

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
RCRA SUBTITLE C UPDATE, USEPA ) R16-7  
AMENDMENTS (January 1, 2015 through ) (Identical- in-Substance  
June 30, 2015 and July 2, 2015) ) Rulemaking – Land)

**NOTICE OF FILING**

TO: Mr. John T. Therriault Mr. Michael McCambridge  
Assistant Clerk of the Board Hearing Officer  
Illinois Pollution Control Board Illinois Pollution Control Board  
100 West Randolph Street 100 West Randolph Street  
Suite 11-500 Suite 11-500  
Chicago, Illinois 60601 Chicago, Illinois 60601  
**(VIA ELECTRONIC MAIL)** **(VIA FIRST CLASS MAIL)**

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Board the ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PUBLIC COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: May 2, 2016

By: /s/ Antonette R. Palumbo  
Antonette R. Palumbo

Antonette R. Palumbo  
Legal Counsel  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, Illinois 62701  
(217) 522-2212

**CERTIFICATE OF SERVICE**

I, Antonette R. Palumbo, the undersigned, hereby certify that I have served the attached ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PUBLIC COMMENTS upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on May 2, 2016; and upon:

Mr. Michael McCambridge  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on May 2, 2016.

By: /s/ Antonette R. Palumbo  
Antonette R. Palumbo

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**THE ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP'S PUBLIC COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through its attorney, Antonette R. Palumbo, and in accordance with the March 3, 2016, Opinion and Order, hereby submits its First Notice comments in the above-captioned matter.

IERG is an Illinois non-profit corporation affiliated with the Illinois Chamber of Commerce. IERG is comprised of fifty-three (53) member companies that are regulated by governmental agencies that promulgate, enforce, or administer environmental laws, rules, regulations, or other policies. One of IERG's primary roles is to represent the interests of its members in rulemakings before the Illinois Pollution Control Board ("Board"). IERG appreciates the opportunity to participate in this proceeding and offers the following comments for consideration by the Board.

**I. INTRODUCTION**

IERG submits these comments in support of the comments filed by Dow Chemical Company ("Dow"). IERG does not intend to recite Dow's comments verbatim; rather, IERG supports the clarifications sought by Dow, as IERG understands that other states have encountered complications in implementing the federal amendments being adopted into Illinois' regulations in this rulemaking. IERG believes the public and the regulated community would be better served by Illinois regulations that clearly reflect some of the more confusing aspects of the federal rules.

To that end, IERG supports the clarifications sought by Dow in relation to four areas of the regulations, including: 1) the pre-2008 exclusions; 2) speculative accumulation; 3) the legitimacy factors analysis; and 4) the contained standard. IERG is also aware that some confusion about the proposed wording has arisen due to differing versions of the proposed regulations from the Board's March 3, 2016 proposal and the Joint Committee on Administrative Rules' ("JCAR") *First Notice Version for Use in Creating Second Notice Changes*. As such, IERG encourages the Board to ensure continuity between the two versions.

## **II. DISCUSSION**

The pre-2008 exclusions and the interplay between these exclusions and the amendments to the regulations are thoroughly discussed by U.S. EPA in the *Federal Register* published on January 13, 2015. 80 FR 1696-20 (Jan. 13, 2015). In order to ensure complete clarification of the continued validity of the pre-2008 exclusions in relation to these amendments, IERG supports Dow's suggestion that the Board discuss these exclusions more thoroughly within its Opinion, or include a Board Note within the text of the rules. IERG understands that the phrase "pre-2008 exclusions" does not actually appear within the text of the rules. However, U.S. EPA stated that the amendments adopted do not alter or amend these exclusions, and this should be noted by the Board.

IERG also encourages the Board to adopt the suggestions Dow has made in regards to the provisions referring to speculative accumulation. IERG is aware that in other states, issues have arisen related to the labeling requirements and believes that Dow's comments seek to address these concerns and clarify the new requirement.

U.S. EPA also adopted amendments to the legitimate recycling determination factors. IERG recommends the Board adopt the Board Notes suggested by Dow detailing the evaluation

requirements for the fourth factor of legitimacy and clarifying that facilities do not have to proceed through the factor four steps in the order laid out in the rule. This clarification is reflective of U.S. EPA's interpretation of the rule and will ensure proper application of the legitimacy determination, as amended by U.S. EPA. 80 FR 1726-30 (Jan. 13, 2015).

Lastly, IERG suggests the Board adopt Dow's proposed actions regarding the contained standard. The Board's deviation from the federal amendments in adding "unpermitted" before "release" could result in the improper interpretation and application of this standard. U.S. EPA noted that a single release event does not mitigate or suspend the application of the contained standard. Rather, a release must be continuous or continuously intermittent in order for the hazardous secondary material to no longer be contained. *See* 80 FR 1746 (Jan. 13, 2015). IERG recommends the Board make this unambiguously clear by including a Board Note.

Thank you for your consideration of these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: May 2, 2016

By: /s/ Antonette R. Palumbo  
Antonette R. Palumbo

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Legal Counsel  
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