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STATE OF ILLINOIS
Pollution Control Board

Cathy Busto
429 Tomahawk Street
Park Forest, Illinois 60466-2417
May 30, 2000

P.C. #6

IN THE MATTER OF:

REVISION OF THE ILLINOIS POLLUTION CONTROL BOARD'S
PROCEDURAL RULES: 35 ILLINOIS ADMINISTRATIVE CODE 101-130

DOCKET NUMBER R00-20

I support the revision of the Illinois Pollution Control Board's procedural rules to govern how persons initiate and participate in all proceedings before the Pollution Control Board under the Environmental Protection Act and other legislation which directs action by the Pollution Control Board. I appreciate that the Board has simplified and has defined many terms potentially unfamiliar to the public. I would like to see the Board develop a glossary of definitions or other format of explanatory material to assist the public.

Regarding Section 104.400 General Subpart D: ADJUSTED STANDARDS, the adjusted standard process does not adequately address solid waste determinations under the Resource Conservation and Recovery Act. The Pollution Control Board should develop specific procedural rules for solid waste determinations.

The definition of "solid waste" in Section 807.104 of Chapter 35 of the Illinois Administrative Code is the same as the definition of "solid waste" pursuant to the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. S6901 et seq. 96 PCB at 163. Several reported Pollution Control Board opinions have considered whether certain materials in certain circumstances were wastes for purposes of "special waste" hauling regulations. R.R. Donnelley & Sons Co. v. Illinois Environmental Protection Agency, PCB 88-79, 96 PCB 161 (February 23, 1989); S. Calif. Chem. Co., Inc. v. Illinois Environmental Protection Agency, PCB 84-51, 60 PCB 103 (September 20, 1984); Safety-Kleen Corporation v. Environmental Protection Agency, PCB 80-12, 37 PCB 363 (February 7, 1980) aff d mem. sub nom. Environmental Protection Agency v. Illinois Pollution Control Board, 98 Ill. App. 3d 1203. 427 N.E.2d 1053 (2d Dist., September 18, 1981).

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I believe it would be better for the Pollution Control Board to develop specific procedural rules for solid waste determinations rather than to make such determinations on a certain materials in certain circumstances basis. Why should "waste" be subject to manifesting requirements and transportation restrictions and be subject to permitting requirements if the "waste" is sent to a treatment, disposal, or storage facility, but not be subject to any regulatory safeguards if the "waste" is sent to a resource recovery facility? Resource recovery and recycling activities pose the same kinds of dangers that treatment and storage do.

Any benefits which the method of waste treatment may or may not produce should be considered immaterial as to a determination of whether the material is "solid waste" or will become "solid waste."

In United States v. ILCO, 996 F.2d 1126 (11th Circuit 1993), the Court found that the spent lead batteries became "part of the waste disposal problem... when the original consumer discarded the battery." Id. at 1132. The Court did not find that the spent lead batteries were not discarded or were not solid waste "just because a reclaimer has purchased or finds value in the components." Id. at 1131. The Court restated holding that "previously discarded solid waste, although it may at some point be recycled, nonetheless remains solid waste." Id. at 1132, [emphasis added].

The ILCO court made the decision that the spent lead batteries remained "discarded", even though it also found that ILCO was recycling the batteries. The Court stated, "[e]xempting the industry from regulation cannot be justified on the theory that its contribution to resolving our environmental problems outweighs the environmental harm caused by its operations." ILCO at 1128.

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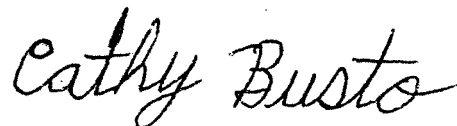
Regarding Section 105.204, I am pleased that the Pollution Control Board has amended this Section to include third-party appeals of National Pollutant Discharge Elimination System (NPDES) permit decisions. Section 40(e) of the Environmental Protection Act allows third-party appeals of NPDES permit decisions.

The proposed revision of the Pollution Control Board's procedural rules also establishes procedural rules for particular proceedings for which no specific procedural rules exist: appeals of Illinois Environmental Protection Agency leaking underground storage tank decisions, appeals of administrative citations, and appeals of local government decisions on siting new pollution control facilities. The establishment of these procedural rules should facilitate public participation in more of the Pollution Control Board's proceedings.

My public comment concerning Part 130 of Chapter 35 of the Illinois Administrative Code will be filed with the Clerk of the Illinois Pollution Control Board before the deadline of June 15, 2000.

I thank the Illinois Pollution Control Board for the opportunity for public comment on this proposed revision of the Board's procedural rules.

Very truly yours,



Cathy Busto