

ILLINOIS POLLUTION CONTROL BOARD
August 2, 1984

IN THE MATTER OF:)
)
PERMIT AND INSPECTION FEES) R84-7
FOR HAZARDOUS WASTE DISPOSAL)
FACILITIES (FINAL RULE))

FINAL ORDER. DISMISSAL OF PROPOSAL

FINAL OPINION AND ORDER OF THE BOARD (by J. Anderson):

On May 18, 1984 the Board sent this proposal to second notice. The Joint Committee on Administrative Rules met on June 12, 1984. Pursuant to the staff's recommendation, the Joint Committee recommended that the Board seek legislative clarification as to the definition of "facility" in Section 5(f) of the Act. Acting on its own motion, the Joint Committee also objected to the rulemaking. On July 30, 1984 the Governor signed P.A. 83-1235 (H.B. 3036) which repealed the statutory authority for this rulemaking. As is more fully set out below, the Board refuses to withdraw or modify the rules in response to the objection, but will withdraw the rules in response to P.A. 83-1235.

The specific objection is as follows:

The Joint Committee objects to the Pollution Control Board's rule on hazardous waste permit and inspection fees because the rule is not within the intent of the statutory authority upon which it is based.

Section 5(f) of the Environmental Protection Act (Supp. to Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1005(f)) mandates that the Pollution Control Board prescribe a "schedule of reasonable permit and inspection fees for hazardous waste disposal facilities requiring a RCRA [Resource Conservation and Recovery Act] permit." These fees, in the aggregate, are to cover all the cost of the Environmental Protection Agency's permit and inspection activities applicable to hazardous waste disposal facilities requiring a RCRA permit.

The Board's proposed rule, however, sets forth no "schedule" of inspection fees. Rather, a proportion is established between three categories of inspection levels, in which each facility will be placed depending

The Board acknowledges the contributions made by Morton F. Dorothy as Hearing Officer and administrative assistant responsible for this rulemaking.

upon the activities occurring at the facility. At the beginning of each fiscal year the Agency is to multiply the number of facilities in each category times a value assigned to that category. The result is divided into the amount appropriated by the legislature for the Agency's inspection activities for that fiscal year. The quotient is then multiplied times the values assigned to each inspection category to determine the fee for that category of facility for that fiscal year.

Because the amount of the fee varies with the number of facilities and the yearly amount of appropriations, no fee "schedule" has been set. Furthermore, since no fee schedule has been set, it is indeterminable whether the fees are reasonable as required by the Act. Therefore, the Joint Committee objects to this rule because it is contrary to the intent of the statutory authority upon which it is based.

As adopted in P.A. 83-0938, Section 5(f) of the Act read as follows:

Not later than January 1, 1984, the Agency shall recommend a schedule of reasonable permit and inspection fees for hazardous waste disposal facilities requiring a RCRA permit under subsection (f) of Section 21 of this Act. Not later than March 1, 1984, the Board shall prescribe such a fee schedule. Such fees in the aggregate shall be sufficient to adequately cover all costs to the State for the Agency's permit and inspection activities applicable to hazardous waste disposal facilities requiring a RCRA permit. Section 27(b) of this Act shall not be applicable to rulemaking under this Section.

Section 22.21 of the Act read as follows:

There is hereby created in the State treasury a special fund to be known as the Environmental Protection Permit and Inspection Fund. All permit and inspection fees collected by the Agency pursuant to subsections (f) and (g) of Section 5 of the Act shall be deposited into the fund. In addition to any monies appropriated from the General Revenue Fund, monies in the fund shall be appropriated by the General Assembly to the Agency in amounts deemed necessary for permit and inspection activities.

Thus, Section 5(f) required that the fees "adequately cover all costs"; yet Section 22.21 required the General Assembly to appropriate funds out of the fee revenue. This posed an inherent difficulty in that Section 5(f) mandated a

single rulemaking, which was to be completed by March 1, 1984, and which was to establish a fee system to "adequately cover all costs". However, the General Assembly had not appropriated funds for the inspection program for fiscal 1984-1985, or succeeding years, so that the Board had to project what the costs would be.

With respect to the inspection fees, the Board was unable to project the costs. Possible program sizes varied over a wide range. A simple annual fee could be set only if the size of the program were known. Yet, this was to be determined by the legislature later. The Board adopted the appropriation-based proposal to avoid this dilemma.

With respect to the permit fees, the Board was able to project future costs from past performance and set a simple dollar amount for the quarterly fees. The objection did not logically apply to the permit fee.

The inspection fee schedule was to be computed by the Agency each year based on its appropriation. The rules specified the schedule completely once the the appropriation and the number and distribution of facilities were known.

The fees were reasonable in the sense that the rules categorized sites according to environmental risk, and collected a greater fee where more risk existed. The relative ratios were based on relative inspection costs which were reasonable based on the comparative risk.

Section 5(f) of the Act did not require a specific dollar amount. The absolute amount of the fee for each facility could be estimated simply from a proposed appropriation, and the number and distribution of facilities. This could be estimated in the appropriation process so that legislators would have known the impact of the appropriation on specific facilities.

The Board refuses to withdraw or further modify these rules to meet the Joint Committee objection. The second notice rules met the statutory intent better than the simple annual fee schedule suggested by the objection.

On July 30, 1984 the Governor signed P.A. 83-1235, which repeals Section 5(f) of the Act. (Exhibit 35). Accordingly the Board will vacate its Order of May 18, 1984 and will dismiss this rulemaking.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 2nd day of August, 1984 by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board