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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

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

R01-26
(Rulemaking - Land)

P.e.#4

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
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(By Federal Express)

Mr. Joel J. Sternstein
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(By Federal Express)

All persons listed on the attached service list by U.S. Mail

Please take notice that today I have filed comments with the Illinois Pollution Control Board in the matter entitled above.

Respectfully,

Kenneth W. Liss
Kenneth W. Liss, LPG

Dated: April 27, 2001

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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REGULATION OF PETROLEUM) (Rulemaking – Land)
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TANKS: 35 ILL. ADM. CODE 732)

TESTIMONY OF KENNETH W. LISS

My name is Kenneth W. Liss. I am a geologist, licensed by the Illinois Department of Professional Regulation. I am submitting my comments to those filed by the ISPE and the CECI. I am unable to attend the hearings and ask that you accept my comments into the record.

For several years I worked on various drafts and testified in favor of the bill that ultimately became the Professional Geologists Licensing Act (Geologists Act). I was appointed to the first Board of Licensing (Board) under the Act. During my tenure on the Board, we formulated the rules required for the administration of the Act, including the recommendations and opinions regarding the qualifications of applicants for licensing. For over 14 years I worked at the Illinois Environmental Protection Agency as a geologist, approximately eight of those years as manager of the Groundwater Unit, Permit Section, Bureau of Land.

Concerning the submissions of Mr. Bonczyk, attorney for the ISPE and the CECI, I have the following comments:

The General Assembly did not purposely exclude the references to the Professional Geologist Licensing Act when amending the LUST legislation. Actually it was the influence of the CECI and the ISPE in the drafting of the legislation with the Agency. Although as a group of professionals, we were eventually successful in getting the licensing Act passed, the different groups of geologists involved in that effort did not have the organizational structure or resources to continue. The Agency took the position not include references to the Professional Geologist Licensing Act in

subsequent legislative or rulemaking actions under the premise that the Professional Geologist Licensing Act was only recently passed, not effective until July 1, 1996 and would require rulemaking and a grandfathering period before licensed professionals would be available. This position was taken despite objections from geologists within the Agency.

The intent of the General Assembly and the importance they placed on the practice of geology is clearly stated in Section 5(a) through (h) and Section 10 of the Professional Geologist Licensing Act. The Act is an accurate representation of the intent of the General Assembly as compared to the presumptions presented by Mr. Bonczyk for the ISPE and CECI. Section 5(a) and Section 10 are as follows:

Sec. 5. Findings. The General Assembly finds that:

(a) In recent years, governmental bodies have increasingly come to rely upon advice from geologists when formulating laws and policies to protect the environment and the safety, property, and well-being of the citizens of this State.

Sec. 10. Declaration of public policy. The practice of professional geology in the State of Illinois is hereby declared to affect the public health, safety, and well-being of its citizens and to be subject to regulation and control in the public interest. It is further declared that the practice of professional geology, as defined in this Act, merits the confidence of the public, **and that only qualified persons shall be authorized to engage in the practice of professional geology in the State of Illinois. This Act shall be liberally construed to best carry out this purpose.** (emphasis applied)

The references to Licensed Professional Engineer (engineer) found in Section 57 of the Environmental Protection Act are broad enough in scope to allow Licensed Professional Geologists (geologist) to perform work under the Part 732 (LUST) rules. The references to Licensed Professional Engineer found in Section 57 require an engineer to certify certain submissions to the Agency, but indicates the work can be performed under the direction of the engineer, not specifically by the engineer..

Now looking at the LUST rules without the proposed amendments, the term Licensed Professional Engineer is included in nearly every section and often subsection of the technical portions of the existing rules. The reference to Licensed Professional

Engineer is not only applied beyond the requirements of Section 57, but also in a manner that requires or implies that the engineer perform the work as opposed to only directing the work. One exception is noted in Section 732.312 Classification by Exposure Pathway Exclusion (d) where it includes "... (or, where appropriate, persons working under the direction of a Licensed Professional Engineer)...". If the comments of the ISPE and CECI are correct in challenging the Board's authority to include Licensed Professional Geologist in the rules, it appears that many of the references to Licensed Professional Engineer in the existing rule also go beyond the authority of Section 57 of the Environmental Protection Act.

Concerning Mr. Huff's comments and questions:

In the first paragraph on page 3 of his testimony, he states that "Geologists are not trained as design professionals though they provide valuable scientific services". In the context of the definition of Licensed Professional Engineer, I agree with this statement. However within the definition of the practice of professional geology, a geologist is a design professional. Geology is a science. For instance, studies in the science of geology, including soils, fluids, rock and earth processes educate us in the areas of stratigraphy and lithology. With that knowledge, a geologist is able to make efficient and intelligent interpretations concerning migration pathways beyond simply plugging parameter values into formulae. A geologist will design a subsurface investigation to fulfill the requirements of a corrective action plan and determine appropriate actions. This may include the design of a slurry wall or a groundwater injection or extraction program. While there is a distinction between the potential designs of the two professions, the term design professional is not exclusive to engineering.

In the second paragraph on page 3, several questions are raised concerning the ramifications of allowing Licensed Professional Geologists to practice under the LUST rules. The first question concerns the potential consequences of the Agency accepting a geologist's certification that entails engineering. If such a submission is

discovered it should be reported to the Department of Professional Regulation. What if the reverse was to happen and the engineer certified geologic submissions, not having the education or experience to competently interpret geologic information? Is there an oversight procedure in place to prevent this from happening under the current Agency review of LUST reports? As in the case of the geologist such a discovery should be reported to the Department of Professional Regulation. The questions put forth by Mr. Huff could apply to any licensed profession. Accepting certifications by a geologist as allowed by the law would not lead to "far more complications and potential problems" as stated in his testimony. Probably no more than what may already be occurring. the answer to each of his concerns is that the enforcement of the regulations concerning licensed professionals falls on the Department of Professional Regulation.

The Agency and the Board are inadvertently placing themselves in the position of determining who should or should not be allowed to perform the work required pursuant to the LUST rules. Therefore in lieu of specifically listing the licensed professions in each subsection, I propose that the Board consider establishing a new section that recognizes the current State laws that set the standards for professionals engaged in the technical work required under these rules. I suggest striking the references to both the licensed professions in the subparts to Part 732 and adding the following:

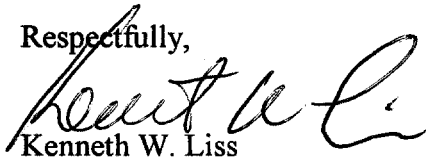
Section 732.107 Professional Certifications

All work performed subsequent to the requirements of this Part must be completed by, or under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist, within the scope and definitions of the laws applicable to their respective professions. The licensed professional shall certify to the accuracy of the information being submitted and competency to perform such work, by signing and affixing a seal in accordance with the requirements of the Professional Engineering Practice Act of 1989 or the Professional Geologist Licensing Act of 1996.

Any questions of impropriety or practicing outside one's profession can be referred to the Department of Professional Regulation for consideration of disciplinary action.

I want to thank the Board for the opportunity to present my comments.

Respectfully,


Kenneth W. Liss
2601 Interlacken Drive
Springfield, Illinois 62704

April 27, 2001

ORIGINAL

R01-26 SERVICE LIST

In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732
Revised April 23, 2001

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R01-26 SERVICE LIST

In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732
Revised April 23, 2001

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