BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PC#13

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

NOTICE OF FILING

TO: ALL COUNSEL OF RECORD
(Service List Attached)

PLEASE TAKE NOTICE that on May 8, 2006, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of Additional Comments From CW^{3}M Company, Inc., for the Illinois Pollution Control Board's Amendments to 35 Ill. Adm. Code 734 and 35 Ill. Adm. Code 732 Subdocket B in the above-captioned matter.

Dated: May 8, 2006

Respectfully submitted,

CW^{3}M Company

By: Carolyn S Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive -Suite 4400
Chicago, Illinois 60606
(312) 357-1313
296296v1

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Additional Comments From CW^{3}M Company, Inc., for the Illinois Pollution Control Board's Amendments to 35 Ill. Adm. Code 734 and 35 Ill. Adm. Code 732 Subdocket B by placing a copy in an envelope addressed to the Service List Attached from CW^{3}M Company, Inc., 701 West South Grand Avenue, Springfield, IL 62704 before the hour of 5:00 p.m., on this 8th Day of May, 2006.

Carol Rowe (CSH)

Carol Rowe

Service List

Gina Roccaforte
Kyle Rominger
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/792-5544
217/782-9807 (fax)

Thomas G. Safley
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776
217/528-4900
217/523-4948 (fax)

William G. Dickett
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603
312/853-7000
312/953-7036 (fax)

Barbara Magel
Karaganis & White, Ltd.
414 North Orleans Street
Suite 801
Chicago, IL 60610
312/836-1177
312/836-9083 (fax)

Bill Fleischi
Illinois Petroleum Marketers Association
112 West Cook Street
Springfield, IL 62704
217/793-1858

Joe Kelly, PE
United Science Industries, Inc.
6295 East Illinois Highway 15
P.O. Box 360
Woodlawn, IL 62898-0360
618/735-2411
618/735-2907 (fax)

Robert A. Messina
General Counsel
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, IL 62703
217/523-4942
217/523-4948

Kenneth James
Carison Environmental, Inc.
65 East Wacker Place
Suite 1500
Chicago, IL 60601

Lisa Frede
Chemical Industry Council of Illinois
2250 East Devon Avenue
Des Plaines, IL 60018
(847) 544-5995

Michael W. Rapps
Rapps Engineering & Applied Science
821 South Durkin Drive
P.O. Box 7349
Springfield, IL 62791-7349
217/787-2118
217/787-6641 (fax)

Joel J. Sternstein, Assistant Attorney General
Matthew J. Dunn, Division Chief
Office of the Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
312/814-2550
312/814-2347 (fax)

Tom Herlacher, P.E.
Principal Engineer
Herlacher Angleton Associates, LLC
8731 Bluff Road
Waterloo, IL 62298
618/935-2261
618/935-2694 (fax)

Dorothy M. Gunn, Clerk of the Board
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
312/814-3956

James E. Huff, P.E.
Huff & Huff, Inc.
512 West Burlington Avenue
Suite 100
LaGrange, IL 60525

Scott Anderson
Black & Veatch
101 North Wacker Drive
Suite 1100
Chicago, IL 60606

Melanie LoPiccolo, Office Manager
Marlin Environmental, Inc.
1000 West Spring Street
South Elgin, IL 60177
847/468-8855

Claire A. Manning
Brown, Hay & Stephens, LLP
205 South Fifth Street
Suite 700
P.O. Box 2459
Springfield, Illinois 62705-2459
(217) 544-8491
(217) 241-3111 (fax)

Brian Porter
Terracon
870 40th Avenue
Bettendorf, IA 52722
563/355-0702

Jonathan Furr, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 72702-1271
217/782-1809
217/524-9640 (fax)

Glen Lee, Manager
Wendler Engineering Services, Inc.
1770 West State Street
Sycamore, IL 60178
815/895-5008

A.J. Pavlick
Great Lakes Analytical
1380 Busch Parkway
Buffalo Grove, IL 60089
847/808-7766

Joseph W. Truesdale, P.E.
CSD Environmental Services, Inc.
2220 Yale Boulevard
Springfield, IL 62703
217/522-4085

David L. Rieser, Partner
McGuire Woods LLP
77 West Wacker Drive
Chicago, IL 60601
312/849-8249

Kurt Stepping
Director of Client Services
PDC Laboratories
2231 West Altorfer Drive
Peoria, IL 61615
309/692-9688

Daniel J. Goodwin
Secor International, Inc.
400 Bruns Lane
Springfield, IL 62702

Richard Andros, P.E.
Environmental Consulting & Engineering, Inc.
551 Roosevelt Road, #309
Glen Ellyn, IL 60137

Steven Gobelman
Illinois Department of Transportation
2300 Dirksen Parkway
Springfield, IL 62764

Jennifer Goodman
Herlacher Angleton Associates, LLC
522 Belle Street
Alton, IL 62002

Ron Dye
President
Core Geological Services
2621 Monetga
Suite C
Springfield, IL 62704
(217) 787-6109

Monte Nienkerk
Clayton Group Services, Inc.
3140 Finley Road
Downers Grove, IL 60515
630/795-3207

Thomas M. Guist, PE
Team Leader
Atwell-Hicks, Inc.
940 East Diehl Road
Suite 100
Naperville, IL 60563
630/577-0800

Dan King, Team Leader
United Science Industries, Inc.
6295 East Illinois Hwy 15
Woodlawn, IL 62898
618/735-2411

Terrence W. Dixon, P.G.
MACTEC Engineering & Consulting, Inc.
8901 N. Industrial Road
Peoria, IL 61615

Collin W. Gray
SEECO Environmental Services, Inc.
7350 Duvon Drive
Tinley Park, IL 60477

George F. Moncek
United Environmental Consultants, Inc.
119 East Palatine Road
Palatine, IL 60067

Tina Archer, Attorney
Greensfelder, Hemker & Gale
10 South Broadway
Suite 2000
St. Louis, MO 63104
314/241-9090

Erin Curley, Env. Department Manager
Midwest Engineering Services, Inc.
4243 West 166th Street
Oak Forest, IL 60452
708/535-9981

Russ Goodiel, Project Manager
Applied Environmental Solutions, Inc.
P.O. Box 1225
Centralia, IL 62801
618/533-5953

Eric Minder
Senior Environmental Engineer
Caterpillar, Inc.
100 NE Adams Street
Peoria, IL 61629
(309) 675-1658

Ken Miller, Regional Manager
American Environmental Corp.
3700 West Grand Ave., Suite A
Springfield, IL 62707
217/585-9517

Jarrett Thomas
Vice President
Suburban Laboratories, Inc.
4140 Litt Drive
Hillside, IL 60162
(708) 544-3260

Daniel Caplice
K-Plus Environmental
600 West Van Buren Street
Suite 1000
Chicago, IL 60607
(312) 207-1600

208776v1

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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

Proposed Rule. Subdocket B

ADDITIONAL COMMENTS FROM CW^{3}M COMPANY, INC. FOR THE ILLINOIS POLLUTION CONTROL BOARD's AMENDMENTS TO 35 ILL. ADM. CODE 734 AND 35 ILL. ADM. CODE 732 SUBDOCKET B

The following additional comments have been prepared by the CW^{3}M Company in response to and follow-up on testimony presented at the March 23, 2006 hearing.

In the Board's January 5, 2006 Opinion and Order, several requests were made of both the Agency and the Public to provide input and additional testimony regarding professional services, scopes of work and the merit of lump sum payment amounts. A subsequent Hearing Officer Order dated February 16, 2006 requested additional testimony regarding the Economic Impact Study and ineligible costs listed in Sections 732.606(ddd) and (eee) and 734.630(aaa) and (bbb).

The March 23, 2006 hearing centered on scopes of work and the Agency's Subdocket B proposal for lump sum rates for professional consulting services. At the hearing, the Agency testified that its current proposal was developed in response to a request from the Board to assign hours to the various LUST tasks. The Agency also attempted a different tactic than it used at prior hearings

for developing proposed lump sum rates. We concur that the Board requested the number of hours for LUST tasks; however, the Agency ignored a number of other Board requests and opinions. Specifically, in the December 1, 2005 Opinion and Order, the Board stated, "the rule must include a scope of work for the tasks for which the rules specify lump sum payment amounts and lump sum rates which more accurately reflect current and historical reimbursement rates." *Id.*, p. 60. Fundamentally, the Agency's proposal did little in the way of moving this proposed rule forward as it has already been determined that the rates proposed in Subdocket A were inadequate and not supported by the record.

The Subdocket B proposal is also not supported by any meaningful data, is still inadequate and is nowhere near reflecting current market rates or historical reimbursement rates. Comparing the Agency's proposed lump sum rates to USI's evaluation of sixty-nine randomly selected sites demonstrates that the Agency's proposed rates fall severely short. The Agency attempted to support its previous proposal with testimony to the effect that the first set of lump sum rates were developed using historical reimbursement rates. However, considerable testimony over the past two years illuminates the flaws in the Agency's data collection and evaluation and negates the claim that those rates were consistent with historically approved rates.

The table below graphically describes how the Agency has lowered what they consider to be reasonable costs over the last 5 years. The dollar amounts are taken directly from the Agency rate sheets obtained through a Freedom of Information Act request and testimony provided in this rulemaking. The numbers were based on the following typical site classification scenario:

- Method 2 Site Classification
- Water table @ 10' below land surface
- 2 Potential Migratory Pathways
- 4 Monitoring Wells and 1 Observation Well installed
- Indicator Contaminants: BETX & PNAs
- 2 Drums of soil & 2 Drums of water for disposal

	IEPA Rate Sheets			
Categories	**March 2001**	**January 2004**	**Subpart H**	**SubDocket B**
Investigation	$8,800.00	$8,800.00	$4,797.50	$4,797.50
Analysis	$4,700.00	$4,700.00	$2,342.00	$2,342.00
Personnel	$13,400.00	$9,870.00	$9,870.00	$8,540.00
Equipment	$1,000.00	$1,000.00	$0.00	$0.00
FP & Other	$900.00	$900.00	$90.00	$90.00
Handling Charge	$1,300.00	$1,300.00	$813.95	$813.95
Total	**$30,100.00**	**$26,570.00**	**$17,913.45**	**$16,583.45**
Change		**-11.7%**	**-40.5%**	**-44.9%**

As this table clearly demonstrates, the Agency proposes to lower reimbursement amounts. The cost of doing business and conducting corrective action have not decreased by nearly 45% in the last 5 years.

We were pleased, as well as relieved, when the Board issued its December 6, 2005 Order and Opinion recognizing the inadequacy of the lump sum payment structure as proposed. As our businesses and livelihoods were at stake, CW^3M, and other participants took these proceedings very seriously and devoted a tremendous amount of resources to facilitate a workable rule. Based upon the March 23, 2006 hearing and Agency testimony regarding its Subdocket B proposal, we have summarized what we believe to be the flaws in the lump sum rates and payment structure in the specific comments described below.

1. *The proposed rates do not adequately reflect current market rates or what has historically been deemed reasonable.* In fact, during the March 23, 2006 hearing, the Agency admitted that current market rates and historically approved rates were not even considered.

2. *The proposed scopes of work are not detailed enough to represent typical situations or benchmarks that correlate to the hours estimated.* The Agency testified that it took into account site variability when estimating the number of hours that it would take

consultants to perform the numerous, varied steps for all the stages of early action, site investigation, corrective action, report preparation, etc;. however; the Agency never satisfactorily described how that was accomplished. Furthermore, when questioned at hearing, Agency witnesses could not estimate or recall the number of hours it took them to simply review of a plan or a report that was submitted by consultants. The Agency witnesses testified that they could not estimate the number of hours allotted to review a given report because of the number of variables between sites and reports. The inability of Agency witnesses to state how long it takes to review a report illustrates the point that PIPE and the various consultants were making - sites and plans are not identical and field activities can drive the time up or down depending on the amount of work completed. Since the Agency cannot estimate the number of hours that it takes for them to simply review a report describing work done by others, the Agency has no credibility when it comes to telling consultants how long it should take the consultants to perform the numerous varied steps for all the stages of early action, site investigation, corrective action, report preparation, etc. In short, the Agency's inability to testify about the amount of time it takes Agency personnel to do something emphasizes the point that PIPE and its various members have been trying to make: there is too much variability between sites to set lump sum payment amounts for consultant's work as the Agency proposes.

3. As discussed in testimony, the length of time to prepare a Stage II report or Stage III plan for example, directly correlates to the amount of reportable field work (i.e., boring logs, well completion reports, logging/tabulating analytical data, etc.). Setting lump sum payment amounts is clearly inappropriate. Consultants should be paid on a time-and-materials basis. If the Agency wishes to develop sufficient data to set rates for certain steps in the process, then details scopes of work should be provided.

4. *The hours estimated for tasks are merely guess work.* The March 23, 2006 hearing and Agency testimony indicate that the hours assigned to tasks were based upon Agency experience. However, the Agency's experience is largely in the form of reviewing reports, not actually completing any of the specific tasks. In fact, while Agency staff has

a combined 140 years of experience, very little of that experience is based on actually conducting the work or preparing the reports. Without such basic information, the Agency has no support for the hours it determined as allowable for consultants to do their work. As mentioned above, even though the Agency testified that it accounted for variability between sites when it determined lump sum payment amounts for consultants, the Agency could never explain how it derived those estimates and Agency witnesses could not even estimate how long it took them to do their own work.

5. *Remote theorization is not appropriate for this program.* Mr. Gary King testified that trying to gear a program off of the possibility that something might happen ("remote theorization") has no merit (Page 98 of transcripts). Yet, the Agency's guesswork at rate setting proposes to do just that. These regulations, as the Board recognized, have serious economic issues, need to be based on much more than guesswork. Moreover, the IEPA should want to collect data because of the "remote theorization" that all consultants are going to gouge them during the collection process.

6. *Data is not available in a uniform manner to evaluate costs.* In the January 5, 2006 Opinion and Order, the Board asked the question of the Agency and the participants, "should Professional Consulting Services be Reimbursed on a Time and Materials Basis?" The Board specifically asked whether or not adequate information was available in the Agency's database to determine lump sum payments. If not, the Board sought to understand what the Agency's opinion was regarding collection of such data. In reviewing Agency testimony, we read some conflicting statements. On pages 53 and 54 of the March 23, 2006 transcript, Mr. Clay states, "I don't think we need to do a massive data collection process for the next five years to establish these rates. I think we have the data to put these into rules right now". However, on page 49 of the same transcript, Mr. Clay states, "we don't have historical data based on that breakdown of each task." Based upon the Agency's testimony and USI's statistical evaluation that was submitted for the record, it is apparent that the data is not available in a uniform manner to evaluate costs any more specifically than according to phases (i.e., early action, site classification or

corrective action) as presented by USI. Therefore, use of historical data to evaluate costs by activity or defined scopes of work is not possible.

COLLECTION OF DATA ISSUES

CW^3M appreciates that the Board will not order the Agency to collect data. We also appreciate the Agency's concerns regarding the availability of resources to collect the data. Based on review of Mr. Doug Clay's March 23, 2006 testimony, our interpretation of his comments is that the Agency's opposition does not lie with the data collection itself, but that the collection of data in the manner proposed by USI would place intensive resource requirements and burdens on owners/operators or their consultants. Mr. Clay is likely correct. Simply modifying our accounting system to accommodate for the Agency's new reimbursement phase codes and the changes resulting from Subpart H has been hard felt by our firm. In fact, an entirely new system is being developed. Nonetheless, we understand that collection of such data is necessary for the Agency to develop its tools for determining reasonableness and have supported such an effort in the past.

However, there has been much discussion about the resources at the Agency needed to collect data. In light of this, some of the Agency's responses regarding data collection in the record are confusing and perhaps conflicting. For example, when questioned during the March 23, 2006 hearing as to the implementation of the phase codes, Mr. Brian Bauer testified that the Agency needed the information for contingency plans and that the codes had nothing to do with recordkeeping. We have yet to decipher what he meant by that testimony. The use of the phase codes appeared obvious as a tool for collection of data. Testimony by Mr. Clay in response to questions by Board Member Girard, indicated that the Agency is in fact going to be collecting data, but not electronically and may not have the resources to tabulate and evaluate the data. We and many other participants, interpreted the Agency use of the phase codes as a step toward data collection. We also interpreted this step as a positive response to move the rate issue forward in a positive and meaningful manner.

In response to any IEPA claims of lacking resources and length of time to collect the data, we would like to summarize our perceived differences:

	IEPA's Testimony	CW^3M testimony
Data Collection Period	5 Years	6 to 12 months
Resources Required	Significant – Unspecified	A Spreadsheet program & 2-4 hours a day of one person
Quality Control	None	Agency is currently reviewing reimbursements and budgets and making deductions, they can continue to do that

The Agency has voiced its opposition in testimony to collecting data for development of future rates. In addition to resource issues, the Agency contends that none of the data used would go through a reasonableness determination or have any quality control. Mr. Gary King testified that the Agency has likely overpaid during the past two years because it did not have the legal tools necessary to gauge the reasonableness of the data. To the contrary, the Agency is, and was prior to March 1, 2006, using some kind of reasonableness tool to evaluate budgets and payment requests. CW^3M's clients have received reimbursement review letters with deductions specifically based on costs not being reasonable as submitted. Additionally, several of the deductions were made on early action payment requests where technical staff made deductions based on a reasonableness determination, despite Mr. Clay's testimony (see page 24 of transcripts). Furthermore, we have received rejections and modifications of budgets from technical staff regarding rates for excavation/disposal and personnel hours. In some cases, Agency project managers asked for additional justification of personnel hours or other costs for specific tasks if a proposed budget appeared high. Therefore, we have concluded that quality control and reasonableness determinations would be made on data incorporated into a database.

PROFESSIONAL REIMBURSEMENT

Fundamentally, we believe that professional services should be reimbursed on a time-worked and materials-used basis. The Agency has already secured maximum payment amounts for contractor services and has established an hourly rate schedule for consulting service personnel.

Early in these rulemaking proceedings, testimony was provided indicating that contractor services, particularly excavation, transportation and disposal, were the most significant expense to the Fund. These costs have now been limited, with provisions for extraordinary circumstances and costs.

We believe that for the long-term success of the program and to reduce future contention between the Agency and those it regulates, scopes of work must be well defined and incorporated into the Board rules when costs are directly tied to the scopes. This is necessary to protect consultants from being asked to conduct additional work at no cost. If the Agency collects and maintains credible data on the costs for various scopes of work, it can utilize the data to support its decisions when a consultant's costs appear too high or allow the consultant to justify why costs at a particular site are higher than normally seen by the Agency. To help do this, the Agency must collect statistically valid data for all costs associated with LUST compliance and remediation. Additionally, there are advantages to developing the scopes outside of the rulemaking process; especially if professional consulting services are reimbursed solely on a time and materials format. The scope could be periodically updated to make it more dynamic and easily adaptable to regulatory changes. As an example, the recently proposed "Right to Know" rules for Subtitle N expanded requirements for well surveys and notifications.

Now, the reimbursement protocol can be further streamlined be cause the Agency now has multiple tools to do so. Foremost of these tools would be providing a standardized task list with an associated scope of work as a necessary step to make the LUST program run more effectively. Use of a standardized task list will allow consultants to bill in a consistent manner and provide the Agency with the opportunity to clearly identify cost submittals outside the norm.

Further, we believe that even after collecting meaningful data, there will not be a normal distribution of the data for most tasks conducted by professionals, thereby making most tasks not candidates for lump sum rate establishment. Only a few tasks, such as the Stage One Site Investigation Plan, are based on quantifiable deliverables with few variations between sites. Most tasks, such as Stage Two plans, will be variable, dependent upon size of site, number of

samples, drilling locations, amount of data to interpret and report, etc. The data collected by USI and presented to the Board illustrates the variability in consulting costs among sites.

The Agency has indicated in previous testimony that the scope of work is whatever it takes to comply with the regulations. The professional consultant's job is to do just that. For some sites it takes less and some more. The reimbursement framework should allow the consultant to do whatever it takes to assist the owner/operator in achieving compliance and closure.

CW^3M did not prepare hourly estimates for tasks as requested by the Board as we felt is was premature to do so before scopes of work were finalized and because we would have been extracting information from a few recent sites rather than conducting an exhaustive evaluation of all of our own data. We, similar to the Agency, do not collect data for this type of evaluation. We track cost data in differing formats and to extract per-task costs would be unduly burdensome. PIPE was criticized in a previous hearing for attempting to develop number of hours per task. We agree with PIPE today that providing that type of information is merely estimating and that rules should be developed on fact and statistically sound inputs. If the Board still requests such information once the scopes are finalized, we are willing to attempt it, but it would be only an estimation. If scopes of work and lump sum payments are developed for specific stages in the remediation process, the issue of average hourly rates would be addressed and quantified; we do not believe this is the appropriate path to take.

Further, providing hours or estimates of each task first requires more detailed scopes of work or quantifiable variables. For example, oversight of an UST removal, to estimate the hours, factors such as number of tanks, size of tanks, product type stored in tanks, number of tank beds, number and length of piping runs and pump islands, quantity of soil for disposal, location of the site, whether or not additional liquids have accumulated and require disposal, temperature, etc. need be known. In our consulting practices, we typically develop cost estimates on narrowly defined scopes, which include all of the above factors.

Generally, we are pleased that the Board recognized the importance of scopes of work and began the process of developing a framework to incorporate scopes of work into the reimbursement process.

CONSULTATION REIMBURSEMENT

We would like to re-iterate that, based upon the discussions from Page 74-78 of the transcripts, CW^3M believes that consulting with and corresponding with clients and the Agency is a vital part of the corrective action process. As such, these consultation fees should be considered an eligible corrective action cost and should remain as part of the scope of work that is reimbursable. During testimony at the March 23 hearing, Mr. Clay indicated no reason why such costs could not be proposed as part of these proceedings, and we therefore propose that the following eligible cost be inserted into the regulations to coincide with the addition in the scopes of work:

> 734.625(a)(21): Costs associated with communications between the property owner, the tank owner/operator, the consultant and the Agency relative to the requirements of this Part.

During the rulemaking hearing on March 23, 2006, the Agency also testified that consultant's costs to meet with the UST owner/operator and discuss corrective action alternatives with him/her, and to advise the consultant's clients regarding corrective action are not reimbursable costs because they are not "corrective action." This position is wrong. The Illinois Environmental Protection Act ("Act") defines "corrective action" as "activities associated with compliance with the provisions of Sections 57.6 and 57.7 of this Title." 415 ILCS 5/57.2. Section 57.6 covers early action activities and Section 57.7 covers site investigation and corrective action.

In a prior Board decision, *City of Roodhouse v. Illinois EPA*, PCB No. 92-31, decided September 17, 1992, the Board determined that corrective action costs included a consultant meeting with and advising its clients regarding corrective action. In that particular case, the City of Roodhouse provided an alternative water supply to its residents when the City's wells became

contaminated from leaking USTs. The Agency denied as a corrective action cost the cost of the consultants attending City Council meetings to advise the City Council with respect to the decisions the City Council had to make regarding an alternative water supply. The Board noted "there is nothing ministerial or routine about the meetings in this case, and we cannot envision how the complex corrective actions could have proceeded without this City Council decisions or how the Council could have made the decisions responsibly, . . . without being technically or legally informed on an ongoing basis, or how these decisions could have been discussed and made other than in an open meeting." *Id.*, page 18. The Board concluded that, not only were the consultant's fees while attending the City Council's meetings reimbursable corrective action costs, but that the attorney's fees for the City's attorney to attend the meetings and advise the City Council regarding an appropriate course of action were corrective action costs also. Accordingly, there is ample precedent in Board decisions as well as through prior Agency decisions that costs for consultants to advise their clients and meet with their clients are correction action costs.

It should also be noted that, at the time of the *Roodhouse* decision, the UST Fund was in financial difficulties; even so, the Board noted that the Agency does not have statutory authority to try to preserve the Fund.

> The Board concludes that the Act does not allow the Agency to determine the scope of corrective action costs based on the sufficiency of the Fund and then deny payment because the costs are unreasonable because the Fund must be preserved. The Agency cannot decide who does or does not get paid by shifting the scope of what constitutes corrective action depending on the availability of monies from the Fund. *Id.*, pp. 17-18.

INELIGIBLE COSTS LISTED IN SECTIONS 732.606(ddd) AND (eee) AND 734.630(aaa) AND (bbb)

CW^3M previously provided testimony regarding the elimination of payment of remediation costs associated with Tier 1 objectives and forcing the use of a groundwater ordinance as an institutional control where one is already in existence. We now provide the following additional comments.

1. The characterization of these items as ineligible costs was a last minute revision to the proposed regulations. We believe this to be a short term fix to the Fund balance that could have negative affects on property owners and groundwater.

2. The Groundwater Protection Act was a driving force behind registration and regulation of underground storage tanks as threats to groundwater as a vital resource in Illinois. The Groundwater Protection Act was developed to identify and control potential sources of groundwater contamination to preserve the resource for long-term use. The Agency supported its proposed changes based on the assumption that if a groundwater ordinance was present, there is no potential exposure or threat to human health and the environment. We do not believe that assumption to be true and offer scenarios where other threats or exposure are possible.

3. There is insufficient data generated by LUST investigations to determine the far-reaching effects of contamination in shallow aquifers. As such, there is no support for the assumption that leaving groundwater contamination in place where there is an ordinance will have no impact on drinking water resources in the State. If a shallow aquifer or perched groundwater is contaminated, it is usually unknown if that contamination is confined from other aquifers. In other words, just because sheen is absent does not mean that body has not or could not be impacted. Shallow aquifers or perched groundwater can be hydraulically connected to surface bodies of water, which could be tributary to a source of drinking water. The current LUST regulations require inspection of surface bodies of water within 100 feet of the LUSTs. Concentrations above a point source discharge level could be present without any visual indication.

4. A detailed discussion of a site as well as future implications of the eligibility of corrective action costs in areas governed by a groundwater ordinance took place during the March 23, 2006 hearing. After reviewing the testimony, it appears that conflicting answers were offered by the Agency regarding its interpretation of the rule and its method of implementation (pages 104-109 of the transcripts). Our conclusion is that this issue requires further research, input from the Agency and clarification of how it will be implemented as written, before the Board makes a final determination. In our pre-filed

testimony, we offered a scenario by which contaminated groundwater could cause threats to human health and the environment even when groundwater is not used for potable purposes. As most people have experienced or are aware of, basements and foundations are not all waterproof. Often, improvements are made to either keep water out or collect and route it by sump pumps to another point of drainage. CW^3M has been involved with a site that experienced a severe example of exposure by contaminated groundwater leaking into a basement and causing a fire and vapor hazard. We described a hearing a very specific situation where we believe that the ineligibility of groundwater remediation in a locality where a groundwater ordinance exists is shortsighted. At that site, contaminated groundwater leaked into the basement and sumps of the building next door and caused a fire and inhalation hazard.

We have had multiple sites where groundwater contamination has gotten into basements or crawl spaces from a leaking underground storage tanks. In each of these cases, the enclosed area has been vented as a short-term solution and then the groundwater remediated as a long-term solution. If this situation occurred in a locality with a groundwater ordinance, all of the criteria for using a groundwater ordinance to obtain a NFR Letter in 35 Ill. Adm. Code 742 would be satisfied, yet it would be irresponsible to close the site when the groundwater contamination is affecting someone's residence and creating human exposure at unacceptable levels. Under the 734 rules, any groundwater remediation would be ineligible for reimbursement if a groundwater ordinance is in effect. TACO in its present form, does not account for inhalation from groundwater contamination or vapors. The groundwater exposure route only considers exposure by groundwater ingestion. Thus, such a site could meet the TACO requirements for closure but still present serious exposure threats. We believe that at a minimum, groundwater should be remediated to the point where contamination is no longer present in the enclosed area and groundwater modeling indicates that contamination will not return there

5. We believe Gary King said it appropriately on page 116 of the hearing transcripts, when he said the TACO rules "were intended to set up a system through which owners could develop remediation objectives for their sites." They were not intended to account for

every possible situation that might occur. We believe that it is naive to assume that the TACO rules are all encompassing and there are no holes in them (nothing is perfect). In the past, this did not matter because an owner, like the one described above, could simply choose to remediate the site to make sure he is no longer affecting his neighbor. The Agency's proposal would, as a practical matter, change the use of TACO from being an owner's choice to forcing an owner to use certain aspects of it. This is not something for which it was designed and for this reason, there are bound to be unforeseen negative impacts. At a minimum, we believe that the ineligible cost listed as 734.630(bbb) should include language which allows for site-specific circumstances, such as the one presented above, to remain eligible for reasonable reimbursement costs.

6. At the March 23, 2006 hearing, the Agency gave conflicting answers to questions regarding eligibility of groundwater remediation within an area governed by an ordinance beyond the early action period. On pages 106-107 of the transcripts, Mr. Clay responded to the question of eligibility for mitigating vapor exposure created by contaminated groundwater by referring to the early action requirements by stating that eligibility could be available using the provisions for vapor hazards or health hazards created by those vapors. However, later in the discussion, on pages 108-109, when asked if the LUST program would require remediation of an exposure hazard created by dissolved gasoline in groundwater, Mr. Clay responded that remediation of the exposure would not be required if there was an ordinance or ELUC in place on that property. Because the vapor intrusion pathway is not currently addressed under TACO, the entire exposure pathway is ignored, after the early action phase. So again, we ask, under what mechanism is vapor intrusion remediation an eligible expense given the ineligibility language of 734.630(bbb)? The record is not clear as to how the Agency will implement this provision as written. We believe the assumption of the rule as initially proposed was that as long as TACO protected exposure routes and could be used as an institutional control, human health and the environment would be protected. However, given the hole in

TACO to address the vapor route under the UST program,[1] the final language must be adequate to protect human health and the environment. While revisions of TACO were discussed and changes are on the horizon, the current rule requires modification to meet the other requirements of 732/734, as does early action. This cost should not be ineligible for reimbursement.

7. If the Board feels compelled to continue to support the idea of restricting groundwater remediation within areas where a groundwater ordinance is in place, we propose the following language to clarify eligible and ineligible costs.

Eligible Costs:

734.630(gg)(6) Costs associated with remediation made necessary due to the repeal of a groundwater ordinance used as an institutional control.

734.630(bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated unless the impacted groundwater may cause human health exposure or safety risks beyond those addressed by the groundwater ingestion pathway.

If the Agency is unwilling to allow owners or operators back into the LUST Program if a problem later arises as a result of forcibly imposed TACO alternatives, then the Board should not consider requiring its use. The applicability of TACO should be left up to the discretion of the owner or operator or the property owner and not be restrictive of protection of human health and the environment.

[1] Note that the vapor intrusion route has been addressed in other cleanup programs that use TACO. *See* attached copy of an NFR Letter that requires the use of barriers to prevent potential exposure to chlorinated solvent from its vaporization from groundwater. (Identifying information has been redacted.)

8. The issue of property values, which may be reduced due to impacts of LUSTs, has been raised multiple times throughout these proceedings. The Agency has relied on forcing use of institutional controls to avoid remediation costs, particularly of off-site properties. However, it should be noted that the indemnification language of the regulations regarding bodily injury or property damage resulting from a release from a LUST, make such impacts eligible corrective action costs.

9. The Agency currently requires that the LUST owner or operator define the extent of contamination to Tier 1 Residential objectives. In order to do this, the consultant, on behalf of the owner or operator, contacts potentially affected neighboring or adjoining property owners and requests access. In accordance with the Agency's current policy and proposed regulatory language, the property owner is to be notified that legal responsibility to remediate the contamination is the responsibility of the UST owner or operator and that failure to remediate contamination from the release may result in threats to human health and the environment and diminished property value. It seems unconscionable to notify an off-site property owner that they may experience loss of property value if remediation does not occur only to then inform them that there will be no remediation, regardless of levels of contamination, just because the groundwater will not be consumed in the immediate future. A community could retract its ordinance at any time, once again potentially jeopardizing human health. In such cases, off-site property owners should have the discretion of remediating their property or relying on an institutional control to address whatever levels of contamination may be present. The potential cost savings of the Agency's proposal may be overshadowed by increased lawsuits and indemnification costs, which have historically been rare because Agency policy has been to allow on and off-site property owners decision-making control over their own property. Thus, the regulations must allow reimbursement of costs to cleanup property to TACO tier I objectives if that is what the property owner requires, whether the property owner is off-site or on-site.

We would like to thank the Board for creating Subdocket B and considering further comments on these very important issues.

Dated: May 8, 2006

Respectfully submitted,

CW^{3}M Company

By: Carol Rowe (CSH)

and:

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313

CHDS01 NSTOKES 331772v1

PREPARED BY:

Name: [redacted]

Address: [redacted]

RETURN TO:

Name: [redacted]

Address: [redacted]

2000-26721

RECORDED
ROCK ISLAND COUNTY, ILL.
2000 OC 18 PM 2:13
RECORD BOOK _____ PAGE _____
RECORDER

THE ABOVE SPACE FOR RECORDER'S OFFICE

This Environmental No Further Remediation Letter must be submitted by the remediation applicant within 45 days of its receipt, to the Office of the Recorder of Rock Island County.

Illinois State EPA Number: 1610655158

[redacted] the Remediation Applicant, whose address is [redacted] has performed investigative and/or remedial activities for the remediation site depicted on the attached Site Base Map and identified by the following:

1. Legal description:

LOT 1 IN KINGS FARM SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 NORTH, RANGE 1 WEST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF EAST MOLINE, ROCK ISLAND COUNTY, ILLINOIS, THE BOUNDARY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1 IN KINGS FARM SUBDIVISION; THENCE NORTH 89 DEGREES 37 MINUTES 00 SECONDS WEST ON THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 390.93 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN KINGS FARM 4TH ADDITION; THENCE NORTH 00 DEGREES 20 MINUTES 27 SECONDS EAST ON THE EAST LINE OF SAID LOT 1 IN KINGS FARM 4TH ADDITION, A DISTANCE OF 210.73 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE WESTERLY ON A CURVE TO THE LEFT ON THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 119.16 FEET, SAID CURVE HAVING A RADIUS OF 625.00 FEET, A CENTRAL ANGEL OF 10 DEGREES 55 MINUTES 24 SECONDS, AND WHOSE LONG CHORD BEARS NORTH 84 DEGREES 03 MINUTES 30 SECONDS WEST, A CHORD DISTANCE OF 118.98 FEET TO A POINT; THENCE NORTH 89 DEGREES 28 MINUTES 41 SECONDS WEST ON SAID NORTH LINE, A DISTANCE OF 176.39 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 IN KINGS FARM 4TH ADDITION; THENCE NORTH 01 DEGREE 41 MINUTES 42 SECONDS EAST ON THE EASTERLY RIGHT-OF-WAY LINE OF KENNEDY DRIVE, A DISTANCE OF 49.84 FEET TO THE SOUTHWEST CORNER OF LOT 2 IN THE REPLAT OF LOT 1 IN KINGS FARM 2ND ADDITION; THENCE SOUTH 89 DEGREES 27 MINUTES 56 SECONDS EAST ON THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 175.21 FEET TO A POINT; THENCE EASTERLY ON A CURVE TO THE RIGHT ON THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 163.49 FEET, SAID CURVE HAVING A RADIUS OF 675.00 FEET, A CENTRAL ANGLE OF 13

DEGREES 52 MINUTES 39 SECONDS, AND WHOSE LONG CHORD BEARS SOUTH 82 DEGREES 42 MINUTES 35 SECONDS EAST, A CHORD DISTANCE OF 163.09 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE NORTHERLY ON A CURVE TO THE LEFT ON THE EAST LINE OF SAID LOT 2, A DISTANCE OF 81.08 FEET, SAID CURVE HAVING A RADIUS OF 675.00 FEET, A CENTRAL ANGLE OF 6 DEGREES 58 MINUTES 13 SECONDS AND WHOSE LONG CHORD BEARS NORTH 07 DEGREES 29 MINIUTES 42 SECONDS EAST, A CHORD DISTANCE OF 81.03 FEET TO A POINT; THENCE NORTH 00 DEGREES 20 MINUTES 15 SECONDS EAST ON THE EAST LINE OF SAID LOT 2, A DISTANCE OF 154.13 FEET TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE NORTH 89 DEGREES 36 MINUTES 29 SECONDS WEST ON THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 87.43 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN KINGS FARM ADDITION; THENCE NORTH 00 DEGREES 21 MINUTES 19 SECONDS EAST ON THE EAST LINE OF SAID LOT 1 IN KINGS FARM ADDITION, A DISTANCE OF 299.91 FEET TO THE NORTHEAST CORNER OF SAID LOT 1 IN KINGS FARM ADDITION; THENCE SOUTH 89 DEGREES 32 MINUTES 47 SECONDS EAST ON THE NORTH LINE OF LOT 1 IN SAID KINGS FARM SUBDIVISION, A DISTANCE OF 225.00 FEET TO A POINT IN THE WEST LINE OF A TRACT DESIGNATED TAX PARCEL SM 59-1; THENCE SOUTH 00 DEGREES 29 MINUTES 37 SECONDS WEST ON THE WEST LINE OF SAID TRACT, A DISTANCE OF 198.45 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89 DEGREES 12 MINUTES 34 SECONDS EAST ON THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 425.14 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00 DEGREES 24 MINUTES 15 SECONDS WEST ON THE WEST LINE OF A TRACT DESIGNATED TAX PARCEL SM 59-3, A DISTANCE OF 129.72 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 26 DEGREES 36 MINUTES 43 SECONDS WEST ON THE WESTERLY LINE OF LOT 2 IN SAID KINGS FARM SUBDIVISION, A DISTANCE OF 507.71 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 8.292 ACRES, MORE OR LESS.

2. Common Address: East of Kennedy Drive and South of 42nd Avenue

3. Real Estate Tax Index/Parcel Index Number: 14556

4. Remediation Site Owner: King's Farm Development LLC

5. Land Use: Residential and/or Industrial/Commercial

6. Site Investigation: Focused

See NFR letter for other terms.

2000-26721

(Illinois EPA Site Remediation Program Environmental Notice)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

(217) 782-6761

THOMAS V. SKINNER, DIRECTOR

September 27, 2000

CERTIFIED MAIL

7000 0600 0025 1669 8279

[redacted]

Re: 1610655158—Rock Island County
East Moline/King's Farm
Site Remediation Program/Technical Reports

Dear [redacted]

The *Focused Soil Sampling & Pathway Evaluation Report*, dated January 10, 2000 (Log No. 00-402) and follow-up correspondence dated August 14, 2000 (Log No. 00-3143) as prepared by Dahl & Associates, Inc. for the King's Farm property has been reviewed by the Illinois Environmental Protection Agency ("Illinois EPA"). The approved remediation objectives at the Site are equal to or are above the existing levels of regulated substances and the above documents shall serve as the approved Remedial Action Completion Report.

The Remediation Site, consisting of 8.29 acres, is located at Kennedy Drive and 42nd Avenue in East Moline, Illinois. Pursuant to Section 58.10 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/1 et seq.), your request for a no further remediation determination is granted under the conditions and terms specified in this letter. The Remediation Applicant, as identified on the Illinois EPA's Site Remediation Program DRM-1 Form (December 23, 1999), is [redacted] Inc.

This focused No Further Remediation Letter ("Letter") signifies a release from further responsibilities under the Act for the performance of the approved remedial action. This Letter shall be considered prima facie evidence that the Remediation Site described in the attached Illinois EPA Site Remediation Program Environmental Notice and shown in the attached Site Base Map does not constitute a threat to human health and the environment for the specified recognized environmental conditions so long as the Site is utilized in accordance with the terms of this Letter.

2000-26721

Conditions and Terms of Approval

Level of Remediation and Land Use Limitations

1) The recognized environmental conditions, as characterized by the focused site investigation, consist of the following:

   a) Regulated substances of concern that have been successfully addressed are detailed in the attached Table A.

Preventive, Engineering, and Institutional Controls

2) The implementation and maintenance of the following controls are required as part of the approval of the remediation objectives for this Remediation Site.

Preventive Controls:

3) At a minimum, a safety plan should be developed to address possible worker exposure in the event that any future excavation and construction activities may occur within the contaminated soil/groundwater as indicated on the Site Base Map. Any excavation within the contaminated soil will require implementation of a safety plan consistent with NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, OSHA regulations (particularly in 29 CFR 1910 and 1926), state and local regulations, and other USEPA guidance. Soil excavated below the water table must be returned to the same depth from which it was excavated or properly managed or disposed in accordance with applicable state and federal regulations.

Engineering Controls:

See Institutional Controls

Institutional Controls:

4) All residences constructed within the cross-hatched area indicated on the attached Site Base Map must incorporate Radon Resistant Construction in accordance with the *City Code of East Moline, Title 7, Health and Sanitation, Chapter 14, Radon Resistant Construction, Sections 1 through 7.* The system must be maintained in proper working order. In addition, if a home is constructed over a crawlspace, the floor of the crawlspace must consist of a concrete slab.

5) Ordinance No. 99-9-OC99082701 (dated September 15, 1999) adopted by the City of East Moline effectively prohibits the installation and use of potable water supply wells in the City of East Moline. This ordinance provides an acceptable institutional control under the following conditions:

   a) The current owner or successor in interest of this Remediation Site who relies on this ordinance as an institutional control shall:

      i) Monitor activities of the unit of local government relative to variance requests or changes in the ordinance relative to the use of potable groundwater at this Remediation Site; and

      ii) Notify the Illinois EPA of any approved variance requests or ordinance changes relative to the use of potable groundwater at this Remediation Site within thirty (30) days after the date such action has been approved.

2000-26721

b) The Remediation Applicant shall provide written notification to the City of East Moline and to owner(s) of all properties under which groundwater contamination attributable to the Remediation Site exceeds the objectives approved by the Illinois EPA. The notification shall include:

i) The name and address of the local unit of government;

ii) The citation of the ordinance used as an institutional control in this Letter;

iii) A description of the property for which the owner is being sent notice by adequate legal description or by reference to a plat showing the boundaries;

iv) A statement that the ordinance restricting the groundwater use has been used by the Illinois EPA in reviewing a request for groundwater remediation objectives;

v) A statement as to the nature of the release and response action with the name, address, and Illinois EPA inventory identification number; and

vi) A statement as to where more information may be obtained regarding the ordinance.

c) Written proof of this notification shall be submitted to the Illinois EPA within forty-five (45) days from the date of this Letter to.

Robert E. O'Hara
Illinois Environmental Protection Agency
Bureau of Land/RPMS Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

d) The following activities shall be grounds for voidance of the ordinance as an institutional control and voidance of this Letter:

i) Modification of the referenced ordinance to allow potable uses of groundwater;

ii) Approval of a site-specific request, such as a variance, to allow use of groundwater at the Remediation Site or at any property identified in a) iii) of the condition of approval;

iii) Failure to provide written proof to the Illinois EPA within forty-five (45) days from the date of this Letter of written notification to the City of East Moline and affected property owner(s) of the intent to use Ordinance 99-9-OC99082701 as an institutional control at the Remediation Site; and

iv) Violation of the terms and conditions of this No Further Remediation letter.

Other Terms

6) Where an institutional control is used to assure long-term protection of human health (as identified under Paragraph 4 of this Letter), the Remediation Applicant must record a copy of this legal mechanism (e.g., ordinance adopted and administered by a unit of local government; or agreement between a property owner and a highway authority) along with this Letter.

7) Where the Remediation Applicant is not the sole owner of the Remediation Site, the Remediation Applicant shall complete the attached *Property Owner Certification of the No Further Remediation Letter under the Site Remediation Program* Form. This certification, by original signature of each property owner, or the authorized agent of the owner(s), of the Remediation Site or any portion thereof who is not a Remediation Applicant shall be recorded along with this Letter.

8) Further information regarding this Remediation Site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:

Illinois Environmental Protection Agency
Attn: Freedom of Information Act Officer
Bureau of Land-#24
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

9) Pursuant to Section 58.10(f) of the Act (415 ILCS 5/58.10(f)), should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide notice to the current title holder and to the Remediation Applicant at the last known address. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of this cause. Specific acts or omissions that may result in the voidance of the Letter under Sections 58.10(e)(1)-(7) of the Act (415 ILCS 5/58.10(e)(1)-(7)) include, but shall not be limited to:

a) Any violation of institutional controls or the designated land use restrictions;

b) The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;

c) The disturbance or removal of contamination that has been left in-place in accordance with the Remedial Action Plan. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected consistent with the Remedial Action Plan;

d) The failure to comply with the recording requirements for this Letter;

e) Obtaining the Letter by fraud or misrepresentation;

f) Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment;

g) The failure to pay the No Further Remediation Assessment Fee within forty-five (45) days after receiving a request for payment from the Illinois EPA;

h) The failure to pay in full the applicable fees under the Review and Evaluation Services Agreement within forty-five (45) days after receiving a request for payment from the Illinois EPA.

10) Pursuant to Section 58.19(d) of the Act, this Letter shall apply in favor of the following persons:

a) [redacted] [the Remedial Applicant],

b) The owner and operator of the Remediation Site;

c) Any parent corporation or subsidiary of the owner of the Remediation Site;

d) Any co-owner, either by joint-tenancy, right of survivorship, or any other party sharing a relationship with the owner of the Remediation Site;

e) Any holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, involving the Remediation Site;

f) Any mortgagee or trustee of a deed of trust of the owner of the Remediation Site or any assignee, transferee, or any successor-in-interest thereto;

g) Any successor-in-interest of the owner of the Remediation Site;

h) Any transferee of the owner of the Remediation Site whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest;

i) Any heir or devisee of the owner of the Remediation Site;

j) Any financial institution, as that term is defined in Section 2 of the Illinois Banking Act and to include the Illinois Housing Development Authority, that has acquired the ownership, operation, management, or control of the Remediation Site through foreclosure or under the terms of a security interest held by the financial institution, under the terms of an extension of credit made by the financial institution, or any successor-in-interest thereto; or

k) In the case of a fiduciary (other than a land trustee), the estate, trust estate, or other interest in property held in a fiduciary capacity, and a trustee, executor, administrator, guardian, receiver, conservator, or other person who holds the remediated site in a fiduciary capacity, or a transferee of such party.

11) This letter, including all attachments, must be recorded as a single instrument within forty-five (45) days of receipt with the Office of the Recorder of Rock Island County. For recording purposes, the Illinois EPA Site Remediation Program Environmental Notice attached to this Letter should be the first page of the instrument filed. This Letter shall not be effective until officially recorded by the Office of the Recorder of Rock Island County in accordance with Illinois law so that it forms a permanent part of the chain of title for the King's Farm property.

12) Within thirty (30) days of this Letter being recorded by the Office of the Recorder of Rock Island County, a certified copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA to:

Robert E. O'Hara
Illinois Environmental Protection Agency
Bureau of Land/RPMS Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

2000-26721

13) In accordance with Section 58.10(g) of the Act, a No Further Remediation Assessment Fee based on the costs incurred for the Remediation Site by the Illinois EPA for review and evaluation services will be applied in addition to the fees applicable under the Review and Evaluation Services Agreement. Request for payment of the No Further Remediation Assessment Fee will be included with the final billing statement.

If you have any questions regarding this correspondence, you may contact the Illinois EPA project manager, John Richardson, at 217/782/6761.

Sincerely,

Lawrence W. Eastep, P.E., Manager
Remedial Project Management Section
Division of Remediation Management
Bureau of Land

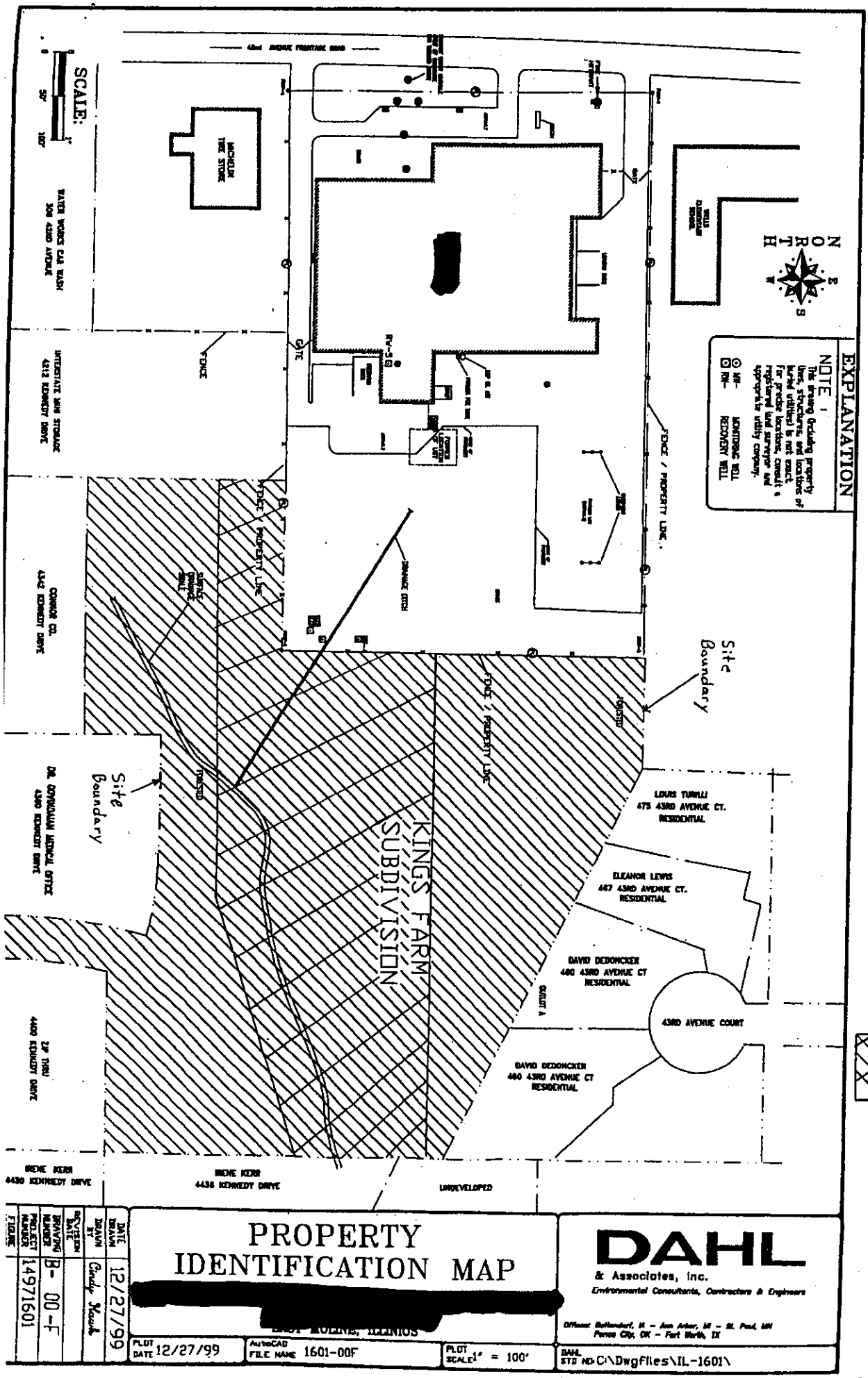
Attachments(3): Illinois EPA Site Remediation Program Environmental Notice
Site Base Map
Property Owner Certification of No Further Remediation Letter under the Site Remediation Program Form

cc: Ronald Vermost
King's Farm Development LLC
2031 52nd Avenue
Moline, Illinois 61265

Robin Husman
Dahl & Associates, Inc.
985 Lincoln Road, Suite 220
Bettendorf, IA 52722-4156

bcc: Records Unit
Bob O'Hara
Jan Zanatello

2000-26721



Site Base Map
1610655158—Rock Island County
East Moline/King's Farm
Site Remediation Program

2000-26721

SITE REMEDIATION PROGRAM
TABLE A: REGULATED SUBSTANCES OF CONCERN
1610655158—KING'S FARM

Volatile Organic Compounds

CAS No.	Compound Name
74-87-3	Chloromethane
74-83-9	Bromomethane
75-01-4	Vinyl Chloride
75-00-3	Chloroethane
75-09-2	Methylene Chloride
67-64-1	Acetone
75-15-0	Carbon Disulfide
75-35-4	1,1-Dichloroethene
75-34-3	1,1-Dichloroethane
540-59-0	1,2-Dichloroethene (total)
67-66-3	Chloroform
107-06-2	1,2-Dichloroethane
78-93-3	2-Butanone
71-55-6	1,1,1-Trichloroethane
56-23-5	Carbon Tetrachloride
75-27-4	Bromodichloromethane
78-87-5	1,2-Dichloropropane
10061-01-5	cis-1,3-Dichloropropene
79-01-6	Trichloroethene
124-48-1	Dibromochloromethane
79-00-5	1,1,2-Trichloroethane
71-43-2	Benzene
10061-02-6	trans-1,3-Dichloropropene
75-25-2	Bromoform
108-10-1	4-Methyl-2-Pentanone
591-78-6	2-Hexanone
127-18-4	Tetrachloroethene
108-88-3	Toluene
79-34-5	1,1,2,2-Tetrachloroethane
108-90-7	Chlorobenzene
100-41-4	Ethylbenzene
100-42-5	Styrene
1330-20-7	Xylenes (total)

PROPERTY OWNER CERTIFICATION OF THE NFR LETTER UNDER THE SITE REMEDIATION PROGRAM

If the Remediation Applicant is not the sole owner of the remediation site, include the full legal name, title, the company, the street address, the city, the state, the ZIP code, and the telephone number of all other property owners. Include the site name, street address, city, ZIP code, county, Illinois inventory identification number and real estate tax index/parcel index number. The property owner(s), or the duly authorized agent of the owner(s) must certify, by original signature, the statement appearing below.

A duly authorized agent means a person who is authorized by written consent or by law to act on behalf of a property owner including, but not limited to:

1. For corporations, a principal executive officer of at least the level of vice-president;
2. For a sole proprietorship or partnership, the proprietor or a general partner, respectively; and
3. For a municipality, state or other public agency, the head of the agency or ranking elected official.

For multiple property owners, attach additional sheets containing the information described above, along with a signed, dated certification for each. All property owner certifications must be recorded along with the attached NFR letter.

Property Owner Information

Owner's Name: King's Farm Development, L.L.C.
Title: By Ronald E. Vermost and Dale E. Godwin, Members and Managers
Company:
Street Address: 3110 23rd Avenue
City: Moline State: IL Zip Code: 61265 Phone: (309) 762-7776

Site Information

Site Name: East Moline/King's Farm
Site Address: Kennedy Drive and 42nd Avenue
City: East Moline State: IL Zip Code: 61244 County: Rock Island
Illinois inventory identification number: 1610655158
Real Estate Tax Index/Parcel Index No. Lot #1, King's Farm Subdivision So. Mol. 14556

I hereby certify that I have reviewed the attached No Further Remediation Letter and that I accept the terms and conditions and any land use limitations set forth in the letter.

Owner's Signature: x Ronald E. Vermost x Dale E. Godwin Date: Oct. 13, 2000
Ronald E. Vermost Dale E. Godwin

SUBSCRIBED AND SWORN TO BEFORE ME
this 13th day of Oct., ~~19~~ 2000

Nancy A. Miles
Notary Public

"OFFICIAL SEAL"
NANCY A. MILES
Notary Public, State of Illinois
My Commission Expires 10-11-2001

The Illinois EPA is authorized to require this information under Sections 415 ILCS 5/58 - 58.12 of the Environmental Protection Act and regulations promulgated thereunder. If the Remediation Applicant is not also the sole owner of the remediation site, this form must be completed by all owners of the remediation site and recorded with the NFR Letter. Failure to do so may void the NFR Letter. This form has been approved by the Forms Management Center. All information submitted to the Site Remediation Program is available to the public except when specifically designated by the Remediation Applicant to be treated confidentially as a trade secret or secret process in accordance with the Illinois Compiled Statutes, Section 7(a) of the Environmental Protection Act, applicable Rules and Regulations of the Illinois Pollution Control Board and applicable Illinois EPA rules and guidelines.

2000-26721

State of Illinois)
) ss:
Rock Island County)

I, Patricia Veronda Recorder, in and for the County and State aforesaid, do hereby certify that the foregoing is a true, perfect and complete .....xerox.....copy of an instrument of writing filed in my office on the ....18.....day of October.....A.D. 2000.....and duly entered of record in Book n/a..... of..records.....at page....n/a.....as document number..2000-26721.....of the records of said Rock Island County, as fully, completely and at large as the same now appears of record.

Witness, Patricia Veronda Recorder

And the seal thereof affixed at my office

in Rock Island, this.18...day of..October.....

A.D. 2000.

.....
Recorder

By.....
Deputy