

ILLINOIS POLLUTION CONTROL BOARD
February 17, 2005

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

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

CONCURRING OPINION (by T.E. Johnson):

I respectfully concur with the majority opinion. I agree with the majority that the proposal is technically feasible and economically reasonable, and further agree that proceeding to first notice with the proposal is proper. However, I remain undecided on the specific issue of excluding handling charges for subcontractors where the primary contractor has a financial interest in the subcontractor.

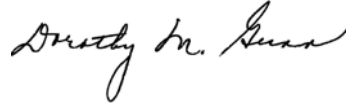
The majority finds that the record to date does not indicate that a primary contractor or consultant who has a financial interest in a business which subcontracts part of the work associated with remediation of a site incurs the same costs as a primary contractor without the financial interest. Accordingly, the majority proposes for first notice the Illinois Environmental Protection Agency's language, which excludes handling charges for subcontractors where the primary contractor has a financial interest in the subcontractor. While the majority does invite comment on this issue, I wish to take this opportunity to underscore my concerns. It is my hope that this issue will be further briefed during the first-notice period, and that, with additional information in hand; the Board will be fully able to reconsider its position prior to deciding whether or not to adopt the rule for second notice.

For these reasons, I respectfully concur.



Thomas E. Johnson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above concurring opinion was submitted on February 17, 2005.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board