

**BSB**

**ORIGINAL**

**BRUCE S. BONCZYK, LTD.**

**RECEIVED**  
CLERK'S OFFICE

MAR 27 2001

STATE OF ILLINOIS  
*Pollution Control Board*

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601 WEST MONROE STREET, SPRINGFIELD, IL 62704  
TELEPHONE (217) 525-0700 FAX (217) 525-2171

March 26, 2001

Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Via FedEx - Overnight


Re: R01-26 (Rulemaking-Land)

Dear Ms. Gunn:

Enclosed for filing in the above Rulemaking are one original and nine copies of the following: Pre-Filed Testimony of Bruce S. Bonczyk. Said copies are provided with the Notice of Filing and Certificate of Service.

Please file stamp the extra enclosed copy of said documents and return them in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Very truly yours,  
Bruce S. Bonczyk, Ltd. Law Office



Bruce S. Bonczyk, P.E.

BSB:lew

cc: Mr. David Kennedy, CECI  
Mr. Gary Crites, ISPE

Enclosures

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MAR 27 2001

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

STATE OF ILLINOIS  
*Pollution Control Board*

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO ) R01-26  
REGULATION OF PETROLEUM ) (Rulemaking - Land)  
LEAKING UNDERGROUND STORAGE )  
TANKS (35 ILL. ADM. CODE 742) )

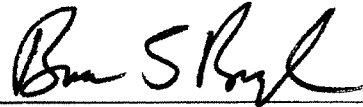
**NOTICE OF FILING**

TO: Ms. Dorothy M. Gunn	Mr. Joel J. Sternstein
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, IL 60601	Chicago, IL 60601
(Via FedEx - Overnight)	(Via FedEx - Overnight)

All Other Persons on the Attached Service List via U. S. Mail

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Pre-Filed Testimony of Bruce S. Bonczyk in the above entitled matter, copies of which are hereby served upon you.

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



\_\_\_\_\_  
Bruce S. Bonczyk, One of their Attorneys

Dated: March 26, 2001

THIS FILING SUBMITTED ON RECYCLED PAPER

Bruce S. Bonczyk  
(IL Reg. 6190593)  
BRUCE S. BONCZYK, LTD.  
601 West Monroe Street  
Springfield, IL 62704  
217.525.0700  
217.525.0780 fax

Service List Attached

R01-26 SERVICE LIST

In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732  
Revised March 12, 2001

Iname	fname	company	Address	citystate	zip
Anderson	Scott	Black & Veatch	101 N. Wacker Drive, Suite 1100	Chicago, IL	60606
Aronberg	Garry	Kuhlmann Design Group	15 East Washington	Belleville, IL	62220
Bianco	Christie	Chemical Industry Council of Illinois	9801 W. Higgins Road, Suite 515	Rosemont, IL	60018
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Consalvo	Cindy	Pioneer Environmental	1000 N. Halsted Suite 202	Chicago, IL	60622
Dickett	William G.	Sidley & Austin	Bank One Plaza 10 South Dearborn Street	Chicago, IL	60603
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Huff, P.E.	James E.	Huff & Huff, Inc.	512 W. Burlington, Suite 100	LaGrange, IL	60525
James	Kenneth	Carlson Environmental, Inc.	65 E. Wacker Place, Suite 1500	Chicago, IL	60601
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Nienkerk, P.G.	Monte M.	Senior Project Manager Clayton Group Services, Inc.	3140 Finley Road	Downers Grove, IL	60515
Rieser	David	Ross & Hardies	150 N. Michigan	Chicago, IL	60601
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Sternstein	Joel J.	Hearing Officer Illinois Pollution Control Board	100 West Randolph Street Suite 11-500	Chicago, IL	60601
Sykuta	David A.	Illinois Petroleum Council	P.O. Box 12047	Springfield, IL	62791
Vlahos	Georgia	Counsel	2501A Paul Jones Street	Great Lakes, IL	60088-2845

R01-26 SERVICE LIST

In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732  
Revised March 12, 2001

Walker	Rodger	Naval Training Center	500 W. Herrin Street	Herrin, IL	62448
Watson	John	Walker Engineering	321 N. Clark Street	Chicago, IL	60610
Zolyak	Gary T.	Gardner, Carton & Douglas	Northern Regional Environmental	Aberdeen Proving	21010-5401
		U.S. Army Environmental Center	Office, Building E-4480	Ground, MD	

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

STATE OF ILLINOIS  
*Pollution Control Board*

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO ) R01-26  
REGULATION OF PETROLEUM ) (Rulemaking - Land)  
LEAKING UNDERGROUND STORAGE )  
TANKS (35 ILL. ADM. CODE 742) )

**TESTIMONY OF BRUCE S. BONCZYK**  
**IN OPPOSITION TO CERTAIN PROPOSED AMENDMENTS**  
**OF THE ENVIRONMENTAL PROTECTION AGENCY'S**  
**PROPOSAL TO AMEND 35 ILL. ADM. CODE 732**

My name is Bruce S. Bonczyk. I am an attorney with Bruce S. Bonczyk, Ltd. and I represent the Illinois Society of Professional Engineers ("ISPE"), and the Consulting Engineers Council of Illinois ("CECI"). I am also a Licensed Professional Engineer in the State of Illinois.

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, I filed with the Board a Motion to Oppose Certain Proposed Amendments of the Environmental Protection Agency's Proposal to Amend 35 Ill. Adm. Code 732, and a companion Memorandum of Law in support of said motion.

Our objections to the proposed amendments relate to a limited and specific issue. We object to the proposed inclusion of terminology in the regulations which allow for "Licensed Professional Geologists" to perform the same functions as "Licensed Professional Engineers". An administrative agency has only such authority as is conferred by express provisions of law, or is found, by fair implication, to be incident to the express authority conferred by such legislation. We object on the ground that there is no statutory authority in the enabling legislation to include Licensed Professional Geologists in the rules.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

On its face, the LUST legislation only refers to Licensed Professional Engineers. Further, an examination of the legislation provides no other guidelines or standards upon which the Agency or Board may conclude that Licensed Professional Geologists are equally charged by the General Assembly to provide the enumerated services in the statute, thus rendering the proposed promulgation of such rules to include licensed geologists to likely be invalid. We believe that if the Board is to adopt this proposed change, the rules would be invalid as being without a statutory basis.

The express enacting legislation and amendatory legislation for the LUST program is silent as to the inclusion of Licensed Professional Geologists. This is true even though the Professional Geologists Licensing Act (P.A. 89-366) was enacted into law prior to the amendatory legislation affecting the LUST program (P.A. 89-428 and 89-457). The presumption exists that the General Assembly in formulating the subsequent changes to the LUST legislation was aware of the Professional Geologists Licensing Act, and chose not to include said professionals into the LUST amendments.

Beyond legal issues, there are practical problems. The legislation embodies a provision which creates a presumption against liability for the Professional Engineers' certifications pursuant to the statute. 415 ILCS 5/57.10. As proposed by this rule, the inclusion of Licensed Professional Geologists in Section 732.402 will disrupt the General Assembly's scheme for presumption against liability, as this specific law contains no reference to Licensed Professional Geologists, thereby detrimentally affecting the viability of the certification and the ability to ensure protection to owners, operators, heirs, etc.

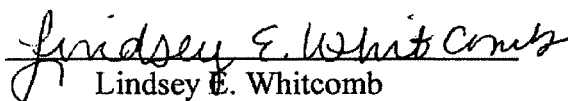
For the above going reasons, ISPE and CECI also suggest to the Agency and Board that the prior testimony of Mr. Doug Clay, Mr. Ron Dye and Mr. Kenneth Liss promoting the inclusion of the terminology for Licensed Professional Geologists is without merit and should be afforded no weight by the Board in considering these amendments.

It is my understanding that both ISPE and CECI are willing to work with the various associations representing geologists in formulating a legislative response to this situation. While there may be merit to including certain functions performed by Licensed Professional

STATE OF ILLINOIS        )  
  )  
COUNTY OF SANGAMON    )

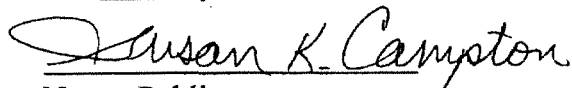
**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached Pre-Filed Testimony of Bruce S. Bonczyk upon the person to whom it is directed, by placing it in an envelope addressed to the person or persons on the Attached Service List, and mailing it from Springfield, Illinois on the 26<sup>th</sup> day of March, 2001, with sufficient postage affixed.

  
Lindsey E. Whitcomb

SUBSCRIBED AND SWORN TO BEFORE ME

this 26 day of March, 2001.

  
Notary Public



THIS FILING SUBMITTED ON RECYCLED PAPER



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