

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
UNDERGROUND STORAGE TANKS	)	
(35 ILL. ADM. CODE 731) AND	)	
PETROLEUM LEAKING	)	R 11-22
UNDERGROUND STORAGE TANKS	)	(Rulemaking – Land)
(35 ILL. ADM. CODE 732 AND 734)	)	

NOTICE OF FILING

To:

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
(Electronic filing)

Timothy Fox, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

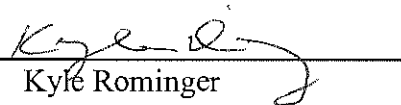
Division Chief of Environmental Enforcement  
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Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield IL 62702-1271

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S POST HEARING COMMENTS TO THE JUNE 16, 2011, HEARING, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Kyle Rominger  
Deputy General Counsel

Dated: 7.22.11  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
POST HEARING COMMENTS TO THE JUNE 16, 2011, HEARING

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA) and submits the following post-hearing comments for the June 16, 2011, hearing:

1. Reporting of a confirmed release. The Illinois EPA initially proposed to amend subsections 734.210(a) and (a)(1) of the Board's rules as follows to mirror the rules of the Office of the State Fire Marshal ("OSFM"), which were recently amended to require the reporting of confirmed releases immediately instead of within 24 hours:

- a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions ~~within 24 hours after the release:~~
  - 1) Immediately report the release in accordance with OSFM rules;  
~~Report the release to IEMA (e.g., by telephone or electronic mail);~~

CW<sup>3</sup>M argued that this change would increase the amount of reporting required because under OSFM rules confirmed releases must be reported to parties other than the Illinois Emergency Management Agency ("IEMA"). See, e.g., Ex. 3 at 4. In response, the Illinois EPA changed its proposed amendment to subsection 734.210(a)(1) to the following:

- 1) Immediately report ~~Report~~ the release to IEMA (e.g., by telephone or electronic mail);

At the June 16 hearing Ms. Carol Rowe noted that reporting to parties other than IEMA would still be required under OSFM rules. Transcript of June 16, 2011, hearing at 11. OSFM rules may require reporting to additional parties. However, the Illinois EPA's proposed subsection 734.210(a)(1) does not affect who must be notified of confirmed releases under Board rules. IEMA is still the only party that must be notified. The only change from the current rules is that the notification to IEMA must be made immediately instead of within 24 hours. This is the same as under OSFM rules. See 41 Ill. Adm. Code 176.320(a) (owners or operators must immediately report releases upon confirmation). Therefore, there is no increase in the reporting requirements as a result of the proposed change to subsection 734.210(a)(1).

There has been no objection to reducing the time for reporting confirmed releases from 24 hours to immediate. In fact, Mr. Vince Smith acknowledged at the June 16 hearing that the reporting of a confirmed release could be completed within the timeframe proposed. Transcript of June 16, 2011, hearing at 9-10.

2. Early Action timeframes. The Illinois EPA proposed to amend the "plus 14 days" timeframe for certain early action activities to "plus 7 days". See proposed amendments to subsections 734.210(c), (d), (e), and (g). This was done to provide consistency with OSFM rules, which allow 7 days to investigate and confirm suspected releases. See 41 Ill. Adm. Code 176.310(b) ("Unless corrective action is initiated [after the reporting of a suspected release], owners or operators must immediately investigate and within 7 days shall confirm the presence or absence of all suspected releases of regulated substances requiring reporting").

Mr. Smith acknowledged at the June 16 hearing that a "plus 7 days" timeframe was not a problem with respect to the submission of a 20 Day Report. Transcript of June 16, 2011, hearing at 9. However, he stated that CW<sup>3</sup>M would like to retain the "plus 14 days" timeframe for the

submission of the 45 Day Report due to the additional time it would provide “before the early action window closes in terms of a reimbursable cost”. *Id.* As Hernando Albarracin noted at the May 10 hearing, the Illinois EPA can approve an extension of the early action period for certain activities if special circumstances warrant. *See* 35 Ill. Adm. Code 734.210(g). Furthermore, as noted in Illinois EPA’s post-hearing comments for the May 10 hearing, the close of the early action period does not prevent the reimbursement of any costs. Costs incurred after the close of the early action period merely need to be approved in a plan and budget. In many cases, activities that could have been conducted or completed during early action are not conducted or completed until after the close of the early action period. In such cases the activities and their costs are included in the appropriate plan and budget. CW<sup>3</sup>M correctly notes on page 2 of Exhibit 5 that there is no specific plan and budget for “Early Action activities conducted after Early Action expires, but before Stage 1 is started”. The appropriate plan and budget depends upon when the activities will be conducted. For example, if the activities will be conducted as a part of site investigation (e.g., soil sampling or drilling borings for soil sampling), the activities and their costs should be included in the appropriate site investigation plan and budget. If the activities will be conducted as a part of corrective action (e.g., removal of contaminated soil), the activities and their costs should be included in the appropriate corrective action plan and budget.

The Illinois EPA stated that it would not object if the Board decided to retain a “plus 14 days” timeframe. However, it should be pointed out that CW<sup>3</sup>M’s reasons for retaining a “plus 14 days” timeframe is not consistent with the purpose of the timeframe. The “plus \_\_\_ days” timeframe was added to the Board’s rules to recognize the time allowed under OSFM rules to investigate and confirm suspected releases. See Regulation of Petroleum Leaking Underground Storage Tanks; Amendments to 35 Ill. Adm. Code 732, R01-26, Second Notice Opinion and

Order at 7-8 (February 21, 2002). Under OSFM rules, owners and operators have 7 days to investigate and confirm the presence or absence of suspected releases. 41 Ill. Adm. Code 176.310(b). The OSFM's rules set forth the procedures for investigating and confirming suspected releases. First, tank tightness testing must be conducted to determine whether a leak exists. 41 Ill. Adm. Code 176.310(b)(1). If a leak is detected, corrective action must begin and the tank system must be repaired, replaced or upgraded. *Id.* If no leak is detected and environmental contamination is not the basis for suspecting a release, no further investigation is needed. 41 Ill. Adm. Code 176.310(b)(2). If no leak is detected but environmental contamination is the basis for suspecting a release, a site assessment must be conducted in accordance with 41 Ill. Adm. Code 176.330. 41 Ill. Adm. Code 176.310(b)(3). Under the site assessment requirements owners and operators must measure for the presence of a release by conducting sampling "in the same manner and following the same procedures" as required under the Board's rules for preliminary site investigations in response to confirmed releases. 41 Ill. Adm. Code 176.330(b). If during the site assessment "sampling or other site observations disclose evidence of a release or site assessment lab results show site contamination", the owner or operator must immediately cease the site assessment, notify IEMA and others of the release, and begin corrective action.<sup>1</sup> 41 Ill. Adm. Code 176.330(d).

CW<sup>3</sup>M is not asking for a retention of the "plus 14 days" timeframe in order to maximize the time allowed for the investigation and confirmation of suspected releases. Rather, they are asking for additional time to conduct activities in response to confirmed releases under the auspices of early action. For example, CW<sup>3</sup>M's pre-filed testimony discusses response activities

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<sup>1</sup> 41 Ill. Adm. Code 176.330(d) states the notification to IEMA is for a suspected release. It appears this is an error and that the subsection should instead refer to a confirmed release, given the fact that Section 176.330 contains the procedures for investigating suspected releases (see 41 Ill. Adm. Code 176.310(b)(3)) and the report to IEMA and others is to be given "as required by Section 176.320", which is the Section addressing the reporting of confirmed releases.

that they argue must be completed in order to submit a 45-Day Report. Ex. 4 at 5. Their written testimony submitted at the June 16 hearing likewise focuses on activities taken in response to confirmed releases, not activities conducted to investigate and confirm suspected releases. Ex. 5 at 1-2. And, during the June 16 hearing, Mr. Smith stated that CW<sup>3</sup>M would prefer to retain a “plus 14 days” timeframe “simply because it gives us that much more time to collect all the documentation that is necessary before the early action window closes in terms of a reimbursable cost”. CW<sup>3</sup>M’s reasons for wanting to retain a “plus \_\_\_ days” timeframe of 14 days is not consistent with the purpose of the “plus \_\_\_ days” timeframe. The “plus \_\_\_ days” timeframe was not added to maximize the time during which activities conducted in response to confirmed releases could be conducted under the early action window. It was added to acknowledge the time for investigating and confirming suspected releases as required under OSFM rules.<sup>2</sup>

3. Off-site groundwater remediation. On page 2 of Exhibit 5 CW<sup>3</sup>M disagrees with the Illinois EPA being able to approve off-site groundwater remediation under proposed subsections 734.360(c) and (d) on a site-specific basis. The Illinois EPA believes a site-specific review of any proposed remediation is appropriate and opposes a mandatory approval imposed by rule.

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<sup>2</sup> The Board rules start the early action clock at the initial reporting to IEMA due to confusion caused by the dual reporting requirements under OSFM rules. Under those rules IEMA must be notified of suspected releases. 41 Ill. Adm. Code 176.300 (formerly 41 Ill. Adm. Code 170.560). Suspected releases must be investigated if corrective action is not started, and if a suspected release is confirmed IEMA must be notified of a confirmed release. 41 Ill. Adm. Code 176.310 - 176.320 (formerly 41 Ill. Adm. Code 170.580). Notification upon confirmation is required regardless of whether the release has already been reported as a suspected release, which results in dual IEMA reports for the same release. However, owners and operators may not investigate and confirm a suspected release within the 7 days required under OSFM rules. And, even if they do, the IEMA incident report does not indicate when a notification is for the confirmation of a suspected release that has already been reported. See Regulation of Petroleum Leaking Underground Storage Tanks; Amendments to 35 Ill. Adm. Code 732, R01-26, Second Notice Opinion and Order at 7-8 (February 21, 2002). The “plus 7 days” timeframe creates a presumption that the initial notification to IEMA is the report of a suspected release. Id. at 8. The owner or operator then has the maximum 7 days allowed under OSFM rules to investigate and confirm the release before the clock starts on the early action requirements taken in response to a confirmed release, such as the 20 Day report and 45 Day report. Therefore, although the early action timelines are stated in terms of “20 Days plus 7 days” or “45 Days plus 7 days”, the 7 days is actually intended to cover the period allowed for investigating and confirming suspected releases, which would occur at the front end of the early action window instead of the back-end (i.e., 7 days plus 20 Days, or 7 days plus 45 days).

The additional language proposed by the Illinois EPA in its post-hearing comments to the May 10, 2011, hearing, in response to CW<sup>3</sup>M concerns, clarifies that the Illinois EPA is authorized to approve on-site remediation when such remediation is necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control. This clarification allows the costs of the on-site remediation to be eligible for payment from the UST Fund. However, the rule should not include language that could be construed as a mandate for Illinois EPA approval of whatever remediation is conducted pursuant to this provision. The Illinois EPA should have the opportunity to approve, deny, or modify a plan for the on-site remediation, the same as it does for all other remediation. It needs to determine that the on-site remediation is in fact necessary to remediate or prevent groundwater contamination at off-site property, and that the proposed remediation is appropriate for the site-specific circumstances and otherwise in compliance with LUST Program requirements. As with other Illinois EPA decisions, if the owner or operator disagrees with the Illinois EPA's decision on the plan the owner or operator can appeal the decision to the Board.

4. Costs incurred after issuance of a No Further Remediation Letter. CW<sup>3</sup>M has asked that examples of costs eligible for reimbursement pursuant to proposed subsection (d) of Section 734.632 be added to the rules. In response, the Illinois EPA submits the following changes to that subsection. The below language includes the changes proposed in the Illinois EPA's post-hearing comments to the May 10 hearing. Changes to the Illinois EPA's original proposal are shown by double-underlining.

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding subsections (gg) and (nn) of Section 734.630 of this Part, [t]he following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans and budgets, corrective action completion reports, and applications for payment, provided that no plan, budget, or report is required for activities conducted pursuant to subsection (d) or (e) of this Section.

- a) Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of the Act and subsection (b) of Section 734.360 of this Part is being developed into residential property.
- b) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of the Act and subsection (c) of Section 734.360 of this Part can no longer be used as an institutional control.
- c) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of the Act and subsection (d) of Section 734.360 of this Part must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.
- d) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of the Act and subsection (b) of Section 734.360 of this Part and the owner or operator demonstrates that (i) the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. Costs eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site fees, and may include, but are not limited to, costs for: disposal site waste characterization sampling; disposal site authorization, scheduling, and



coordination; field oversight; disposal fees; and preparation of applications for payment.

- e) The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of the Act and subsection (c) of Section 734.360 of this Part, or if an on-site groundwater use restriction is used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of the Act and subsection (d) of Section 734.360 of this Part, and the owner or operator demonstrates that (i) the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. [415 ILCS 5/57.19].
- f) Consulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part.

5. Bidding - Bonding, Pre-qualification, and Change Orders. At the June 16 hearing the Illinois EPA stated it would propose language to clarify that bonding requirements and contractor prequalification would be optional and at the discretion of the owner or operator. Furthermore, that if a change order is necessary an amended plan and budget would be required, but a rate that was determined through bidding would continue to be honored in the amended budget. The Illinois EPA submits the following changes to the first paragraph of Section 734.855, and to the second paragraph of subsection (d) of 734.855, to address these issues. Changes to the Illinois EPA's original proposal are shown by double-underlining.

Section 734.855      Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing. Bidding is optional. Bidding is allowed only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than

or equal to maximum payment set forth in this Part. [415 ILCS 5/57.7(c)(3)(C)]. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

a) Bidding must be publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:

1) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable.

The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, (i) contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and (ii) qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.

Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

2) At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published by the owner or operator in a local paper of general circulation for the area in which the site is located. The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.

- 3) Bids must be opened publicly by the owner or operator in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section. After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

The person opening the bids may not serve as a witness. The names of the person opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

- 4) Bids must be unconditionally accepted by the owner or operator without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

- 5) Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with subsection (c) of this Section. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.

- 6) The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.

- 7) All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours. [415 ILCS 5/57.7(c)(3)(B)]

- a) ~~A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.~~
- b) All The bids must be summarized on forms prescribed and provided by the Agency. The bid summary ~~forms~~, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received, the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. ~~If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.~~
- c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.
- 1) Mistakes discovered before opening. A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.
- 2) Mistakes discovered after opening of a bid but before award of the winning bid.
- A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted.
- B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transposition errors, and mathematical errors.

- C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:
  - i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or
  - ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- 3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).
- 4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive such informalities or allow correction depending on which is in the owner's or operator's best interest.
- d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:
  - 1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
  - 2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
  - 3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contract performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and
  - 4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.

e) ~~The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H, in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.~~

6. Revisions to eliminate proposed Board Notes. The Illinois EPA's post-hearing comments to the May 10 hearing proposed Board Notes following subsections (ddd), (eee), and (fff) to Section 734.630. At the June 16 hearing the Board asked whether these Board Notes should be incorporated into the text of the rules. To that end, the Illinois EPA submits the following changes to subsections (ddd), (eee), and (fff) of Section 734.630. Changes to the Illinois EPA's original proposal are shown by double-underlining.<sup>3</sup>

ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property.

eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under subsection (c) of Section 734.360 of this Part. This subsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) of this Section to remediate or prevent groundwater contamination at off-site property.

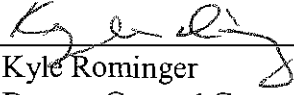
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<sup>3</sup> The addition of "property" to subsection (ddd) was proposed in the Illinois EPA's post-hearing comments to the May 10 hearing.

fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under subsection (d) of Section 734.360 of this Part. This subsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(d) of this Part to remediate or prevent groundwater contamination at off-site property.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
\_\_\_\_\_  
Kyle Rominger  
Deputy General Counsel

Dated: 7-22-11  
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STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON )

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the Illinois Environmental Protection Agency's Post Hearing Comments to the June 16, 2011, Hearing upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
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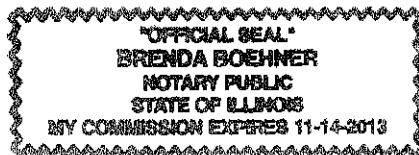
Attached Service List

and mailing them (First Class Mail) from Springfield, Illinois on 7-22-11,  
2011 with sufficient postage affixed as indicated above.

Kimberly Kras

SUBSCRIBED AND SWORN TO BEFORE ME  
This 22nd day of July, 2011.

Brenda Boehner  
Notary Public





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William G. Dickett  
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Illinois Petroleum Marketers Association  
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