

ILLINOIS POLLUTION CONTROL BOARD

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))

POST HEARING COMMENTS FROM CHASE ENVIRONMENTAL GROUP, INC.
REGARDING: AMENDMENTS UNDER P.A. 96-908 TO REGULATIONS OF
UNDERGROUND STORAGE TANKS (UST) AND PETROLEUM LEAKING UST: 35 ILL.
ADM. CODE 731, 732, AND 734

Background:

The following comments were prepared as a joint effort by Marvin Johnson, Kelly Tensmeyer P.G. and Russ Goodiel of Chase Environmental Group, Inc. (Chase). As a group these individuals have a combined forty (40) plus years of leaking underground storage tank (LUST) experience including both direct field knowledge as well as documentation and completion of associated plans, reports, budgets and completion of associated Agency reimbursement paperwork. Chase has attempted to make these comments in a less technical manner and hopefully an easy to understand format.

Prior to our comments on a few specific sections, Chase reviewed the payment priority list to determine what the current demand on the LUST fund was. From October 2010 until the end of May 2011, there are currently \$13.9 million worth of claims pending payment. The average for that 8 month period is \$1.74 million per month with the month of May 2011 only showing \$807,000 pending payment. Chase would like to point out how demand on the fund has decreased as a direct result of the last changes to the regulations. Chase strongly believes the previously approved changes will continue to decrease demand on the fund while still giving leaking UST owners/operators some choice as to how to proceed with their particular site. Under the proposed changes, the choices available to the site owner/operators has been reduced or in many instances, completely removed.

Chase strongly believes that by placing the restrictions proposed in these regulations, future generations are going to have to deal with the contamination that is left in place. Throughout Illinois, infrastructure, such as sewer and water systems are in very poor condition. Over time, as the conditions of these systems continue to deteriorate, the potential for contamination entering these utilities will increase. Chase personnel have dealt first hand with vapors entering sewers and consequently neighboring homes and businesses. The costs associated with addressing these problems after the fact as a “reaction” versus being proactive and addressing the contamination during corrective action is always higher.

Chase also has a fear that gas stations that are not in high traffic areas will remain vacant for years. Based on our experience and the history of former gas stations located in southern Illinois, it does not appear many parties are interested in buying contaminated properties for redevelopment. In larger cities or areas with high traffic counts, there will always be interested buyers, but what about the majority of the sites that are closing and are not located on the perfect corner lot? Although these sites may have an NFR letter, there is still potential for future costs associated with the contamination left in place such as maintaining an engineered barrier. Due to the future uncertainty which comes along with buying a contaminated property, it appears there is a trend of more vacant gas stations with no value to the owner/operator and no tax benefits to communities.

Chase does realize the Agency has been directed to reduce demand on the fund, which based on the numbers we have presented, has been accomplished. Based on the numbers we have presented above and using the regulations currently in place, if the \$1.74 million per month average was applied to a full year, the total demand on the fund would be \$20.88 million dollars. Is that too much demand on the fund? What does the Agency feel is a reasonable amount for a year, as Chase feels this number is low at its current rate and any reduction would be detrimental to the owner/operators, consultants and most importantly the environment? As a side note to this section we would like to add that the Agency's LUST section budget to administer the fund for the year ending July 2012 is approximately \$6.5 million. Using these numbers, over one year a total of approximately \$27.38 million would be dispersed with almost 25% going to administering the fund. During the 734 rule making it was discussed how the changes would help streamline the entire process and simplify reimbursement. This has not been the case for Chase and other consultants we have talked to agree. As these new changes are being presented, Chase feels we are heading down the same path again.

1. Section 734.100 Plans & Budgets Approved Prior to June 8, 2010.

This item appears to have been addressed and Chase both appreciates and agrees with the Agency's stance to allow the previously approved plans be completed as approved and not on a "case by case basis".

Section 734.210 Early Action

Chase firmly believes that the timeframe for completion of "early action" activities should remain as it stands now at 45 plus 14 days. The number of activities that must be completed in this timeframe in order to be eligible for reimbursement generally require at least this amount of time to be completed and there are often times that some of the final paperwork cannot be completed in this timeframe. Chase noted that during the hearings it appeared the Agency was agreeable to leave this timeframe at 45 plus 14 days and Chase agrees with this point.

Section 734.360 Application of Certain TACO Provisions

Chase does not agree that site owner/operators should be forced to use industrial/commercial property objectives (unless residential use can be demonstrated or the site will be developed into a residential property), nor does Chase agree that owner/operators should be forced to use some form of property restriction or institutional control to address groundwater beneath the site. In some instances such as in the Cook County area this may be practical, in areas in the southern part of the state, Chase believes groundwater is being overlooked as a potential future resource.

Although Chase does not agree with forced use of the TACO, Chase understands the Agency has been directed to reduce payout from the fund and the forced use of TACO was a simple means to do so. Chase would like to ensure that at a minimum an owner/operator has the ability to either prevent offsite property contamination or to allow the owner operator to complete corrective action on an offsite property that has already been adversely impacted. The Agency seems to be open to this concept and we appreciate the Agency working the consultants on this, but we still see room for improvement. Chase is simply looking for a more solid rule to relay on, because it is these areas that become a "case by case basis" and often times these do not turn out in favor of the owner/operators.

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

d) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed 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.

Chase seeks clarification on this portion. Chase believes that in either this section or as part of a new addition, all necessary correction action activities, including but not limited to: costs for collecting a sample for landfill acceptance, completion of the associated landfill approval forms, disposal fees, professional oversight and reimbursement package preparation costs should be allowed as eligible costs incurred after the NFR letter and Chase believes this was the initial "intent" of this change when it was added previously. As currently proposed, Chase believes the proposal submitted by CW3M clarifies these issues and is more inline with the "intent" of this change, therefore Chase supports CW3M's proposal as submitted.

Section 734.810 UST Removal and Abandonment

UST Removal or Abandonment Costs

Payment for the Costs associated with ~~UST-removal or abandonment~~ of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, and disposal, ~~and abandonment~~ of UST systems.

Chase is in favor of changing the UST abandonment reimbursement to a time & materials basis. Chase believes this will benefit the owners/operators who have had consultants turn down jobs because the rates that were previously associated with UST abandonment were not sufficient in many times to even cover the materials used to fill the UST, not to mention time onsite to prep the UST to be properly abandoned.

Chase would like to clarify that the costs associated with completion of the OSFM required site assessment associated with UST abandonment would be reimbursed at the applicable subpart H rates. These costs would need to be completed in accordance with 734 subsections (h)(2)(A) through (D).

Section 734.810 Bidding

Chase believes the bidding process at this time is far too cumbersome to use successfully. All indications are that no consultants have successfully used the bidding process under the latest format and it appears all parties involved are in agreement that the bidding process needs some work. Chase looks forward to working with the Agency and other consultants to develop a bidding format that is user friendly enough for consultants to use and be reimbursed under and allows the Agency a quick and easy review.

In conclusion, Chase would like to thank the Agency, the IPCB and CW3M Company for working with us and hearing our concerns regarding the potential changes to the LUST rules and regulations. In many cases we are on the same page and are working towards a common sense solution, while in other cases Chase is in obvious disagreement with what the Agency has proposed. We look forward to working with all parties involved to find an end product that we are all proud to have been apart of.