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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 18 2004  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF

PROPOSED AMENDMENTS TO: ) R04-22  
REGULATION OF PETROLEUM LEAKING ) (Rulemaking – UST)  
UNDERGROUND STORAGE TANKS )  
35 ILL. ADM. CODE 732 )  
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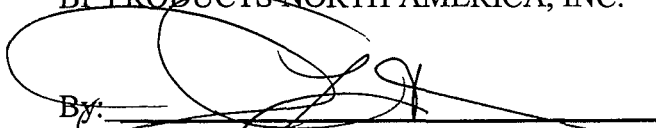
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35 ILL. ADM. CODE 734 ) Consolidated  
 )

NOTICE

To: See Attached Service List

**PLEASE TAKE NOTICE** that today I have filed with the Office of the Clerk of the Pollution Control Board **APPEARANCE** of David L. Rieser on behalf of **BP PRODUCTS NORTH AMERICA, INC.; MOTION TO FILE TESTIMONY INSTANTER; AND TESTIMONY OF HAROLD PRIMACK** in the above titled matter. Copies of these documents are hereby served upon you.

BP PRODUCTS NORTH AMERICA, INC.

By:   
One of its Attorneys

DATED: June 18, 2004

**MCGUIREWOODS LLP**  
David L. Rieser  
77 West Wacker Drive, Suite 4400  
Chicago, Illinois 60601  
(312) 849-8100

## Printable Notice List

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Print Service List			
Party Name	Role	City & State	Phone/Fax
Ogle County State's Attorney Office Interested Party	Ogle County Courthouse 110 South Fourth Street, P.O. Box 395	Oregon IL 61061-0395	815/732-1170 815/732-6607
Michael C. Rock, Assistant State's Attome			
IEPA Petitioner	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782-5544 217/782-9807
Gina Roccaforte, Assistant Counsel			
Kyle Rominger, Assistant Counsel			
Doug Clay			
Hodge Dwyer Zeman Interested Party	3150 Roland Avenue Post Office Box 5776	Springfield IL 62705-5776	217/523-4900 217/523-4948
Thomas G. Safley			
Sidley Austin Brown & Wood Interested Party	Bank One Plaza 10 South Dearborn Street	Chicago IL 60603	312/853-7000 312/953-7036
William G. Dickett			
Karaganis & White, Ltd. Interested Party	414 North Orleans Street Suite 810	Chicago IL 60610	312/836-1177 312/836-9083
Barbara Magel			
Illinois Petroleum Marketers Association Interested Party	112 West Cook Street	Springfield IL 62704	217/793-1858
Bill Fleisch			
United Science Industries, Inc. Interested Party	P.O. Box 360 6295 East Illinois Highway 15	Woodlawn IL 62898-0360	618/735-2411 618/735-2907
Joe Kelly, PE			
Illinois Environmental Regulatory Group Interested Party	3150 Roland Avenue	Springfield IL 62703	217/523-4942 217/523-4948
Robert A. Messina, General Counsel			
Carlson Environmental, Inc. Interested Party	65 E. Wacker Place Suite 1500	Chicago IL 60601	
Kenneth James			
Chemical Industry Council of Illinois Interested Party	2250 E. Devon Avenue Suite 239	Des Plaines IL 60018-4509	
Lisa Frode			
Barnes & Thornburg Interested Party	1 North Wacker Drive Suite 4400	Chicago IL 60606	312/357-1313 312/759-5646
Carolyn S. Hesse, Attorney			
Rapps Engineering & Applied Science Interested Party	821 South Durkin Drive P.O. Box 7349	Springfield IL 62791-7349	217/781-2118 217/781-5641
Michael W. Rapps			
Environmental Management & Technologies Interested Party	2012 West College Avenue Suite 208	Normal IL 61761	309/454-1717 309/454-2711
Craig S. Gocker, President			
Office of the Attorney General Interested Party	Environmental Bureau 188 West Randolph 20th Floor	Chicago IL 60601	312/614-2550 312/614-2547
Joel J. Sternstein, Assistant Attorney General			
Herlacher Angleton Associates, LLC Interested Party	8731 Bluff Road	Waterloo IL 62298	618/935-2262 618/935-2694
Tom Herlacher, P.E., Principal Engineer			
Illinois Pollution	100 W. Randolph St.	Chicago	

## Printable Notice List

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<b>Control Board Interested Party</b>	Suite 11-500	IL 60601	3128143956
	Dorothy M. Gunn, Clerk of the Board Marle Tipsord, Hearing Officer		
<b>Huff &amp; Huff, Inc. Interested Party</b>	512 West Burlington Avenue Suite 100	LaGrange IL 60525	
	James E. Huff, P.E.		
<b>Black &amp; Veatch Interested Party</b>	101 North Wacker Drive Suite 1100	Chicago IL 60606	
	Scott Anderson		
<b>Posegate &amp; Denes Interested Party</b>	111 N. Sixth Street	Springfield IL 62701	217-522-6152
	Claire A. Manning		
<b>Marlin Environmental, Inc. Interested Party</b>	1000 West Spring Street	South Elgin IL 60177	847-468-8855
	Melanie LoPiccolo, Office Manager		
<b>Illinois Department of Natural Resources Interested Party</b>	One Natural Resources Way	Springfield IL 62702-1271	217-7782-1809 217-524-9640
	Jonathan Furr, General Counsel		
<b>Burroughs, Hepler, Broom, MacDonald, Hebrank &amp; True Interested Party</b>	103 W. Vandalia Street Suite 300	Edwardsville IL 62025	618/656-0184 618/656-1801
	Musette H. Vogel		
<b>EcoDigital Development LLC Interested Party</b>	P.O. Box 380 6295 East Illinois Hwy 15	Woodlawn IL 62898	(618) 735-2411
	Joe Kelly, VP Engineering		
<b>Great Lakes Analytical Interested Party</b>	1380 Busch Parkway	Buffalo Grove IL 60089	(847) 808-7766
	A.J Pavlick		
<b>CSD Environmental Services, Inc. Interested Party</b>	2220 Yale Boulevard	Springfield IL 62703	217-522-4085
	Joseph W. Tuesdale, P.E.		
<b>CORE Geological Services, Inc. Interested Party</b>	2621 Monetga, Suite C	Springfield IL 62704	217-787-6109
	Ron Dye, President		
<b>Clayton Group Services Inc. Interested Party</b>	3140 Finley Road	Downers Grove IL 60515	630-795-3207
	Monte Nienkerk		
<b>PDC Laboratories Interested Party</b>	2231 W. Altorfer Dr.	Peoria IL 61615	309-692-9688
	Kurt Stepping, Director of Client Services		
<b>Arweil-Hicks, Inc. Interested Party</b>	940 East Diehl Road Suite 100	Naperville IL 60563	630-577-0800
	Thomas M. Gust, PE, Team Leader		
<b>CW3M Company, Inc. Interested Party</b>	701 South Grand Ave. West	Springfield IL 62704	217-522-8001
	Jeff Wienhoff		
<b>Suburban Laboratories, Inc. Interested Party</b>	2140 Jf Drive	Hillside IL 60162	708-544-3260
	Jarrett Thomas, V.P.		
<b>Environmental Consulting &amp; Engineering, Inc. Interested Party</b>	551 Roosevelt Road #309	Glenn Ellyn IL 60137	
	Richard Andros, P.E.		
<b>WACTED Engineering &amp;</b>		Peoria	

## Printable Notice List

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<b>Consulting, Inc. Interested Party</b>	8901 N. Industrial Road	IL 61615	
	Terrence W. Dixon, P.G.		
<b>Illinois Department of Transportation Interested Party</b>	2300 Dirksen Parkway	Springfield IL 62764	
	Steven Gobelman		
<b>SEECO Environmental Services, Inc. Interested Party</b>	7350 Duvon Drive	Tinley Park IL 60477	
	Collin W. Gray		
<b>Herlacher Angleton Associates, LLC Interested Party</b>	522 Belle Street	Alton IL 62002	
	Jennifer Goodman		
<b>United Environmental Consultants, Inc. Interested Party</b>	119 East Palatin Road Suite 101	Palatine IL 60067	
	George F. Moncek		
<b>McGuire Woods LLP Interested Party</b>	77 W. Wacker Suite 4400	Chicago IL 60601	
	David Rieser		
<b>Greenfelder, Hamker &amp; Gale Complainant</b>	10 S. Broadway Suite 2000	St. Louis MO 63104	314-241-9090
	Tina Archer, Attorney		
<b>Midwest Engineering Services, Inc. Interested Party</b>	4243 W. 166th Street	Oak Forest IL 60452	708-535-9981
	Erin Curley, Env. Department Manager		
<b>American Environmental Corp. Interested Party</b>	3700 W. Grand Ave., Suite A	Springfield IL 62787	(217) 585-9517
	Ken Miller, Regional Manager		
<b>Applied Environmental Solutions, Inc. Interested Party</b>	P O Box 1225	Centralia IL 62801	6185335953
	Russ Goodiel, Project Manager		
<b>Secor International, Inc. Interested Party</b>	400 Bruns Lane	Springfield IL 62702	
	Daniel J. Goodwin		
<b>Caterpillar, Inc. Interested Party</b>	100 NE Adams Street	Peoria IL 61629	3096751658
	Eric Minder, Sr. Environmental Engineer		
<b>K-Plus Environmental Interested Party</b>	Suite 1000 600 W. Van Buren Street	Chicago IL 60607	312-207-1600
	Dane Caplice		
<b>Illinois Society of Professional Engineers Interested Party</b>	300 West Edwards	Springfield IL 62704	217-544-7424 217-525-6239
	Kim Robinson		
	Brittan Polin		
Total number of participants: 50			

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THIS FILING IS SUBMITTED ON RECYCLED PAPER  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
OF THE STATE OF ILLINOIS Pollution Control Board

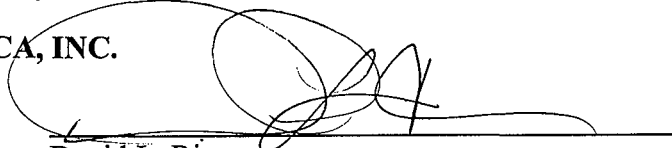
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APPEARANCE

I, David L. Rieser, hereby file my appearance in this matter on behalf of **BP PRODUCTS NORTH AMERICA, INC.**

  
\_\_\_\_\_  
David L. Rieser

**MCGUIREWOODS LLP**  
David L. Rieser  
77 West Wacker Drive, Suite 4400  
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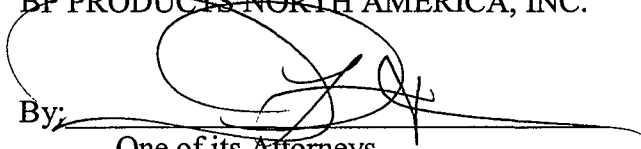
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BP PRODUCTS NORTH AMERICA, INC.'S MOTION TO FILE  
TESTIMONY INSTANTER

BP Products North America, Inc. ("BP"), by and through its attorneys, McGuireWoods LLP, requests permission to files its testimony regarding the above rulemaking, instanter. BP was unable to file this testimony on the due date because of conflicting schedules. No one will be prejudiced by this late filing and it will not delay the Board's consideration of these proposed rules.

WHEREFORE, for the reasons stated herein, BP respectfully requests permission to file this testimony instanter.

BP PRODUCTS NORTH AMERICA, INC.

By:   
One of its Attorneys

Date: June 18, 2004

MCGUIREWOODS LLP  
David L. Rieser  
77 W. Wacker Drive  
Chicago, Il 60601  
312/849-8100

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TESTIMONY OF HAROLD PRIMACK ON BEHALF OF BP PRODUCTS NORTH AMERICA, INC.

My name is Harold Primack and I am testifying on behalf of BP Products North America, Inc. (“BP”) regarding the Illinois Environmental Protection Agency’s proposed revisions to 35 Ill. Adm. Code 732 and proposed new 35 Ill. Adm. Code 734. My testimony will focus on the Agency’s proposed list of maximum payment amounts for various tasks associated with the investigation and remediation of leaking underground storage tanks. While BP chose not to participate in all of the hearings, we believe that our experience in UST work makes us particularly well suited to comment on the concept of unit pricing as proposed by the Agency.

As Environmental Business Manager, I am responsible for managing environmental incidents at BP’s retail sites in Illinois. I have been with BP since 1980 and have been involved in reviewing Board regulations regarding underground storage tanks in Illinois since 1996.

BP is an international energy company with a significant Illinois presence in gasoline marketing. BP is in the process of remediating more than 240 Illinois sites with leaking underground storage tank incidents and is very familiar with the costs of taking these actions. Because of the number of tanks and remediation projects, BP is in a position to contract with consultants to obtain favorable pricing and limit some measure of uncertainty.

BP believes that the unit pricing and maximum payment amounts concept proposed by the Agency has value to consumers of environmental services. We believe that the unit price and maximum payments structure will provide a measure of predictability and stability in the market place and will allow for more informed consumer decisions. We



further believe that reasonable maximum payment amounts will preserve the UST Fund and, if implemented correctly, improve the efficiency of the Agency's administration.

In taking this position, however, we believe these hearings can improve the Agency's proposal by working toward several additional goals. First, the process of arriving at the costs themselves must be transparent. We believe that transparency is essential both to allow consumers of consulting services to see usual prices for various activities and to allow the marketplace to function more efficiently by allowing for better price evaluation. The transparency would also allow better stakeholder acceptance since it would document the source of the Agency's numbers and allow the discussion to be focused on values that represent reasonable costs and not on uncertainty as to Agency methodology.

Second, the hearing will help to ensure that maximum payment amounts are reasonable so as to accord stakeholders value in performing the UST work. To set maximum costs too low would drive good consultants from the marketplace and inappropriately shift the costs of performing the remediation from the Fund. This might cause the Fund to fail of its required statutory purpose to serve as a financial assurance mechanism for the remediation of USTs. We believe that setting reasonable maximum costs will best achieve the goals of reducing unwarranted payments from the Fund.

Finally, it is essential that flexibility be built into the process. Despite testimony implying that this work is more art than science, the fact is that much of the UST work is a commodity activity which can generally be priced in advance. Yet the process of setting maximum costs and rates must account not only for regional differences but also for the complex site which presents unique challenges. While the proposed rules provide for some measure of flexibility, there are no criteria for exercising that flexibility. Given the increased number of appeals recently filed before the Board, the regulations should identify these criteria clearly so as best to inform the Agency and the regulated community in the implementation of the regulations and the Board in its review of Agency actions.

In evaluating options to achieving the transparency and flexibility required to make this process work, it is instructive to review the Board's TACO regulations. After some initial disputes, these regulations accomplished the potentially controversial work of setting cleanup values through substantial transparency. Both the underlying data and the process by which those values were derived were clear and subject to stakeholder review and comment even before the Agency submitted its proposal to the Board. The resulting consensus was useful in focusing the discussion on the actual values and not on process issues.

TACO is also a model of flexibility, both from the user and the Agency's standpoint. The user has numerous approaches to choose among from the simple Tier I to the complex Tier III. The Agency simplified its review process so that the Tier I and II proposals stay with the project managers who work from templates while the Tier III decisions typically go to a higher level of decisionmaking. While the range of flexibility provided by TACO



is not remotely needed for UST pricing, the Board should consider having different levels of review based on whether or not the project adheres to the maximum payment schedule.

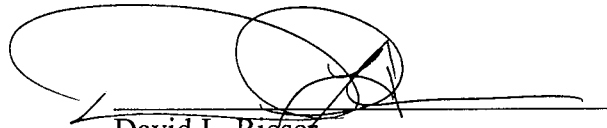
For all these reasons, BP supports the Agency's concept of maximum payment schedules but we request that the Board consider our suggestions in order to better address the Agency's issues and the needs of the stakeholders.

Thank you for allowing me to present this testimony today.

\\REA\219676.1

CERTIFICATE OF SERVICE

I, David L. Rieser, an attorney, hereby certify that I caused the attached pleadings to be served upon all parties listed on the attached Service List via first class U.S. mail from 77 West Wacker Drive, Chicago, IL, on June 18, 2004.



David L. Rieser

\\REA\219947.1