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STATE OF ILLINOIS
Pollution Control Board

Dea Zimmerman
841 Bittersweet Drive
Northbrook, Illinois 60062

May 2, 2001

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street - Suite 11-500
Chicago, Illinois

R01-26
P.C.#6

In the Matter of: Proposed Regulation Changes to 35 Illinois Administrative Code Part 732

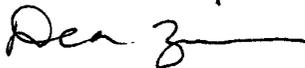
Dear Ms. Gunn,

I have serious concerns regarding the proposed regulation changes to 35 Illinois Administrative Code Part 732: Regulation of Petroleum Leaking Underground Storage Tanks. Specifically, I am concerned over the proposed language addition found at Part 732.411, Off-Site Access. My comments are based on personal experience and will demonstrate the need to alter these proposed changes before they become final.

Enclosed are my comments.

Thank you for your time and consideration.

Sincerely,



Dea Zimmerman

enc.

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MAY 2 - 2001

STATE OF ILLINOIS
Pollution Control Board

Before the Illinois Pollution Control Board

In the Matter of

Proposed Amendments to Regulation) R01-26
of Petroleum Leaking Underground) (Rulemaking - Land)
Storage Tanks, 35 ILL. ADM. 732)

I have serious concerns regarding the proposed regulation changes to 35 Illinois Administrative Code Part 732: Regulation of Petroleum Leaking Underground Storage Tanks. Specifically, I am concerned over the proposed language addition found at Part 732.411, Off-Site Access. My comments are based on personal experience and will demonstrate the need to alter these proposed changes before they become final.

My family owns a small commercial building containing retail businesses that is located adjacent to an Amoco gasoline station. In early June of 2000, we received a letter from Amoco requesting us to sign and return an off-site access agreement allowing Amoco access to collect soil samples as part of an environmental assessment (Attachment 1). We were a little puzzled by the request as there was no information about why Amoco wanted the soil samples. My husband left Amoco a phone message, which was not returned prior to us going on an extended leave. We returned at the end of August. Because Amoco was not forthcoming about what was going on or had gone on their property, or their motivation for wanting to do an environmental assessment on our property, I filed a Freedom of Information request with the Illinois EPA. Once we received this information, we had a better idea of the situation.

The latest LUST incident occurred in December of 1997 and it was this incident that Amoco was working on closing out. Amoco's objective was (and remains) to obtain a No Further Remediation letter from IEPA for the 1997 release. The IEPA classified the site as a "High Priority Site" and, in a letter dated April 19, 2000, required Amoco to submit a High Priority Action Completion Report within 60 days. This letter instructed Amoco that pursuant to 35 IAC Part 742.120, Amoco had to sample off-site (which would be on our property).

It was now the Winter of 2000, and I obtained a "model" IEPA off-site access agreement that was developed based on requirements outlined in Section 22.2c of the Environmental Protection Act (415 ILCS 5/22.2c) (Attachment 2). We re-structured the access agreement we were negotiating with Amoco to follow this "model" IEPA access agreement and sent it back to Amoco (Attachment 3). At the beginning of February 2001, Amoco refused to sign the agreement due to language that required them to accept responsibility for diminution in property value caused by any release.

In response to a second FOIA request to IEPA, I learned that Amoco had received an extension from IEPA, giving them until March 31, 2001, to file the High Priority Action Completion Report. After the date passed, I called the IEPA project manager for this LUST incident to inform her that Amoco refused to sign the access agreement we sent them and to determine what the next steps would be. I was appalled to hear her state that Amoco would probably get their No Further Remediation letter anyway, especially as more time passed. When asked why, she stated

that the regulations were changing and all Amoco would have to do was show the IEPA that they (Amoco) had used best efforts in attempting to obtain off-site access. The IEPA project manager was not able to answer the question of how IEPA would evaluate whether Amoco used “best efforts” or not. I could not believe that the regulations could be and would be manipulated in such a manner as to allow a corporate giant to shirk their responsibilities under the law.

It was at this point of frustration that I looked at the proposed language for off-site access found at Part 732.411. I do not disagree with any of the criteria that an owner/operator would have to meet in 732.411(b). While the requirements in 732.411(c) are weak, essentially a statement from the owner/operator stating what they did and that they were not successful in obtaining off site access, it is Part 732.411(d) that concerns me the most.

This is the Section that says how IEPA is going to evaluate whether or not an owner/operator used “best efforts” in obtaining off-site access. Most of the requirements listed in section (d) require the IEPA to evaluate physical, hydrogeological, and other environmental factors. There is nothing in these proposed regulations that requires IEPA to try to discern whether the owner/operator is telling the truth about their “best efforts,” whether the owner/operator is the one at fault for not obtaining off site access, or whether any unreasonable demands were placed on either party.

I can envision certain circumstances where owner/operators really have made an honest attempt at obtaining off site access, but, due to no fault of their own, have failed. I do believe there should be provisions in the regulations to allow those owner/operators a chance to obtain an NFR letter. However, the proposed regulations are so lopsided in favor of owner/operators that situations like the one described above might occur.

The proposed regulations should impose on IEPA some responsibility to get the other side of the story, by contacting the off site property owner to determine if indeed the owner/operator used “best efforts.” Without seeing or hearing the other side, IEPA simply does not have the appropriate and necessary information upon which to base a “best efforts” decision. If you don’t change the regulations to incorporate this information, you might as well stop imposing the off site sampling requirement.

The bottom line is that we followed a model off-site access agreement that IEPA believes meets the requirements of the law, we made no unreasonable demands upon Amoco, and Amoco refused to sign it. And the prevailing thought on the part of the IEPA project manager is that Amoco, the owner of the tank that released toxicants into the environment, will probably get an NFR letter anyway. This outcome, as I see it, would be a great disservice to environmental law enforcement. The current proposed regulations could allow this outcome. I am hoping this example is an unintended consequence of the proposed regulations and that IEPA will resolve this loophole prior to final adoption of the regulations.

Thank you for your time and consideration.

ACCESS AGREEMENT

This access agreement is entered into between Amoco Oil Company and the Grantor shown below. Grantor is the owner of the following property-

For good and valuable consideration which the parties hereby acknowledge the receipt and sufficiency thereof, the undersigned (Grantor) hereby agrees does not agree to grant Amoco access to the above-referenced Property in order to perform certain environmental activities which Amoco at its sole discretion chooses to perform. Such activities may include sampling, assessment, inspection, monitoring, installation of equipment, operation and maintenance of equipment, and remediation activities (Activities).

Amoco shall use reasonable efforts during its Activities to minimize interruption to the business or use of the Property. Amoco will repair any property damage that may occur as a result of its Activities at the Property.

Upon written request by Grantor, Amoco agrees to provide the results of analytical testing performed by Amoco regarding Activities. Amoco provides this information as a courtesy only. Use of any of the information contained in these documents are at Grantor's sole risk. No copies are to be made, nor will Grantor allow any person to examine these documents without the prior written consent of Amoco. Amoco shall not be deemed to have made any representation or warranty, expressed or implied, as to the condition to the Property or the accuracy to the documents.

Amoco will indemnify Grantor from third party causes of action which arise out of negligence associated with Activities performed by Amoco on the Property.

It is hereby agreed that the Amoco Access Agreement or Activities on the Property are neither an admission against Amoco's interests nor an assumption of liability or waiver of any rights by Amoco.

Either party to the Access Agreement may revoke it with sixty days written notice indicating such revocation.

Amoco Oil Company Representative

Property Owner Signature (Grantor)

Consultant Contact Person

Printed Name

Phone Number

Date of Authorization

Attachment 2
page 1 of 3



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 Mary A. Cade, Director

217/782-6762

CERTIFIED MAIL

FEB 10 1999

Dear _____

The Illinois Environmental Protection Agency ("Illinois EPA") has reviewed the High Priority Corrective Action Plan ("plan") submitted for the above-referenced incident. This plan, dated December 1, 1998, was received by the Illinois EPA on December 2, 1998. Citations in this letter are from the Environmental Protection Act ("Act") and 35 Illinois Administrative Code ("35 IAC").

Pursuant to 35 IAC Section 732.405(c) and Section 57.7(c)(4) of the Act, the Illinois EPA is modifying the plan. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with 35 IAC Part 732 and Title XVI of the Act:

1. Perform the leaching factor equation (R14) on the concentration of benzene detected in soils at MW-3. In addition, determine the dissolved hydrocarbon concentration along the centerline to the north of MW-3 by performing equation R26 based on the results of R14.

It should be noted that the Illinois EPA has developed a model letter for LUST owners/operators to send to off-site property owners for the purpose of requesting access for investigation and/or remediation. The letter outlines terms that the LUST owner/operator will abide by if access is provided without the necessity of an injunction. This information was developed based on requirements outlined in Section 22.2c of the Environmental Protection Act (415 ILCS 5/22.2c). This process is now in effect and should be followed for all future access requests. The decision to accept the documentation provided in the above-referenced plan for off-site access denial was based on site-specific circumstances and timing. This does not mean that the Illinois EPA will accept any other future or past attempts at off-site access without the proper documentation in the form of the model letter. Please find attached a copy of the model letter for your information.

Additionally, the Illinois EPA has revised form LPC 568 that was previously sent to you in a letter dated March 17, 1998. This form must be completed and submitted to the Illinois EPA prior to issuance of the No Further Remediation Letter.

Attachment 2
page 2 of 3

**MODEL LETTER TO OFF SITE PROPERTY OWNERS
REQUESTING ACCESS FOR PURPOSES OF REMEDIATION**

! DATE !
! ADJACENT PROPERTY OWNER NAME !
! ADDRESS !
! ADDRESS !

RE: Property Access Consent

Dear ! NAME !:

On behalf of ! OWNER/OPERATOR !, this document serves as a request for property access pertaining to the remediation of contamination that is present on your property. The contamination resulted from a release of ! TYPE OF CONTAMINATION ! from an underground storage tank ("UST") system. The UST was removed on ! DATE !.

Pursuant to provisions of the Illinois Environmental Protection Act ("Act") pertaining to petroleum underground storage tanks (415 ILCS 5/57), owners or operators of USTs are responsible for corrective action to remediate any contamination that poses a threat to human health, human safety, or the environment resulting from the UST release.

Section 22.2c of the Act provides that if an owner of an adjacent property refuses to permit access onto the adjoining land for the purpose of effecting remediation, the owner or operator may seek a court order to compel the owner of the off site property to permit immediate entry for purposes relating to the remediation of the site, the adjoining land, and any other real property that may be contaminated with petroleum products. (415 ILCS 5/22.2c) In the event that it becomes necessary for the owner or operator to seek an injunction pursuant to Section 22.2c, the court will prescribe the conditions of the entry and will determine the amount of damages, if any, to be paid to you as compensation for the entry.

If access is provided without the necessity of an injunction, ! OWNER/OPERATOR ! will abide by the following terms:

1. ! OWNER/OPERATOR ! will return the condition of the property to its condition prior to the entry (less the contamination).
2. ! OWNER/OPERATOR ! will conduct all remediation at its own expense.
3. ! OWNER/OPERATOR ! and its contractors will keep and maintain proper insurance, as applicable, including: Worker's Compensation; Commercial General Liability; Comprehensive Automobile Liability and Professional Liability for Errors and Omissions for the completion of all work.

Attachment 2
page 3 of 3

As a consequence of the release, potential threats to human health and the environment and diminished property value may be an issue. Pursuant to the Act, it is the duty of ! OWNER/OPERATOR ! to mitigate any threat to human health, human safety, and the environment resulting from the UST release. It is necessary that we have your cooperation in granting access to your property to comply with our responsibility under the law.

Please select one of the choices below, sign, date and return this document to ! OWNER/OPERATOR ! at the address stated herein.

Per the terms of this document, I elect to GRANT _____ access for site remediation.

Per the terms of this document, I elect to DENY _____ access for site remediation and understand that ! OWNER/OPERATOR ! may seek an injunction in a court of competent jurisdiction to gain access to my property for the purpose of remediating contamination caused by the release as stated in this document.

I understand that failure to allow ! OWNER/OPERATOR ! to remediate my property may result in my inclusion in a lawsuit filed by the Illinois EPA or the State of Illinois involving the contamination on my property.

! NAME OF OWNER/OPERATOR !
! ADDRESS!
! ADDRESS !

! NAME OF OFF SITE OWNER !
! ADDRESS !
! ADDRESS !

Signature: _____

Signature: _____

Date: _____

Date: _____

Access Agreement

This Access Agreement is entered into between Amoco Oil Company ("Owner/Operator") and _____ The purpose of this Agreement is for the Owner/Operator to advance a soil boring at _____ Illinois ("off-site property") as indicated on the attached site map (Exhibit A) at the approximate location indicated as B-8.

This document serves as a request by the Owner/Operator for access to the off-site property pertaining to the sampling for any contamination that could be present and subsequent corrective action if necessary. The ~~contamination need for sampling~~ resulted from a release of _____ [fill in type of contamination] from an underground storage tank ("UST") system. The UST was removed on _____ [insert date].

Pursuant to provisions of the Illinois Environmental Protection Act ("the Act") pertaining to petroleum underground storage tanks (415 ILCS 5/57), owners or operators of USTs are responsible for corrective action to remediate any contamination that poses a threat to human health, human safety, or the environment resulting from the UST release.

If _____ provides access to the off-site property, then the Owner/Operator will abide by the following:

1. The Owner/Operator will advance the soil boring on _____, 2001 between the hours of _____, M and _____, M. The Owner/Operator shall use all reasonable efforts during this time to minimize interruption of the businesses at or use of the off-site property.
2. After the sampling, tThe Owner/Operator will return the condition of the off-site property to its condition prior to the access ~~(less the contamination)~~.
3. The Owner/Operator will conduct all remediation take any and all corrective action as required by the Illinois Environmental Protection Agency -at its own expense.
4. The Owner/Operator and its contractors will keep and maintain proper insurance, as applicable, including: Worker's Compensation; Commercial General Liability; Comprehensive Automobile Liability and Professional Liability for Errors and Omissions for the completion of all work. Further, the Owner/Operator will indemnify from third party causes of action which arise out of negligence associated with any activities by the Owner/Operator or its contractors on the off-site property.
5. The Owner/Operator will promptly provide _____ with the analytical results from the soil boring taken on the above date.

Attachment 3

page 2 of 2

6. As a consequence of the release, potential threats to human health and the environment and diminished property value may be an issue. Pursuant to the Act, it is the duty of the Owner/Operator to mitigate any threat to human health, human safety, and the environment resulting from the UST release. Further, the Owner/Operator takes full responsibility for any diminution in value to the off-site property that results from the release.

The undersigned do hereby agree to enter into this Access Agreement under the terms specified above.

Amoco Oil Company Representative

property owner

Consultant Contact:

Name: _____

Telephone Number: _____

Date