

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
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MAY 11 2006

STATE OF ILLINOIS
Pollution Control Board

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

R04-22 (B)
(Rulemaking – UST)

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IN THE MATTER OF :)
)
PROPOSED AMENDMENTS TO:)
REGULATION PETROLEUM LEAKING)
UNDERGROUND STORAGE TANKS)
35 ILL. ADM. CODE 734)

R04-23 (B)
(Rulemaking – UST)
Consolidated

PUBLIC COMMENT

Now comes Professionals of Illinois for the Protection of the Environment (PIPE), by and through its attorneys, Claire A. Manning, Brown, Hay & Stephens LLP, and offers the following Post-hearing comment in this proceeding, for the consideration of the Illinois Pollution Control Board (Board).

The Professionals of Illinois for the Protection of the Environment (PIPE) would like to thank the Pollution Control Board for the opportunity “to further address the issue of payment for professional services” in this Docket B. See R04-22 (B) and R04-23 (B), January 5, 2006. As the Board recognized in opening this docket, the Environmental Protection Act (“Act”) sets forth the Board’s general rulemaking authority in Section 27 which requires that the Board, among other considerations, determine the “economic reasonableness and technical feasibility” of any rule. More specifically, the relevant section reads:

“The Board may adopt substantive regulations as described in this Act. Any such regulations may make different provisions as required by circumstances for different contaminant sources and for different geographical areas; may apply to sources outside this State causing, contributing to, or threatening environmental damage in Illinois; may

make special provision for alert and abatement standards and procedures respecting occurrences or emergencies of pollution or on other short-term conditions constituting an acute danger to health or to the environment; and may include regulations specific to individual persons or sites. In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. The generality of this grant of authority shall only be limited by the specifications of particular classes of regulations elsewhere in this Act.” 415 ILCS 5/27(a)

This general grant of rulemaking authority recognizes the special place the Board holds in Illinois law for controlling and abating pollution – and for adopting rules which do so in a measurable, but economically reasonable and technically feasible manner. Despite this special role, very little record time or evidence has been spent in recognition of what the Illinois Environmental Protection Agency’s proposed standard rates would mean to the environment. Instead, this rule has simply been, and continues to be, about cutting reimbursement costs applicable to owners and operators of leaking underground storage tanks. Moreover, this rule has been, and continues to be, based upon an unsupported and unproven assumption that professional service charges for clean-up need to be standardized – and curtailed. Underlying this rule is an even more dangerous and unsupported assumption, held fast by the Agency as “truth self evident”: that somehow such economic reduction and standardization will result in more efficient and expeditious clean-up of Illinois UST sites.

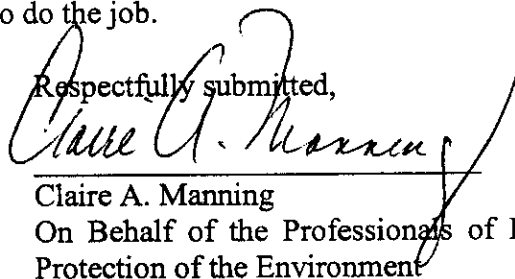
The Board has never passed on a rule with so little supporting data justifying it – and it should not do so now. The Board was right to refuse, in Docket A, to promulgate the Agency’s rates as reasonable, in large part because the Agency did not justify the numbers. The Board would likewise be right now, to decline to promulgate the Agency’s rates – many of which are

less than proposed previously, again because the Agency has not supported those numbers with any measurable data whatsoever.

Rather, as was evident at the March 23 hearing, the Agency's numbers were simply reached – and proposed – on the basis of a peer discussion of paper reviews of hundreds of thousands of different types of reimbursement requests that have come into the Agency's UST unit since it began. While the Agency styles this review as based upon 140 hours of combined experience, the Board certainly realizes that this experience is not borne of performance of actual work on a real site, but instead is based solely on a paper review of thousands of requests for reimbursement and, importantly, a review that is void of any real site information or data.

The Board has heard from persons experienced in actual site remediation clean-up, in the form of testimony and comments from those companies who actually perform a majority of the UST remediation work in Illinois. The Board should listen to those voices and, unless and until real and verifiable data is presented to the Board justifying standard costs for reimbursement of tasks related to clean-up costs for UST sites, the Board should decline to adopt standard reimbursement costs. Until then, reimbursement for professional services should be based upon the time and materials actually necessary to do the job.

Respectfully submitted,



Claire A. Manning
On Behalf of the Professionals of Illinois for the
Protection of the Environment

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PROOF OF SERVICE

The undersigned states that a true and correct copy of the foregoing PUBLIC COMMENT, was served upon those people listed on the Pollution Control Board's service list on its website, by placing a copy of such in the U.S. Mail, May 9, 2006, from Springfield, Illinois.

A handwritten signature in cursive script that reads "Claire A. Manning". The signature is written in black ink and is positioned above a horizontal line.

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