BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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| IN THE MATTER OF: | ) | |
| | ) | |
| PROPOSED AMENDMENTS TO | ) | R01-26 |
| REGULATION OF PETROLEUM | ) | (Rulemaking – Land) |
| LEAKING UNDERGROUND STORAGE | ) | |
| TANKS (36 ILL. ADM. CODE 732) | ) | |

**TESTIMONY OF JAMES HUFF, P.E.**
**IN OPPOSITION TO CERTAIN PROPOSED AMENDMENTS**
**OF THE ENVIRONMENTAL PROTECTION AGENCY'S**
**PROPOSAL TO AMEND 35 ILL. ADM. CODE 732**

My name is James E. Huff. I am Vice President of Huff & Huff, Inc., an environmental engineering firm located in LaGrange, Illinois. I am a Licensed Professional Engineer and a member of the Consulting Engineers Council of Illinois ("CECI"). I serve as Chairman of the Illinois EPA Liaison committee for the CECI. I am testifying today on behalf of the Consulting Engineers Council of Illinois as well as the Illinois Society of Professional Engineers ("ISPE").

ISPE serves over 3,000 Licensed Professional Engineers in Illinois, while CECI has 225 member consulting engineering firms, of which approximately one-third provide environmental engineering services. Many of the CECI member firms employ geologists, and their expertise is integral to our practice. This is particularly true in the environmental arena.

I am testifying today to object to certain portions of the proposed amendments to 35 Ill. Adm. Code 732, on behalf of ISPE and CECI. First, we commend the Illinois Environmental Protection Agency and the Illinois Pollution Control Board for its actions in updating and amending these proposed rules. We appreciate the Agency's concerns in refining the process and implementing the proposed improvements to the regulations.

Our objections to the proposed amendments relate to a limited and specific issue. That issue is the proposed inclusion of terminology in the regulations which allow for "Licensed Professional Geologists" to perform many of the same functions as "Licensed Professional

Engineers". We object on the ground that there is no statutory authority in the enabling legislation to include licensed professional geologists in the rules. The only reference throughout the LUST legislation is to licensed professional engineers.

As the Board is aware, specific functions are assigned in the LUST legislation to licensed professional engineers. For example, the determination of physical soil classifications, site evaluations. survey of water supply wells, and groundwater investigations are all assigned to licensed professional engineers. The Agency is proposing that with one exception, licensed professional geologists should be included for every action which licensed professional engineers currently perform. Conceptually, both CECI and ISPE are open to allowing qualified geologists to practice in areas where they are licensed, so long as this is not achieved at the exclusion of qualified engineers to properly practice their profession. Unfortunately, we believe the LUST legislation does not grant the authority for such operations to geologists, and we request the Board carefully examine our legal arguments contained in our Motion to Oppose Certain Proposed Amendments of the EPA's Proposal to Amend 35 Ill. Adm. Code 732, and the accompanying Memorandum of Law. CECI and ISPE are prepared to work closely with the geologists to develop the proper statutory basis to allow the licensed professional geologist to certify those items contained in the Agency's proposal.

The Agency's own testimony raises questions of the validity of including licensed professional geologists. The filed testimony of Mr. Doug Clay clearly indicates that Title XVI of the Environmental Protection Act, the LUST provisions, was not modified or amended to include certifications by licensed professional geologists. His testimony merely reflects the Agency belief that Board should adopt these changes because the Professional Geologists Licensing Act was adopted subsequent to the LUST provisions. However, that testimony fails to indicate that the Professional Geologists Licensing Act was passed prior to the most recent amendments to the LUST provisions in 1996. The presumption therefore exists that if the General Assembly intended to include geologists in the LUST provisions, they clearly could have done so in the subsequent LUST amendments.

In the filed testimony of Mr. Ron Dye of the Advisory Board of the Illinois Chapter of the American Institute of Professional Geologists. Mr. Dye asserts the agency should also insert licensed professional geologists in proposed Section 732.409(a)(2) relating to certification of Corrective Action Completion Reports. The American Institute of Professional Geologists acknowledges that certain portions of a Corrective Action Completion Report are outside the purview and practice of professional geologists. Geologists are not trained as design professionals though they provide valuable scientific services. It seems inconsistent to us that the Agency can pick and choose the application of where certification by geologists are appropriate, especially in light of the fact that there are no enumerated statutory standards to govern the Agency in its selection.

If an Agency project manager inappropriately accepts a licensed professional geologist (LPG) certification that entails engineering, what are the potential consequences? Could the No Further Remediation letter become invalidated because the report was certified inappropriately? Who would make such a decision on the appropriateness of a LPG certification? Our position remains that qualified Licensed Professional Engineers are the only professionals qualified to certify Corrective Action Completion Reports, and allowing LPGs to certify some of these Reports leads to far more complications and potential problems. In this regard, CECI and ISPE are in full agreement with the Agency draft language in 732.409(a)(2).

In summary, many of CECI member firms employ geologists, and both CECI and ISPE support developing the framework to allow qualified Licensed Professional Geologists to certify in those areas recognized by the statutes. ISPE and CECI are prepared to work closely with the geologists to develop this proper statutory framework to allow LPG's to certify those items contained in the Agency's proposal. However, this legislative framework is not yet in place, and consequently ISPE and CECI object to the Licensed Professional Geologist inclusion in the proposed 732 changes.

I thank the Board for this opportunity, and I would be pleased to answer any questions you may have.

Respectfully submitted,
Illinois Society of Professional Engineers
Consulting Engineers Council of Illinois

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