

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO:)	R04-22
REGULATION PETROLEUM LEAKING)	(Rulemaking – UST)
UNDERGROUND STORAGE TANKS)	
35 ILL. ADM. CODE 732)	
_____)	
)	
IN THE MATTER OF :)	
)	
PROPOSED AMENDMENTS TO:)	R04-23
REGULATION PETROLEUM LEAKING)	(Rulemaking – UST)
UNDERGROUND STORAGE TANKS)	Consolidated
35 ILL. ADM. CODE 734)	

REQUEST FOR HEARING

NOW COMES Claire A. Manning, BROWN, HAY & STEPHENS, LLP, counsel for the Professionals of Illinois for the Protection of the Environment (“PIPE”), and replies to the Illinois Pollution Control Board’s (the “Board”) invitation that the parties advise as to whether additional hearings should be scheduled in this matter and, if so, to comment on the number and scope of such hearings. (Proposed Rule for First Notice, R04-22 and R04-23, February 17, 2005, page 83).

This rule deals with issues related to the reasonableness of the reimbursement process and payments related to the State’s underground storage tank remediation program. It has been the subject of much controversy before the Board. Virtually to a person, the public comments and testimony on this rule cautioned the Board against moving forward with the changes proposed by the Illinois Environmental Protection Agency (the “Agency”). While the Board recognizes that the rates established by the

Agency are not statistically defensible, the Board's first notice order nonetheless relies largely upon "the Agency's experience in the UST program."

PIPE hopes that the Board will spend more time in review of this proposal prior to moving it to second notice, and, accordingly, requests first notice hearings. However, since PIPE has already spent considerable time, resources and energy in devotion to this rulemaking, PIPE agrees that future hearings should be limited in time and scope. Specifically, the Board's continued review of this rule should be devoted to the Board having a clear understanding of how these rules will be applied -- especially since Board review of individual Agency reimbursement decisions is so costly that, given the lesser dollars in dispute, Board appeal is virtually impractical. Thus, an owner and operator is in the very real position of accepting whatever it is that the Agency's determines is necessary, and, since there is no defined "scope of work", such determinations are neither consistent nor predictable. In the recent past several months since the Board's order in this matter, PIPE members have ascertained that the Agency's modification and denial decisions have reached record numbers.

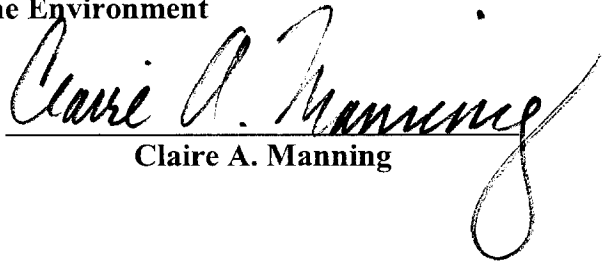
Prior to moving this rule to second notice, the Board should also address questions related to the extent that these rules may adversely impact remediation efforts in Illinois. While the State's belt tightening may mean one thing to those corporate owners and operators who can absorb costs not covered by these rules, it means an entirely different thing to those individual owners and operators who have to access the fund to remediate a piece of property that has been their sole source of livelihood and may be their only remaining asset.

Thus, PIPE suggests that the Board hold one or two more days of hearing: geared toward more fully addressing the above issues. Further, in order to assure that these hearings achieve those objectives, PIPE suggests that, at least as to the addressing the question of application of the rules, the Board allow PIPE to put written "scenario" questions to the Agency, and the Agency be required to respond in writing, so that hearing time is limited to those areas where there may truly be a dispute – as opposed to a misunderstanding.

Respectfully submitted,

**Professionals of Illinois for the Protection
of the Environment**

By:



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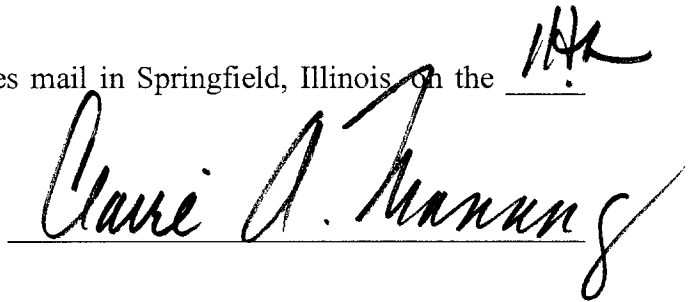
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and by depositing same in the United States mail in Springfield, Illinois, on the 11th
day of *April*, 2005.


A handwritten signature in cursive script, reading "Claire A. Manning", is written over a horizontal line. Above the signature, the word "11th" is written in a similar cursive style.