

MAY 04 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO:)	
REGULATION OF PETROLEUM LEAKING)	R04-23
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 4, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of Questions Pre-Filed By CW³M in the above-captioned matter on behalf of CW³M Company.

Dated: May 4, 2004

Respectfully submitted,

CW³M Company

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Jonathan P. Froemel, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
217261v1

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Questions Pre-Filed By CW³M by placing a copy in an envelope addressed to the Service List Attached from CW3M Company, Inc., 701 West South Grand Avenue, Springfield, IL 62704 before the hour of 5:00 p.m., on this 5th Day of May, 2004.

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)

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

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

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

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

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

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

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)

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

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)

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

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

Claire A. Manning
Posegate & Denes
111 North Sixth Street
Springfield, IL 62701
(217) 522-6152

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 W. 166th Street
Oak Forest, IL 60452
708/535-9981

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

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

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

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

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

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CLERK'S OFFICE

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QUESTIONS PRE-FILED BY CW³M

Now comes CW³M, by and through its attorneys, Barnes & Thornburg, and pre-files the following questions in the above-captioned consolidated rulemaking proceedings:

1. 734.855 Unusual or Extraordinary Expenses – *“the Agency can allow exceedances of the Subpart H amounts on a site-specific basis”* Since the Agency used until recently a maximum rate sheet, for what percentage of situations where costs above the rate sheets were requested, did the Agency agree that those requests were justified? Can you describe any specific situations in which the Agency agreed costs above the maximum listed in the rate sheets were allowed? For example, a series of USTs are located near each other and some, but not all, are to be removed, and the remaining USTs are still in use so that shoring and hand-digging was requiring to remove USTs, and would IEPA consider this a situation where higher costs would be allowed? If not, why not?

2. 734.865 Increase in Maximum Payment Amounts -- From what time period was the data which was evaluated when creating the rates obtained? Why wait two and a half years to begin raising the rates for inflation? How was the Implicit Price Deflator for Gross National

Product selected as the inflation factor over other inflation factors such as the consumer price index? Why is inflation capped at 5 percent? If the inflation rate is greater, why not pay the actual rate? If there was a 6 percent deflation would Agency still limit the change to 5 percent?

3. In Doug Clay's testimony in support of 732.605 – *“This limit is what the Agency believes is reasonable for destruction or dismantling and reassembly of a structure reflects historical practice”* On what data or information is this historical practice based? In determining what the Agency considered is reasonable were any or all of the following variables considered: size of structure, type of construction material, distance from landfill if building is not to be re-assembled, removal and disposal of any hazardous materials contained within the building such as asbestos, and the IEPA and U.S. EPA asbestos inspection, notification, removal and disposal requirements?

4. In Brian Bauer's Introductory Section – *“these averages are consistent with the Agency's historical data”* To what specific historical data is Mr. Bauer referring? Is he referring to historical rate sheets which IEPA stated have been used throughout the history of the program? Why didn't the Agency provide any of these rate sheets or any other historical data with the Agency's pre-filed testimony so that the Board and public may review them to verify Mr. Bauer's statements?

5. In Brian Bauer's testimony in support of 732.815 – *“survey of vacuum truck contractors”* Please name each vacuum truck contractor contacted.

6. In Brian Bauer's testimony in support of 732.820(b) – The Agency is assigning a directly proportional rate to well installation. However, isn't the only difference between the cost of a 15' and 20 foot well the amount of riser pipe, sand and bentonite? Aren't those 3 factors only 3 of the 11 factors used in calculating the well rate while the other factors are

constant for each well? Why not propose a formula which had a constant for those factors that are constant times the number of wells + a constant for the other variable factors times the number of feet in the wells in order to more accurately account for the true costs? Was a formula like the one described above considered when deriving the monitor well installation rates? Why or why not?

7. In Brian Bauer's testimony in support of 732.820(d) – *“the average costs to abandon a groundwater-monitoring well is about \$150”* How was this number derived? How many budgets were evaluated and from what time period were they? Why was \$1.50 per linear foot in the original proposed amendments?

8. In Brian Bauer's testimony in support of 732.485(a)(2) -- *“one-half of the average daily expenses”* Did the Agency do any calculations which leads to these rates? It describes miscellaneous supplies as *“gloves, sampling jars, plastic bags, and all other incidental materials”*, a PID and vehicle are also included in the half-day rate, however the Agency has historically also reimbursed equipment such as survey equipment and water level meter. Under which of the proposed mechanisms are these costs covered?

9. In Brian Bauer's testimony in support of 734.845(a)(2)(A) – *“based on conversations with UST removal contractors...consultants are not always present”* With which UST removal contractors did IEPA personnel have these discussions? Which IEPA personnel had these discussions? On what information did you determine that one half-day was adequate for a consultant to be at a tank removal site? Do you feel this is adequate for a tank removal with a total capacity of 75,000 gallons which takes two days? When asked if consultant's were present during UST removal, was the question specifically limited to UST removals where an

incident for the subject tanks had been previously reported, or was it posed as a general question for all tank pulls?

10. In Brian Bauer's testimony is support of 734.845(b)(2) – Your testimony provides two-half days for one full day of drilling, how did the Agency arrive at the conclusion that drilling only required one consulting personnel to be on-site? Were the increased sampling requirements of 734 considered? Is one consulting personnel for drilling activities in line with the number of personnel proposed by CECI?

11. In Brian Bauer's testimony in support of Appendix E – *“the reimbursed personnel rate is based on the task performed, not necessarily the title of the person performing the task.”* Did the Agency consider if this provision discriminates against small businesses that have only a few employees? I.e. a small firm cannot afford to hire a registered professional because they do not have enough “registered professional work” for them to do and cannot afford to pay them registered professional rates because they are required to bill them at a lower rate for most of the tasks which they will need to perform.

12. In Brian Bauer's testimony is support of 734.840(a) – *“square foot rates for the installation of asphalt are from the 2003 National Construction Cost Estimator”* Did the Agency review the introduction to the National Construction Estimator which explains how to use the guide prior to utilizing its numbers? Was the required Area Modification Factor utilized? Was the required Overhead and Markup Factor utilized? Was mobilization included? Was supervision (foreman) included? For the asphalt replacement rate, was subgrade preparation included? Is the rate used a residential or commercial construction rate? Why didn't IEPA use the rates for concrete listed in the quote?

13. In Harry Chappel's Introduction – *"I was in private practice as a co-owner in two environmental consulting firms"* As a registered professional engineer, did you certify plan and budgets for submittal to the LUST Section? Did you ever certify any budgets which exceeded the maximum amounts listed in these amendments as being reasonable costs?

14. In Harry Chappel's testimony in support of 732.825 – *"historically allowed \$55 per cubic yard"* When was the \$55/yd³ figure derived by the Agency? Was the \$55 dollars per cubic yard originally developed as a maximum amount or as a guideline above which a time and materials review was necessary? What is the basis for this formula? How many times have adjustments been made to the excavation and disposal and backfill figures?

15. In Harry Chappel's testimony in support of 732.825 – *"fluff factor of 5 percent"* How did the Agency determine the 5 percent "fluff" factor? Is it a value that the Agency has historically utilized? If not, what historical value was utilized and what was the reason for its adjustment?

16. In Harry Chappel's testimony in support of 732.825 – *"conversion factor for tons to cubic yards has been specified"* The specified conversion factor is 1.5.tons per yd³. Is this the conversion factor which is currently utilized by the Agency? Is the Agency aware that in the previous revisions to 732, the Board specified that the conversation rate should be 2g/cm³ which is equivalent to 1.68 tons per cubic yard? Is there a reason the Agency has chosen not to use the Board specified conversion rate, which was established following public comment at the previous rulemaking?

17. In Harry Chappel's testimony in support of 732.825 – *"This figure (for backfill) does not include cost for a consultant's oversight"* Are costs for a consultant's oversight of backfill operations included anywhere in Subpart H?

18. In Harry Chappel's testimony in support of 732.835 – “EPA instead opted to use the average amounts provided on the IAEL data” On what basis did the Agency determine that 50% of the rates submitted on the IAEL sheet were unreasonable?

19. In Harry Chappel's testimony in support of 732.845 – “The hours estimated for the various activities discussed were derived in consultation with the Consulting Engineers Council of Illinois” Were the hours proposed for categories provided by the CECI lump sum values or maximum allowable values? Did the Agency strictly adhere to the same scope of work for which the CECI had proposed for various values, or did the Agency add to the scope of work without increasing the number of hours to do the work? For the personnel title breakdowns, did the Agency adjust the CECI proposal in any way? Was reimbursement claim preparation included by the CECI into each of its reports or was it listed as a separate item with its own set of hours?

20. In Harry Chappel's testimony in support of 732.845 – “a workday of 10 hours was assumed” In the Agency's experience or in the historical data which you state to have reviewed, have the Agency ever seen instances where professional consulting services were required for more than 10 hours in one day? If more than ten hours of work are required in one day then why does the Agency feel that consultants should not be paid for working longer than 10 hours in one day?

21. In Harry Chappel's testimony in support of 732.845 – The average hourly wage in Mr. Chappel's section is for both professional field personnel and administrative office personnel. Why does the Agency feel that it is appropriate to average the rate for office personnel who never go to the field with hourly rates for field personnel? By setting the \$30.00

limit on mileage aren't you in effect limiting owners and operators to hiring consultants who have offices within 82 miles of the site (based upon IRS allowed rate of \$0.365 per mile)?

22. In Harry Chappel's testimony: Attachment 2 – Is the Agency aware that rates included in Attachment 3 for Arizona which is labeled “2003 Cost Ceilings” are consistently higher than the rates that are listed for Arizona in Attachment 2? What is the reason for this discrepancy?

23. In Harry Chappel's testimony: Attachment 5 – Are you aware that costs in this section haven't been effective since 2001? The current costs listed on the Colorado website are higher than the ones presented in Attachment 5 and are listed as effective since 1/1/02. What is the reason that the Agency chose to provide old data?

24. In Harry Chappel's testimony: Attachment 9 – Who prepared this attachment? How were the standard deviations calculated? Why did the Agency included only some of the data points in its standard deviation calculations as opposed to all of the data points provided? Please provide the specific sites and dates the reports were submitted in order to allow for a Board or public inspection of IEPA's data collection?

25. In Harry Chappel's testimony: Attachment 12 – Who prepared this attachment? Explain the use of negative numbers in the 20&45 Day and oversight columns? Because of the obvious errors in this document, please provide all of the spreadsheets upon which calculations were conducted. Attachment 12 appears to indicate the costs included are all early action consultant costs with the exclusion of any excavation oversight; is this correct? Based on proposed Subpart H the total amount of money that would be paid for the activities included on this sheet, including any closure request, would be \$6,760. Did the Agency determine how many of the 15 sites that had their costs included in Appendix 12, would be approved under the

proposed maximum allowable rates? Did the Agency intend that 9 of the 15 sites would have costs above the limits in Subpart H? Is the Agency aware that in the sample set collected, consultants would have had unreasonable fees in 60% of the cases?

26. Subpart H General -- According to Mr. Bauer's testimony, a number of sites were reviewed and average costs of the data reviewed are listed. Please produce the supporting documentation for all of the rates calculated in the form of spreadsheets in Appendices? For the data selected in these calculations, what was the timeframe of the submitted reports from which the data was selected and when was the data evaluation completed?

27. Subpart H General -- In some of the sections of Mr. Bauer's testimony, it is stated that IEPA utilized the average costs to calculate the maximum rates, why is it that you feel that 50% of consultants and their subcontractors have been submitting unreasonable rates? What evaluation did the Agency do, if any, to determine that 50% of the consultants were overcharging? Has the Agency testified in the past that the average plus one standard deviation was (which covered 84% of costs) the method for determining maximum rates in its rate sheets? What is the Agency's rationale for the change from that method? When the average plus one standard deviation was utilized, what was the reasoning for its selection?

28. Subpart H General -- Did the Agency review OSHA regulations (29 CFR 1926) in conjunction with efforts to develop the field oversight rates and the number of consulting personnel required for certain activities?

29. Subpart H General -- In the Agency's testimony for Part 734, it describes how a consultant is paid half-days for drilling activities, yet there is no similar description in Part 732. While I understand that drilling activities are included in the lump sums for site classification,

don't sites classified as High Priority require delineation of the plume following site classification? How will these costs be funded?

30. Subpart H General -- Is the Agency aware that its proposed rates for personnel are actually less than previously approved rates; for example the proposed rates are 26% less than the personnel rates previously approved by the Agency for site classification (\$13,400 previous and \$9,870 currently)? What new information led the Agency to make this adjustment?

31. Subpart H General -- Subpart H provides maximum costs for writing specific reports, if the Agency requests additional information which is already present in the report or requires revisions which exceed the minimum requirements of the Act, is there any mechanism for payment of these costs. Even if the response is a one-page letter or a couple of phone calls why should the owner or operator eat costs that were incurred due to errors by Agency personnel?

32. Subpart H General -- The Agency has repeatedly stated recently that they cannot complete reviews of costs based on time and materials without the assistance of some sort of guidance rates. On that basis what criteria will the Agency use to determine reasonableness on a time and materials basis for items such as alternative technologies and free product removal?

33. Subpart H: General -- The proposed maximum allowable rate for preparation of a Corrective Action Plan is the same in Part 734 and Part 732. Aren't the technical requirements different since High Priority CAPs in Part 732 also require all of the site investigation and plume delineation activities to be included in addition to the requirements of a CAP for Part 734? The Agency conservatively allowed at least \$4,800 for that type of work in Part 734 site investigation, is there a reason that an additional \$4,800 is not included in the CAP preparation costs for Part 732?

34. Subpart H: General -- Instead of setting lump sum rates, did the Agency consider utilizing formulas, that took into account site-specific factors such distance from services. If so, why was that idea rejected? If not, why not?

35. Subpart H: General -- The Agency provides costs for excavation and disposal and then alternative technologies must be budgeted on a time and materials basis. The Agency also requires cost comparisons to conventional technology for alternative technology proposals. What is the Agency considering conventional groundwater treatment technology and what is its mechanism for payment?

36. Subpart H: General -- If the fuel tax exemption for off-road diesel is lifted, excavation and backfill costs will increase. Is there any provision to raise rates if this or any other factors outside normal inflation occur which directly cause an increase in costs?

37. Subpart H: General -- The regulations should include the methods and procedures for setting rates, not the rates themselves. This way, factors outside the realm of normal inflation, such as the fuel tax exemption for off-road diesel can be addressed more quickly. What is the Agency's reason for publishing the rates in the regulations as opposed to simply calculating a method for determining the rates in which the rates can more easily be adjusted for changing real world situations.

38. March 15, 2004 Hearing (D. Clay) -- Are you aware that some, but not all of the LUST project managers are implementing the technical requirements of proposed 734, despite your assertion that these rules are not yet being implemented?

Dated: May 4, 2004

Respectfully submitted,

CW³M Company

By: Carol Powe (CSH)

and:

By: Carolyn S Hesse
One of Its Attorneys

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

217215v1