

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO	)	R01-26
REGULATION OF PETROLEUM	)	(Rulemaking - Land)
LEAKING UNDERGROUND STORAGE	)	
TANKS (35 ILL. ADM. CODE 742)	)	

TESTIMONY OF KENDRA BROCKAMP IN SUPPORT OF  
THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL TO AMEND 35 ILL.  
ADM. CODE 732

My name is Kendra Brockamp. I am a Unit Manager in the Leaking Underground Storage Tank Section within the Bureau of Land of the Illinois Environmental Protection Agency. I have been in my current position since November 1998. Prior to assuming my current position, I was a project manager in the Leaking Underground Storage Tank Section beginning in 1991. I received a B.S. in Biology in 1989 from the University of Illinois at Urbana-Champaign. My resume is attached. Today, I will be testifying in support of amendments to 35 Ill. Adm. Code Part 732.

Subsections 732.202(g) and (h): Early Action

Wording has been changed in subsection (g) to clarify that, for purposes of reimbursement, the early action activities set forth in subsection (f) must be performed within 45 days after initial notification of a release to the Illinois Emergency Management Agency ("IEMA"), rather than within 45 days after confirmation of a release. This change is being made to enable the Agency to have a clearly documented and recorded date from which to determine the reimbursement period for purposes of early action. Administratively, it would be difficult for the Agency to use the rather subjective confirmation date.

Subsection (h) has been added, requiring the owner or operator to determine whether or

not contaminated soil exposed during early action activities meets the applicable Tier 1 remediation objectives. For a typical single tank excavation, six samples must be collected: one from each sidewall at the approximate location of the lower 1/3 of the tank, and two from the bottom of the excavation (one at each end of the tank). Samples shall be analyzed for the appropriate indicator contaminants as outlined in 35 IAC Section 732.310. This sampling is required to determine whether soil exceeding the applicable Tier 1 remediation objectives remains at the site. If the excavated backfill is returned to the excavation, then two samples of the backfill must also be analyzed (in addition to the 6 samples collected from the excavation limits) for the appropriate indicator contaminants. Piping runs must also be sampled at a rate of one sample for each 20 foot length of excavation (0-20 feet would require one sample, 21-40 feet would require two samples). Again, if the piping backfill is placed back into the excavation, then sampling of the backfill material would be required. For many years, when sampling has been required in the LUST Section, the Agency has required excavation samples to be collected in accordance with the above guidance as the Agency believes these sample locations to be most likely to detect any contamination present.

If the owner or operator determines that the applicable remediation objectives are met and there is no evidence that contaminated soils may be or may have been in contact with groundwater, then a corrective action completion report must be submitted for IEPA review. If the IEPA approves the report, then a No Further Remediation Letter will be issued and the owner or operator will have met the objective requirements for cleanup. In the event that the remediation objectives have not been met, or that a groundwater investigation would be required in accordance with 35 IAC Section 732.300(b)(2), then the owner or operator shall proceed to Subpart C (Site Evaluation and Classification).

Information gained from the soil samples is useful to the owner or operator for determining whether to proceed with site classification or with a full cleanup in lieu of site classification in accordance with Section 732.300(b). If site classification is chosen, knowing the remaining concentrations of contamination in the excavation area can be beneficial to the owner or operator in choosing a site classification method and will help with proposing and completing a migration pathway investigation in accordance with Subpart C. The approximate cost of analyzing six samples collected from the excavation for BETX (typical of an unleaded gasoline UST) is \$510.00. Obtaining samples at the time of excavation is much less expensive than drilling soil borings and collecting samples at a later time. Mobilization for a drill rig is approximately \$250.00/day and drilling cost is approximately \$24.00 per foot. This would be approximately \$1690.00 for six-10 foot borings to collect samples in addition to the \$510.00 cost of sample analysis. Based on the above, the Agency believes that, in the long run, the collection of these samples at the time of early action will not increase the overall cost of the remediation project.

#### Section 732.204: Application for Payment

The proposed amendment to this Section removes the option of submitting early action costs as part of the site classification. Rather, owners and operators will simply submit a reimbursement request for early action activities. It has been extremely rare for an owner/operator to submit early action costs as part of the site classification budget. In the rare situation that an owner/operator chose the budget option, internal tracking and processing required additional time and resources on the part of the Illinois EPA. Additionally, because early action costs have already been incurred at the time the site classification budget is submitted, the potential benefit of submitting the early action costs in the site classification

budget is not realized. The language in subsections 732.305(b)(1) and (2) has also been amended to reflect this change.

Subsection 732.300(b): General

Doug Clay will provide testimony on 732.300(b)(1). Regarding 732.300(b)(2), the Illinois EPA has proposed language to clarify when a groundwater investigation is required for a site where the owner or operator is performing a complete cleanup in lieu of site classification. Mainly, the clarification addresses the situation where there is no recharge of groundwater after water has been pumped from the excavation. If, once the excavation has been pumped dry, there is no evidence of water recharge in the excavation within 24 hours, then further groundwater investigation is not necessary. This process of allowing the excavation to be pumped dry and determining the recharge to decide whether or not a groundwater investigation is required is a current practice of the Illinois EPA. Additionally, the language describing when a groundwater investigation is required has been amended. However, the central intent remains the same: a groundwater investigation is required if there is evidence that contaminated soils may be or may have been in contact with groundwater. The Illinois EPA is adding the “may have been” to address situations where there may have been fluctuations in the groundwater table. For instance, when a release is discovered via soil borings, water might be present in the borings in the vicinity of the tank at a rather shallow level, indicating groundwater may be in contact with contaminated soil. However, conditions when the tank is removed and/or remediation is performed may not reveal water in contact with contaminated soil in the area. Because conditions at the time the release was discovered indicate the potential for contaminated soil to have been in contact with groundwater, a groundwater investigation would still be required even though the conditions at the time of tank removal/remediation may have been markedly different.

It should be noted that the language deleted in subsection(b)(2) has been re-incorporated and reformatted so as not to change the substance of the subsection.

Subsection 732.305(d): Plan Submittal and Review

Subsection (d) has been amended to allow owners and operators who have proceeded to perform site classification without having submitted a budget plan to submit an application for payment after the work is performed (and to forego budget submission). Essentially, this application for payment would be submitted in lieu of the budget plan. The Illinois EPA is allowing this option to save the owner and operator time and money in preparing, submitting and waiting for budget approval when the work has already been completed and the benefits of budget submittal have already been diminished. In addition, the Agency saves the resources it would otherwise have to spend on reviewing budgets for plans that have already been implemented. This same language has been added in Sections 732.312(k) and 732.405(d).

It should be noted that once a budget plan is submitted for a portion of the remediation process (site classification, low priority or high priority), owners and operators must continue to seek approval of a budget plan for that part of the remediation process. For instance, if the owner/operator submits a site classification budget plan and it is denied, then the owner/operator performs the site classification work, the owner/operator is still bound to submit a site classification budget and obtain a budget approval from the Illinois EPA prior to submitting a request for payment (billing package). This is necessary for effective internal tracking and processing with budget and billing application reviews.

Subsections 732.307(g) and (j): Site Evaluation

Doug Clay will be providing testimony regarding the addition of the Licensed Professional Geologist to the site classification process. Subsection (g) which addresses

migration pathway investigations, is amended to clarify the Illinois EPA's expectations regarding the migration pathway investigation. Specifically, the Illinois EPA expects that soil, groundwater (if groundwater is encountered), and surface water (if there is potential for surface water contamination) samples will be obtained and analyzed for the appropriate indicator contaminants along identified natural and manmade migration pathways or between contaminated soil and the pathways. Under the proposed language, the use of screening instruments (such as photoionization detectors) alone is not acceptable to determine if migration of contaminants of concern has occurred along a specific pathway. These instruments may not detect the full range of contaminants that may be of concern. Additionally, there is no numerical basis by which to judge the results as they are generally in "meter units" and, therefore, could not be compared with the remediation objectives outlined in 35 IAC Part 742. There has been some concern regarding the risks of invasive sampling of utility line backfill. The Agency will not prescribe that samples have to be collected in the backfill of every utility line if samples collected between the area of contamination and the utility line are found to contain contaminant levels below the TACO Tier 1 residential remediation objectives. If, however, the native material surrounding the utility backfill is contaminated, the Agency expects that an analytical evaluation of the utility backfill will be conducted, or that the owner or operator will agree to a high priority site classification based on migration pathway issues. Samples collected from the tank excavation in conjunction with Section 732.202(h), which meet the Tier 1 TACO residential remediation objectives may be used to fulfill the requirement for samples collected between contaminated soil and the pathways under Subsection (g).

Language has been added to subsection (j)(1) to clarify when a groundwater investigation is required as part of Method 1 and Method 2 site classification. A groundwater investigation is

required for any site which fails to meet the criteria for NFA site classification as well as for any site where a groundwater investigation is necessary pursuant to Section 732.302(b) that would otherwise meet the NFA criteria. Section 732.302(b), requires an investigation of a site otherwise classified as NFA if the Agency has received information indicating that groundwater exceeds the applicable remediation objectives at the property boundary line or 200 feet from the excavation, whichever is less. Amendments to this language effective July 1, 1997 failed to clarify that a groundwater investigation is required for any site which fails to meet the NFA site classification requirements. This requirement was in the original 732 regulations adopted by the Board in 1994.

#### Subsection 732.310(g): Indicator Contaminants

Subsection (g) has been amended to clarify that the used oil screening sample be collected from an area that is the most contaminated. Results of the screening sample are used to determine the indicator contaminants for the used oil release. If the sample is not collected in the most contaminated area, the owner/operator risks not identifying and addressing all of the contaminants that may be present. Collecting the screening grab sample from the most contaminated area is a practice that the Agency currently expects to ensure that all indicator contaminants are identified and addressed.

#### Subsections 732.312(g) and (h): Classification by Exposure Pathway Exclusion

Both subsections have been amended to eliminate the option of using 35 IAC Part 742 Subpart I ("Subpart I") to exclude pathways under this method of site classification. Rather, the owner or operator will have to utilize the options under 35 IAC Part 742 Subpart C ("Subpart C") if they attempt to exclude pathways under this classification method. Subpart C is very prescriptive in its requirements for Pathway exclusion and the process of using Subpart C is

straightforward. Subpart I is a Tier 3 Evaluation designed to develop remediation objectives outside the requirements of Tiers 1 and 2 through a flexible framework of site-specific data. It includes an option for an evaluation of incomplete human exposure pathways not excluded under Subpart C. Typically, the Subpart I requests are more complex and the differences between utilizing a Tier 2 approach and utilizing the pathway exclusion approach may become less distinguishable. Therefore, the Agency is proposing to limit options under the pathway exclusion method of classification to that straightforward approach outlined in Subpart C as a way to simplify the classification approach. The Agency does recognize pathway exclusion under Subpart I as a method of corrective action for sites that are classified as "High Priority".

#### Subsection 732.503(b): Full Review of Plans or Reports

Subsection (b) is being amended merely to make the current requirements more clear. The Agency is not (and has not been) required to provide written notification of final action on 20 day, 45 day, or free product removal reports.

#### Subsections 732.601(b),(c),(d),(f) and (g): Applications for Payment

Testimony on subsection (a) will be provided by Doug Clay as will testimony on subsection (b)(1). Subsection (b)(8) is added to require that as part of the complete application for payment, the owner/operator must provide an address to which payment and notice of final action should be sent. Subsection (c) is added to require that any changes to the address designated on the application must be made on a form provided by the Illinois EPA. These changes are proposed to eliminate confusion as to where the payment is to be mailed. In the past, there has been no uniform way to designate changes to the payment address, and due to the complexity of business arrangements, these changes were being requested frequently. This form should help clear up any confusion and ensure that the payment is mailed in accordance with the



apply. In cases where there are multiple occurrences in the same calendar year, the owner or operator is already getting the benefit of a single deductible; therefore, the Illinois EPA has applied the higher of the deductibles in these circumstances.

Subsection (c) has been added to clarify that the Agency must instruct the Office of the State Comptroller to issue payment to the owner or operator at the designated address (See 35 IAC 732.601(b)(8)). The Agency shall not authorize the Office of the State Comptroller to issue payment to an agent, designee or entity who has conducted corrective action activities for the owner or operator. The Agency believes it is important for the owner or operator to be aware of the reimbursement amounts and dates of payment and, if the payment is mailed to the consultant, the owner/operator loses the ability to track the payment. As the statute and regulation place the ultimate responsibility for seeking reimbursement on the owner/operator, it appears that it would be in the owner or operator's best interest to receive the payment. Also, the statute only references an owner or operator as being eligible to receive reimbursement from the Underground Storage Tank Fund. No other parties are listed as being eligible to receive reimbursement. Finally, the Agency believes that keeping the owner/operator involved in both the technical and reimbursement process keeps the process more cost efficient.

#### Subsection 732.605(a): Eligible Costs

The change to subsection(a)(13) clarifies that the Illinois EPA will not reimburse the owner/operator for the removal/disposal of any UST deemed ineligible by the Office of the State Fire Marshal. This is merely a clarification of current practice at the Illinois EPA.

#### Subsections 732.606(l), (kk) and (ll): Ineligible Costs

The change to subsection (l) again clarifies that the Illinois EPA will not reimburse the owner/operator for the removal/disposal of any UST deemed ineligible by the Office of the State

Fire Marshal. Again, this is merely a clarification of current practice at the Illinois EPA.

Subsection (kk) has been amended to provide that costs an owner or operator incurs after receipt of the No Further Remediation (“NFR”) letter will be reimbursed if the costs are incurred for MTBE remediation pursuant to Subsection 732.310(i)(2). Subsection 732.310(i)(2) is a new provision that allows an owner or operator to elect to address MTBE as an indicator contaminant if the Agency has issued an NFR Letter and if the release at the site has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 IAC Part 742. The Agency supports allowing the owner/operator to re-enter the fund after the NFR letter is issued as a method to ensure MTBE impacts that threaten the groundwater, and potentially, potable water supplies can be addressed by the owner/operator.

The addition of Subsection (ll) declares that handling charges for subcontractor costs that have been billed directly to the owner or operator are ineligible for reimbursement. When an owner or operator pays a bill directly to the subcontractor, there should be no handling charges by the contractor reimbursed since there would be no handling of the payment by the contractor.

The addition of Subsection (kk) declares that handling charges for subcontractor costs when the contractor has not paid the subcontractor are ineligible for reimbursement. Handling charges are to cover (among other items) payment of subcontracts and field purchases. If the contractor has not paid the bill, then the contractor is not entitled to handling charges.

#### Section 732.607: Payment for Handling Charges

This Section includes a clarification as to the proper citation from the Act which established this handling charge scale. The proper reference is Section 57.8(f) of the Act rather than Section 57.8(g) of the Act.

owner/operator's directive. Re-lettered subsection (d) has been amended to include that change of address forms be mailed/delivered to the address designated by the Illinois EPA.

Re-lettered subsection (f) has been amended to allow the Agency to review an application for payment when no budget plan has been submitted if the owner/operator is making a submission pursuant to Sections 732.305(d), 732.312(l), 732.405(e) or 732.405(f). These sections allow the owner/operator to submit an application for payment after the associated classification, low priority, or high priority work has been completed and to forego budget submission. This exception is being allowed in accordance with Section 732.305(d) and the other sections referred to previously in this paragraph which provides that if no budget has been submitted for a site classification plan, low priority plan, or high priority corrective action plan and, when required, the appropriate completion report has been submitted and approved by the Illinois EPA, an application for payment can be submitted in lieu of a budget plan. See testimony under 35 IAC Section 732.305(d) (above).

Re-lettered subsection (g) amends "amount" to read "amounts". This is because when the Illinois EPA compares the approved budget with the application for payment, there are six line items ("amounts") rather than one ("amount") that are reviewed for comparison between the budget and billing package: investigation costs; analysis costs; personnel costs; equipment costs, field purchases and other costs; and handling charges.

#### Subsections 732.602(e), and (g): Review of Applications for Payment

Subsection (e) has been amended to be consistent with Section 57.8(a)(1) of the Illinois Environmental Protection Act. The amendment specifies that if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the

receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law, rather than deem it rejected by operation of law.

Subsection (g) includes language clarifying to whom payments from the Underground Storage Tank Fund shall be mailed. The Illinois EPA will mail payments to the owner or operator at the address designated on the application for payment submitted. If the address changes, the owner or operator must indicate this on a form specifically for notifying the Illinois EPA of such change of address. These changes are consistent with those outlined in subsections 732.601(b)(8) and 732.601(c) for which testimony has been provided above.

Subsections 732.603 (b) and (c): Authorization for Payment; Priority List

Subsection (b) has been amended to clarify the application of deductibles to payments from the UST Fund. This proposed amendment serves to clarify how the Agency has already been handling the application of deductibles to payments from the Fund. Only one deductible shall apply per occurrence. For example, if a petroleum release from a particular UST or USTs is reported to IEMA during a soil boring investigation and, subsequently, the owner/operator removes those same USTs, the Illinois Office of the State Fire Marshall (“OSFM”) may require another report to IEMA. In such case, only one deductible shall apply because both reports relate to the same contamination, or to one occurrence. The second incident is considered a re-reporting of the first.

If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence. This is how the Agency has been implementing the final paragraph of Section 57.9(b) of the Illinois Environmental Protection Act (“Act”). For further clarification, where more than one deductible determination is made by the OSFM, only the higher deductible shall

### Section 732.609: Subrogation of Rights

There is a correction of a spelling error in this Section for the word indemnification.

### Section 732.Appendix B Additional Parameters

Appendix B includes polychlorinated biphenyls ("PCBs") as an additional indicator contaminant. This was inadvertently omitted from the July 1, 1997 amendments to 35 IAC Part 732. Appendix A lists footnote (2) next to transformer oils. Footnote (2) indicates that the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants for transformer oils [in addition to BETX and PNAs].

### Section 732.Appendix C Backfill Volumes

This table is amended to include the maximum amount of backfill material that can be removed in tons as well as cubic yards and to include the maximum amount of backfill material that can be replaced in tons and cubic yards in order to adhere to the requirements of 35 IAC Section 732.606(a) for purposes of reimbursement. Section 732.606(a) declares the following as an ineligible cost: costs for the removal, treatment, transportation, and disposal of more than four feet of fill surrounding the UST, as set forth in Appendix C, during early action activities conducted pursuant to Section 732.202(f), and costs for replacing the same with clean fill material. Previously, in Appendix C, these 4 foot backfill amounts were merely listed in cubic yards. This resulted in some difficulty when bills were submitted with the amounts in tons, rather than cubic yards. Therefore, the Illinois EPA is amending the table to include the backfill volumes in tons.

The typical backfill that is being removed and disposed of is sand while an excavation is backfilled with some type of gravel. *The National Construction Estimator* by Dave Ogershok, 1999; Craftsman Book Company; Carlsbad, California, states that one cubic yard of sand weighs

1.35 tons and that one cubic yard of gravel weighs 1.4 tons. Therefore, the 1.35 ton/cubic yard conversion was used in determining the maximum amount of backfill material to be removed in tons. The 1.4 ton/cubic yard conversion was used in determining the maximum amount of backfill material to be replaced in tons. Including these conversions as part of the Appendix C table should alleviate any future doubt regarding the amount of material allowed in accordance with 35 IAC Section 732.606(a) for purposes of reimbursement from the Fund.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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## Education

UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN  
*B.S. in Biology--May 1989*

## Employment

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

*Senior Public Service Administrator 11/98 to current*

Unit Manager in the Leaking Underground Storage Tank (LUST) Section  
Manage and direct the activities of the Unit which includes seven project managers

- prepare work schedules and assign work
- perform annual performance evaluations
- provide training and technical guidance to staff
- facilitate problem solving
- coordinate the LUST Section portion of the Performance Partnership with USEPA
- respond to subjects of highly controversial or sensitive nature
- make presentations at Brownfield Conferences and other Illinois EPA related functions

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

*Environmental Protection Specialist 05/91 to 10/98*

Project Manager in the LUST Section

- Review and provide comments on technical plans and reports for leaking underground storage tank remediation
- Review and provide comments on budgets
- Review and provide comments on reimbursement packages submitted for the leaking underground storage tank Fund
- Provide testimony at appeals and regulatory hearings before the Illinois Pollution Control Board
- Assist in the preparation of enforcement cases

## Additional Training

- Technical: Basical Geology and Hydrogeology; Aquifer Testing; Groundwater Chemistry and Sampling; Hydrogeologic Mapping; Risk Assessment at Superfund Sites;
- Computer: Word Perfect; Word; Power Point; Quattro Pro
- Management/Problem Solving: Effective Management; Expert Witness; Maintaining an Optimistic Focus at Work; Testifying Workshop; Total Quality Management Facilitator Training

