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STATE OF ILLINOIS
Pollution Control Board

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)

IN THE MATTER OF:

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 QUESTIONS 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 AMMENDMENTS TO 35 ILL. ADM CODE 732 AND 35 ILL. ADM. CODE 734

SUBPART H: MAXIMUM PAYMENTS AMOUNTS

A.) The Board acknowledged that the research and collection of data used to determine maximum lump payment amounts which were proposed by the Agency are not based on any scientific or statistically recognized method.

1. Is it possible to evaluate the data the Agency currently has in its possession to determine statistically valid maximum payment amounts?
2. Is it possible the Agency may have underestimated the tasks needed or the number of hours it takes to complete the tasks when establishing the maximum payment amounts in proposed Subpart H?
 - a. If not, why?
3. What recourse will the owner/operator have if there are deficiencies in the proposed maximum payment amounts?
 - a. If none, why?

4. Will specific procedures be developed by the Agency to perform the triennial review to determine whether or not current maximum payment amounts are consistent with prevailing market rates and suggest changes needed to make the maximum payment amounts consistent with prevailing market rates, pursuant to proposed 732.875 and 734.875?
 - a. If not, why?
 - b. If so, will those procedures be made public information?
 1. If not, why?
5. If any procedures developed by the Agency to perform the triennial review and identify any changes needed to make maximum payment amounts consistent with prevailing market rates involve a long delay before implementation, how will the Agency compensate the owner or operator during the delay?
6. What additional measures has the Agency considered using to identify and correct any deficiencies in maximum payment amounts, in a timely fashion, other than the triennial review conducted pursuant to proposed 732.875 and 734.875?
 - a. If none, why?
7. If the Agency fails to find or fix any deficiencies in a timely manner, are there any repercussions to the Agency or the State of Illinois?
8. What procedure will the Agency use to notify the owners/operators when the maximum payment amounts have been adjusted?
9. How did the Agency determine the annual inflation factor was the appropriate factor to use to adjust the maximum lump sum rates?
 - a. Did the Agency consider any other factors?
 1. If no, why?

B.) The Agency stated in testimony at hearing on May 26, 2004 that drillers and tank removal contractors (among others) were contacted to verify that the maximum payment amounts derived by the Agency were consistent with prevailing market rates.

1. Which specific drillers and tank removal contractors were contacted to verify that the maximum payment amounts derived by the Agency were in fact consistent with prevailing market rates?

732.855 & 734.855 BIDDING

C.) The Agency is proposing that a bidding process be used as an alternative to the maximum payment amount set forth in Subpart H.

1. What reasoning did the Agency employ to propose that "bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest" in 732.855 (a) if "the maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amounts set forth in Subpart H", and "the owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest" as proposed by the Agency in 734.855 (c)?
2. Does the Agency realize that if a consultant owns their own contracting firm it will be difficult, if not impossible, to obtain quotes from multiple competitors?
3. If a consultant cannot find a competitor to give a quote and their own contracting firm cannot perform the service for the maximum payment, what other information can be provided to the Agency to prove the price being requested is reasonable?
4. Would documentation from RS Means or some other nationally recognized cost data source suffice as supporting documentation for the unusual or extraordinary provision in lieu of the bidding process?
 - a.) If no, why?

732.825 & 734.825 SOIL REMOVAL AND DISPOSAL

D.) The Agency is proposing that payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill, and concrete, asphalt, or paving overlying such contaminated soil or fill must not exceed a total of \$57.00 per cubic yard.

1. Since the only unit price proposed is for the sum of the removal, transportation and disposal costs, does the Agency intend to approve as reasonable any and all costs submitted for the individual components of removal, transportation and disposal as long as the sum of these cost are less than the proposed unit price of \$57.00 per cubic yard?
2. What type of supporting documentation will the Agency require in order to review requests for payment for soil removal and disposal?
3. Since the proposed maximum payment amount is based wholly on the total volume in cubic yards of soil removed, transported and disposed of, and "the

volume of soil removed and disposed must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05", pursuant to proposed 732.825 (a)(1) and 734.825 (a)(1), is any supporting documentation other than the above calculation required to review requests for payment for soil removal and disposal?

a.) If so, why?

4. If yard tickets indicating the total weight of soil received by the landfill, converted to cubic yards using a conversion factor of 1.5 tons per cubic yard, pursuant to proposed 732.825 (a)(1) and 734.825 (a)(1), would that suffice as supporting documentation for the unusual or extraordinary provision if the resulting conversion results in a different volume of soil removed and disposed when compared to the volume of soil removed and disposed determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05", pursuant to proposed 732.825 (a)(1) and 734.825 (a)(1)?

a.) If no, why?

732.845 & 734.845 PROFESSIONAL CONSULTING SERVICES

E.) In the testimony of Brian Baur in support of the Illinois Environmental Protection Agency's proposal to adopt 35 Ill. Adm. Code 734 & 732, Mr. Bauer stated that the per foot unit costs for drilling were based on "assuming an average 100 feet of drilling per event, eight soil borings advanced to a depth of 10 to 15 feet" and the average per foot unit cost for well installation were "based on a monitor well installed to a depth of 20 feet below the ground surface." The current proposals for 732 & 734 indicate that professional consulting services associated with site investigation conducted pursuant to Subpart C and payment for costs associated with field work and field oversight to define the extent of contamination resulting from the release must not exceed a total of \$390.00 per half-day, and the number of half days must not exceed "one half-day for every four soil borings, or fraction thereof, drilled" and "one half-day for each monitoring well installed".

1. What average soil boring and monitoring well depths were assumed in the proposed \$390.00 per half-day?
2. At what soil boring and monitoring depths would payment of costs for professional consulting services associated with site investigation conducted pursuant to Subpart C or payment for costs associated with field work and field oversight to define the extent of contamination resulting from the release be considered an unusual or extraordinary circumstance?
3. If no specific soil boring or monitoring well depths would be considered unusual or extraordinary circumstances for payment of costs associated with site investigation conducted pursuant to Subpart C or with field work and field

oversight to define the extent of contamination resulting from the release, why not?

F.) In the Agency's proposed 732.845 (d)(1), payment for costs associated with the preparation and submission of investigation plans for sites classified pursuant to Section 732.307 must not exceed A.) a total of \$3,200.00 for plans to investigate on-site contamination and B.) a total of \$3,200.00 for plans to investigate off-site contamination.

1. Is the total reimbursement for costs associated with the preparation and submission of ALL plans to investigate on-site contamination or off-site contamination, for sites classified pursuant to Section 732.307, to be limited to \$3,200.00 or is the total reimbursement for costs associated with the preparation and submission of EACH plan to investigate on-site contamination or off-site contamination, for sites classified pursuant to Section 732.307, to be limited to \$3,200.00, assuming more than one plan is required to complete investigation of on-site and / or off-site contamination?
2. Since investigation of off-site contamination requires identification, notification and completion of "best efforts" to obtain off-site access in accordance with 732.411 and 734.350 for one or more additional properties, were these costs included in the maximum payment amount for costs associated with the preparation and submission of plans to investigate off-site contamination, for sites classified pursuant to Section 732.307?
 - a. If so, how many off-site properties were considered when developing maximum payment amounts for costs associated with the preparation and submission of plans to investigate off-site contamination, for sites classified pursuant to Section 732.307?
 - b. If not, why?

G.) In the Agency's proposed 734.325 (c), "upon completion of the Stage 3 site investigation the owner or operator must proceed with the submission of a site investigation completion report that meets the requirements of Section 734.330".

1. If upon completion of the Stage 3 site investigation, the requirements of Section 734.330 (b)(3) and (b)(4) have not yet been met, would this be considered an unusual or extraordinary circumstance, and would a Stage 4 site investigation plan also be required on a time and materials basis?
 - a. If not, why?

H.) In the Board's discussion of issues in their Proposed Rule: First Notice. Opinion and Order of the Board, it is stated that "payment for costs associated with Stage 3 site investigations will be reimbursed pursuant to Section 734.850" (Payment on Time and Materials Basis); however, 734.845 (b)(5) states that "payment for costs associated with

the preparation and submission of Stage 3 site investigation plans must not exceed a total of \$3,200.00, while 734.845 (a)(5) states that "payment for costs associated with Stage 3 site investigation will be reimbursed pursuant to Section 734.850.

1. Has this error been corrected?
- I.) The Agency stated in testimony that groundwater remediation is considered an alternative technology, and the Agency's proposal for 732 and 734 indicates that payment for costs associated with preparation and submission of corrective action plans for conventional technology must not exceed a total of \$5,120.00, and payment for cost associated with alternative technologies must be determined on a time and materials basis.
1. If a site has both soil and groundwater contamination, is the owner/operator required to submit two plans, one for conventional dig and haul for the soil contamination and one for an alternative technology for the groundwater contamination?
 - a. If so, are these plans to be submitted concurrently or consecutively?
 - b. How is the owner/operator reimbursed for the preparation of these plans?
 2. If the owner/operator submits a conventional plan for dig and haul, conducts the remediation and the sidewall or floor samples still exceed the applicable remediation objectives, is the owner/operator to submit an additional corrective action plan?
 - a. If so how is the owner/operator reimbursed for preparation of this plan?
 3. Does the Agency intend to limit how many corrective action plans are submitted for a site?
 4. How does the Agency intend to control the costs of alternative technology corrective action plans?
 5. Has the Agency considered requiring alternative technology corrective action plans to be submitted in phases, with the first phase consisting of a review of two or more technologies and a proposal for design of the chosen technology, and the second phase consisting of the implementation of the selected remediation technology?
 - a. If not, will the Agency developing a framework in which the owner/operators submit the alternative technology plans in this manner to ensure the corrective action technology chosen is agreeable to the Agency prior to incurring design fees?
 1. If not, why?

2. If the Agency will allow the plans to be submitted in two phases, will the Agency continue to allow the owner/operator to request reimbursement of these plans every 90 days independently of each other?

a. If not, why?

J.) In the Agency's proposed 734.845 (c)(4) and 732.845 (d)(8), "payment for costs associated with the preparation and submission of corrective action completion reports must not exceed a total of \$5,120.00".

1. Are individual completion reports to be submitted independently following completion of soil remediation and groundwater remediation, if conducted consecutively?

a. If so, is the maximum payment for cost associated with the preparation and submission of corrective action completion reports to be considered reasonable for EACH completion report submitted?

1. If not, why?

K.) In the Agency's proposed 734.845 (d)(6)(B) and 732.845 (d)(2), "payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives must not exceed a total of \$800.00. Evaluation under 35 IAC 742 TACO includes evaluation of up to six (6) separate routes of potential exposure for fifty-five (55) potential contaminants of concern as listed in proposed 732 and 734 Appendix A and B and may include calculation to predict impact from remaining groundwater contamination, evaluation of both surface and sub-surface soils and evaluation of mixtures of contaminants of concern. For Tier 3 specifically, the Agency's own TACO Fact Sheet 1: Introduction indicates that "a Tier 3 review and evaluation draws on expertise beyond the immediate BOL project manager".

1. Given these circumstances and inherent variability of Tier 2 and Tier 3 evaluations under TACO, wouldn't it seem more appropriate to consider payment of costs associated with the development of Tier 2 or Tier 3 remediation objectives on a time and materials basis?

a. If not, why?

2. How many Tier 3 evaluations does the LUST section review in one year on average?

3. How many Tier 3 evaluations has the LUST section reviewed in total, historically?

L.) In the Agency's proposed 734.845 and 732.845, payment for costs associated with professional consulting services must not exceed the amounts set forth in those sections, and such costs include, but are not limited to, applications for payment from the Fund.

1. Did the Agency provide costs for seeking payment from the Fund including, but not limited to, completion of applications for partial or final payment, pursuant to proposed 732.605 (a)(14) and 734.625 (a)(14), in their proposed maximum payment amounts for 732.845 (a), (b) and (c), as well as, 734.845 (a), (b)(1), (b)(3), (b)(5) and (c)?
 - a. If not, why?
 - b. If so, how many applications for partial or final payment were provided for under each professional consulting services sub-section?
2. Did the Agency 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?
 - a. If not, why?
3. What unit rates and how many hours did the Agency use to determine the cost associated with seeking payment from the Fund including, but not limited to, completion of applications for partial or final payment, pursuant to proposed 732.605 (a)(14) and 734.625 (a)(14), in their proposed maximum payment amounts for professional services?
4. Will the Agency be requesting detailed time and material type breakdown on invoices for items which have maximum payment amounts for unit rates or lump sums?
 - a. If yes, why?
5. Will the Agency attempt to control the profit margin on maximum payment amounts for unit rates or lump sums?
 - a. If yes, what will be considered an appropriate profit margin, how will these margins be determined, and will they be made available to the public?
6. How did the Agency determine \$640 was the appropriate amount for reimbursement of revised corrective action plans if a plan and its associated budget must be amended due to unforeseen circumstances (734.845 (f))?
7. If a plan and its associated budget must be amended due to "unforeseen circumstances" wouldn't the amendment of that plan and budget logically fall under the unusual or extraordinary circumstances provisions of 734.860?

- a. If no, why?

IEPA CONSISTENCY OF REVIEWS

M.) Statistics derived from the IEPA's database and attached as part of CSD's questions, show the Agency reviewers approve, with or without modification, 50% of the reports submitted. Some reviewers only approve 25% of the reports, with or without modifications, while some reviewers approve 75% of the reports.

1. How does the Agency explain this variation of approval rates between project managers?
2. How does the Agency explain an overall average approval rate of only 50% of submittals?
3. What does the Agency intend to do to improve the approval rate of approvals, expedite closure of active incident numbers, and ensure consistency amongst reviewers?
4. Will the Agency develop a standard for review?

- a. If not, why?

1. Without a written standard, how will the Agency assure the public that all Agency reviewers will require the same level of effort for all items subject to a maximum payment amount and will not, in some cases, require more information or effort from some owners/operators or consultants, without consideration of providing additional compensation under unusual or extraordinary circumstances and as a result, impose an unfair financial penalty?

- b. If the Agency were to develop a standard for review will they share that standard with the public so we can follow it to ensure we submit the information in the format desired by the Agency?

1. If not, why?

SCOPE OF WORK

N.) The Board determined a scope of work was not necessary because they and the Agency believe the variability is accounted for in the rates. The board further stated that the proposal includes a bidding process for projects that cannot be undertaken for the maximum rate in Subpart H and that including a scope of work would be cumbersome. Statistics derived from the IEPA's database and attached as part of CSD's questions, show the Agency reviewers approve with or without modification only 50% of the reports submitted. CSD finds the 50% approval rate is troublesome. We would like the

proposed regulations to be more explicit so that we are more certain that we know what the Agency wants in order to approve a report when submitted. When CSD submits our reports, we find that each project manager at IEPA has his or her own set of criteria for approving reports. Some project managers want a complete history of the project to date with a table summarizing all the analytical data some only want what you are proposing for this particular stage, some want 3 cross sections, some want 2, etc... It is difficult and frustrating from the consulting side to know what the Agency expects in each report. We are asking the IEPA to consider a scope of work to help ensure consistency amongst project managers and in turn, promote consistency amongst consulting firms and streamline the Agency review and approval process.

1. Will the Agency consider modifying the standard forms prescribed and provided by the Agency, as required in proposed 732.110 (a) and 734.135 (a), to include more specific details of what is required to be submitted in the report?
 - a. If not, why?
 - b. If the Agency considers this effort to be too burdensome, will the Agency consider establishing a work group of consultants and IEPA reviewers to propose revisions to the forms?
 1. If no, why?
2. How was the variability from site to site been taken into account in development of the maximum payment amounts as suggested by Mr. Clay?
3. Why does the Agency believe that a defined scope of work is not necessary for some if not every aspect of a UST cleanup to determine reasonable maximum payment amounts, when the Agency's own solution to determine reasonableness as an alternative to the maximum payment amounts via the bidding process proposed in 734.855 is predicated upon bids being based on the same "scope of work"?

UNUSUAL OR EXTRAORDINARY CIRCUMSTANCES

- O.) In the Agency's proposed 734.860 and 732.860, unusual or extraordinary circumstances, the provisions for administering these subsections are somewhat vague and arbitrary.
1. How often does the Agency expect to grant site specific maximum payment amounts for unusual or extraordinary circumstances?
 2. What are some additional examples of situations which the Agency would consider to be an unusual or extraordinary circumstance?
 3. What would the Agency consider to be a usual or ordinary circumstance?

4. What procedure will the Agency establish for the public to use if they feel they have an extraordinary circumstance?
5. What type of information will be required to demonstrate to the Agency that the costs for which a site specific maximum payment amount are being sought, are the result of an unusual or extraordinary circumstance, are unavoidable, are reasonable, and are necessary?
5. Will the Agency's decisions on extraordinary circumstances be subject to appeal to the Board?
 - a. If not, why?
6. Would the Agency be willing to post a Question and Answer type page on their website in order to track and inform owner/operators and consultants regarding requests for unusual or extraordinary circumstances, as well as, the Agency's decisions regarding whether or not those situations were considered to be unusual or extraordinary and / or questions received by the Agency regarding general administration of program?
 - a. If not, why?

IEPA Unit Manager and Project Manager Response Type Analysis

2003 to Present

Includes both initial and amended submittals

	<u>Total</u> <u>Decisions</u>	<u>Average</u> <u>Days for</u> <u>Response</u>	<u>Approvals</u>	<u>Average</u> <u>Days for</u> <u>Approval</u>	<u>Modified</u> <u>or Denied</u>	<u>Average</u> <u>Days for</u> <u>Mod/Den</u>
Whiteler	3,245 28.68%	44	1,572 51.68%	38.5	1,503 46.32%	50.96
McGill	596 18.37%	36	414 69.46%	31.75	182 30.54%	45.75
Rossi	540 16.64%	38	290 53.70%	35.21	250 46.30%	41.92
Davis	443 13.65%	30	197 44.47%	25.36	246 55.53%	33.67
Hale	407 12.54%	56	191 46.93%	44.49	216 53.07%	66.18
Zuehlke	386 11.90%	44	159 41.19%	38.38	227 58.81%	48.69
Kaiser	326 10.05%	58	164 50.31%	48.87	162 49.69%	68.22
Rothering	293 9.03%	58	184 62.80%	53.14	109 37.20%	67.13
Fernandes	254 7.83%	44	143 56.30%	44.71	111 43.70%	43.98
Chappel	2,702 23.88%	70	1,058 39.16%	65.88	1,644 60.84%	72.90
Malcom	682 25.24%	33	273 40.03%	30.50	409 59.97%	33.85
Hawbaker	403 14.91%	90	183 45.41%	83.09	220 54.59%	95.63
Donnelly	391 14.47%	41	111 28.39%	39.78	280 71.61%	41.71
Kuhlman	364 13.47%	78	188 51.65%	71.31	176 48.35%	86.02
Weller	353 13.06%	98	125 35.41%	88.93	228 64.59%	103.03
Bauer	271 10.03%	96	70 25.83%	91.16	201 74.17%	98.06
Schwartzkopf	238 8.81%	108	108 45.38%	100.50	130 54.62%	114.96
Lowder	2,004 17.71%	83	929 46.36%	80.47	1,075 53.64%	94.91
Benanti	420 20.96%	101	143 34.05%	87.27	277 65.95%	108.39
Piggush	347 17.32%	116	181 52.16%	113.38	166 47.84%	119.31
Heaton	294 14.67%	86	118 40.14%	77.86	176 59.86%	91.95
Putrich	214 10.68%	39	98 45.79%	41.10	116 54.21%	37.24
McCain	193 9.63%	95	111 57.51%	89.05	82 42.49%	102.95
Friedel	189 9.43%	95	83 43.92%	91.64	106 56.08%	97.31
Rahman	168 8.38%	68	89 52.98%	59.64	79 47.02%	77.29
Urish	167 8.33%	58	99 59.28%	54.02	68 40.72%	62.87
Daly	8 0.40%	51	7 87.50%	56.57	1 12.50%	14.00
Lowder	4 0.20%	368	0 0.00%	0.00	4 100.00%	368.00
Henninger	1,872 16.55%	66	1,001 53.47%	64.11	871 46.53%	67.14
Barrett	367 19.60%	66	200 54.50%	63.88	167 45.50%	69.39
Wallace	332 17.74%	59	154 46.39%	54.54	178 53.61%	63.02
Myers	330 17.63%	36	132 40.00%	31.86	198 60.00%	38.03
Hamilton	242 12.93%	80	170 70.25%	80.66	72 29.75%	78.67
Ransdell	219 11.70%	89	121 55.25%	79.56	98 44.75%	101.19
Covert	200 10.68%	83	131 65.50%	78.05	69 34.50%	92.94
Thorsen	88 4.70%	77	37 42.05%	69.84	51 57.95%	81.57
Tucka	79 4.22%	52	46 58.23%	49.41	33 41.77%	56.00
Dolan	14 0.75%	40	9 64.29%	47.22	5 35.71%	27.00
Nickell	1 0.05%	30	1 100.00%	30.00	0 0.00%	0.00
Albarracin	1,490 13.17%	73	905 60.74%	68.11	585 39.26%	79.52
Jones	532 35.70%	51	292 54.89%	45.73	240 45.11%	56.41
Bloome	308 20.67%	69	206 66.88%	67.54	102 33.12%	73.09
Gaydosh	282 18.93%	112	168 59.57%	105.76	114 40.43%	120.93
Layman	165 11.07%	100	97 58.79%	90.37	68 41.21%	114.35
South	74 4.97%	52	43 58.11%	47.33	31 41.89%	58.00
Kasa	42 2.82%	44	33 78.57%	38.09	9 21.43%	65.33
Ingold	32 2.15%	79	25 78.13%	81.20	7 21.88%	71.00
Dilbaitis	28 1.88%	49	23 82.14%	51.57	5 17.86%	39.60
Reynolds	27 1.81%	84	18 66.67%	77.11	9 33.33%	98.00
GRAND TOTAL	11,313	65	5,635 49.81%	59.90	5,678 50.19%	70.71