

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAR 01 2006

STATE OF ILLINOIS
Pollution Control Board

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 March 1, 2006, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of Pre-Filed Testimony from CW³M Company, Inc. for the Illinois Pollution Control Board's March 23, 2006 Hearing of Amendments to 35 Ill. Adm. Code 734 and 35 Ill. Adm. Code 732 Subdocket B in the above-captioned matter.

Dated: March 1, 2006

Respectfully submitted,

CW³M Company

By:

Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive -Suite 4400
Chicago, Illinois 60606
(312) 357-1313
320561v1

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Pre-Filed Testimony from CW³M Company, Inc. for the Illinois Pollution Control Board's March 23, 2006 Hearing of Amendments to 35 Ill. Adm. Code 734 and 35 Ill. Adm. Code 732 Subdocket B 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 1st Day of March, 2006.

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 West 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
Brown, Hay & Stephens, LLP
205 South Fifth Street
Suite 700
P.O. Box 2459
Springfield, Illinois 62705-2459
(217) 544-8491
(217) 241-3111 (fax)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

208776v1

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAR 01 2006

STATE OF ILLINOIS
Pollution Control Board

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

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:)
REGULATION OF PETROLEUM LEAKING) R04-23(B)
UNDERGROUND STORAGE TANKS) (UST Rulemaking)
(35 ILL. ADM. CODE 734)) (Consolidated)
)

Proposed Rule. Subdocket B

**PRE-FILED TESTIMONY FROM CW³M COMPANY, INC. FOR THE ILLINOIS
POLLUTION CONTROL BOARD'S MARCH 23, 2006 HEARING OF AMENDMENTS
TO 35 ILL. ADM. CODE 734 AND 35 ILL. ADM. CODE 732 SUBDOCKET B**

This testimony was prepared by Vince E. Smith, Jeffrey R. Wienhoff and Carol L. Rowe of CW³M Company who are available to assist with providing information during today's proceedings.

CW³M has spent a considerable amount of time researching environmental cost data from numerous sources and preparing testimony for these rulemaking proceedings. Our intent during the previous hearings was to provide the Illinois Pollution Control Board (Board), the Illinois Environmental Protection Agency (Agency) and other interested parties with credible, supported data to illustrate the flaws in the rates initially proposed by the Agency.

In the Board's January 5, 2006 Opinion and Order, several requests were made of both Agency and the Public to provide input and additional testimony regarding professional services, scopes of work and the merit of lump sum payment amounts. A subsequent Hearing Officer Order

dated February 16, 2006 also requested additional testimony regarding the Economic Impact Study and ineligible costs listed in Sections 732.606(ddd) and (eee) and 734.630(aaa) and (bbb).

The Professionals of Illinois for Protection of the Environment (PIPE) have prepared and pre-filed testimony in response to the January 5, 2006 Opinion and Order. Given the minimal time frame between the February 16, 2006 Order and the deadline for pre-filed testimony, we are unsure if there will be sufficient time for PIPE to prepare comments for the additional issues. However, CW³M offers its support and concurrence with PIPE's pre-filed testimony regarding scopes of work and rate development. In the interest of time, we are providing additional comments or detail to support PIPE and will attempt to address the additional issues presented in the February 16, 2006 Order.

Professional Consulting Services Should be Reimbursed on a Time-and-Materials Basis

CW³M appreciates that the Board recognized and opened a Subpart B Docket to reflect that currently there is not sufficient information to reimburse professional consulting services on a lump sum basis. Accordingly, professional consulting services should continue to be reimbursed on a time-and-materials basis, if not indefinitely, at least until valid lump sum amounts can be developed for specific tasks. As demonstrated by the information that USI presented at hearing and for the record, which was a more statistically valid analysis than anything proposed by the Agency, there can be a significant variation in the scope and extent of professional consulting services due to variations between sites. At some point in the future, it may be possible to develop lump sum payment amounts for more routine tasks, but that is information that will need to be obtained. It does not currently exist. CW³M proposes below a methodology to acquire the information and data necessary in order to determine for which scopes of work a lump sum payment could be developed. It is quite possible that, for some scopes of work, it will not be possible to develop a lump sum payment. Accordingly, CW³M believes that professional consulting services should continue to be reimbursed on a time-and-materials basis.

Scopes of Work

As the Board recognized, it is important to clarify scopes of work for specific tasks before beginning to develop a framework to incorporate scopes of work into the reimbursement process.

Fundamentally, we believe that professional services should be reimbursed on a time-and-materials format. We also believe that for the long-term success of the program and to reduce future contention between the Agency and those it regulates, that scopes of work be well defined and incorporated into the Board rules if costs are directly tied to the scopes. We further believe that the Agency must collect statistically valid data for all costs associated with LUST compliance and remediation. However, if professional consulting services are reimbursed solely on a time-and-materials format, there are advantages to developing the scopes outside of the rulemaking process. The scopes could be periodically updated, dynamic, and easily adapted to regulatory changes, which affect the deliverable. For example, the recently proposed rules for Subtitle N: Right to Know include expanded requirements for well surveys and notifications. Once adopted, the scopes of work could be easily amended to accommodate the new requirements.

The rules will contain maximum payment amounts for contractor services and an hourly rate schedule for consulting service personnel. Early in the rulemaking proceedings, testimony was provided that the contractor services, particularly excavation, transportation and disposal were the most significant expense to the Fund. These costs have now been contained; there are also provisions for establishing extraordinary costs. If scopes of work are included in the rules, consultants will be protected from being asked by the Agency to conduct additional work at no cost. If the Agency collects and maintains defensible data, it can utilize the results to support its decisions if a consultant's costs appear too high or to allow the consultant to justify why costs at a particular site are higher than normally seen by the Agency.

If the Agency's intent in proposing Subpart H were to streamline the reimbursement process, they now have multiple tools to do so. Providing a standardized task list with associated scopes

of work is another tool for the LUST program to be run more effectively. With established scopes of work, the consultants will be able to bill in a consistent manner, providing the Agency with the ability to more easily identify costs submittals which are outside the norm.

Further, we predict that, after collecting meaningful data, it will become clear that the amount of time and/or costs for many tasks conducted by professionals, do not fall within a statistical distribution such that lump sum rates can be accurately established. Only a few tasks, such as the Stage One Site Investigation Plan, are based on quantifiable deliverables with few variations between sites. Most tasks, such as Stage Two plans, will be variable, dependent upon the size of site, number of samples, drilling locations, amount of data to interpret and report, etc. The data collected by USI and presented to the Board illustrates the variability in consulting costs.

The Board discussed in the January 5, 2006 Opinion the adequacy of the Agency's proposed lump sum rates and questioned whether or not the Agency's existing data could be evaluated or if the Agency would be willing to collect the necessary data. Based upon the information derived from USI's study of the Agency's data, there is no apparent means of extracting meaningful data from the Agency's records at levels less broad than the major phases of LUST compliance. Throughout these proceedings, the Agency has adamantly declined to even entertain the notion of data collection for rate development, so it is unlikely that the Agency would now elect to do so. This presumption further compels us to propose the time-and-materials format for reimbursing professional service costs.

The Agency has indicated in previous testimony that the scope of work is whatever it takes to comply with the regulations. The professional consultant's job is to do just that. For some sites it takes less and some more. At those sites where less work is required and the payment is a lump sum, there is a possibility that the Fund would overpay for the work, whereas at a site where more work is required, the owner/operator would be stuck making up the difference if the Fund does not fully reimburse the consultant's services. While this procedure might eventually "average out" if the owner/operator owns enough sites, it is unfair to the small owner/operator who owns only one or a few sites, especially if the site is a more contaminated and complex site.

Accordingly, the reimbursement framework must recognize that site specific circumstances and facts impact the amount and type of work necessary to comply with the corrective action requirements. Thus, the reimbursement process must cover all costs to allow the consultant to do the work necessary to assist the owner/operator in achieving compliance and closure.

CW³M did not prepare hourly estimates for tasks as requested by the Board as we feel it is impossible to do so without narrowly defined scopes of work and because, we would have been extracting information from a few recent sites rather than conducting an exhaustive evaluation of our own data. We, similar to the Agency, do not collect data for this type of evaluation. We track cost data in differing formats and to extract per-task costs at this time would be unduly burdensome. PIPE was criticized in a previous hearing for attempting to develop information on number of hours per task. We agree with PIPE today that providing that type of information is merely guessing and estimating and rules should be developed based on fact and statistically sound inputs. If the Board still requests such information once the scopes of work are developed, we are willing to attempt to assemble such information but, even then, such information would be only an estimation. Given that the issue of average hourly rates would be addressed and quantified by that time, we do not believe that assigning a set number of hours to each task is appropriate.

Further, providing hours or estimates of each task first requires numerous, factual, site-specific details to develop site-specific scopes of work and to quantify variables. For example, to estimate the hours for oversight of an UST removal, factors such as number of tanks, size of tanks, product type stored in tanks, number of tank beds, number and length of piping runs and pump islands, quantity of soil to be disposed of, type of soil, location of the site, whether or not additional liquids have accumulated and require disposal, temperature, and other weather conditions, etc., need be known. Obviously, more work and time are typically necessary to pull eight tanks as opposed to two tanks. In our consulting practices we typically develop narrowly defined scopes which include all of the above factors.

Ineligible costs listed in Sections 732.606(ddd) and (eee) and 734.630(aaa) and (bbb)

The Board specifically requested additional comments on whether reimbursement should be allowed for corrective action costs in excess of those to meet the TACO Tier II objectives or if there is a groundwater ordinance prohibiting the installation of potable water wells. CW³M has previously provided testimony regarding The Agency's proposal to list as ineligible payment of remediation costs beyond those costs necessary to meet Tier II objectives and payment of groundwater remediation costs if a groundwater ordinance is used as an institutional control. The following discussion offers additional comments.

The addition of these items as ineligible costs was a last minute revision to the proposed regulations which we believe to be a short term desperate fix to balance the Fund and not well thought out as to the potential negative effects on property owners and groundwater as a resource in this State. Further, as currently worded, the listed ineligible costs go too far and a specific example is described below.

The Groundwater Protection Act was a driving force behind registration and regulation of underground storage tanks as threats to groundwater as a vital resource in Illinois. The Groundwater Protection Act was developed to identify and control potential sources of groundwater contamination to preserve the resource for long-term use.

The Agency supported its proposed changes based on the assumption that if a groundwater ordinance were present, there is no potential exposure or threat to human health and the environment. We do not believe that assumption to be true and offer an example where other threats or exposure are present.

There are insufficient data generated by LUST investigations to determine far-reaching effects of contamination of shallow aquifers to assume that leaving groundwater contamination in place where there is an ordinance will have no impact on drinking water resources in the State. If a shallow aquifer or perched groundwater is contaminated, it is usually unknown if that contamination is confined from other aquifers. Shallow aquifers or perched groundwater may also be hydraulically connected to surface bodies of water, which could be tributary to a source of drinking water. The current LUST regulations require inspection of surface bodies of water within 100 feet of the LUSTs. Just because sheen is absent does not mean that body has not or could not be impacted. Concentrations above a point source discharge level could be present without any visual indication.

Another scenario by which contaminated groundwater could cause threats to human health and the environment when an ordinance is present involves contaminated groundwater and/or vapor intrusion. As most people have experienced or are aware of, not all basements and foundations are waterproof. Often, improvements are made to either keep water out or collect and route it by sump pumps to another point of drainage. CW³M has been involved with a site that experienced a severe example of exposure by contaminated groundwater when not being used as a source of drinking water.

In this example, a hotel was situated on the property boundary adjacent to a site with LUSTs. The hotel foundation was not watertight and the owners collected water in their sump systems and discharged the water to the sewer. Because of high levels of gasoline contamination from the station site and migration to the neighboring property, the groundwater entering through the basement walls created a gasoline vapor hazard. The hotel had to be evacuated and an interceptor system installed to capture and treat the groundwater before it entered the basement. If a groundwater ordinance had been in effect as Sections 732.606(ddd) and (eee) and 734.630(aaa) and (bbb) are currently drafted, this site would not have been eligible to receive reimbursement for corrective action that was required to prevent human exposure and a possible

explosion hazard. This same scenario is possible while an incident is open or after issuance of a No Further Remediation Letter, if on-site contamination were allowed to remain in place because of a groundwater ordinance and modeling that was limited to migration to off-site properties.

If the Agency is unwilling to allow owners or operators back into the LUST reimbursement program if a problem later arises as a result of the Agency forcibly imposing relaxed remedial alternatives, then the Board should not consider limiting reimbursement to achieve only Tier II remedial objectives and should not eliminate reimbursement even if an ordinance prohibits the installation of private water wells. The applicability of TACO Tier I, II or III should be at the discretion of the LUST owner or operator or the property owner and reimbursement of corrective action costs should be provided.

The Agency currently requires that the LUST owner or operator define the extent of contamination and compare it to Tier 1 Residential objectives. In order to do this, the consultant, on behalf of the owner or operator, contacts potentially affected neighboring or adjoining property owners and requests access. In accordance with the Agency's current policy and proposed regulatory language, the property owner is to be notified that legal responsibility to remediate the contamination is the responsibility of the LUST owner or operator and that failure to remediate contamination from the release may result in threats to human health and the environment and diminished property value.

It seems unconscionable to notify an off-site property owner that they may experience loss of property value if remediation does not occur to Tier I levels only to then inform them that there will be no remediation, regardless of levels of contamination, just because an ordinance is in place preventing them from consuming the groundwater. A community could retract its ordinance at any time, once again potentially jeopardizing human health. In such cases, the off-site property owners should have the discretion of remediating their property or relying on an

institutional control to address whatever levels of contamination may be present. The potential cost savings of the Agency's proposal may be overshadowed by increased lawsuits and indemnification costs, which have historically been rare because current Agency policy is to be certain on and off-site property owners are afforded decision-making control over their own property.

Economic Impact Study

PIPE, as well as several other entities, have tried to convey the seriousness of this rulemaking with regard to the economic impact to UST owners/operators, consultants and contractors. The fiscal impact to us by participating in these proceedings has been significant, given we are a small business and have dedicated an extraordinary amount of time to hearings and testimony. However, given the serious nature of the proposed rate structure, it was imperative that we participate if we are to survive as a business and continue to conduct LUST consulting services.

It is unconscionable for Illinois State Government to proceed with imposing new regulations without evaluating the economic impact, particularly when the most contentious component of these proceedings has been the setting of rates, which have not been supported by industry and threaten to cause the demise of firms who predominately conduct LUST work. There has also been considerable testimony presented that predicted the decline in LUST remediation work and compliance if consultants and contractors could not profitably complete the work and if owners/operators could not carry the nonreimbursable costs.

If the Department of Commerce and Economic Opportunity cannot evaluate the economic impact of proposed rates, it becomes crucial that cost data be properly collected and statistically evaluated and maximum rates only be established where typical situations are well defined and a sufficient amount of valid data exist to support the rates.

A component of the economic impact should also include the administrative costs to businesses to comply with the new regulations. Because of the rules passed as part of Subdocket A, we are in the process of developing new tracking, budgeting and field forms for use by our personnel. Of more significance is the effort to develop new accounting and billing programs to accommodate multiple types of payments, as well as tracking costs for which there are lump sum payment amounts.

APPENDIX A: Proposed 734 Regulations: Scopes of Work

In Appendix A, CW³M has attempted to construct general scopes of work that we feel would adequately address the needs of the LUST program by providing a framework to add quantifiable deliverables based on actual data. Generalized scopes of work are adequate for budgeting and reimbursement in a time-and-materials format. However, if lump sum payment amounts are to be developed and used, very specific scopes of work with quantifiable deliverables must be developed. While we still believe that time and materials billing is the most appropriate method for reimbursement of consulting services, the draft regulations in Appendix A, also provide for methods to calculate lump sums where appropriate. We listed these items in a manner that we feel is most appropriate to calculate lump sums if the Board deems some lump sum payment amounts are appropriate for the LUST program. If the Board deems that time and materials is the appropriate method of payment, then 734.845(b) could easily be removed and collection of the data and its statistical evaluation could be used to create tools for the Agency to determine reasonableness. While the regulations proposed in Appendix A are not a polished finished product, we believe the format and the information provided are excellent starting points to developing a complete scope of work rule. A strikethrough/underline version has not been

provided because our proposed version varies significantly from the version put forth by the Board, therefore, a fresh document was started and should be viewed as replacing the Board's version in whole.

We would like to thank the Board for creating Subdocket B and considering further testimony on these very important issues. We will be pleased to answer any questions in relation to our testimony here today.

Dated: March 1, 2006

Respectfully submitted,

CW³M Company

By: Carol Rowe (CRH)

and:

By: Carolyn S. Hesse
One of Its Attorneys

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

APPENDIX A

PROPOSED 734 REGULATIONS SCOPES OF WORK

**PRE-FILED TESTIMONY FROM CW³M COMPANY, INC. FOR THE ILLINOIS
POLLUTION CONTROL BOARD'S MARCH 23, 2006 HEARING OF AMENDMENTS
TO 35 ILL. ADM. CODE 734 AND 35 ILL. ADM. CODE 732 SUBDOCKET B**

Costs associated with professional consulting services shall be considered reasonable as long as they are submitted in accordance with the requirements of this Section. Such costs include, but are not limited to, those associated with project planning and oversight; field work; field oversight, field equipment; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation. The amounts set forth in this section are not subject to the provisions of Section 734.855.

- a) The following lists tasks for which professional consulting services may be reimbursed. Any and all activities which are required to be performed by a consultant on behalf of the owner/operator are listed within the Scope of Work of at least one of the tasks identified below. The Scopes of Work for these tasks are in Appendix F.
- 1) Preparation for the abandonment or removal of USTs.
 - 2) Preparation and submission of a 20-Day Certification and 45-Day Reports.
 - 3) Preparation and submission of a report submitted in accordance with 734.210(h)(3).
 - 4) Preparation and submittal of a Free Product Removal Report.
 - 5) Oversight of free product removal activities.
 - 6) Preparation for Stage 1 site investigation.
 - 7) Preparation and submission of a Stage 2 Site Investigation Report and preparation for corresponding field activities
 - 8) Preparation and submission of a Stage 3 Site Investigation Report and preparation for corresponding field activities
 - 9) Preparation and submission of a Site Investigation Completion Report.
 - 10) Preparation and submission of a conventional technology Corrective Action Plan.
 - 11) Preparation and submission of a conventional technology Corrective Action Completion Report.
 - 12) Preparation and submission of a conventional technology Corrective Action Plan addendum which is required due to unforeseen circumstances.
 - 13) Preparation and submittal of a reimbursement package.
 - 14) Oversight of the removal of USTs.
 - 15) Oversight of the removal of soil and the placement of backfill.
 - 16) Oversight of the repairing of an UST line.
 - 17) Oversight of the completion of soil borings not to be used for installation of monitoring wells.

- 18) Oversight of the installation of monitoring well(s) and associated surveying and sampling requirements.
- 19) Collection of data from hydraulic conductivity test(s).
- 20) Conducting water well surveys.
- 21) Performing Community Relations for off-site contamination.
- 22) Obtaining Environmental Land Use Controls.
- 23) Obtaining Highway Authority Agreements from jurisdictions other than Illinois Department of Transportation.
- 24) Obtaining a Highway Authority Agreement with the Illinois Department of Transportation.
- 25) Obtaining a copy of an existing groundwater ordinance.
- 26) Assist in developing a new groundwater ordinance
- 27) Development of Tier 2 or Tier 3 remediation objectives.
- 28) Preparation and submittal of an alternative technology Corrective Action Plan.
- 29) Preparation and submittal of an alternative technology Corrective Action Completion Report.
- 30) Oversight and performance of alternative technology corrective action.
- 31) Travel, per diem and lodging.
- 32) Any other technically required task not listed in above.

b) In establishing rates for the tasks listed in subsection (a) of this Section:

- 1) The Agency must collect data in a format consistent with the task listed in subsection (a) of this Section directly from reimbursement requests submitted by an owner or operator. For tasks where the level of effort varies depending on the size of the project, or the distance from the consultant's office, the Agency must calculate a unit cost, *e.g.*, cost to install one monitoring well, performing 4 soil borings, oversee removal of 200 cubic yards of soil, etc.
- 2) The Agency must determine that datasets contain a scientifically sufficient and significant amount of data before lump sum billing rates may be established for the tasks represented in that dataset.
- 3) After (2) is accomplished, rates must be scientifically calculated to the 95% confidence level.
- 4) Any lump sum billing rates established in accordance with (2) and (3) must cover 90% of submittals for that task.

- 5) Any established lump sum rate must be posted on the IEPA website and list an effective date equal to 30 days from the date of its posting.
- 6) The Agency must update the rates on an annual basis by the same method and no more frequently.
- 7) All tasks will continue to be billed on a time and materials basis until such time as (5) has been satisfied for a particular task.
- 8) As the scopes of work in Appendix F are dependent upon IEPA forms for report submittal, steps (1) through (7) must be repeated if substantive changes are made to the IEPA forms at any time.

APPENDIX F. Scope of Work for Professional Consulting Services

The following lists specific scopes of work and correlates the scopes of work to particular regulatory requirements. A complete, all-inclusive scope of work is the list of requirements beneath each scope of work. A brief description lists the typical items to be performed and is not intended to be all-inclusive. If a regulation is listed under a certain scope of work and then a subsection of that regulation is listed elsewhere, the more general regulation is not meant to include the more specific subsection listed elsewhere. (For example, 734.210(h)(3) is listed under 734.845 (a)(3) and therefore 734.210(h)(3) is not considered part of the Scope of Work for 734.845(a)(2) where 734.210 is listed).

General Scopes: These items are general items which are considered reasonable and expected and are common to numerous tasks. They are to be considered part of each of the other scopes of work but are only listed once for brevity. They should be billed in relation to the specific tasks under which they are performed.

Regulations covered: 734.130 – 734.135 – 734.145

Brief Description: Project Management – Client Correspondence – Obtaining client signatures on required forms -- State Agency Correspondence – Agency Meetings – Review or supervision by senior staff – Report Compilation, Reproduction & Distribution – Notification of field activities – Certification by licensed professionals

734.845 (a)(1) Preparation for the abandonment or removal of USTs

Regulations Covered: 734.210 (f)

Brief Description: Office of the State Fire Marshal Notifications and Permits – Drilling/Waste Characterization sampling – Site visit/UST inspection -- Prepare waste profile – Arrange for landfill approval/Contents disposal/Backfill – Prepare waste manifests or tracking forms – Coordination and scheduling – Utility location

734.845 (a)(2) Preparation and submission of 20-Day Certification and 45-Day Reports

Regulations Covered: 734.210 – 734.440

Brief Description: Prepare a 20-Day certification in compliance with IEPA form – Prepare 45-Day Reports in compliance with IEPA form – Prepare 45-Day Report Addendum with information not available at time of 45-Day report submittal – Performing any field work required to adequately complete report (i.e. site mapping, Site visit, etc.)

734.845 (a)(3) Preparation and submission of an early action closure report

Regulations Covered: 734.210(h)(3)

Brief Description: Prepare closure paperwork – Obtain PE certification – Record NFR – Submit recorded NFR

734.845 (a)(4) Preparation and submission of a free product removal report

Regulations Covered: 734.215(a)(4) – 734.215 (a)(5)

Brief Description: Prepare a free product report in compliance with IEPA form – Each additional quarterly report counts as one submittal

734.845 (a)(5) Oversight of free product removal activities

Regulations Covered: 734.215

Brief Description: Professional oversight of any on-site free product removal activities

734.845 (a)(6) Preparation of Stage 1 Site Investigation

Regulations Covered: 734.310 – 734.315 – 734.440

Brief Description: Review EA data -- Determine appropriate drilling locations -- Determine if groundwater investigation is required -- Prepare Stage 1 Site Investigation Plan & Budget in compliance with IEPA form – Field activities coordination and scheduling – Utility location

734.845 (a)(7) Preparation and submission of Stage 2 Site Investigation Report and preparation for corresponding field activities

Regulations Covered: 734.310 – 734.320 – 734.425(c) – 734.430(b) -- 734.440

Brief Description: Complete documentation of Stage 1 activities -- Review Stage 1 data -- Determine appropriate drilling locations – Prepare Stage 2 Site Investigation Plan & Budget in compliance with IEPA form – Field activities coordination and scheduling – Utility location – Includes all required Stage 2 plans

734.845 (a)(8) Preparation and submission of Stage 3 Site Investigation Report and preparation for corresponding field activities

Regulations Covered: 734.310 – 734.325 – 734.350 – 734.425(c) – 734.430(b) -- 734.440

Brief Description: Complete documentation of Stage 2 activities -- Review Stage 2 data – Determine appropriate drilling locations -- Prepare Stage 3 Site Investigation Plan & Budget in compliance with IEPA form -- Perform off-site access attempts and negotiations -- Field activities coordination and scheduling – Utility location – Property owner coordination – Includes all required Stage 3 plans

734.845 (a)(9) Preparation and submission of Site Investigation Completion Report

Regulations Covered: 734.310 – 734.330 – 734.425(c) – 734.430(b) -- 734.440

Brief Description: Complete documentation of Site investigation activities -- Review all site investigation data – Prepare Site Investigation Completion Report in compliance with IEPA form

734.845 (a)(10) Preparation and submission of a conventional technology Corrective Action Plan

Regulations Covered: 734.335 -- 734.440

Brief Description: Review site investigation data + Conduct technical evaluation and design – Collect additional site data as may be required for design or implementation -- Prepare Corrective Action Plan & Budget in compliance with IEPA form -- Prepare waste profile – Arrange for landfill approval – Prepare waste manifests or tracking forms – Coordination and scheduling – Utility location

734.845 (a)(11) Preparation and submission of a conventional technology Corrective Action Completion Report

Regulations Covered: 734.345 -- 734.350(c) – 734.700

Brief Description: Complete documentation of corrective action activities -- Review corrective action data – Determine the necessity of any institutional controls -- Prepare closure paperwork – Prepare Corrective Action Completion Report in compliance with IEPA form – Record NFR – Submit recorded NFR

734.845 (a)(12) Preparation and submission of a conventional technology Corrective Action Plan addendum which is required due to unforeseen circumstances

Regulations Covered: 734.335

Brief Description: Review corrective action data -- Conduct technical evaluation and design of possible and selected technologies -- Prepare Corrective Action Plan & Budget addendum in compliance with IEPA form -- Prepare waste profile – Arrange for landfill approval – Prepare waste manifests or tracking forms – Coordination and scheduling -- Utility location

734.845 (a)(13) Preparation and submission of a reimbursement package

Regulations Covered: 734.220 – 734.600

Brief Description: Obtaining OSFM Eligibility & Deductibility Determination – Prepare UST reimbursement claim in compliance with IEPA forms – 1 claim may be submitted for each of the following situations: Early action, Stage 1 site investigation, Stage 2 site investigation, Stage 3 site investigation, every 90 days during free product or corrective action activities

734.845 (a)(14) Oversight of the removal of a UST

Regulations Covered: 734.210(h)

Brief Description: On-site oversight of removal of UST – Document condition and removal of tanks and system – Collect required samples - oversight of safety procedures; OSHA competent person oversight of excavation work

734.845 (a)(15) Oversight of the removal of soil and placement of backfill

Regulations Covered: 734.210(h) -- 734.345(a)(2)

Brief Description: On-site oversight of removal of contaminated soil and placement of backfill materials – Assure compliance with technical regulations and/or approved technical plans – Document removal activities – Maintain manifest or waste tracking forms – Oversee and verify any subcontractors -- Collect required samples – Safety/Regulatory supervision; OSHA competent person oversight

734.845 (a)(16) Oversight of the repairing of a UST line

Regulations Covered: 734.210(h)

Brief Description: On-site oversight of the repairing of a UST line – Document condition and repair of UST line – Collect required samples

734.845 (a)(17) Oversight of the completion of soil borings not to be used for installation of monitoring wells

Regulations Covered: 734.315(a) – 734.320(a) – 734.325(a) – 734.425

Brief Description: On-site oversight of the completion of soil borings – Assure compliance with technical regulations and/or approved technical plans --Document completion of borings on IEPA boring logs with all required information – Collect required samples

734.845 (a)(18) Oversight of the installation of monitoring well(s) and associated surveying and sampling requirements

Regulations Covered: 734.315(a) – 734.320(a) – 734.325(a) – 734.425 – 734.430

Brief Description: On-site oversight of the completion of monitoring well(s) – Assure compliance with technical regulations and/or approved technical plans --Document completion of borings on IEPA boring logs with all required information – Collect required soil samples – On second site visit: Survey monitoring well elevations – Determine static groundwater levels – Collect required groundwater samples

734.845 (a)(19) Collection of data from a hydraulic conductivity test

Regulations Covered: 734.315(a)(2)(E)

Brief Description: On-site completion of *in-situ* hydraulic conductivity test(s)

734.845 (a)(20) Conducting water well surveys

Regulations Covered: 734.445(b) -- 35 IAC Part 1505 Subpart B

Brief Description: Contact required agencies for well information -- Review and evaluate information obtained – Prepare required charts and maps – May be performed at multiple stages as required by regulations

734.845 (a)(21) Performing Community Relations for off-site contamination

Regulations Covered: 35 IAC Part 1505 Subpart B

Brief Description: Preparing contact lists -- Preparing fact sheets -- Updating fact sheets as required -- Gaining Agency approval of fact sheets and contact lists -- Each distribution of fact sheets qualifies as a separate event -- Developing and performing community relations plans

734.845 (a)(22) Obtaining an Environmental Land Use Control

Regulations Covered: 734.345(a)(3)(B) – 742.1010

Brief Description: Contacting affected property owners – Negotiating terms for ELUCs – Preparing ELUCs – Obtaining executed ELUCs

734.845 (a)(23) Obtaining a Highway Authority Agreement with a jurisdictions other than the Illinois Department of Transportation

Regulations Covered: 734.345(a)(3)(B) – 742.1020

Brief Description: Identifying Highway Authority – Contacting Highway Authority – Preparing HAA – Obtaining executed HAAs

734.845 (a)(24) Obtaining a Highway Authority Agreement with the Illinois Department of Transportation

Regulations Covered: 734.345(a)(3)(B) – 742.1020

Brief Description: Identifying Highway Authority – Preparing IDOT HAA for – Reviewing HAA forwarded by IDOT – Obtaining executed HAAs

734.845(a)(25) Obtain a Copy of an Existing Groundwater Ordinance

Regulations Covered: 734.345(a)(3)(B)-742.1015

Brief Description: Obtain copy of ordinance - notify neighbors of ordinance and impacted groundwater.

734.845 (a)(26) Assist in developing a new groundwater ordinance

Regulations Covered: 734.345(a)(3)(B) – 742.1015

Brief Description: Contacting responsible party and neighbors – Explaining conditions of ordinance – Attending meeting with governing board – Preparing ordinance – Obtaining executed ordinance – Obtaining a memorandum of understanding

734.845 (a)(27) Development of Tier 2 or Tier 3 remediation objectives

Regulations Covered: 734.140 – 734.410 – 742 Subpart F – 742 Subpart G – 742 Subpart H – 742 Subpart I

Brief Description: Reviewing appropriate site data – Determining which equations need to be used and for which constituents – Utilize appropriate equation – Determine if objectives have been met

734.845 (a)(28) Preparation and submission of an alternative technology Corrective Action Plan

Regulations Covered: 734.335 – 734.340 – 734.440

Brief Description: Review site investigation data – Conduct technical evaluation and design – Perform costs comparison -- Collect additional site data as may be required for design or implementation -- Prepare Corrective Action Plan & Budget in compliance with IEPA form – Any required amendments

734.845 (a)(29) Preparation and submission of an alternative technology Corrective Action Completion Report

Regulations Covered: 734.340 – 734.345 – 734.350(c) – 734.440

Brief Description: Complete documentation of corrective action activities -- Review corrective action data – Determine the necessity of any institutional controls -- Prepare closure paperwork – Prepare Corrective Action Completion Report in compliance with IEPA form – Record NFR – Submit recorded NFR

734.845 (a)(30) Oversight and performance of alternative technology corrective action

Regulations Covered: 734.340 – 734.355

Brief Description: Will be site specific dependent upon site specific conditions and alternative technology chosen

734.845 (a)(31) Travel, per diem, and lodging based on 30 mile increments from the consultants office

Regulations Covered: 734.210 – 734.210(h) -- 734.215 -- 734.345(a)(2) -- 734.315(a) – 734.320(a) – 734.325(a) -- 734.315(a)(2)(E) 734.445(b) -- 35 IAC Part 1505 Subpart B -- 734.340

Brief Description: Covers personnel time and vehicle charges for travel to site when oversight is required – Covers any required per diem and lodging

734.845 (a)(32) Any other technically required task not listed above

Regulations Covered: 734

Brief Description: A detailed explanation of the work completed and a description of why it is a required activity must be submitted for all requested budgets or reimbursement under this task.

320301v1