected. Exhibit 90 at 19 (proposed Section 734.505(f)). If the Illinois EPA makes such a determination, it must then provide a written notification to the owner or operator that includes the reasons for the rejection. Id. This provision is inconsistent with Title XVI, which provides that submittals are either rejected or approved by operation of law at the end of the 120-day review period, depending upon the type of submittal. 415 ILCS 5/57.7(c)(4) (as amended by P.A. 92-0554) (technical submittals denied by operation of law) and 57.8(a)(1) (as amended by P.A. 92-0554) (applications for payment approved by operation of law). Because submittals are approved or denied by operation of law at the end of the 120-day review period, the Illinois EPA has no authority to deem that a submittal should be rejected at the end of the period and issue a denial letter. Because PIPE's alternative proposal is inconsistent with Title XVI, it should not be added to the Board's LUST rules.

e. Illinois EPA project manager requirements

Finally, another change proposed by PIPE regarding Illinois EPA reviews requires that Illinois EPA project managers who perform technical reviews must be either a licensed professional engineer or a licensed professional geologist. Exhibit 90 at 21 (proposed Section 734.510(a)). As explained by Gary King at the last hearing, such a requirement would make approximately 85 to 90 percent of the Illinois EPA's current project managers ineligible to review technical submissions. Tr. of August 9, 2004, hearing at 213. Allowing only 10 to 15 percent of the Illinois EPA's project managers to review technical submissions would cripple the LUST Program. Each week, on average,

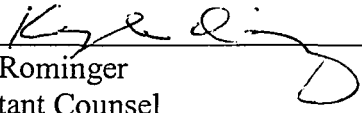
the LUST Section receives a stack of plans and reports more than seven feet in height. Tr. of August 9, 2004, hearing at 20. Slightly more than half of these documents are reviewed within 60 days after their submission, and almost three-quarters are reviewed within 90 days. Tr. of August 9, 2004, hearing at 20-21; Exhibit 88 at 6. Allowing only 10 to 15 percent of the Illinois EPA's project managers to review these documents would ensure that the reviews could no longer be conducted in a timely manner. Such a limitation would also likely result in many submissions being denied by operation of law because the Illinois EPA would not be able to review them all within the 120-day statutory deadline. Therefore, a requirement that Illinois EPA project managers who perform technical reviews must be either a licensed professional engineer or a licensed professional geologist should not be added to the LUST Program.

4. PIPE's Alternative Subpart H

As stated above, the Illinois EPA has made substantial changes to its proposal in response to the concerns and suggestions raised in the many hearings held in this rulemaking. Some of the suggestions set forth in PIPE's alternative proposal, including PIPE's Subpart H, have already been incorporated into the Illinois EPA's proposal. Those that have not been incorporated would, in the Illinois EPA's opinion, make changes to the LUST Program that are unnecessary or inappropriate. The Illinois EPA is opposed to PIPE's alternative proposal to the extent that it is inconsistent with the Illinois EPA's proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



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signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 110 Members voting 'yes', 0 voting 'no', and 0 voting 'present'. And the House does adopt... does pass House Bill 4438. And this Bill, having received a Constitutional Majority, is hereby declared passed. House Bill 5842. Mr. Brady. Mr. Clerk, read the Bill."

Clerk Bolin: "House Bill 5842, a Bill for an Act in relation to insurance. Second Reading of this House Bill. No Committee Amendments. No Floor Amendments. No Motions filed."

Speaker Hartke: "Third Reading. House Bill 4471. Representative Hassert. Mr. Clerk, read the Bill."

Clerk Bolin: "House Bill 4471, a Bill for an Act concerning environmental protection. Third Reading of this House Bill."

Speaker Hartke: "Representative Hassert."

Hassert: "Thank you, Mr. Speaker, Members of the General Assembly. This Bill simply amends the Underground Storage Tank Act of the EPA. It streamlines the underlying process that they're under right now for cleanup and basically, increases the payments that they can access to the fund from the LUST Fund. I'll be happy to answer any questions."

Speaker Hartke: "Is there any discussion? The Chair recognizes the Gentleman from Cook, Representative Lang."

Lang: "Thank you. Inquiry of the Clerk, please."

Speaker Hartke: "Mr. Clerk, your question."

Lang: "I would like to know what Amendments have been adopted on this Bill?"

Clerk Bolin: "Committee Amendments 1 and 2 have been adopted to

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the Bill."

Lang: "Thank you, Mr. Clerk."

Speaker Hartke: "Further discussion? Seeing no one is seeking recognition, the question is, 'Shall the House pass House Bill 4471?' All those in favor will signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this issue, there are 110 Members voting 'yes', 0 voting 'no', and 0 voting 'present'. And the House does pass House Bill 4471. This Bill, having received a Constitutional Majority, is hereby declared passed. The Chair recognizes Representative Mitchell. For what reason do you seek recognition?"

Mitchell, B.: "Mr. Speaker let the records show on House Bill 4055 I was off the floor and I wish to register a 'no' vote. I would... Thank you."

Speaker Hartke: "The Journal will reflect your wishes. House Bill 3812. Representative Jones. John Jones. Mr. Jones, would you like to call House Bill 3812? Representative. Mr. Clerk, read the Bill."

Clerk Bolin: "House Bill 3812, a Bill for an Act concerning townships. Second Reading of this House Bill. Amendment #1 was adopted in committee. No Floor Amendments. No Motions filed."

Speaker Hartke: "Third Reading. House Bill 4364. Representative Giles. Mr. Clerk, read the Bill."

Clerk Bolin: "House Bill 4364, a Bill for an Act regarding higher education student assistance. Third Reading of this House Bill."

Speaker Hartke: "Representative Giles."

Giles: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. House Bill 4364 is a Bill that is amended by the

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SENATOR DUDYCZ:

Thank you, Mr. President. House Bill 4257 amends the Park District Aquarium and Museum Act providing that aquariums and museums run by a park district must be open to the public free of charge for at least fifty-two days a year, six of which must be between the months of June and August, each year. You may recall, two years ago we passed this provision on a -- on a trial basis for a two-year period, and it's been a complete success and this legislation takes that -- that trial period out. Makes it permanent.

PRESIDING OFFICER: (SENATOR WATSON)

Is there any discussion? Is there any discussion? If not, the question is, shall House Bill 4257 pass. All those in favor, vote Aye. Opposed, vote No. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there's 57 voting Yes, no voting No, no voting Present. House Bill 4257, having received the required constitutional majority, is declared passed. House Bill 4471. Mr. Secretary, please read the bill.

SECRETARY HARRY:

House Bill 4471.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR WATSON)

Senator Jacobs.

SENATOR JACOBS:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. House Bill 4471 is an Agency bill which replaces the system of physical soil classification for leaking underground -- investigation and site classification for leaking underground storage tanks with a system of site investigation and corrective action. It deletes high priority and low priority and no further

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action classification. States that the IEPA will -- will not -- excuse me. It increases the -- the maximum amount of the IP -- EPA shall approve for payment from the Fund. This bill is an Agency bill, as I indicated. According to the IEPA -- industry and the Illinois EPA, they can reduce remediation costs, streamline the corrective action process and require all leaking underground tank cleanups to proceed using the tiered approach. I know of known opposite -- no known opposition and I ask for your support. I know there's some questions.

PRESIDING OFFICER: (SENATOR WATSON)

Discussion? Senator Donahue.

SENATOR DONAHUE:

Thank you very much, Mr. President. I have a question of the sponsor.

PRESIDING OFFICER: (SENATOR WATSON)

Sponsor indicates he'll yield, Senator Donahue.

SENATOR DONAHUE:

Senator Jacobs, I'd like to ask you two questions for the purposes of legislative intent. Initially, with regard to the amendments at page 31 dealing with increasing the per-occurrence monetary limitation from one million dollars to 1.5 million dollars - if an owner/operator has completed remediation and expended more than one million dollars at a site, and thus, was restrained by the one-million-dollar-per-occurrence limitation currently in the law, and we now increase the recovery limitation to 1.5 million dollars per occurrence, does that mean that we intend to allow a person whom has completed remediation to submit past bills in excess of one-million-dollar limitation?

PRESIDING OFFICER: (SENATOR WATSON)

Senator Jacobs.

SENATOR JACOBS:

No, it is not the intention of the legislation to allow for

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recovery of costs in excess of one million dollars for those sites that have already completed remediation.

PRESIDING OFFICER: (SENATOR WATSON)

Senator Donahue.

SENATOR DONAHUE:

Senator, again, my second question is only to clarify for legislative intent - along the same line of reasoning as my first question - at page 29 the legislation proposes to amend the current law to allow individuals with certain numbers of tanks to recover more expenses incurred each calendar year. In particular, and just by way of example, the legislation proposes to increase the amount an owner/operator of less than one hundred and one tanks may recover per calendar year from one million dollars, as currently the law, to two million dollars. By increasing the total amount that this owner/operator may claim per calendar year against the Fund, is it your intent to allow the persons whom -- were restrained by the one-million-dollar limitation per calendar year prior to enactment of these proposed amendments to file for recovery of expenses in excess of one million dollars, but less than two million dollars proposed in the limitation?

PRESIDING OFFICER: (SENATOR WATSON)

Senator Jacobs.

SENATOR JACOBS:

Thank you, Senator. No, it is not the intention to allow for recovery of expenses incurred in past calendar years in excess of the one-million- or two-million-dollar-calendar-year limitation, whichever may be applicable under the current law. It is the intention to allow the Illinois EPA to increase the amount that an owner/operator may claim against the Fund for expenses incurred after the enactment of the legislation.

PRESIDING OFFICER: (SENATOR WATSON)

Is any -- any other discussion? Any other discussion? If

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not, the question is, shall House Bill 4471 pass. All those in favor, vote Aye. Opposed, vote No. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there's 58 voting Yes, no voting No, no voting Present. House Bill 4471, having received the required constitutional majority, is declared passed. House Bill 4988. Mr. Secretary, please read the bill.

SECRETARY HARRY:

House Bill 4988.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR WATSON)

Out of the record, Mr. Secretary. 4989. Senator -- please read the bill, Mr. Secretary.

SECRETARY HARRY:

House Bill 4989.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR WATSON)

Senator Peterson.

SENATOR PETERSON:

Thank you, Mr. President, Members of the Senate. House Bill 4989 amends Article XV {sic} (XL) of the Insurance Information and Privacy Protection Act of the Illinois Insurance Code to authorize the Director to -- of Revenue to enforce the privacy provisions of the federal Gramm-Leach-Bliley Act. This is an initiative of the Department of Revenue. I ask for your support.

PRESIDING OFFICER: (SENATOR WATSON)

Is there any discussion? Is there any discussion? If not, the question is, shall House Bill 4989 pass. All those in favor, vote Aye. Opposed, vote No. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take

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ACTING SECRETARY HAWKER:

Senate Bill 1951.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR DONAHUE)

Senator Jacobs.

SENATOR JACOBS:

Thank you, Madam President, Ladies and Gentlemen of the Senate. Senate Bill 1951 merely changes or -- or provides an exemption from licensure concerning law enforcement officers employed by an employer in connection with the affairs of that employer. Now, with the amendment, I know of no known opposition and ask for your support.

PRESIDING OFFICER: (SENATOR DONAHUE)

Is there any discussion? Is there any discussion? Seeing none, the question is, shall Senate Bill 1951 pass. Those in favor will vote Aye. Opposed, Nay. And the voting's open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 Ayes, no Nays, none voting Present. Senate Bill 1951, having received the required constitutional majority, is declared passed. Senator Myers, on Senate Bill 1958. Senator Sieben, on Senate Bill 1963. Senator Welch, on Senate Bill 1968. Read the bill, Madam Secretary.

ACTING SECRETARY HAWKER:

Senate Bill 1968.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR DONAHUE)

Senator Welch.

SENATOR WELCH:

Thank you, Madam President. What this bill does is allow for

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the licensed professional geologist to perform and review site investigations. When the original law was passed allowing engineers to do the site investigations, geologists weren't licensed. Since that time, they've been licensed, and this bill will bring the -- the site investigation statute up to date. So, I would urge an Aye vote.

PRESIDING OFFICER: (SENATOR DONAHUE)

Is there any discussion? Any discussion? Senator Burzynski.

SENATOR BURZYNSKI:

Thank you, Madam President. Would the sponsor yield, please?

PRESIDING OFFICER: (SENATOR DONAHUE)

He indicates he'll yield, Senator Burzynski.

SENATOR BURZYNSKI:

Thank you. Senator, what -- what committee did this go through?

PRESIDING OFFICER: (SENATOR DONAHUE)

Senator Welch.

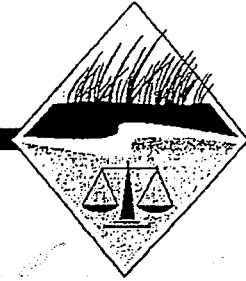
SENATOR WELCH:

It went through the Environment and Energy Committee.

PRESIDING OFFICER: (SENATOR DONAHUE)

Are there further discussions? Is there further discussion? Seeing none, the question is, shall Senate Bill 1968 pass. Those in favor will vote Aye. Opposed, Nay. And the voting's open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 Ayes, no Nays, none voting Present. Senate Bill 1968, having received the required constitutional majority, is declared passed. Senator Dillard, do you wish to return this bill? Senator Dillard seeks leave of the Body to return Senate Bill 1972 to the Order of 2nd Reading for the purposes of an amendment. Hearing no objection, leave is granted. And on the Order of 2nd Reading is Senate Bill 1972. Madam Secretary, have there been any amendments approved

ILLINOIS POLLUTION CONTROL BOARD



Date Sept. 23, 2004

Number of pages including cover sheet 8

TO: BRENDA

Phone _____
Fax Phone 217/ 782-9807
CC: _____

FROM: JOHN THERIAULT

**Pollution Control Board
James R. Thompson
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General Information

<p>Case No.: R2004-022 Case Type: Rulemaking Media Type: Land County: Statewide Date Filed: 1/13/2004 Stat Decision Due:</p>	<p>Case Name: In the Matter of: Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732) (Consolidated: R04-22 and R04-23) Board Members: Girard, G. T.; Hearing Officers: Tipsord, M.; Status: Status Report Track Date of Agenda: Filing Fee Date:</p>
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United Science Industries, Inc. Interested Party	P.O. Box 360 6295 East Illinois Highway 15	Woodlawn IL 62898-0360	618/735-2411 618/735-2907
Joe Kelly, PE			
Illinois Environmental Regulatory Group Interested Party	3150 Roland Avenue	Springfield IL 62703	217/523-4942 217/523-4948
Robert A. Messing, General Counsel			
Carlson Environmental, Inc. Interested Party	65 E. Wacker Place Suite 1500	Chicago IL 60601	
Kenneth James			
Chemical Industry Council of Illinois Interested Party	2250 E. Devon Avenue Suite 239	DesPlaines IL 60018-4509	
Lisa Frede			
Barnes & Thornburg Interested Party	1 North Wacker Drive Suite 4400	Chicago IL 60606	312/357-1313 312/759-5646
Carolyn S. Hesse, Attorney			

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Rapps Engineering & Applied Science Interested Party	821 South Durkin Drive P.O. Box 7349	Springfield IL 62791-7349	217/787-2118 217/787-6641
	Michael W. Rapps		
Environmental Management & Technologies Interested Party	2012 West College Avenue Suite 208	Normal IL 61761	309/454-1717 309/454-2711
	Craig S. Gocker, President		
Office of the Attorney General Interested Party	Environmental Bureau 188 West Randolph, 20th Floor	Chicago IL 60601	312/814-2550 312/814-2347
	Joel J. Sternstein, Assistant Attorney General		
Herlacher Angleton Associates, LLC Interested Party	8731 Bluff Road	Waterloo IL 62298	618/935-2262 618/935-2694
	Tom Herlacher, P.E., Principal Engineer		
Illinois Pollution Control Board Interested Party	100 W. Randolph St. Suite 11-500	Chicago IL 60601	312/8143956
	Dorothy M. Gunn, Clerk of the Board Marie Tipsord, Hearing Officer		
Huff & Huff, Inc. Interested Party	512 West Burlington Avenue Suite 100	LaGrange IL 60525	
	James E. Huff, P.E.		
Black & Veatch Interested Party	101 North Wacker Drive Suite 1100	Chicago IL 60606	
	Scott Anderson		
Posegate & Denes Interested Party	111 N. Sixth Street	Springfield IL 62701	217-522-6152
	Claire A. Manning		
Marlin Environmental, Inc. Interested Party	1000 West Spring Street	South Elgin IL 60177	847-468-8855
	Melanie LoPiccolo, Office Manager		
Illinois Department of Natural Resources Interested Party	One Natural Resources Way	Springfield IL 62702-1271	217/782-1809 217/524-9640
	Jonathan Furr, General Counsel		
Burroughs, Hepler, Broom, MacDonald, Hebrank & True Interested Party	103 W. Vandalia Street Suite 300	Edwardsville IL 62025	618/656-0184 618/656-1801
	Musette H. Vogel		
EcoDigital Development LLC Interested Party	PO Box 350 6295 East Illinois Hwy 15	Woodlawn IL 62898	(618) 735-7411
	Joe Kelly, VP Engineering		
Great Lakes Analytical Interested Party	1380 Busch Parkway	Buffalo Grove IL 60089	(847) 808-7766
	A.J Pavlick		
CSD Environmental Services, Inc Interested Party	2220 Yale Boulevard	Springfield IL 62703	217-522-4085

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	Joseph W. Truesdale, P.E.		
CORE Geological Services, Inc. Interested Party	2621 Monetga, Suite C	Springfield IL 62704	217-787-6109
	Ron Dye, President		
Clayton Group Services Inc. Interested Party	3140 Finley Road	Downers Grove IL 60515	630.795.3207
	Monte Nienkerk		
PDC Laboratories Interested Party	2231 W. Altorfer Dr.	Peoria il 61615	309-692-9688
	Kurt Stepping, Director of Client Services		
Atwell-Hicks, Inc. Interested Party	940 East Diehl Road Suite 100	Naperville IL 60563	630-5770800
	Thomas M. Guist, PE, Team Leader		
CW3M Company, Inc. Interested Party	701 South Grand Ave. West	Springfield IL 62704	217-522-8001
	Jeff Wienhoff		
Suburban Laboratories, Inc. Interested Party	4140 Litt Drive	Hillside IL 60162	708-544-3260
	Jarrett Thomas, V.P.		
Environmental Consulting & Engineering, Inc. Interested Party	551 Roosevelt Road #309	Glenn Ellyn IL 60137	
	Richard Andros, P.E.		
MAGTEC Engineering & Consulting, Inc. Interested Party	8901 N. Industrial Road	Peoria IL 61615	
	Terrence W. Dixon, P.G.		
Illinois Department of Transportation Interested Party	2300 Dirksen Parkway	Springfield IL 62764	
	Steven Gobelman		
SEECO Environmental Services, Inc. Interested Party	7350 Duvon Drive	Tinley Park IL 60477	
	Collin W. Gray		
Herlacher Angleton Associates, LLC Interested Party	522 Belle Street	Alton IL 62002	
	Jennifer Goodman		
United Environmental Consultants, Inc. Interested Party	119 East Palatin Road Suite 101	Palatine IL 60067	
	George F. Moncek		
McGuire Woods LLP Interested Party	77 W. Wacker Suite 4400	Chicago IL 60601	312/849-8100
	David Rieser		
Greensfelder, Hemker & Gale Complainant	10 S. Broadway Suite 2000	St. Louis MO 63104	314-247-9890
	Tina Archer, Attorney		

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Midwest Engineering Services, Inc. Interested Party	4243 W. 166th Street	Oak Forest IL 60452	708-535-9981
	Erin Curley, Env. Department Manager		
American Environmental Corp. Interested Party	3700 W. Grand Ave., Suite A	Springfield IL 62707	(217) 585-9517
	Ken Miller, Regional Manager		
Applied Environmental Solutions, Inc. Interested Party	P O Box 1225	Centralia IL 62801	6185335953
	Delete Me 2		
Secor International, Inc. Interested Party	400 Bruns Lane	Springfield IL 62702	
	Daniel J. Goodwin		
Caterpillar, Inc. Interested Party	100 NE Adams Street	Peoria IL 61629	3096751658
	Eric Minder, Sr. Environmental Engineer		
K-Plus Environmental Interested Party	Suite 1000 600 W. Van Buren Street	Chicago IL 60607	312-207-1600
	Daniel Caplice		
Illinois Society of Professional Engineers Interested Party	300 West Edwards	Springfield IL 62704	217-544-7424 217-525-6239
	Kim Robinson		
	Brittan Bolin		

Total number of participants: 50

Case Activity		
Date	Activity Type	Activity Notes
8/20/2004	Transcript	August 9, 2004 hearing transcript
8/16/2004	Public Comment	Comments of Bill Fleischi of Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores (PC #1)
8/11/2004	Hearing Officer Order/Correspondence	*Hearing Officer Order: On August 9, 2004, Board concluded seventh day of hearings; with agreement of participants, date 45 days from August 9, 2004, will be set for filing of comments to be considered by Board prior to first notice, requests for additional hearings may be made at that time; comments must be filed in Board's Chicago Office by 4:30 p.m., September 23, 2004, mailbox rule does not apply (service list not included in viewable file)
8/10/2004	Exhibit List	Updated List of exhibits including seventeen (17) exhibits submitted at hearing held on August 9, 2004 (Springfield, IL) (Due to the volume of the exhibits, the viewable file is not available. Please contact the Clerk's Office at 312/814-3629 to view or obtain a copy)
8/9/2004	Erata Sheet	*Illinois Environmental Protection Agency's Third Errata Sheet (Exhibit 87 from Hearing held 8/9/04)
8/3/2004	Prefiled Testimony	PIPE's Proposed Alternate Language
8/2/2004	Prefiled Testimony	Additional Testimony of Douglas W. Clay in Support of the Illinois Environmental Protection Agency's Proposal; Illinois Environmental Protection Agency's Third Errata Sheet
7/16/2004	Transcript	July 6, 2004 hearing transcript
7/7/2004	Exhibit List	Updated List of exhibits including three(3) exhibits submitted at hearing held on July 6, 2004 (Springfield, IL) (Due to the volume of the exhibits, the viewable file is not available. Please contact the Clerk's Office at 312/814-3629 to view or obtain a copy)
7/1/2004	Transcript	June 22, 2004 hearing transcript
7/1/2004	Transcript	June 21, 2004 hearing transcript
		Updated List of exhibits including forty-five (45) exhibits submitted at hearings held on June 21 and 22, 2004 (Springfield, IL) (Due to the volume of the exhibits, the

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General Information

Case No: R2004-023 Case Type: Rulemaking Media Type: Land County: Statewide Date Filed: 1/13/2004 Stat Decision Due:	Case Name: In the Matter of: Regulation of Petroleum Leaking Underground Storage Tanks (Proposed new 35 Ill. Adm. Code 734) (Consolidated: R04-22 and R04-23) Board Members: Girard, G. T.; Hearing Officers: Tipsord, M.; Status: Status Report Track Date of Agenda: Filing Fee Date:
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Service List

Party Name	Role	City & State	Phone/Fax
IEPA Petitioner	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782-5544 217/782-9807
	Gina Roccaforte, Assistant Counsel		
	Kyle Rominger, Assistant Counsel		
	Doug Clay		
Hodge Dwyer Zeman Interested Party	3150 Roland Avenue Post Office Box 5776	Springfield IL 62705-5776	217/523-4900 217/523-4948
	Thomas G. Safley		
Sidley Austin Brown & Wood Interested Party	Bank One Plaza 10 South Dearborn Street	Chicago IL 60603	312/853-7000 312/953-7036
	William G. Dickett		
Karaganis & White, Ltd. Interested Party	414 North Orleans Street Suite 810	Chicago IL 60610	312/836-1177 312/836-9083
	Barbara Magel		
Illinois Petroleum Marketers Association Interested Party	112 West Cook Street	Springfield IL 62704	217/793-1858
	Bill Fleischi		
United Science Industries, Inc. Interested Party	P.O. Box 360 6295 East Illinois Highway 15	Woodlawn IL 62898-0360	618/735-2411 618/735-2907
	Joe Kelly, PE		
Illinois Environmental Regulatory Group Interested Party	3150 Roland Avenue	Springfield IL 62703	217/523-4942 217/523-4948
	Robert A. Messina, General Counsel		
Carlson Environmental, Inc. Interested Party	65 E. Wacker Place Suite 1500	Chicago IL 60601	
	Kenneth James		
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	Lisa Frede		
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	Carolyn S. Hesse, Attorney		
Rapps Engineering & Applied Science Interested Party	821 South Durkin Drive P.O. Box 7349	Springfield IL 62791-7349	217/787-2118 217/787-6641
	Michael W. Rapps		

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Environmental Management & Technologies Interested Party	2012 West College Avenue Suite 208	Normal IL 61761	309/454-1717 309/454-2711
	Craig S. Gocker, President		
Office of the Attorney General Interested Party	Environmental Bureau 188 West Randolph, 20th Floor	Chicago IL 60601	312/814-2550 312/814-2347
	Joel J. Sternstein, Assistant Attorney Genera		
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	Tom Herfacher, P.E., Principal Engineer		
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	Claire A. Manning		
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	Melanie LoPiccolo, Office Manager		
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	Jonathan Furr, General Counsel		
Posegate & Denes, P.C. Interested Party	111 N. Sixth Street	Springfield IL 62705	217/522-6152 217/522-6184
	Claire A. Manning, Attorney		
Burroughs, Hepler, Broom, MacDonald, Hebrank & True Interested Party	103 W. Vandalla Street Suite 300	Edwardsville IL 62025	618/656-0184 618/656-1801
	Musette H. Vogel		
Great Lakes Analytical Interested Party	1380 Busch Parkway	Buffalo Grove IL 60089	(847) 808-7766
	A.J. Pavlick		
CSD Environmental Services, Inc Interested Party	2220 Yale Boulevard	Springfield IL 62703	217-522-4085
	Joseph W. Truesdale, P.E.		
CORE Geological Services, Inc. Interested Party	2621 Monetga, Suite C	Springfield IL 62704	217-787-6109
	Ron Dye, President		

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Suburban Laboratories, Inc. Interested Party	4140 Litt Drive	Hillside IL 60162	708-544-3260
	Jarrett Thomas, V.P.		
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	Collin W. Gray		
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	Jennifer Goodman		
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	David Rieser		
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	Erin Corley, Env. Department Manager		
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	Russell Goodiel, Project Manager		
Secor International, Inc. Interested Party	400 Bruns Lane	Springfield IL 62702	
	Daniel J. Goodwin		
Illinois Society of Professional Engineers Interested Party	300 West Edwards	Springfield IL 62704	217-544-7424 217-525-6239
	Kim Robinson		

20423

STATE OF ILLINOIS)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois Environmental Protection Agency's Post Hearing Comments upon the persons to whom they are directed by placing copies in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Overnight Mail)

Marie Tipsord
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Overnight Mail)

SEE ATTACHED SERVICE LIST
(First Class Mail)

and mailing them from Springfield, Illinois on September 22, 2004, with sufficient postage affixed as indicated above.

Brenda Bochner

SUBSCRIBED AND SWORN TO BEFORE ME
this 22nd day of September, 2004.

Cynthia L. Wolfe
Notary Public

