

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 29 2002

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R02-1
AMENDMENTS (JANUARY 1, 2001,)	(Rulemaking - Land)
THROUGH JUNE 30, 2001);)	

P.C.#6

IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R02-12
AMENDMENTS (JULY 1, 2001, THROUGH)	(Rulemaking - Land)
DECEMBER 31, 2001 AND JANUARY 22 , 2002);)	

IN THE MATTER OF:)	
)	
UIC UPDATE, USEPA AMENDMENTS)	R02-17
(JULY 1, 2001, THROUGH DECEMBER 31,)	(Rulemaking Land)
2001))	(Consolidated)

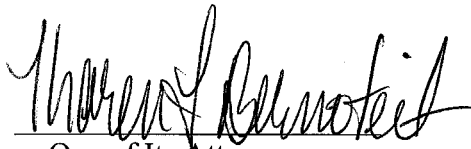
NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Mike McCambridge
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	James R. Thompson Center
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)	(VIA FIRST CLASS MAIL)

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the **COMMENTS**, copies of which are herewith served upon you.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
One of Its Attorneys

Dated: March 27, 2002

Karen L. Bernoteit
Robert A. Messina
Illinois Environmental
Regulatory Group
215 East Adams Street
Springfield, Illinois 62701
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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 29 2002

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R02-1 STATE OF ILLINOIS
AMENDMENTS (JANUARY 1, 2001,) (Rulemaking - Land) *Pollution Control Board*
THROUGH JUNE 30, 2001);)

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R02-12
AMENDMENTS (JULY 1, 2001, THROUGH) (Rulemaking - Land)
DECEMBER 31, 2001 AND JANUARY 22, 2002);)

IN THE MATTER OF:)
)
UIC UPDATE, USEPA AMENDMENTS) R02-17
(JULY 1, 2001, THROUGH DECEMBER 31,) (Rulemaking Land)
2001)) (Consolidated)

COMMENTS

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP
("IERG"), by one of its attorneys, Karen L. Bernoteit, and submits the following
COMMENTS in the above-referenced matter to the Illinois Pollution Control Board
("Board"), stating as follows:

IERG supports the Board's proposed amendment to 35 Ill. Admin. Code
728.134(a) and to 35 Ill. Admin. Code 721.124(a) to reference the Association of Battery
Recyclers v. EPA, 208 F.3d 1047 (D.C. Cir. 2000) decision that vacated the May 26,
1998 Phase IV Land Disposal Restriction (LDR) regulation as it provides for the use of
the toxicity characteristic leaching procedure (TCLP) to determine whether manufactured
gas plant (MGP) waste exhibits the toxicity characteristic.

IERG is a not-for-profit Illinois corporation comprised of 70 member companies engaged in industry, commerce, agriculture, and other related activities that are regulated by governmental agencies that promulgate, administer or enforce environmental laws and regulations. IERG was organized to promote and advance the interests of its members before governmental agencies, such as the Illinois Environmental Protection Agency and Illinois Pollution Control Board, and before judicial bodies, such as the Illinois Courts. Moreover, IERG is an affiliate of the Illinois State Chamber of Commerce, which has more than 5,000 members in the State.

Importantly, the decision of the District Court of Appeals, D.C. Circuit, in the Association of Battery Recyclers case, has resulted in the expedited remediation of numerous MGP waste sites as it eliminated the encumbrances created by the applicability of LDRs to this type of waste. From a public policy perspective, it is a positive development as it allows the owner/operators of MGP waste sites to move forward and address sites that have been slated for remediation but delayed due to the applicability of the onerous requirements of the RCRA hazardous waste program.

The proposed Board Note is identical to the language of the first two sentences of IERG's proposed Board Note submitted to the Board on June 14, 2001. Adoption of the Board's proposed Board Note will ensure the clarity of Illinois' requirements applicable to MGP waste and will avoid any confusion regarding the applicability of the TCLP for the evaluation of MGP waste.

As for placement of the proposed Board Note, IERG concurs with the Board's proposal to append the proposed Board Note to 35 Ill. Admin. Code 721.124(a), as well

as to 35 Ill. Admin. Code 728.134(a), which is the placement that IERG had previously proposed to the Board for the note.

Finally, IERG concurs with the Board's proposed Board Note to be appended at 35 Ill. Admin. Code 721.102(c)(3) and 35 Ill. Admin. Code 721.104(a)(17). This Board Note addresses the other aspect of the Association of Battery Recyclers decision, that excludes materials generated and reclaimed within the primary mineral processing industry from the regulatory definition of solid waste.

IERG urges the Board to adopt the proposed Board Notes to be appended at 35 Ill. Admin. Code 728.134(a), 35 Ill. Admin. Code 721.124(a), 35 Ill. Admin. Code 721.102(c)(3) and 35 Ill. Admin. Code 721.104(a)(17).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: 

Karen L. Bernoteit

Dated: March 27, 2002

Karen L. Bernoteit
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CERTIFICATE OF SERVICE

I, Karen L. Bernoteit, the undersigned, certify that I have served a copy of the

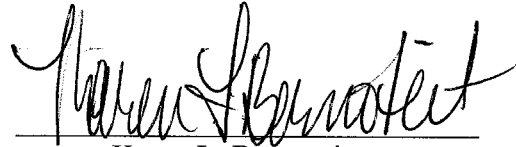
COMMENTS upon:

Ms. Dorothy M. Gunn
Clerk of the Board
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Chicago, Illinois 60601

Mike McCambridge
Hearing Officer
Illinois Pollution Control Board
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SEE ATTACHED SERVICE LIST.

by depositing said documents in the United States Mail in Springfield, Illinois on
March 27, 2002.



Karen L. Bernoteit

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