BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

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

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

Proposed Rule. First Notice

PREFILED TESTIMONY FROM CINDY S. DAVIS, P.G. AND JOSEPH W. TRUESDALE, P.E., P.G. OF CSD ENVIRONMENTAL SERVICES, INC. REGARDING THE ILLINOIS POLLUTION CONTROL BOARD'S 1ST NOTICE OF AMENDMENTS TO 35 ILL. ADM. CODE 732 AND 734.

1.) CSD Environmental owns Heartland Drilling (HDR) and has been denied handling charges due to a direct financial interest. The problem for CSD and HDR is that HDR does not own the landfill, backfill, trucking or supply companies used. HDR only provides the labor and equipment. When the HDR invoice includes the charges from these other companies, the Agency denies the handling charge. The definition of handling charge includes administrative, insurance, interest costs and a reasonable profit for procurement, oversight and payment of subcontracts and field purchases.

Although it may be true that CSD, when hiring HDR, eliminates much of the cost of procurement for HDR provided labor and equipment since we have a direct financial interest, however, we do not eliminate the costs for administrative, insurance, interest costs and a reasonable profit for oversight and payment of subcontractors and field purchases. CSD's professional liability insurance premium is based upon the total sales of the company which includes the costs of all subcontractors. Our professional liability insurance company informed CSD that they include the costs for subcontractors because they assume a risk for those subcontractors under the professional policy. They provided

the following example, if CSD hires a drilling company (any company even if CSD has a direct financial interest in them) CSD is in charge of instructing the company where to drill, if the drilling company strikes a product line, water line, etc, CSD's professional liability insurance company is responsible to pay for any damages.

Any prime contractor should be entitled to a handling charge for any subcontractor costs for which the prime contractor is responsible for administrative, insurance, interest costs and a reasonable profit for oversight and payment of subcontractors regardless of whether they have a direct or indirect financial interest in the subcontractor. CSD is responsible for paying all subcontractors hired for the job, and must borrow large sums of money in order to complete the job and pay the subcontractor, if we show proof of payment, as the Agency is requesting, we should be entitled to recoup the cost for administrative, insurance, interest costs and a reasonable profit for oversight and payment of subcontractors and field purchases through a handling charge.

2.) In the matter of financing, CSD believes the Board should be aware that many consultants provide financing to our clients. The Agency stated in response to prefiled question 17, by Jay Koch, that "The Illinois EPA has no opinion on this issue." The reality is that many of these sites would not be remediated or going through the remediation process without this service. Many of our clients are small businesses who do not have the capital to pay for our services without being reimbursed from the LUST Fund. In addition, many clients do not have the collateral to go to a lending institution and obtain a loan for their LUST compliance expenditures. Because of this need, financing was offered by many, but not all consultants. Most financing arrangements are simple, the consultant will wait for payment until the owner or operator is reimbursed form the LUST fund, and the consultant will not charge the owner/operator for costs which are not reimbursed by the State of Illinois LUST Fund. In some cases, arrangements are made with subcontactors such as landfills and trucking firms to wait for payment until the owner is reimbursed. In other cases, the consultant agrees to pay the subcontactors and wait for payment. Obviously, time is of the essence in receiving the payments to keep costs down. The longer a consultant has to borrow money to pay a subcontractor, or the longer a consultant has to wait for money, the more we have to borrow on our lines of credit to make payroll. All of this costs money and is paid out of the consultants profit on the job. The implementation of maximum lump sum payments as they are currently proposed will in our opinion cut the profit margin of many consultants to a point at which they will no longer reasonably be able to provide the upfront financing for LUST compliance. If we eliminate financing in turn we can expect non compliance to increase amongst the small businesses and those of limited financial means who truly cannot afford to proceed with LUST compliance without some mechanism of financing. This will just result in more properties subject to the Brownfield's (USTfields) initiative and additional financial encumbrances on that program.

4.) We understand the Agency's need to control costs, we are not opposed to maximum lump sum payments when the payments are fair and equitable and we know exactly what is to submit to achieve compliance. The Board has acknowledged that the

Agency did not use scientific or statistically valid methods to arrive at lump sum prices. CSD suggests that the Board adopt the proposed maximum lump sum payments as threshold values at or below which proposed budgets and requests for reimbursement can be approved without significant Agency review, but require the owner/operator to submit actual costs for Agency review and approval. The Agency will be able to use actual costs in their triennial review to determine if the threshold values need adjusted. The threshold values will provide an incentive to the owner/operator and the consultants in so much as if the task can be completed for at or below the threshold value, the costs are more expeditiously approved and reimbursed. If the owner/operator has to submit additional information to justify exceeding the threshold value, they will be subjected to a longer more detailed review.

5.) We are asking the Board to require the Agency to revise the forms prescribed and provided by the Agency as required in proposed 732.110 (a) and 734.135 (a) and proved a comprehensive list on each form of the tasked to be completed including the expected minimum number of maps, cross sections, etc to be included in the report. CSD also requests at anytime the Agency modifies the forms they establish a procedure to adjust the Subpart H costs accordingly.

6.) The board stated in the proposed rulemaking on page 78, item 19, "Furthermore, the proposal, as adopted for the first notice, will include a bidding process for projects that cannot be undertaken for the maximum rate in Subpart H." However, the board needs to be aware that Professional Services are not normally bid. In addition, the owners and operators of many gasoline stations, except for the large petroleum companies, do not employ environmental professionals to assist them in complying with the regulations. The smaller owner/operators hire environmental consultants and engineers to assist them with the regulations and compliance issues. If the owners consultant cannot complete foe example, the Stage II Site Investigation for the specified amount in Subpart H, the owner has to try and establish a scope of work, set the scope out for bid, choose the lowest bid, and if the existing consultant cannot complete the work for the lowest bid, then the owner / operator will have to pay out of pocket for the chosen consultant to review the 20 & 45 Days reports and Stage 1 Site Investigation Reports to come up to speed on the project. In simplest terms, the bidding process for professional services does not seem feasible, and should be reserved for UST compliance costs associated with all items except professional services..

7.) In the Agency's response to Daniel Kings, pre-filed question 5, we believe the Agency should further evaluate and provide for the additional costs of abandonment slurry (flowable fill), as required by the Illinois State Fire Marshall's regulations concerning UST abandonment, separate from the price of UST removal and abandonment. The labor to abandon a UST is similar to the labor necessary to remove a UST. For example, to abandon a UST the contractor must uncover the UST; purge the UST of vapors; cut a hole in the top of the UST for access; enter the UST; clean the UST; remove sludge and wastes from the UST; fill the UST with flowable fill and properly place backfill on top of the UST. To remove a UST the contractor conducts all the above,

except he does not fill the UST with flowable fill, he removes the UST and disposes of it then fills the void left by the UST with standard fill material. CSD currently has a project which will require abandonment of three tanks, 4,000, 7,000 and 8,000 gallons in size, the costs for abandonment per Subpart H will be $9,450.00. The price we obtained from the concrete plant closest to the site is $5,035 for the flowable fill alone. In addition, CSD believes that the Board should revise 732.810 and 734.810 as specified in Attachment A to this testimony.

8.) In the Agency's response to Daniel Kings prefiled question 18, section 734.845(b) and 732.845(d) allows for field oversight not exceeding $390.00 per half day, plus travel costs, for advancing soil borings and installing monitoring wells. CSD would like to make both the Agency and the board aware that after soil logging, sampling and installation of the monitoring wells themselves, the wells must be developed and the casing elevations surveyed, the wells must also be purged, gauged, and have groundwater samples collected. These activities are typically not all performed on the same day, so there would be more than one applicable travel cost to the site associated with each monitoring well. Provisions for more than one travel charge associated with monitoring well installation should be allowed and provided for in the proposed Subpart H regulations. In addition, the previous activities are typical of all monitoring wells installed, however, hydraulic conductivity testing is only performed on one or more wells and the field costs associated with conducting the hydraulic conductivity tests should only apply to the monitoring well or wells in which hydraulic conductivity tests are performed.

Although the proposed Subpart H rate of $390.00 per half day for each monitoring well installed may be adequate for the standard activities conducted for each monitoring well (soil logging and sampling, monitoring well installation, developing and surveying casing elevations, and purging gauging and sampling groundwater), it does not appear that the costs associated with field work and field oversight for hydraulic conductivity testing were provided for in the per half day rates for field work and field oversight for monitoring wells proposed in Subpart H, nor is it understood how costs associated with activities conducted on one monitoring well can reasonably be prorated through an unknown number of multiple monitoring wells. We suggest the addition of the following to 734.845(b)(2), 734.845(b)(6) and 732.845(d)(2), based on the RS Means published cost for "slug test, per well" of $540.39 adjusted by the average RS Means published localization factor for Illinois of 0.98

C) $530.00 for conducting each hydraulic conductivity test.

9.) In response to CSD's prefiled question A-4, the Agency did not indicate whether or not the procedures to be used for the triennial review will be made available to the public. CSD request that the Board require the Agency to develop written procedures for conducting the triennial review and make those written procedures public information.

10.) In the Agency's response to CSD's prefiled testimony, question I-5, it was stated that the question was unclear, and that the Illinois EPA will be happy to answer this

question at hearing if additional clarification of the question is provided. In an effort to clarify, we have restated the question as follows:

> Has the Agency considered requiring alternative technology corrective action plans to be submitted in phases? The first phase could consist of a review of two or more alternative technologies compared to conventional technology (including rough "feasibility" type total cost estimates for each) and a detailed budget proposal for the full scale design of the chosen technology, The second phase would then consist of completing design of the full scale alternative technology corrective action plan and a detailed budget proposal for implementation of the chosen alternative technology, as designed?

CSD asks this question because we are concerned that significant amounts of designs costs would be incurred to prepare detailed cost comparisons of two or more alternative technologies to conventional technology, and subsequent preparation of the chosen alternative technology corrective action plan without having the Agency first review the cost comparison of the two or more alternative technologies to conventional technology and evaluated the design approach and the budget proposal for design of the chosen technology . If the alternative technology corrective action planning was divided into phases, it gives the Agency the opportunity early in the planning stage to evaluate the types of technologies being proposed as well as the design approach for the chosen technology and allows for Agency guidance as far as what they are looking for in the final design in order for it to be something the Agency feels comfortable approving.

As Doug Clay mentioned in testimony "*In alternative technology, the corrective action plan, fieldwork, all of that is time and materials, and I think you're right, there is a lot of going back and forth as far as giving something that the Agency is comfortable approving, and part of that is I think we (the Agency) need to provide guidance [to] consultants as far as what we're looking for. We're working on that. But I think consultants also need to do a better job of explaining to us the design"* (March 15, 2004 transcript of proceedings page 50, lines 17-24 and page 51, lines 1 and 2) In turn, this provides consultants the opportunity to explain the design approach and receive guidance from the Agency prior to expending significant amounts of design costs. The Agency would then be able to limit the per project time and costs for the owner / operators consultant and the Agency by evaluating whether or not the design approach proposed and associated design budget proposal are reasonable, and will likely provide the information necessary for the Agency to feel comfortable approving the corrective action plan prior to expending actual costs for detailed design, and limit the amount of "back and forth" between the Agency and the consultant as much as possible.

11.) In response to CSD's prefiled question L-1, the Agency stated that they "did not include a particular number of applications for payment under any subsection of Section 734.845", however, in response to CSD's prefiled question L-2, the Agency stated that "yes" they did allow for and include costs for completion of applications for partial or final payment every 90 days as provided for in the Environmental Protection Act Section 57.8. These statements are in direct contradiction of one another, because in order for the

Agency to provide for costs for completion of applications for partial or final payment every 90 days in the maximum payment amounts under professional consulting services under Section 734.845, they would have had to estimate the time required to complete the each subsection of Section 734.845 and assign a particular number of applications for payment. Given that Agony's contradictory responses to these questions, it would appear the Agency is intentionally withholding pertinent information fro the Board and the public with regards to this proposed rulemaking.

The Agency throughout their responses for prefiled testimony states tasks were included in 734.845, but all of the tasks which the Agency continually states "have been included in the lump sum maximum payment amounts" have never been presented during this rulemaking process in their entirety. We believe one of the goals of this rulemaking should be to develop a fair system which is transparent and open to the public in an effort, as the Agency has stated time and time again, to "streamline the LUST program." CSD suggests that the Board require the Agency to provide to the Board and the public any and all task lists, unit costs and quantity estimates which the Agency used to develop the maximum lump sum prices proposed in Subpart H.

12.) In the Agency's response to CSD's prefiled question L-6, the Agency stated that they derived the lump sum price of $640 for "a plan that must be amended due to **unforeseen** circumstances" based upon eight hours of personnel time at the average rate of $80 an hour. If the amendment is truly required due to "unforeseen circumstances", how could the Agency possibly **foresee** that these unforeseen circumstances will typically take 8 hours to address?

CSD suggests the costs associated with any amended plan due to unforeseen circumstances should be reimbursed according to 734.850 and 732.850.

13.) In response to CSD's prefiled questions M-1 and M-2, the Agency declined to answer the questions since they didn't know how the referenced statistics were generated. The statistics were generated from the LUST database by USI. USI will be explaining how the statistics were derived during their testimony. CSD may ask additional questions regarding the statistics at hearing.

14.) In response to CSD's prefiled question M-4, the Agency stated that "the Illinois EPA will continue to review information submitted to it to determine whether the information demonstrates compliance with the environmental protection Act and the Board's regulations." We would like to know if the Agency is going to establish a <u>written</u> standard for review for their project managers and if so, will that standard be made public information. CSD believes that a written standard of review, which is available to both Agency staff and the public, will aid tremendously in streamlining the program and insuring consistency of reviews amongst Agency project managers, and consistency of submittals amongst consultant thereby, reducing per project costs to the Fund..

15.) CSD believes if this rulemaking is finalized in its current form, the following will occur in the State of Illinois:

- Many environmental consulting firms will stop conducting work for LUST sites, or may even shut down entirely leaving fewer environmental consulting firms completing LUST work in the State of Illinois.

- Fewer engineers, geologists and scientists will be employed in the State of Illinois for the completion of LUST work.

- Financing of LUST projects will decrease substantially, and may cease entirely.

- Additional costs will be passed to the owners/operators of LUST sites being regulated, and

- Non compliance for LUST sites will likely increase.