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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)
)
Proposed Amendments to Regulation)
of Petroleum Leaking Underground)
Storage Tanks (35 Ill. Adm. Code 732)) R01-26-
) (Rulemaking)

NOTICE OF FILING

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Illinois Pollution Control Board
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(Federal Express)

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Joel Sternstein, Hearing Officer
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PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Illinois Environmental Protection Agency Responses to Pollution Control Board Requests at Hearing Held February 27, 2001 by the ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: Judith S. Dyer
Judith S. Dyer
Assistant Counsel
Division of Legal Counsel

By: Kyle Rominger
Kyle Rominger
Assistant Counsel
Division of Legal Counsel

Dated: March 30, 2001

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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APR 02 2001

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R01-26
REGULATION OF PETROLEUM) (Rulemaking – Land)
LEAKING UNDERGROUND STORAGE)
TANKS (35 ILL. ADM. CODE 732))

Illinois Environmental Protection Agency Responses to Pollution Control Board
Requests at Hearing Held February 27, 2001


Now comes the Illinois Environmental Protection Agency (“Agency”), by its attorneys, and provides the following responses to requests made by the Illinois Pollution Control Board (“Board”) at the hearing in the above-captioned rulemaking held February 27, 2001:

1. The Board requested that the Agency provide a copy of a letter received by the Agency from the Department of Professional Regulation addressing the inclusion of Licensed Professional Geologists in the proposed amendments before the Board in this rulemaking. A copy of that letter, dated September 20, 2000, is attached for entry in the record as an exhibit in this proceeding (“Attachment 1”).
2. The Board requested that the Agency consider drafting language making an Agency determination that a corrective action plan requires modification an appealable action. In response, the Agency is submitting the attached proposed addition to Section 732.405(f). The proposed addition states that any action by the Agency to require a revised corrective action plan shall be subject to appeal to the Board within 35 days after the Agency’s final action in the manner provided for the review of permit decisions in Section 40 of the Act (“Attachment 2”).

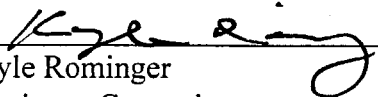
3. The Board requested and the Agency agreed to provide the Memorandum of Agreement between the Agency and the Illinois Department of Transportation identified in Section 732.703. The Agency will submit that Memorandum of Agreement as an exhibit at the hearing April 3, 2001.
4. The Agency agreed to inform the Board as to the status of communications with the Illinois Records Commission regarding electronic reporting. The Agency will provide this information in a statement at the hearing April 3, 2001.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Judith S. Dyer
Assistant Counsel



Kyle Rominger
Assistant Counsel

Dated: March 30, 2001

1021 N. Grand Ave. East
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Illinois Department of Professional Regulation

Leonard A. Sherman
Director

20 September, 2000

George H. Ryan
Governor

Douglas W. Clay, PE
IEPA
1021 North Grand Av. East / Box 19276
Springfield, Ill. 62794

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SEP 26 2000

Dear Mr. Clay:

IEPA/BOL

This letter responds to your inquiry regarding the regulatory proposal IEPA submitted to the Illinois Pollution Control Board. Specifically, you inquired about the portions of the draft Rules which relate to the practices of geology and professional engineering. To begin, note the following statutory provisions:

Professional Engineering Practice Act, 225 ILCS 745 §15: Examples of the practice of professional geology include, but are not limited to, the conduct of, or responsible charge for, the following types of activities: (i) mapping, sampling, and analysis of earth materials, interpretation of data, and the preparation of oral or written testimony regarding the probable geological causes of events; (ii) planning, review, and supervision of data gathering activities, interpretation of geological data gathered by direct and indirect means, preparation of geological maps, cross-sections, interpretive maps and reports for the purpose of evaluating regional or site specific geological conditions; (iii) the planning, review, and supervision of data gathering activities and interpretation of data on regional or site specific geological characteristics affecting groundwater; (iv) the interpretation of geological conditions on the surface and at depth at a specific site on the Earth's surface for the purpose of determining whether those conditions correspond to a geologic map of the site; and (v) the conducting of environmental property audits.

Professional Geologist Licensing Act 225 ILCS §325/4(o): "Professional engineering practice" means the consultation on, conception, investigation, evaluation, planning, and design of, and selection of materials and methods to be used in, administration of construction contracts for, or site observation of an engineering system or facility, where such consultation, conception, investigation, evaluation, planning, design, selection, administration, or observation requires extensive knowledge of engineering laws, formulae, materials, practice, and construction methods. A person shall be construed to practice or offer to practice professional engineering, within the meaning and intent of this Act, who practices, or who, by verbal claim, sign, advertisement, letterhead, card, or any other way, is represented to be a professional engineer, or through the use of the initials "P.E." or the title "engineer" or any of its derivations or some other title implies licensure as a professional engineer, or holds himself out as able to perform any service which is recognized as professional engineering practice.

Examples of the practice of professional engineering include, but need not be limited to, transportation facilities and publicly owned utilities for a region or community, railroads, railways, highways, subways, canals, harbors, river improvements; irrigation works; aircraft, airports and landing fields; waterworks, piping systems and appurtenances, sewers, sewage disposal works; plants for the generation of power; devices for the utilization of power; boilers; refrigeration plants, air conditioning systems and plants; heating systems and plants; plants for the transmission or distribution of power; electrical plants which produce, transmit, distribute, or utilize electrical energy; works for the extraction of minerals from the earth; plants for the refining, alloying or treating of metals; chemical works and industrial plants involving the use of chemicals and chemical processes; plants for the production, conversion, or utilization of nuclear, chemical, or radiant energy; forensic engineering, geotechnical engineering including, subsurface investigations; soil classification, geology and geohydrology, incidental to the practice of professional engineering; energy analysis, environmental design, hazardous waste mitigation and control; recognition, measurement, evaluation and control of environmental systems and emissions; automated building management systems; or the provision of professional engineering site observation of the construction of works and engineering systems. Nothing contained in this Section imposes upon a person licensed under this Act the responsibility for the performance of any of the foregoing functions unless such person specifically contracts to provide it.

§732.307(b) of the draft EPA storage tank leak Rules authorizes geologists to conduct "physical soil classification[s]." This is not listed in the definition of the practice of geology, though it is referenced specifically in the definition of professional engineering practice (above). However, the methods of "soil classification" are spelled out in the following sections of these proposed rules (§§(c) and (d)), and these methods include map review and other procedures which appear to fall under the purview of the practice of geology. The remainder of the sections of these draft Rules also appear to appropriately authorize geologists to perform tasks contained in their practice definitions. Thus, there appear to be no conflicts with the Geology or PE Practice Acts.

This letter serves as an informal statement reflecting the interpretation of the Department on this matter. The Office of the Attorney General renders official opinions regarding statutory interpretation. However, if questions remain, please contact me at (217) 557-5632.

Sincerely,

Jason R. Craddock
Legal Counsel

Respond to: 320 West Washington 3rd Floor Springfield, Illinois 62786 217-785-0800 TDD 217-524-6735 <http://www.state.il.us/dpr> James R. Thompson Center 100 West Randolph Suite 9-300 Chicago, Illinois 60601 312/314-4500

Attachment

Section 732.405 Plan Submittal and Review

- a) Prior to conducting any corrective action activities pursuant to this Subpart D, the owner or operator shall submit to the Agency a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in Section 732.403 or 732.404 of this Part, as applicable. Groundwater monitoring and corrective action plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- b) In addition to the plans required in subsections (a), (e) and (f) of this Section and prior to conducting any groundwater monitoring or corrective action activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a groundwater monitoring or corrective action budget plan. Such budget plans shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and a line item estimate of all costs associated with the development, implementation and completion of the applicable activities. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part. Groundwater monitoring and corrective action budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- c) The Agency shall have the authority to review and approve, reject or require modification of any plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- d) Notwithstanding subsections (a), ~~and (b)~~, (e) and (f) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget or corrective action plan or budget. However, any such plan shall be submitted to the Agency for review and approval, rejection or modification in accordance with the procedures contained in Subpart E of this Part prior to payment or reimbursement for any related costs or the issuance of a No Further Remediation Letter. If the owner or operator has obtained Agency approval of a Low Priority groundwater monitoring plan and a Low Priority groundwater monitoring completion report, or has obtained Agency approval of a High Priority corrective action plan and a High Priority corrective action completion report, without the submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing the

applicable activities required, for a Low Priority site, in Section 732.403 or, for a High Priority site, in Section 732.404.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

- e) If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject or require modifications of the amended plan in accordance with the procedures contained in Subpart E of this Part.

- (f) If the Agency determines any approved corrective action plan will not achieve applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit a revised corrective action plan. Any action by the Agency to require a revised corrective action plan pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

R01-26 SERVICE LIST

In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732
Revised March 12, 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 March 12, 2001

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