

DEC 27 2001

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PETROLEUM UNDERGROUND STORAGE
TANK PROGRAM
AMENDMENTS TO
35 IL. ADMIN. CODE 732

)
)
)
) RO1-26
) (Rulemaking - Land)
)

P.C. #12

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FEDEX - OVERNIGHT)

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

All Other Persons on the Attached Service List (U.S. Postal Service)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the attached Public Comments of the Illinois Chapter of the American Institute of Professional Geologists in the above-titled matter, a copy of which are hereby served upon you.

Respectfully submitted,

ILLINOIS CHAPTER
AMERICAN INSTITUTE OF
PROFESSIONAL GEOLOGISTS

By: *Ronald B. St. John*
Ronald B. St. John, President

Dated: December 21, 2001

Illinois Chapter, AIPG
Clayton Group Services
3140 Finley Road
Downers Grove, Illinois 60515
(630) 795-3200

DEC 27 2001

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

IN THE MATTER OF)
)
PETROLEUM UNDERGROUND STORAGE)
TANK PROGRAM) RO1-26
AMENDMENTS TO) (Rulemaking - Land)
35 IL. ADMIN. CODE 732)

**PUBLIC COMMENTS OF THE ILLINOIS CHAPTER OF THE ILLINOIS
INDIANA SECTION OF THE AMERICAN INSTITUTE OF PROFESSIONAL
GEOLOGISTS
IN OPPOSITION TO CERTAIN PROPOSED AMENDMENTS TO
THE POLLUTION CONTROL BOARD'S FIRST NOTICE
PROPOSAL TO AMEND 35 IL. ADMIN. CODE 732**

My name is Ronald St. John, and I serve as President of the Illinois Chapter of the Illinois Indiana Section of the American Institute of Professional Geologists (Illinois Chapter). The Illinois Chapter respectfully submits its comments on the above-titled matter.

We oppose the Pollution Control Board's proposed amendments to 35 Illinois Administrative Code (IAC) Section 732.307 (a), 35 IAC 732.307 (b), 35 IAC 732.312 (d), and 35 IAC 732.601 (b) because they are in conflict with the Professional Geologist Licensing Act (225 ILCS 745). We request that the Pollution Control Board delete the proposed amendments to (35 IAC 732.307 (a), 35 IAC 732.307 (b), 35 IAC 732.312 (d), and 35 IAC 732.601 (b) in their entirety and allow the matter to be addressed by the General Assembly.

The Pollution Control Board's proposed amendment allows Licensed Professional Geologists to conduct Petroleum Underground Storage Tank (UST) activities under the supervision of a Licensed Professional Engineer (LPE). The General Assembly authorized the regulation and licensing of Professional Geologists, and in doing so, did not require LPGs to practice under the supervision of an LPE. We hope that the Pollution Control Board will agree, as it stated in the First Notice for the 35 IAC Part 732 regulations that it, "*will not allow LPGs to practice in those areas specifically reserved for LPEs, nor will it allow LPGs to practice in violation of the Engineer Act or the Geologist Act.*"

The proposed amendments are also unnecessary because it does not make any material difference in the current situation as anyone may conduct Petroleum UST activities under the supervision of an LPE, and there is no benefit to the public to specifically identify LPGs in the regulation.

Also, the proposed amendments do not clarify what it means to be supervised by an LPE as defined in the Environmental Protection Act, where an LPE is "a person, corporation,

or partnership licensed to under the laws of this State to practice professional engineering'. The potential exists for the proposed amendments to create confusion that LPGs may be supervised by professional engineering corporations and partnerships in addition to Professional Engineers. Furthermore, the Professional Engineering Licensing Act defines "Direct Supervision/Responsible Charge" as work prepared under the control of a licensed professional engineer or that work as which the professional engineer has detailed professional knowledge. This suggests that an LPE does not need to personally supervise the work performed, but does need to have detailed professional knowledge of the work.

It appears that the amendments were proposed in an attempt to include LPGs in the Petroleum UST regulations. However, the Pollution Control Board has determined that the Environmental Protection Act limits the role of the LPG in the Petroleum UST regulations. The Pollution Control Board has made it clear that it believes that the Environmental Protection Act would have to be amended to allow LPG to conduct certain activities specifically reserved for the LPEs in the Environmental Protection Act. We request the Pollution Control Board to allow us to petition the General Assembly to make changes to the Environmental Protection Act to include LPGs in the Petroleum UST program.

We also oppose the Pollution Control Board's proposed amendment to 35 IAC 732.307 (e), and request that the proposed amendment be deleted. Geologists have contributed significantly to the wealth of knowledge regarding contaminant transport. One only has to look to the publications of the United States Geological Survey and the Illinois State Geological Survey for many examples of important scientific contributions in the understanding of contaminant behavior in the subsurface. The USGS also conducts contaminant investigations under contract to the United States Environmental Protection Agency. Consulting geologists routinely perform environmental investigations in the vicinity of the built environment, sometimes referred to as "urban geology." Preferential transport of contaminants via utility corridors, building foundations, fill materials, etc. is well known and this knowledge is not limited to professional engineers.

There were comments speculating on the intent of the General Assembly with regards to the role of the LPG, but the commenter did not include some of the background that is important to understanding why the General Assembly did not include LPGs in Title XVI to the Environmental Protection Act. A brief discussion of the timing of the Professional Geologist Licensing Act in relation to amendments to the Environmental Protection Act is provided below. This brief history shows that there were no LPG licenses issued at the time of passage of Title XVI in 1996. Furthermore, the General Assembly was focused in 1995 and 1996 on resolving technical and legal problems with Title XVI that caused the United States Environmental Protection Agency (U.S. EPA) to withdraw its approval of the States Underground Storage Tank Program, and that caused a Cook County Circuit Court to find the amendments to the Environmental Protection Act designed to rectify the U.S. EPA's technical problems were unconstitutional.

The Title XVI Petroleum Underground Storage Tank amendments to the Environmental Protection Act occurred in 1993, prior to the General Assembly passing the Professional Geologist Licensing Act (1995), and so the General Assembly could not have included Professional Geologists in the Environmental Protection Act at that time.

There were problems with Title XVI of Environmental Protection Act that caused U.S. EPA to withdraw its approval of the Illinois Leaking Underground Storage Tank (LUST) Program in 1995. The General Assembly revised the Environmental Protection Act in December of 1995 and the U.S. EPA returned control of the LUST program to the State of Illinois in April 1996. On May 7, 1996, the amendments to the Environmental Protection Act were found to be unconstitutional, and the Environmental Protection Act was again modified by the General Assembly to resolve the constitutionality issue.

The Professional Geologist Licensing Act was approved August 18, 1995, and was to become effective on July 1, 1996. However, the implementing regulations were not finally adopted until October 1, 1997. These regulations established the requirements for application for licensure. Applications for initial licensure were due by April 1, 1998. Subsequently, the Department of Professional Regulation began issuing licenses.

At the time of the passage of Title XVI, the regulations implementing the LPG licensing program had not been issued, and the Department of Professional Regulation could not issue licenses to Professional Geologists. It is likely that the General Assembly did not include Professional Geologists in the amendments to Title XVI because there were no licenses issued to Professional Geologists prior to 1998.