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STATE OF ILLINOIS
Pollution Control Board



6760 Southwest Avenue
St. Louis, Missouri 63143-2635

Office: 314-647-5550
Fax: 314-647-2002

August 9, 2005

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

PC#57

Re: Proposed Revisions to Leaking Underground Storage Tank Regulations Part 732 and 734

Dear Ms. Tipsord:

Midwest Petroleum Company is a petroleum marketer operating in the states of Illinois and Missouri. We currently are responsible for clean up on five properties in Illinois. Midwest has prepared this correspondence in regards to the Illinois Environmental Protection Agency's (IEPA) proposed changes to 732 and 734. Specifically, the IEPA is proposing to limit onsite cleanup cost reimbursement to Tier 2 TACO objectives and not allow owners/operators back into the LUST Fund after an NFR letter has been issued for a site. The Board stated in its February 17, 2005 Opinion and Order on Page 76, "Participants have expressed concerns that if reimbursement is limited to Tier 2 objectives and some future event occurs, the owner or operator may be liable for additional cleanup. The Board finds that these hypothetical problems are not sufficient to warrant a change in the UST program to this extent. The Board invites additional comment on this issue." In response to the Board's request for additional comments we provide the following:

Midwest Petroleum Company owns a convenience station located in Columbia, Illinois. The IEPA project manager *strongly* encouraged the use of an Environmental Land Use Control (ELUC) and a groundwater restriction to address the contaminants at this site. Midwest contacted the adjacent property owner for obtaining the ELUC. The adjacent property owner has agreed to an ELUC on their property, however, their lawyer has drafted a letter to Midwest stating the owners of the property will hold Midwest liable in the event of a future occurrence. The property is currently being sold and the new owners intend to construct a building. Their lawyer has informed Midwest if contaminated soils or groundwater are encountered during the construction they will hold Midwest liable for the cost of disposing the soil and any contaminated groundwater. In addition, the Illinois Department of Transportation (IDOT) will need to be contacted in order to obtain a Highway Authority Agreement for the contamination under Illinois Route 3 which migrated from our site. IDOT requires in their Highway Authority

Agreement that the owner/operator reimburse IDOT the reasonable cost to perform any site investigations and to dispose of any contaminated soil or groundwater which may be encountered in order to construct, reconstruct, improve, repair, maintain and operate a highway. Specifically, IDOT in item 12 of the Highway Authority Agreement, states, "The Department reserves the right and the right of those using the property under permit to remove contaminated soil or groundwater above Tier 1 residential remediation objectives from its Right-of-Way and to dispose of them as they deem appropriate not inconsistent with applicable environmental regulations so as to avoid causing a further release of the Contaminants and to protect human health and the environment." If the Board adopts the changes as proposed by the IEPA, Midwest will not be able to access the fund for future claims, but will be held responsible by IDOT and by the adjacent property owner.

The USEPA requires an owner/operator to obtain insurance to meet the Federal Financial Responsibility Requirements. In Illinois, the Underground Storage Tank program was established allowing the owners/operators to meet the Federal requirements. If the Illinois UST Fund will not allow an owner/operator back into the Fund, the effect is the Illinois UST Fund is no longer in compliance with the Federal requirements which specifically states as obtained from USEPA's website, "Congress wanted owners and operators of underground storage tanks (USTs) to show that they have the financial resources to clean up a site if a release occurs, correct environmental damage, and compensate third parties for injury to their property or themselves".

I am a member of the Missouri Petroleum Storage Tank Insurance Fund. In Missouri, we were also concerned with the amount of dollars that were being spent for cleanup. Missouri also requires an owner/operator to use deed restrictions from adjacent property owners. However, in Missouri, the owner/operator is not restricted from accessing the fund for future liability claims.

Sincerely,



Cc: Illinois Petroleum Marketers Association