

**ORIGINAL**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

MAR 29 2001

IN THE MATTER OF: )  
 )  
AMENDMENTS TO REGULATION OF )  
PETROLEUM LEAKING UNDERGROUND )  
STORAGE TANKS: )  
35 ILL. ADM. CODE 732 )

STATE OF ILLINOIS  
*Pollution Control Board*

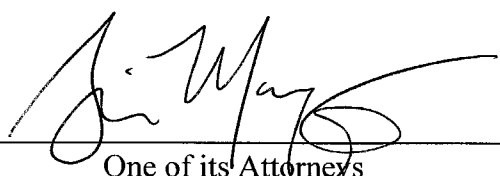
R01-26  
(Rulemaking - Land)

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on behalf of the ILLINOIS PETROLEUM COUNCIL, I have filed with the Clerk of the Illinois Pollution Control Board the **ILLINOIS PETROLEUM COUNCIL'S MOTION TO FILE TESTIMONY INSTANTER** and **TESTIMONY OF DAVID PIOTROWSKI ON BEHALF OF THE ILLINOIS PETROLEUM COUNCIL**, copies of which are hereby served on you.

ILLINOIS PETROLEUM COUNCIL

By:   
One of its Attorneys

Dated: March 29, 2001

**ROSS & HARDIES**  
David L. Rieser, Esq.  
Brian Marquez, Esq.  
150 North Michigan Ave.  
Chicago, Illinois 60601  
(312) 558-1000

***THIS FILING SUBMITTED ON RECYCLED PAPER***

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STATE OF ILLINOIS  
*Pollution Control Board*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

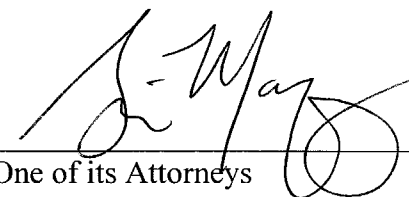
IN THE MATTER OF:	)	
	)	
AMENDMENTS TO REGULATION OF	)	R01-26
PETROLEUM LEAKING UNDERGROUND	)	(Rulemaking - Land)
STORAGE TANKS:	)	
35 ILL. ADM. CODE 732	)	

**ILLINOIS PETROLEUM COUNCIL'S  
MOTION TO FILE TESTIMONY INSTANTER**

The Illinois Petroleum Council, by and through its attorneys, Ross & Hardies, requests permission to file the Testimony of David Piotrowski On Behalf of the Illinois Petroleum Council instanter. The Illinois Petroleum Council was unable to file this testimony on the due date of March 27, 2001 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, the Illinois Petroleum Council respectfully requests permission to file this testimony instanter.

ILLINOIS PETROLEUM COUNCIL

By:   
One of its Attorneys

DATED: March 29, 2001

**ROSS & HARDIES**

David L. Rieser  
Brian Marquez  
150 N. Michigan  
Chicago, Il 60601  
312/558-1000

**MAR 29 2001**

**STATE OF ILLINOIS**  
*Pollution Control Board*

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 732) )

TESTIMONY OF DAVID PIOTROWSKI ON  
BEHALF OF THE ILLINOIS PETROLEUM COUNCIL

Introduction

My name is David Piotrowski. I am an Environmental Business Manager with BP Amoco. I have been in my current position since March 1999. My responsibilities include managing various types of remediation projects for BP Amoco and its subsidiaries, including Amoco Oil Company ("Amoco"). A large portion of these projects involve remediation of sites in the Illinois leaking underground storage tank ("LUST") program. My responsibilities relating to these LUST sites include all aspects of such remediation, including working with off-site property owners to obtain access for sampling and/or corrective action.

Prior to assuming my current position, I was an Environmental Manager for Amoco in Houston, Texas from 1996 to 1999, where I managed remediation projects for Amoco's Refining and Exploration & Production businesses. Prior to that, I was a Liability Manager for Amoco from 1992 to 1996. One of my responsibilities in this position was to manage LUST remediation projects for Amoco in Illinois.

I received a B.S. in Geology from Illinois State University and a M.S. in Geology from Western Michigan University. My resume is attached.

Today, I will be testifying on behalf of the Illinois Petroleum Council ("IPC") in support of certain modifications to Illinois EPA's proposed amendments to the Part 732 LUST regulations. My testimony will be limited to the off-site access issues that are contained in

Illinois EPA's proposed Sections 732.404(c) and 732.411. The IPC generally supports Illinois EPA's proposal to allow underground storage tank ("UST") owners and operators the opportunity to receive a No Further Remediation Letter where off-site contamination has not been addressed due to the inability to obtain off-site access. However, the IPC believes that certain modifications should be made to Illinois EPA's proposal. The IPC's proposed modifications to Sections 732.404(c) and 732.411 are attached hereto in both a black-lined version and a clean version and are discussed in more detail below.

#### Amoco's Approach to Working With Off-Site Property Owners

Amoco is the largest petroleum marketer in Illinois and, as a result, has the largest number of gasoline service stations and the largest number of LUST sites. Amoco has therefore obtained a vast amount of experience in working with off-site property owners in attempting to obtain access for investigation and/or corrective action. Based on our experience in working with off-site property owners, we have discovered that many different types of issues arise in attempting to obtain access from an off-site property owner. Some of these issues include:

- The level of understanding of the off-site property owners with regard to environmental issues varies. Some off-site owners are companies which, like Amoco, have experience with environmental issues, while other off-site owners are individuals or businesses with no such experience.
- The reason for the off-site access can be different for each site. Much of the time, off-site access is required for soil and/or groundwater sampling to determine the extent of the impact. However, off-site access may also be required for traditional corrective action activities.
- Sometimes, there have been prior or subsequent releases at the service station site for which Amoco is not responsible. In addition, there may have been releases on the adjacent property which the adjacent property owner does not want investigated.
- Some releases impact only one adjacent property, while others impact several off-site properties and perhaps one or more roadways. In the latter case, it is often more efficient to conduct investigation activities at

different off-site properties at the same time. One property owner's refusal to grant access can hinder this effort.

- Off-site impacts can include soil only, groundwater only, or both. In addition, in some cases, off-site investigation may be a one-time event, while in other cases additional samples or borings may be required.

Given these different types of issues that can and do arise, Amoco's approach in attempting to obtain off-site access has been: (i) to take a site-specific approach in requesting access; and (ii) to provide any information which the property owner needs to understand the request for access and to feel comfortable with his or her decision regarding such request. For example, in some cases, Amoco will make phone calls to an off-site property owner if he or she has not responded to a written request for access. Amoco will also conduct a face-to-face meeting if requested by a property owner. Amoco has found that property owners are much more willing to grant access if the request is tailored to the specific situation and the property owner understands the issues and the need for access.

#### Illinois EPA's Proposed Amendments

The IPC generally agrees with Illinois EPA's proposal to allow UST owners and operators to obtain a No Further Remediation Letter where off-site contamination has not been addressed due to the inability to obtain off-site access. However, the IPC believes that certain modifications should be made to Illinois EPA's proposal in order to increase the chance of success in obtaining off-site access and in resolving issues relative to off-site contamination.

First, the IPC believes that the contents of the letter to be sent to off-site property owners as proposed by Illinois EPA in Section 732.411(b) should be revised. The contents of the letter proposed by Illinois EPA are too specific, and, due to the different types of situations that could arise for any given site, may actually be inaccurate. For example, Illinois EPA's proposal that the letter state that the owner or operator "will return the property to its original condition

prior to entry” may not be accurate if the access involves installation of an engineered barrier or a corrective action system. In addition, the letter proposed by Illinois EPA contains legal admissions that are unnecessary, unfair, and in some cases inaccurate. For example, as noted above, some sites have had prior or subsequent releases for which the UST owner or operator is not legally responsible, and thus Illinois EPA’s proposal that the letter state that “the owner or operator will conduct all remediation at its own expense” would be unwarranted.

Second, in Section 732.411(d), Illinois EPA attempts to define what constitutes “best efforts” for attempting to obtain off-site access. However, the factors listed have nothing to do with an owner’s or operator’s attempt to obtain access. Rather, the factors describe generalized site conditions without establishing criteria for agency decision making. As a result, Illinois EPA’s proposal does not adequately define the standard Illinois EPA will use when deciding when a UST owner or operator will receive a No Further Remediation Letter where off-site contamination has not been addressed due to the inability to obtain off-site access. To the extent that Illinois EPA intended to set such a standard in Section 732.411(d)(1) to (9), it did not do so, but rather only listed a series of factors relating to possible exposure scenarios. Any factors considered by Illinois EPA in deciding whether to grant a No Further Remediation Letter should be done in the context of a defined standard, such as whether the site poses an imminent threat of harm to human health or the environment.

#### The IPC’s Modifications to Illinois EPA’s Proposal

The IPC’s modifications to Illinois EPA’s proposal are set forth in the attachments to this testimony. As discussed in more detail below, we believe that these modifications address the deficiencies in Illinois EPA’s proposal that are noted above.

First, the IPC's modifications to Section 732.411(b) address the letter to be sent to the off-site property owner. The contents of the letter proposed by the IPC are more general and therefore allow the letter to be more easily tailored to the site-specific situation, while still providing a baseline for agency review. In addition, the modifications omit the unwarranted and/or inaccurate legal admissions. The IPC's modifications therefore make it more likely that an off-site property owner will grant access to a UST owner or operator for investigation and/or corrective action.

Second, the IPC's modifications to Section 732.404(c), the IPC's deletion of Illinois EPA's Section 732.411(d)(1) to (9), the IPC's modification to Illinois EPA's Section 732.411(e) (which is the IPC's Section 732.411(d)), and the IPC's addition of its Section 732.411(e) all make clear that the standard that Illinois EPA should use in deciding whether to issue the owner or operator a No Further Remediation Letter is whether the contamination remaining on the off-site property poses an imminent threat of harm to human health or the environment. In deciding whether such a threat exists, the IPC's Section 732.411(e) requires that Illinois EPA should consider factors including but not limited to the following: (1) the presence of free product on the off-site property; (2) the presence of fire, explosion, and vapor hazards through natural or manmade pathways on the off-site property; and (3) the presence of potable water wells, surface water, setback zones or regulated recharge areas on or adjacent to the off-site property.

This imminent threat of harm standard and the factors listed above are more appropriate than Illinois EPA's possible exposure scenarios listed in Section 732.411(d)(1) to (9) of Illinois EPA's proposal. Given that the IPC's modifications retained Illinois EPA's language stating that "[t]he owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access has been denied" (this

language was moved from Section 732.411(a) to a new Section 732.411(f) for clarity purposes), the proper standard for issuing a No Further Remediation Letter should be whether the off-site contamination is posing an imminent threat of harm to human health or the environment, as opposed to only considering general factors based possible exposure scenarios.

Finally, the IPC has deleted the “at a minimum” language in the introductory sentence in Section 732.411(b). This phrase is vague and seems inconsistent with the “best efforts” concept.

\* \* \* \* \*

For the reasons set forth above, the IPC respectfully requests that the Board adopt the modifications proposed by the IPC in the attachments to this testimony. I intend to provide a summary of this testimony at the April 3, 2001 hearing in Chicago and would be happy to answer any questions about the IPC’s modifications.

THIS FILING IS SUBMITTED ON RECYCLED PAPER



**DAVID A. PIOTROWSKI**  
Environmental Business Manager  
BP Amoco  
28100 Torch Parkway, 3-S  
Warrenville, IL 60555  
Phone: (630) 836-5674

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**SUMMARY:**

Fourteen years experience in health, safety and environmental management in industry and environmental consulting. This includes managing a major oil company's environmental risk consisting of financial and technical management of multiple consultants and contractors, contract negotiations with environmental firms, regulatory compliance, and legal negotiations with third parties. Has previously managed and performed all aspects of petroleum hydrocarbon investigations and remedial actions including: groundwater monitoring, subsurface investigations, remedial design, operation & maintenance, and emergency response activities at refinery, terminal, pipeline, and service station facilities.

**EXPERIENCE & ACCOMPLISHMENTS**

**BP Amoco, 1990 to Present**

Environmental Business Manager, BP Amoco MidContinent Business Unit (MCBU) 2/99 - Present: Manage Illinois program including health & safety performance and annual & lifecycle environmental costs of retail and terminal facilities in Illinois. Coordinate and support the MCBU asset management team as they pursue property acquisitions and divestments.

Project Coordinator EH&S Amoco Worldwide Exploration Business Group (WEBG) 2/98-2/99: Provided HSE support and guidance to various WEBG country teams including Venezuela, Algeria and Nigeria. This included development of Safety Health & Environment Management Systems (SHEMS), coordinating permit acquisitions, environmental consultant oversight for assessment activities, landfarm planning & development, and waste treatment/disposal coordination.

Water Quality Engineer, EH&S Amoco Texas City Refinery, 11/95 to 2/98: Responsible for providing HSE support and guidance for refinery water and waste issues including: wastewater treatment plant permitting and reporting, landfarm permitting/operation/reporting, deep well injection permitting/reporting, spill response and reporting, groundwater/soil assessment and remediation, potable water testing/reporting, and benzene NESHAP compliance. Worked closely with represented workforce to meet compliance objectives.

Remediation Coordinator, EH&S, Amoco Marketing, St. Louis, Missouri, 1992 to 1996: Responsible for managing all aspects of terminal and service station environmental projects in Illinois, Missouri, Indiana and Iowa. This included consultant oversight for over 130 projects and management of multi-million dollar annual budgets.

Project Engineer, EH&S, Chicago, Illinois, 1990 to 1992: Responsible for terminal and pipeline remediation projects in a six state region. Responsibilities included: project coordination and strategy development, consultant oversight, budget management, project permitting, and regulatory negotiations.

**MAECORP Incorporated, Chicago, Illinois, 1987 to 1990**

Project Manager, 1989 to 1990: Environmental consultant responsible for coordination and oversight of underground storage tank and pipeline remediation projects for major oil and industrial clients. Directly responsible for managing project level environmental staff.

Senior Hydrogeologist, 1988 to 1989: Responsible for subsurface environmental investigations and remediation projects. Activities included proposal preparation, project management, field work, and report preparation. Provided guidance to company field geologists.

Hydrogeologist, 1987 to 1988: Hired as company's first geologist. Responsible for all aspects of subsurface investigation and remediation projects.

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**Michigan Department of Natural Resources, 1986 to 1987**

Field Geologist, Plainwell, Michigan Field Office: Responsible for conducting environmental assessments, groundwater monitoring, and consultant audits.

**EDUCATION:**

Master of Science - Geology, 1987, Western Michigan University, Kalamazoo, MI  
Research Fellowship - 1986-1987  
Graduate Teaching Assistant - 1984-1986

Bachelor of Science - Geology, 1984, Illinois State University (ISU), Normal, Illinois  
Undergraduate Teaching Assistant - 1983-1984  
General Assembly Scholarship Recipient  
ISU Hockey Team  
Sigma Phi Epsilon Fraternity

### Section 732.404 High Priority Site

- (c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part and the Agency has not determined that any contamination remaining on the off-site property poses an imminent threat of harm to human health or the environment.

### Section 732.411 Off-site Access

- a) An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) must demonstrate compliance with the requirements of this Section. ~~The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.~~
- b) In conducting best efforts to obtain off-site access, an owner or operator must, ~~at a minimum,~~ send a letter by certified mail to the owner of any off-site property to which access is required, stating:
- 1) ~~Citation to Section 57 of~~ That the Act stating assigns the legal responsibility of the owner or operator to remediate of a UST to address the contamination caused by the release; a release from that UST that occurred during the time that UST was owned or operated by that owner or operator;
  - 2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;
  - 3) ~~That, if the court approves an injunction pursuant to Section 22.2c of the Act, the court will also prescribe the conditions of entry and the amount of monetary damages, if any, that are to be paid to the property owner as compensation for the entry;~~
  - 3) That in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by its investigation;
  - 4) That the owner or operator, if allowed access, will return the property to its original condition prior to entry;

- 5) That the owner or operator will conduct all remediation at its own expense;
  - 4) That if the investigation shows contamination resulting from a release from a UST for which the owner or operator is responsible, the owner or operator will work to resolve issues arising from that release with the off-site property owner;
  - 6) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release;
  - 7) That the owner or operator will 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; and
- 8) 5) A reasonable time to respond to the letter, not less than 30 days.
- c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the Corrective Action Completion Report, the following documentation:
- 1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and
  - 2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.
- d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:
- 1) The physical and chemical characteristics, including toxicity, persistence and potential migration, of applicable indicator contaminants at the property boundary line;
  - 2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;
  - 3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

- 4) ~~The potential effects of residual contamination on nearby surface water and groundwater;~~
  - 5) ~~The proximity, quality and current and future uses of nearby surface water and groundwater, including setback zones and regulated recharge areas of potable water supply wells;~~
  - 6) ~~Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;~~
  - 7) ~~The nature and use of the part of the off-site property that is the suspected area of contamination;~~
  - 8) ~~Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and~~
  - 9) ~~Any other applicable information assembled in compliance with this Part.~~
- e)d) The Agency shall issue a No Further Remediation letter to an owner or operator subject to this Section ~~and otherwise entitled to such issuance only~~ if the owner or operator has, in accordance with this Section, either
- 1) completed any requisite off-site corrective action or
  - 2) demonstrated to the Agency's satisfaction an inability that it has been unable to obtain off-site access despite best efforts and the Agency has not found that the contamination remaining off-site poses an imminent threat of harm to human health or the environment.
- e) In evaluating whether the off-site contamination poses an imminent threat of harm the Agency shall evaluate factors including but not limited to the following:
- 1) The presence of free product on the off-site property;
  - 2) The presence of fire, explosion, and vapor hazards through natural or manmade pathways on the off-site property; and
  - 3) The presence of potable water wells, surface water, setback zones or regulated recharge areas on or adjacent to the off-site property.
- f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access has been denied.

Section 732.404 High Priority Site

- (c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part and the Agency has not determined that any contamination remaining on the off-site property poses an imminent threat of harm to human health or the environment.

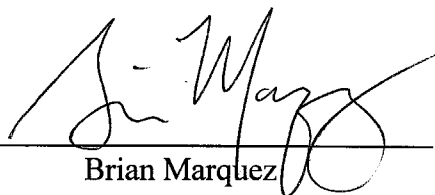
Section 732.411 Off-site Access

- a) An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) must demonstrate compliance with the requirements of this Section.
- b) In conducting best efforts to obtain off-site access, an owner or operator must send a letter by certified mail to the owner of any off-site property to which access is required, stating:
- 1) That the Act assigns the legal responsibility of the owner or operator of a UST to address the contamination caused by a release from that UST that occurred during the time that UST was owned or operated by that owner or operator;
  - 2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;
  - 3) That in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by its investigation;
  - 4) That if the investigation shows contamination resulting from a release from a UST for which the owner or operator is responsible, the owner or operator will work to resolve issues arising from that release with the off-site property owner;
  - 5) A reasonable time to respond to the letter, not less than 30 days.
- c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the Corrective Action Completion Report, the following documentation:

- 1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and
  - 2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.
- d) The Agency shall issue a No Further Remediation letter to an owner or operator subject to this Section if the owner or operator has, in accordance with this Section, either
- 1) completed any requisite off-site corrective action or
  - 2) demonstrated to the Agency's satisfaction that it has been unable to obtain off-site access despite best efforts and the Agency has not found that the contamination remaining off-site poses an imminent threat of harm to human health or the environment.
- e) In evaluating whether the off-site contamination poses an imminent threat of harm the Agency shall evaluate factors including but not limited to the following:
- 1) The presence of free product on the off-site property;
  - 2) The presence of fire, explosion, and vapor hazards through natural or manmade pathways on the off-site property; and
  - 3) The presence of potable water wells, surface water, setback zones or regulated recharge areas on or adjacent to the off-site property.
- f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access has been denied.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing **ILLINOIS PETROLEUM COUNCILS' MOTION TO FILE TESTIMONY INSTANTER** and **TESTIMONY OF DAVID PIOTROWSKI ON BEHALF OF THE ILLINOIS PETROLEUM COUNCIL**, were served on behalf of the Illinois Petroleum Council upon all the parties on the attached Service List on or before 5:00 p.m. on this 29<sup>TH</sup> day of March, 2001, by either first class U.S. mail, postage prepaid or by overnight UPS delivery.

  
\_\_\_\_\_  
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