

May 2, 2001  
Proposal No: 0000-01-05

Ms. Dorothy Gunn  
Clerk of the Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

**RECEIVED**  
CLERK'S OFFICE

MAY 03 2001

STATE OF ILLINOIS  
Pollution Control Board

R01-26  
J.C.#9

**Re: Amendments to 35 Ill. Admin. Code 732  
Regulation of Petroleum Leaking Underground Storage Tanks  
Rulemaking R01-26**

Dear Ms. Gunn:

Weaver Boos & Gordon, Inc. (Weaver Boos) hereby submits these comments regarding the proposed amendments to the Petroleum Leaking Underground Storage Tank (UST) regulations filed by the Illinois Environmental Protection Agency (IEPA). Weaver Boos is a geotechnical and environmental engineering firm that has been performed numerous site investigations and detailed geological investigations in accordance with both federal and state remediation programs. Weaver Boos involvement with contaminated sites has extended from the site investigation phase through development and implementation of remedial action plans. Weaver Boos' personnel have obtained closure or in the process of implementing remedial action plans at numerous underground storage tank sites in Illinois and other states. Because offsite contamination has been an issue at several of our sites, Weaver Boos' personnel have been involved in notifying and working with offsite property owners in gaining access to their property for purposes of investigation, and if necessary, remediation. Through our experiences, Weaver Boos has gained an understanding of the sensitivity surrounding potential off-site impact issues. It is for these reasons that Weaver Boos has serious concerns with the IEPA's proposed Section 732.411 (Off-Site Access). Specifically, our concerns involve two issues:

1. The contents of the letter demonstrating "best efforts" to obtain offsite access; and

2. The criteria the IEPA considers when reviewing such demonstration.

The proposed rule states that an owner or operator seeking to comply with the best efforts requirements must, at a minimum, send a certified letter to the off-site property setting forth eight specific statements (35 IAC 732.411(b)(1) – (8)). Weaver Boos has concerns with mandating the content of such a letter for a number of reasons. Many times when attempting to access off-site properties, we are unsure as to the level of environmental concern present on the property. Our goal in obtaining access is to investigate and evaluate the adjacent property in relation to the environmental concerns being addressed. Conclusions are drawn following and not prior to investigation. The statements in subparagraphs (1) through (6) appear to imply upfront, prior to gaining access and conducting further investigation, that remediation and monetary damages are absolutes; and if remediation is not conducted, there will be a threat to human health and the environment. Weaver Boos believes the proposed statements are contrary to the spirit and intent of the State's risk-based remediation program.

Over the past several years, the State has moved away from a remediation program that focused on cleaning up every particle of each contaminant and moved to a program that addressed potential pathways and risk to receptors. Local governments have passed ordinances prohibiting the use of groundwater and accepted highway authority agreements limiting access, and remedial applicants have relied on these institutional controls to obtain closures at various sites. This more reasonable approach to remediation has resulted in substantial redevelopment and closure of contaminated sites. While residual contamination may be present in the soil or the groundwater and extend beyond the property boundaries of a remedial site, it is unreasonable and illogical to state, as set forth in subparagraph (6), that a threat to human health and the environment exists unless remediation is conducted.

Each leaking underground storage site is different and should be evaluated based on the site-specific characteristics. To imply as part of an effort to gain access that all sites must be remediated is to return to the pre-risk based thinking. To require the submittal of a standard letter containing all of the elements set forth in subparagraph (1) through (6) would have an adverse impact on site remediation. It could slow down the whole remediation process by turning the focus from one of identifying and addressing environmental concerns to one of using any potential environmental issues as a mechanism to obtain a monetary benefit.

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Weaver Boos believes the remedial applicants should have the ability to correspond with adjacent property owners in a manner that is not threatening and does not use scare tactics. In particular, the access requirements cannot and need not increase the likelihood of the applicant getting sued. Because if it does, it will serve as a strong deterrent to applicants pursuing remediation efforts. Many times the source of offsite contamination may result from activities on other adjacent properties. We believe such access should be documented and submitted to the IEPA. However, we do not believe the IEPA's criteria for evaluating the "best efforts demonstration" should be the criteria set forth in paragraph (d) of Section 732.411. The criteria set forth in paragraph (d) are the factors considered when approving a remedial action plan and not the factors for determining whether an appropriate level of effort was made to obtain access. Factors to be considered when evaluating a "best efforts demonstration" should focus on the following:

- ◆ The type and level of communications made with the offsite property owners;
- ◆ Response or lack of response received; and
- ◆ Any follow-up conducted by the remedial applicant.

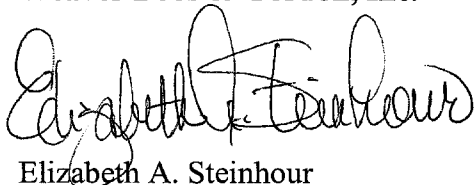
Weaver Boos supports the IEPA's position that reasonable efforts must be made to obtain access to offsite properties. We believe it is in everyone's best interest to have an understanding of offsite impacts. Offsite situations are sensitive matters that should be addressed in a clear, concise and positive manner. The level of information provided may vary depending on the circumstances surrounding the site.

Movement toward a risk-based approach to remediation has been a long and laborious process. Weaver Boos believes the program that has been established is a good one. We acknowledge that amendments may be necessary to build on and improve the system. Weaver Boos supports the inclusion of a general requirement that notification to the offsite property owner be provided, documented, and submitted to the IEPA as part of a "best efforts to obtain access" demonstration. We also support the inclusion of standards for defining what level of effort would be determined to be the "best effort" for obtaining access. However, we believe the proposed offsite notification provisions will unnecessarily frighten and mislead offsite owners.

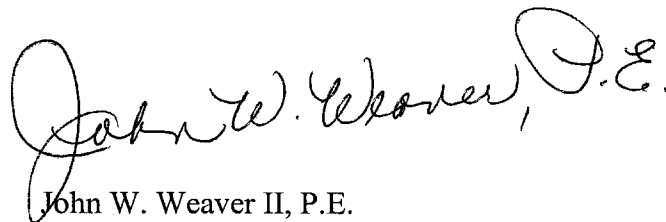
Further applicants will try to avoid offsite work, as they will view these requirements as increasing their liability prior to getting any information. We support requirements that are limited to communications between the remedial applicant and the offsite owners. Obtaining permission through a Court Order should be left to the discretion of the property owner and should not be mandated by the IEPA as part of a "best effort" demonstration.

Weaver Boos appreciates the opportunity to provide these comments to the Illinois Pollution Control Board.

Very truly yours,  
**Weaver Boos & Gordon, Inc.**



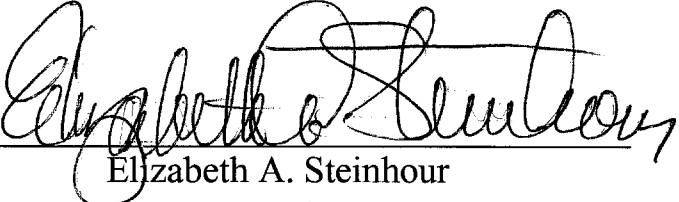
Elizabeth A. Steinhour  
Senior Project Manager



John W. Weaver II, P.E.  
Principal

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the **Comments of Weaver Boos & Gordon, Inc.** in the Illinois Pollution Control Rulemaking R01-26 (Amendments to 35 Illinois Administrative Code 732 – Regulation of Petroleum Leaking Underground Storage Tanks) were served upon all the parties on the attached Service List on the 2<sup>nd</sup> day of May, 2001, by either first class U.S. mail, postage prepaid or by overnight federal express delivery.

  
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