

ILLINOIS POLLUTION CONTROL BOARD

March 17, 2011

IN THE MATTER OF:)

)
UNDERGROUND STORAGE TANKS (35) R11-22
ILL.ADM. CODE 731) AND PETROLEUM) (Rulemaking – Land)
LEAKING UNDERGROUND STORAGE)
TANKS (35 ILL. ADM. CODE 732 AND 734))

RECEIVED
CLERK'S OFFICE

JUN 16 2011

STATE OF ILLINOIS
Pollution Control Board

AMENDED TESTIMONY FROM CW³M COMPANY, INC. FOR THE ILLINOIS POLLUTION CONTROL BOARD'S 1st NOTICE OF AMENDMENTS TO 35 ILL. ADM. CODE 732 AND 734

After reading the pre-filed testimony of the Illinois EPA for the hearing to be held June 16, 2011, CW³M Company, Inc., asks to respond to several of the "Responses to Board Questions" included in the pre-filed testimony.

The IEPA mentions that the Illinois EPA has not received a request to discuss an issue with the LUST Advisory Committee. The Professionals of Illinois for the Protection of the Environment (PIPE) contacted the IEPA on August 22, 2006, and requested the scheduling of the first LUST Advisory Committee meeting. Another meeting request was sent to the IEPA on September 19, 2007. The first LUST Advisory Committee meeting took place November 16, 2007. Included is the list of attendees, and a brief summary of what was discussed. CW³M Company would have liked the LUST Advisory Committee to meet more, but found the Agency unwilling to acknowledge the group and the requests for meetings. It became too costly and a waste of time to continue to request meetings.

When the Agency decided to make proposed changes to the program, a convening of the LUST Advisory Committee should have been undertaken. It is why the committee was created in the first place.

Secondly, on page five of the IEPA's pre-filed testimony, it is stated that the 45-Day Report is a status report and does not require the pulling of tanks, the mobilization of equipment, or the drilling of boreholes. That type of response may be required during early action. The 45-Day Report should then, as a Status Report, provide an update of the EA activities that have taken place. This is where the shortfall of time occurs. As quoted from the IEPA pre-filed testimony of June 2, 2011, "Activities that are not conducted within the first 45 days plus 7 days after release confirmation are not prohibited from occurring later. They need to be approved in a plan, and if payment from the Fund is sought, they need to be approved in a budget as well". This is not entirely accurate. If the site is defined as industrial/commercial and does not have

gross levels of contamination defined during Site Investigation, no further action will be deemed necessary at the site. In summary, we would agree with leaving 734.210(c), 734.210(d), and 734.210(e) unchanged. Also, there is no provision in the regulations to submit an "Early Action activities conducted after Early Action expires, but before Stage 1 is started" plan and budget, and no provision for review and approval. As we stressed at the first hearing, unknowns in this program cost money and waste time and effort for both the Regulator and the Regulated.

Next, and in regards to 734.360(c) and (d), CW³M whole-heartedly disagrees with the decisions being made on a site-by-site basis. In theory, we could agree, but having worked with the reality of the program, variations between Project Managers and modifications to procedures, it is too risky. This has been the procedure since the Act has gone into effect, and has failed miserably. It is too subjective and at the mercy of a Project Manager who uses the 120 day clock over and over with the intent to deny or because the review has not been conducted. Regardless of the review procedure that is to be implemented, the rules should be altered to reflect the inherent freedoms of innocent off-site property owners. Our suggestion would be to modify 734.360 (c) and (d) changing "may approve" to "will approve" and adding "If a demonstration is made that the off-site property owner is unwilling to accept an institutional control." to the end of each section. In terms of cosmetics, the word "an" needs to be added between "at" and "off-site" in each section as well.

In response to the comments made by the Agency on page 7 of their pre-filed testimony for this hearing, which limits payment to the achievement of industrial/commercial objectives unless the property is demonstrated to be residential or is being developed into residential property, CW³M agrees that the addition of the proposed Board Note 734.630(ddd) will allow remediation to prevent off-site contamination.

In regards to the eligible costs after the issuance of the letter of No Further Remediation, CW³M proposes that additional costs be eligible for reimbursement. Outside of the costs of transportation and disposal, the required costs for completing the work include, at the minimum: waste characterization, sample analysis, landfill authorization, scheduling and arrangements, manifests, and reimbursement preparation. We would truly appreciate some time to work with the Agency and the Board on this issue.

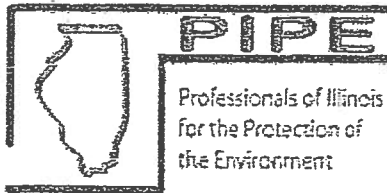
Lastly among the pre-filed documents, CW³M would like to propose a small work group to develop statutory language to revise the language regarding the bidding process. A simpler process, that is less expensive but also takes into account the consensus of the Agency that prompted this approach, should be agreed upon. Some projects which have been bid were for drilling or liquid disposal, which were only for a few thousand dollars, while some were excavations that can cost several hundred thousand dollars. Projects of great size have become fewer and fewer with the statutory changes of 2010. An expensive and expansive bid process seems costly and

unnecessary. We would be willing to assist in preparing some type of alternative language within a work group.

Again, we thank the IPCB for their time, as well as the Agency, and look forward to working together to create a set of rules that suits both the Agency, and the owner/operators that depend on the LUST Fund.

APPENDIX A

PREVIOUS CORRESPONDENCE CONCERNING
LUST ADVISORY COMMITTEE



P.O. Box 9098
Springfield, IL 62791

August 22, 2006

Illinois Environmental Protection Agency
Douglas P. Scott, Director
1021 North Grand Avenue East
Springfield, IL 62794-9274

RE: LUST Advisory Committee

Dear Director Scott:

The purpose of this letter is to inform the Agency that the Professionals of Illinois for Protection of the Environment (PIPE) have appointed two members to represent PIPE on the LUST Advisory Committee. Our appointed representatives are Mr. Jay Koch of United Science Industries and Mr. Robert Renguso of Marlin Environmental. PIPE formally requests the first meeting of the LUST Advisory Committee be scheduled to discuss the Agency's implementation of the new regulations and other matters important to the LUST community.

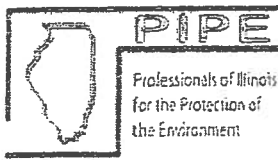
We look forward to developing a productive committee to move the LUST program forward in a positive direction and establishing relationships that cooperatively address the issues of tomorrow.

Please contact Mr. Koch at 618-735-2411 and Mr. Renguso at 630-444-1933 to arrange a meeting time.

Cindy S. Davis
President

Carol Rowe
President-Elect

Cc: Illinois Petroleum Council
American Consulting Engineers Council of Illinois
Illinois Society of Professional Engineers
Illinois Chapter of the American Institute of Professional Geologists
Illinois Association of Environmental Laboratories
Illinois Environmental Regulatory Group
Office of the State Fire Marshal
Illinois Department of Transportation



P.O. Box 9816
Springfield, IL 62791

October 24, 2007

Certified Mail #7006 2150 0004 5095 7443

Illinois Environmental Protection Agency
Mr. Doug Clay, P.E., LUST Section Manager
1021 North Grand Avenue East
Springfield, IL 62794-9274

RE: LUST Advisory Committee

Dear Clay:

As a follow up to our letter of September 19, 2007 and our subsequent conversation earlier today, the LUST Advisory Committee will meet on November 16, 2007 at the office of the Illinois Petroleum Marketers Association.

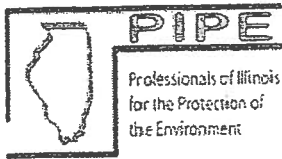
As we discussed, it is our vision to utilize this forum to become a proactive organization and work in a cooperative manner with the IEPA to address issues faced by each of us. Our agenda was broad; however, I believe the discussions will be more focused and allow the other members to bring issues to the meeting.

We look forward to the meeting and per your request; PIPE will notify the remaining members of the Committee of the scheduled meeting. Thank you for your assistance in scheduling the meeting and your willingness to work with the Committee.

Sincerely,

Carol L. Rowe
President

xc: Illinois Petroleum Marketers Association
Illinois Petroleum Council
American Consulting Engineers Council of Illinois
Illinois Society of Professional Engineers
Illinois Chapter of the American Institute of Professional Geologists
Illinois Association of Laboratories
Illinois Environmental Regulatory Group
Office of the Illinois State Fire Marshal
Illinois Department of Transportation
Illinois Pollution Control Board



P.O. Box 9098
Springfield, IL 62791

September 19, 2007

Illinois Environmental Protection Agency
Douglas P. Scott, Director
1021 North Grand Avenue East
Springfield, IL 62794-9274

RE: LUST Advisory Committee

Dear Director Scott:

The purpose of this letter is to request a meeting of the LUST Advisory Committee. Two members of PIPE will be in attendance. Per IL ADM Code 734.150, the committee is to meet quarterly should issues be raised for discussion. The immediate issues PIPE would like to discuss with the Agency are as follows:

- Funding/Backlog of review & payment
- Formulation of guidance documents or Section policies
- Use of current personnel rates
- NAT LUST

PIPE had previously requested a meeting but received no response from the Agency. We look forward to developing a committee that can serve the needs of the Agency as well as the regulated community and create a framework to address the issues of tomorrow in a cooperative manner.

Sincerely,

A handwritten signature in black ink, appearing to read "CAROL ROWE", with a long, sweeping underline.

Carol L. Rowe
President

xc: Illinois Petroleum Marketers Association
Illinois Petroleum Council
American Consulting Engineers Council of Illinois
Illinois Society of Professional Engineers
Illinois Chapter of the American Institute of Professional Geologists
Illinois Association of Laboratories
Illinois Environmental Regulatory Group
Office of the Illinois State Fire Marshal
Illinois Department of Transportation
Illinois Pollution Control Board

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CW3M Company
701 W South Grand Ave
Springfield, IL 62704

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Douglas P. Scott, Director
U.S. Environmental Protection
Agency
1021 North Grand Ave.
Springfield, IL 62794-9276

2. Article Number:
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CWM Company, Inc.

From: Cindy Davis [cdavis@csdenviro.com]
Sent: Friday, November 16, 2007 2:10 PM
To: Nancy Mackiewicz; jay@ecodigitaldevelopment.com; cwmco@sbcglobal.net; scottm@regenesiis.com
Cc: Joseph Truesdale; Shane Thorpe; Todd Hogan; Carole Roper
Subject: LUST Advisory Meeting

We had our first LUST Advisory Meeting this morning at 10:30 at the IPMA offices. In attendance were representatives from IEPA (Harry, Garry, Doug, Cliff, Bill Radlinski, & Mike Lowder), IPMA, IPC, IERG, ISPE, ACEC and PIPE.

I am going to briefly summarize the issues that were discussed:

Reimbursement Reviews

Time frame for reviews of reimbursement applications and requests for extensions by the Agency. The Agency stated they have lost 3 reviewers and cannot replace them due to a mandate by the Governors' office to reduce the size of State Government. They stated as more reviewers leave they will expect even longer delays. We discussed several ways to solve this problem such as requesting additional staff, temporary help, contract help, streamlining reviews and contracting the payment portion out. The IEPA was pretty much negative to all suggestions brought to the table. Bill Fleishli stated he would see if he could help by asking the Governors' office to allow IEPA to backfill the open positions. The message we received was the Agency will continue to ask for extensions and see no end in sight. Expect that delays will be longer in the future.

Eventually we were able to get the Agency to tell us they do not want to be responsible for administration of the UST Fund in the future and they would support rulemaking which would leave the technical portion of the LUST program with the Agency and send the reimbursement process elsewhere.

Funding Issues and Extension of Tax beyond 2013

IEPA stated the Bureau of Land will not support any legislative moves to extend the tax beyond the current sunset date under the current reimbursement scenario. They stated that because there are no costs controls on the fund they are not comfortable with supporting legislations. Note they stated this was only the Bureau of Land's opinion and not necessarily that of the Agency. The Agency further stated that they don't think the Fund is a necessary evil anymore because private insurance is available to meet the Federal Insurance Requirements. A long discussion was held on this comment where it was made clear to the Agency that 1) insurance is only available on clean properties; and 2) tank owners who had paid into the fund for over 15 years will not support the Agency's position. I specifically answered if cost containment could be provided would the Agency support extension of the tax. The Agency did not answer my question.

The discussion again centered around the Agency stating it is not their mission to be an accounting firm for processing payments, but to protect the environment. They again made it clear they do not want to administer the fund in the future. They don't seem to be concerned with extending the tax, just merely getting their hands out of administration and making it someone else's problem.

Alternative Technologies

We had a brief discussion where I asked the Agency if they would entertain putting together a work task force to address issues with alternative technologies. I explained that the consulting community has issues with spending money on preparing an alternative technology, having it denied 3 times and require additional expenses to answer the Agency only the end to have the plan denied again. I suggested that we discuss breaking down submitting alt tech caps into smaller phases to control costs. Doug agreed to establish a task force and will email me with dates for a meeting time. I envision this task force will also be tackling guidance document issues related to alternative technologies, but to sell the idea, I limited it to procedural issues at this time.

Summary

We need to find out who is interesting in working on the alternative tech task force – Scott I assume this is very important to you and your firm. Anyone else who wants to be on the force, let me know.

We need to be thinking about putting together legislation on a proposal to privatize the UST Fund. Jay, I and Ken Miller met after the meeting and agreed we should look at how other states operate their UST Fund programs and see if we can find a State to model Illinois' program after. We agreed to start looking at programs in other States, Ken Miller stated he would look at Indiana's, Jay mentioned hearing Florida had a good program. I volunteered to look up Missouri's program. We need to determine how many other States have UST programs that are private and divide up amongst us evaluating those states. If anyone can look at some other states it would be helpful.

Cindy Davis, P.G.
President
CSD Environmental Services, Inc.
cdavis@csdenviro.com
217-522-4085