

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO: REGULATION)	R 04-22
OF PETROLEUM LEAKING UNDERGROUND)	(Rulemaking - Land)
STORAGE TANKS (35 ILL.ADM.CODE 732))	

PC#37

IN THE MATTER OF:)	R 04-23
)	(Rulemaking - Land)
PROPOSED AMENDMENTS TO: REGULATION)	
OF PETROLEUM LEAKING UNDERGROUND)	
STORAGE TANKS (35 ILL.ADM.CODE 734))	

N O T I C E

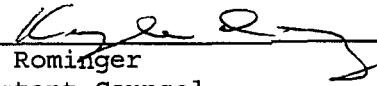
Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste. 11-500
Chicago, Illinois 60601

Marie Tipsord, Hearing Officer
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste 11-500
Chicago, Illinois 60601

See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of
the Clerk of the Pollution Control Board the Illinois Environmental Protection
Agency's Comments Regarding The Need For An Additional Hearing on behalf of
the Illinois Environmental Protection
Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
Kyle Rominger
Assistant Counsel

DATE: April 8, 2005
Agency File #:
Illinois Environmental
Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

THIS FILING IS SUBMITTED ON RECYCLED PAPER

APR 11 2005

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

R04-22
(Rulemaking – Land)

STATE OF ILLINOIS
Pollution Control Board

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

R04-23
(Rulemaking – Land)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
COMMENTS REGARDING THE NEED FOR AN ADDITIONAL HEARING

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Kyle Rominger, and submits the following comments regarding the Board's request for comments on the need for an additional hearing in this rulemaking:

The Illinois EPA appreciates the Board providing an opportunity for another hearing in this matter if one appears warranted. Like the Board, the Agency wants to ensure that the final rules adopted in this proceeding are reasonable for all of the parties involved in the LUST Program. This goal is reflected in the many changes the Illinois EPA made to its proposal during the hearings.

As the Board is aware, this rulemaking has included numerous hearings and the submission of a great deal of information through pre-filed testimony, exhibits, responses, alternative proposals, and comments. All of the parties timely expressing a desire to voice their opinion on the Illinois EPA's proposal or to submit alternatives to

the proposal have been given an ample opportunity to do so. As reflected in the Board's First Notice Opinion and Order, the Board carefully considered all of the information it received over the past year. The Agency agrees with the Board's opinion that everyone's efforts over the past year have culminated in a proposal that, among other things, as a whole will provide reimbursement of reasonable remediation costs.

The Board's First Notice proposal is, for the most part, identical to the Illinois EPA's proposal. Therefore, the Board has already received testimony and comments on the vast majority of its First Notice proposal. The Illinois EPA realizes that there may continue to be disagreements over particular aspects of the proposal. However, an additional hearing is not needed if parties merely will be re-arguing points and issues that have already been thoroughly debated. Such a hearing would only waste the Board's time, as well as everyone else's, and the net result would only be a delay in the effective date of the amendments. Based upon the information submitted to date, it does not appear that an additional hearing is warranted.

If the Board does determine that an additional hearing is warranted, for the purposes of expediting the hearing and the adoption of final rules, the Illinois EPA respectfully requests the following:

1. That the hearing order identify the new information that will be brought into the record and the issues to be considered at the hearing;
2. That the hearing be limited to addressing information that was not, nor could have been, previously submitted into the record; and
3. That the new information being brought into the record is such that it cannot be submitted in public comments because an opportunity for rebuttal

testimony is needed.

In addition to the above, the Illinois EPA has the following comments regarding the letters marked as Public Comments ("PC") #10 through #36:

1. The letters appear to be an orchestrated effort on behalf of United Science Industries ("USI") rather than the independent undertakings of individual citizens.

a. All of the letters are similar in content. They express concern over the Board's proposal, express concern about hearings being held only in the northern part of the state, and request that a hearing be held in the southern part of the state, usually the Mt. Vernon area. PC #21 and #24 are identical except for the number of years each author has worked as an environmental consultant.

b. All but two of the letters have "COPY PROVIDED TO ATTACHED SERVICE LIST" printed at the bottom, in the same location and in the same font. Every letter has attached to it an identically formatted service list with "SERVICE LIST AS OF 3/17/05" printed in the center at the top of the page.

c. All but one of the letters appear to be authored by persons who are USI employees. The authors of PC #10, #20, #23, and #32 are identified in the record as USI employees. A cursory review of USI reimbursement submittals currently on the desks of a few members of the Illinois EPA's staff confirmed that at least 18 of the authors are employed by USI. In addition, the authors of all but two of the letters could be

reached through USI's telephone system by dialing their extension using their last name. The only author that could not be identified as a USI employee was the author of PC #22.

d. Although the letters are addressed from various addresses and contain dates ranging over several days, all of the letters, at least the copies received by the Agency, were mailed on the same day using the same private postage meter with identification number 0002344202. This is the same postage meter USI uses to mail its technical and reimbursement submissions to the Illinois EPA. The exception is PC #35. The Agency cannot confirm whether the same postage meter was used to mail PC #35 because the envelope for the letter was not retained.

Because the letters marked as PC #10 through #36 appear to be essentially a coordinated effort of repetitious requests on behalf of USI, the Illinois EPA requests that they be combined and viewed in total as effectively a single request for an additional hearing rather than individual requests. The Illinois EPA does not wish to deny anyone the right to submit comments merely because they are affiliated with an interested party. However, the Illinois EPA does not believe that one party's request should be given more weight merely because its request is submitted through numerous employees instead of in a single submittal.

2. The letters request that a hearing be held in the southern part of the state to provide an adequate opportunity for citizens of southern Illinois to be heard. However, the letters do not provide any evidence showing that any citizen of southern Illinois has been denied an opportunity to participate in these

proceedings. In fact, the record indicates just the opposite. The vast majority of the public participants in this rulemaking are from central and southern Illinois:

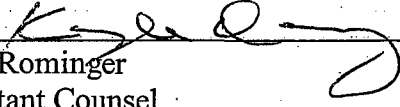
USI and its employees are based in Woodlawn, near Mt. Vernon; CSD Environmental, CW³M, and their employees are based in Springfield; CW³M indicated that it also has an office in Marion; Daniel Goodwin and the American Consulting Engineers Council of Illinois are based in Springfield; Michael Rapps is based in Springfield and also has an office in Carbondale; Russ Goodiel is based in Centralia; and Bill Fleischli and the Illinois Petroleum Marketers Association are based in Springfield. Furthermore, the American Consulting Engineers Council of Illinois and the Illinois Petroleum Marketers Association represent engineers and UST owners and operators located throughout the state.

3. The letters do not identify any additional evidence that will be brought into the record if an additional hearing is held. There is nothing in the letters to indicate that holding an additional hearing in southern Illinois is likely to result in any change to the Board's First Notice proposal. Rather, it appears there is merely a desire to continue arguing the same old issues and points discussed in previous hearings and resolved by the Board in its First Notice Opinion and Order.

Taken in total, the Illinois EPA does not believe that the letters adequately demonstrate the need for an additional hearing. The Illinois EPA respectfully requests that the Board continue the adoption of its proposal by accepting public comments on the Board's First Notice proposal and proceeding to Second Notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



Kyle Rominger
Assistant Counsel

DATED: 4.8.05
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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 Comments Regarding The Need For An Additional Hearing on behalf of the Illinois Environmental Protection Agency upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph St., Ste 11-500
Chicago, Illinois 60601

Marie Tipsord, Hearing Officer
Pollution Control Board
James R. Thompson Center
100 West Randolph St., Ste 11-500
Chicago, Illinois 60601

See Attached Service List

and mailing it from Springfield, Illinois on 4-8-05

Melinda A Brandt

SUBSCRIBED AND SWORN TO BEFORE ME

this 8th day of April, 2005
Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

Party Name	Role	City & State	Phone/Fax
<u>Ogle County State's Attorney Office</u> Interested Party	Ogle County Courthouse 110 South Fourth Street, P.O. Box 395	Oregon IL 61061- 0395	815/732-1170 815/732-6607
Michael C. Rock, Assistant State's Attorne			
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Gina Roccaforte, Assistant Counsel Kyle Rominger, Assistant Counsel Doug Clay			
<u>Hodge Dwyer Zeman</u> Interested Party	3150 Roland Avenue Post Office Box 5776	Springfield IL 62705- 5776	217/523-4900 217/523-4948
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<u>Sidley Austin Brown & Wood</u> Interested Party	Bank One Plaza 10 South Dearborn Street	Chicago IL 60603	312/853-7000 312/953-7036
William G. Dickett			
<u>Karaganis, White & Magel, Ltd.</u> Interested Party	414 North Orleans Street Suite 810	Chicago IL 60610	312/836-1177 312/836-9083
Barbara Magel			
<u>Illinois Petroleum Marketers Association</u> Interested Party	112 West Cook Street	Springfield IL 62704	217/793-1858
Bill Fleischi			
<u>United Science Industries, Inc.</u> Interested Party	P.O. Box 360 6295 East Illinois Highway 15	Woodlawn IL 62898- 0360	618/735-2411 618/735-2907
Joe Kelly, PE			
<u>Illinois Environmental Regulatory Group</u> Interested Party	3150 Roland Avenue	Springfield IL 62703	217/523-4942 217/523-4948
Robert A. Messina, General Counsel			
<u>Carlson Environmental, Inc.</u> Interested Party	65 E. Wacker Place Suite 1500	Chicago IL 60601	
Kenneth James			
<u>Chemical Industry Council of Illinois</u> Interested Party	2250 E. Devon Avenue Suite 239	DesPlaines IL 60018- 4509	
Lisa Frede			
<u>Barnes & Thornburg</u> Interested Party	1 North Wacker Drive Suite 4400	Chicago IL 60606	312/357-1313 312/759-5646
Carolyn S. Hesse, Attorney			
<u>Rapps Engineering & Applied Science</u> Interested Party	821 South Durkin Drive P.O. Box 7349	Springfield IL 62791- 7349	217/787-2118 217/787-6641
Michael W. Rapps			
<u>Environmental Management & Technologies</u> Interested Party	2012 West College Avenue Suite 208	Normal IL 61761	309/454-1717 309/454-2711
Craig S. Gocker, President			
<u>Office of the Attorney General</u> Interested Party	Environmental Bureau 188 West Randolph, 20th Floor	Chicago IL 60601	312/814-2550 312/814-2347

RoseMarie Cazeau, Bureau Chief <u>Herlacher Angleton Associates, LLC</u> Interested Party	8731 Bluff Road	Waterloo IL 62298	618/935-2262 618/935-2694
Tom Herlacher, P.E., Principal Engineer <u>Illinois Pollution Control Board</u> Interested Party	100 W. Randolph St. Suite 11-500	Chicago IL 60601	312/814-3620 312/814-3669
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Claire A. Manning <u>Marlin Environmental, Inc.</u> Interested Party	1000 West Spring Street	South Elgin IL 60177	847-468-8855
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Stanley Yonkauskki, Acting General Counsel <u>Burroughs, Hepler, Broom, MacDonald, Hebrank & True</u> Interested Party	103 W. Vandalia Street Suite 300	Edwardsville IL 62025	618/656-0184 618/656-1801
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Thomas M. Guist, PE, Team Leader <u>CW3M Company, Inc.</u> Interested Party	701 South Grand Ave. West	Springfield IL 62704	217-522-8001

Jeff Wienhoff <u>Suburban Laboratories, Inc.</u> Interested Party Jarrett Thomas, V.P.	4140 Litt Drive	Hillside IL 60162	708-544-3260
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<u>MACTEC Engineering & Consulting, Inc.</u> Interested Party Terrence W. Dixon, P.G.	8901 N. Industrial Road	Peoria IL 61615	
<u>Illinois Department of Transportation</u> Interested Party Steven Gobelman	2300 Dirksen Parkway	Springfield IL 62764	
<u>SEECO Environmental Services, Inc.</u> Interested Party Collin W. Gray	7350 Duvon Drive	Tinley Park IL 60477	
<u>Herlacher Angleton Associates, LLC</u> Interested Party Jennifer Goodman	522 Belle Street	Alton IL 62002	
<u>United Environmental Consultants, Inc.</u> Interested Party George F. Moncek	119 East Palatin Road Suite 101	Palatine IL 60067	
<u>McGuire Woods LLP</u> Interested Party David Rieser	77 W. Wacker Suite 4100	Chicago IL 60601	312/849-8100
<u>Greensfelder, Hemker & Gale</u> Complainant Tina Archer, Attorney	10 S. Broadway Suite 2000	St. Louis MO 63104	314-241-9090
<u>Midwest Engineering Services, Inc.</u> Interested Party Erin Curley, Env. Department Manager	4243 W. 166th Street	Oak Forest IL 60452	708-535-9981
<u>American Environmental Corp.</u> Interested Party Ken Miller, Regional Manager	3700 W. Grand Ave., Suite A	Springfield IL 62707	217/585-9517
<u>Applied Environmental Solutions, Inc.</u> Interested Party Delete Me 2	P O Box 1225	Centralia IL 62801	6185335953
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<u>Caterpillar, Inc.</u> Interested Party Eric Minder, Sr. Environmental Engineer	100 NE Adams Street	Peoria IL 61629	3096751658
<u>K-Plus Environmental</u> Interested Party Daniel Caplice	Suite 1000 600 W. Van Buren Street	Chicago IL 60607	312-207-1600
<u>Illinois Society of Professional Engineers</u> Interested Party Kim Robinson Brittan Bolin	300 West Edwards	Springfield IL 62704	217-544-7424 217-525-6239

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Daniel J. Goodwin, P.E.

Total number of participants: 51