ILLINOIS POLLUTION CONTROL BOARD
March 19, 1981

IN THE MATTER OF:	)	
	)	
PERMITS FOR SLUDGE APPLICATION TO LAND	)	
	)	
	)	
AMENDMENTS TO THE WATER POLLUTION REGULATIONS: CHAPTER 3, AND SPECIAL WASTE HAULING REGULATIONS: CHAPTER 9 OF THE ILLINOIS POLLUTION CONTROL BOARD	)	R77-12, Docket B

PROPOSED RULE: SECOND NOTICE

PROPOSED OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On May 10, 1977, the Illinois Environmental Protection Agency (Agency) filed a proposal, part of which was to add a new Rule 950 to Chapter 3: Water Pollution, which proposed a permit system for the application of sludge to land. The entire proposal was docketed as R77-12, but was later divided into four separate dockets. That part of the proposal concerning the new Rule 950 was designated as R77-12, Docket B. Five days of merit hearings concerning this matter were held in late 1977 and early 1978. On December 10, 1979, the Illinois Institute of Natural Resources (INR) filed an economic impact study (EcIS) concerning the proposed regulation (Project No. 80.122, INR Document No. 79/43). Thereafter, two more days of hearings were held to consider the EcIS and any final testimony. Dates and places of all hearings are listed below:

1. September 6, 1977; Springfield
2. September 7, 1977; Springfield
3. September 8, 1977; Chicago
4. January 25, 1978; Chicago
5. March 6, 1978; Chicago
6. February 4, 1980; Chicago
7. February 25, 1980; Springfield

On March 24, 1980, the Agency filed an amended proposal which the Board found to contain only such changes as were already adequately covered by the hearings and the ECIS. Therefore, no additional hearings were deemed to be required, and none were held. The Agency submitted a brief supporting the amended proposal on June 30, 1980.

On December 4, 1980, the Board adopted a modified version of the Agency's amended proposal for comment (Proposed Rule: First Notice). It was published in the Environmental Register No. 229 on December 18, 1980, and in the Illinois Register

on January 26, 1981. The comment period ended on February 15, 1981. Two public comments were received, one on February 10, 1981, on behalf of the Agency, and another on the same day on behalf of Illinois Power Company.

The Agency submitted proposed Rule 950 to allow it to establish a permit program to regulate the land application of sludge from sewage treatment plants and to allow this application to take place without individual user permits wherever the activity could be accomplished without harm to the environment. Under the proposal, if three conditions are met, no permit can be required unless the Agency determines that environmental harm is possible and notifies the owner or operator of the site in writing of the requirement to apply for a permit. The conditions are intended to minimize any possible adverse effects. Further, those sites which must obtain a permit for receiving sludge for land application under some other Board rule or through some other state agency would be exempted from the permitting requirement. Finally, generators and haulers of municipal water or wastewater treatment plant sludge which is to be applied to land and regulated under Chapter 3 would be exempted from the special waste hauling permit requirement and manifest requirements under Chapter 9.

During the course of the proceedings it became apparent that amendments to other rules were appropriate in order to integrate proposed Rule 950 with other Board rules. Therefore, by its amended petition, the Agency proposed to add the definition of "Sludge," and amend the definitions of "FWPCA," "Pretreatment Works" and "Wastewater" of Rule 104 of Chapter 3. Further, the Agency proposed a modification of Rule 910 of Chapter 3 to clarify the Agency's authority under §39(b) of the Act to include permit conditions pursuant to both federal and state regulations. Finally, the Agency proposed that Rule 211(c) of Chapter 9 be amended to substitute language parallel to that proposed in Rule 950 of Chapter 3 to ensure consistency between chapters concerning the exemption of municipal haulers and wastewater treatment plant sludge from permit and manifest requirements.

The Board agrees with the overall scheme of the Agency's proposal and finds that it will ensure a useful and workable mechanism for safely managing the application of sludge to land. However, in response to comments and testimony (especially from the Metropolitan Sanitary District of Greater Chicago (MSD)) and a concern over the statutory authorization of some sections of the proposal, the Board has made several modifications of the proposal to clarify some of the language and to ensure the Board's oversight of the Agency's criteria to be used in the permitting process. A more comprehensive examination of the Board's proposal follows.

RULE 104 OF CHAPTER 3--DEFINITIONS

"FWPCA"--This change simply updates the previous definition and should assist public understanding and make the definition

consistent with federal regulations. This is done in response to Agency comments which suggest this alternative to substitution of Clean Water Act for FWPCA throughout Chapter 3 which was rejected on the basis of administrative convenience.

"Pretreatment Works"--The changes make the definition consistent with federal language and uses the correct citation to the Code of Federal Regulations as changed in rules published on June 26, 1978 (43 FR 27736-27773). It is appropriate to amend the definition in this proceeding because Rule 950 refers to pretreatment works.

"Sludge"--In 1979 the Illinois General Assembly amended the Environmental Protection Act to add the proposed definition of sludge consistent with the definition used by the United States Environmental Protection Agency (USEPA) in regulations promulgated under the Resource Conservation and Recovery Act of 1976. The record in this proceeding centers on land application of sludge of the type produced by municipal wastewater treatment plants. This typically has a high organic content with troublesome traces of metals.

The definition of sludge taken from the Act is considerably broader than the sludge types addressed in this record. Sludges resulting from chemical precipitation are commonly generated by water treatment plants and by wastewater treatment plants treating form metals and other contaminants such as those regulated by Rule 408 of Chapter 3.

The definition of sludge also includes sludges from air pollution control facilities. A recent case involved a landfill permit to accept a gypsum-like sludge (calcium sulfate) produced by a scrubber on a coal-fired boiler (Environmental Site Developers v. EPA, PCB 80-15, June 12, 1980). Agronomic use of this sludge could be feasible at some time in the future.

Since the record in this case is restricted to municipal wastewater treatment plant sludge, the Board will note in this Opinion that the rules, permits and exceptions are intended to apply only to this type of sludge.

The Agency proposal sought to add "sludge" to the definition of "wastewater." However, Rules 203(a) and 403 refer to "unnatural sludge" and "sludge solids" as contaminants present in water or effluents respectively. If the sludge itself were "wastewater" an undesirable circular definition would be introduced. Therefore, the Board declines to amend the definition of wastewater.

Under Part II of Chapter 3 the water in a stream would arguably become "wastewater" if contaminated by sludge. This would presently be thought of as protected waters contaminated with sludge. Under Part IV a conflict could arise from the amiguity as to whether only the sludge in a wastestream is "wastewater" or whether the entire stream is "wastewater."

It is not clear what would be gained by adding "sludge" to the definition of "wastewater." Sludge is treated as a contaminant under Rule 203(a) and Rule 403. Its discharge to waters of the state would violate both rules.

RULE 949 OF CHAPTER 3--NPDES PERMIT CONDITIONS

The Agency has proposed the addition of Rule 910(a)(8). The Board, while recognizing the need for such authority to be explicitly stated in Chapter 3, finds that for reasons of administrative convenience, the rule should be separately numbered as Rule 949. The rule can be later renumbered 910(a)(8) during the codification procedure for Chapter 3. This avoids opening all of Rule 910 to public comment (which might result in delay of this rulemaking) and saves the time and effort of retyping and publishing the entire rule (which is quite lengthy) at a time when an examination of the entire rule would be inappropriate. By placement of the rule immediately prior to Rule 950, permit applicants should have no difficulty noting it.

The 1977 amendments (P.L. 95-217) to Section 405 of the Federal Water Pollution Control Act of 1972 provided that permits were to be issued under the NPDES program for the disposal of sewage sludge where water pollution might occur as a result of the activity. Subpart 405(d) requires the Administrator of USEPA to promulgate "regulations providing guidelines for the disposal of sludge and utilization of sludge for various purposes" within one year after the date of enactment of the subsection. Some regulations implementing Rule 405 have been enacted by USEPA (40 CFR Part 257, "Criteria for Classification of Solid Waste Disposal Facilities and Practices," Sept. 13, 1979) and are included as Exhibit B-23 in this proceeding.

The NPDES regulations in Subpart A of Part IX of Chapter 3 were patterned after the federal NPDES regulations applicable at the time of their adoption. They contain no specific references to permit requirements under Section 405 of the Clean Water Act although Rule 910(a)(4)(ii) indirectly authorizes the Agency to include federal requirements under Section 405.

On May 19, 1980 USEPA published Consolidated Permit Regulations at 45 FR 33290 et seq. The proposed language in Rule 949 is derived from 40 CFR 122.62(o) which refers to conditions to be included in NPDES permits. Under USEPA's delegation of authority to Illinois to administer the NPDES permit program, the state is required to ensure that permits comply with all applicable federal requirements pursuant to Section 39(b) of the Act.

The language of proposed Rule 949 will clarify the Agency's authority to include permit conditions pursuant to both federal and state regulations in order to implement the requirements under Section 405.

RULE 950 of CHAPTER 3--PERMITS FOR SITES RECEIVING SLUDGE

Rule 950(a)(1) through (4)

Generally, the Board does not intend to impose a dual permit requirement on land application of materials included in the definition of sludge but which are regulated under other Agency programs or by other agencies. These materials are, therefore, exempted from the requirements of Rule 950.

Rule 950(a)(1) exempts livestock wastes which are regulated under Chapter 5 of the Board's Rules and Regulations: Agriculture Related Pollution.

Rule 950(a)(2) exempts septic tank pumpings which are regulated by the Illinois Department of Public Health under the Private Sewage Disposal Licensing Act (Ill. Rev. Stat., 1979, Ch.111½, Sections 116.301 et seq.).

Rule 950(a)(3) exempts sludge disposal operations which are regulated under Chapter 7: Solid Waste Regulations. Sludge disposal in a landfill is to be distinguished from application to land. The former is regulated because sludge to be landfilled is "waste" and "refuse" as defined in the Act. The Act prohibits refuse disposal except pursuant to Board regulations (§§21 & 22). On the other hand, land application of sludge is regulated pursuant to Title III of the Act and Chapter 3: Water Pollution. Sludge is a contaminant which if improperly placed upon the land creates a water pollution hazard [§§12(b), 12(d) and 13(a)(3)]. Regulation of land application pursuant to Chapter 3 is independent of whether the sludge is "waste." Where the sludge is indeed waste, unless exempted, it is conceivably also subject to regulation under Chapter 7. However, the Board intends land application pursuant to Chapter 3 permit to be exempt from Chapter 7 permits.

Rule 950(a)(4) exempts a site which is specifically identified in an approved sludge management scheme of an operating or NPDES permit issued by the Agency and which receives sludge exclusively from the permittee. This includes sludge generators who utilize their own sludge.

Rule 950(a)(5)

Rule 950(a)(5) sets up another group of exempt sites. However, the basis for exemption is of a different sort. This exemption is not based upon the site being subject to other permit requirements, but rather is based upon a perception that those sites which meet the three conditions for this exemption are unlikely to present a potential for environmental harm. The three conditions are that the site receives sludge from a properly permitted generator, that the user applies the sludge to less than 300 acres under common ownership or control in any year, and that the sludge is handled in compliance with an approved sludge management scheme.

MSD has argued that this exemption is inconsistent with the mandate of paragraph 583.05 of the Wastewater Land Treatment Site Regulations Act (WLTSRA) which states that "No person may establish, operate, manage or maintain any wastewater land treatment site or any digested sludge utilization site without first obtaining a permit from the Illinois Environmental Protection Agency."

The Agency, on the other hand, argues that such an exemption is consistent with the WLTSRA in that home rule counties are exempted from coverage of the WLTSRA and that the WLTSRA should be read consistently with the Environmental Protection Act (Act) which granted the Board the power to regulate pollution sources through the establishment of permit requirements.

The Agency's first argument, simply stated, is that since some exemptions are built into the WLTSRA, it could not have been the intent of the legislature to require a permit for each and every site at which sludge is applied to land (See para. 590 of the WLTSRA exempting home rule counties). The exemptions granted under Rule 950(a)(1) through (4) provide other examples of exemptions which the legislature must have intended to be permissible, for if permits were to be required for such sites, a dual permit system would arise creating needless administrative costs and, perhaps, confusion and inconsistency.

The Agency's second argument is that the WLTSRA must be read consistently with the Act and when that is done, must be read to allow for Board exemptions from the permitting requirement. Section 4(g) of the Act, the Agency's enabling statute, states that the Agency has "the duty to administer,... such permit and certification systems as may be established by this Act or by regulations adopted thereunder." Under Section 4(j) of the Act, the Agency has only "the authority to make recommendations to the Board for the adoption of regulations." Section 5(b) gives the Board the authority to adopt regulations. Further, Section 39 directs the Agency to issue permits upon a demonstration by the applicant that "the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or regulations hereunder."

The Agency argues that nothing in the language of the WLTSRA suggests that the General Assembly intended to carve out a section of pollution control and abatement called "wastewater land treatment sites and digested sludge utilization sites," assign responsibility for regulating and issuing permits for such sites to the Agency, and, in that manner, erode the Board's authority as the promulgator of pollution control regulations in the State of Illinois. Such compartmentalization of regulatory authority would interfere with the express legislative intent stated in Section 2 of the Environmental Protection Act "that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment."

Therefore, the argument continues, the only reasonable way to resolve the apparent conflict between provision of the two statutes is to conclude that a permit is required under Paragraph 583.05 of the WLTSRA only if a permit is required by Board regulation under the Environmental Protection Act.

Section 12(b) of the Act states that no person shall "construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution ...of any type designated by Board regulations, without a permit granted by the Agency." (Emphasis added.) This language suggests that the Board has discretion in designating those facilities and activities for which a permit will be required under the Act.

The exercise of this discretion is illustrated in other regulations in Part IX of Chapter 3. Rule 951(b) for example, excludes from the requirement of a construction permit new projects such as storm sewers than transport only land runoff (among others). Rule 952 excludes these sources from the requirement of obtaining an operating permit as well. Furthermore, in Rule 953 the Board makes exceptions to the general requirement of operating permits as applied to existing treatment works, pretreatment works, and wastewater sources.

By adopting regulations which exclude some potential pollution sources, the Board has exercised its authority to adopt "different provisions as required by circumstances for different contaminant sources" under Section 27 of the Environmental Protection Act. The Board is acting consistently with prior practice and with Section 27 in exempting some sludge application sites from the requirement to obtain a permit. Thus concludes the Agency's second argument.

Clearly the Board must pass regulations prior to the Agency's commencement of permitting facilities under Rule 950. The Board finds that the WLTSRA did not take away any of the Board's regulatory powers. However, in rebuttal to the Agency's argument, it could be argued that the WLTSRA indirectly compelled the Board to pass a regulation without exemptions. The Board finds that such is not the case. As stated above, the exemptions granted in Rule 950(a)(1) through (4) must have been intended. Further, the granting of exemptions under Rule 950(a)(5) does not relieve those who fall under it from the obligation to transport, store and apply the sludge according to an approved management scheme (Rule 950(a)(5)(C)). Thus, the Agency retains control over the management of the sludge which is certainly consistent with the legislative intent of the WLTSRA.

The overriding justification for the Rule 950(a)(5) exemption is economic. A requirement for site-specific permits is estimated to be an annual cost to the Agency of $120,000 (R.VI-16)[1]. With the exemption the annual cost is approximately $23,000 (R.VI-15). These figures are in 1978 dollars (R.VI-28) and do not take into consideration other costs, especially those to the applicant, a considerable part of which would also be saved.

The second major justification for the exemption is the intent to encourage the use of the land application of sludge. If the agricultural user had to apply for a permit, it is less likely that he would participate in a utilization program (EcIS 2). Mr. Erwin D. Torber, an author of the EcIS, estimated total savings accruing to the Illinois agricultural industry at $5.3 million (EcIS 2 and 79) but qualified that by stating that that is the total value of the sludge which can be applied to land and that much of this amount is currently being applied anyway (R.VI-17). Further, this figure ignores the fact that farmers may well have to make extra applications to the field because sludge is not a complete fertilizer and must be supplemented (R.VII-23). Two other assumptions also lower this figure. It is assumed that all the sludge is, in fact, applied to agricultural land, and that commercial fertilizer would be purchased for the land if sludge were not available (EcIS 79). Thus, the true value to all of the users is something considerably less than $5.3 million.

This relatively small benefit to the individual may well be more than offset in many farmer's minds by any requirement of a permit. If that were to happen, the greater benefits which accrue to others would be lost.

These other benefits accrue to the sludge generator and to society as a whole and result from the ability of the sludge generator to dispose of an unwanted product at little or no expense rather than transporting it for disposal at increasingly expensive and scarce landfills. As Mr. Rothenberg of the MSD pointed out, in April of 1978 it cost MSD $1.40 per cubic yard to landfill sludge; whereas in February of 1980 the cost had risen to $3.60 per cubic yard. He stated further that if MSD's give-away program were to halt, taxpayers would have to pay $12.8 million for transportation of the unwanted sludge to Fulton County and as much as $25 million for additional capital expenditures (R.VII-20). The EcIS found that unit costs for land application systems ranged from $10 to $38 per dry ton while landfilling costs ranged from $81 to $177 per dry ton (EcIS 71-80).

For all of these reasons, the Board finds that it was the intent of the legislature to allow the Board to use its discretion in determining how the application of sludge to

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[1]Although the transcrips of the first five hearings are numbered consecutively, the 5th 6th and 7th hearing transcripts are numbered separetely. Hence, the page numbers of those transcripts will be referred to as V-p, VI-p., and VII-p.

land should be regulated and that the exemption granted in proposed Rule 950(a)(5) is an appropriate exercise or that discretion.

Rule 950(a)(5)(A)

This is the first of the three conditions each of which must be met to be exempted from the permit requirement under this subsection. Two points are of particular note here.

First, the requirement that the sludge generator inform the user that he has an approved sludge management scheme is included to ensure that an unknowing user is not found to be operating without a required permit simply because the generator is acting improperly; i.e. the failure of the generator to inform the user is a defense in an action against a user for operating without a permit which is predicated upon a violation of Rule 950(a)(5)(A).

Second, this subsection is written to ensure that products (such as "Milorganite") which are produced by a sludge generator in a state other than Illinois, but which are sold in Illinois, are subject to the same limitations as those imposed on Illinois generators whose sludge management schemes will be part of their operating or NPDES permits. The First Notice proposal inadvertently altered the language proposed by the Agency such that out-of state products would be treated differently, but the Board now proposes to change the language back to what it was. It should be noted that the Agency will approve or disapprove an out-of-state generator's sludge management scheme on the basis of the draft NPDES permit from that state which goes to the Agency for comment.

Rule 950(a)(5)(B)

The condition that the user apply the sludge to less than 300 acres under common ownership or control was reached by balancing the risk of pollution to the waters of the state against the Agency's ability to administer the permit program and the intent to encourage the application of sludge to land by the average farmer. The Agency had originally proposed a 200 acre limitation. However, the MSD objected to that as being too restrictive. The 200-acre limitation would have subjected the Agency to the possibility of issuing permits to about 40,000 farms; whereas the amended proposal would reduce the number to 12,000, which the Agency now contends is a number which can be reasonably handled administratively (See p. 12 of Attachment C to the Agency's Petition for Amendments).

While the Board agrees that the 300 acre figure is a reasonable one, the Board has modified the language to allow the aggregation of separate parcels of land which are not contiguous. The Board finds that it would not promote the purposes of the act to allow a farmer to be exempted from the permit requirement because

a public road divides his land into two 250 contiguous acre parcels whereas his neighbor with 350 contiguous acres could not be exempted.

Rule 950(a)(5)(C)

This third condition for exemption under Rule 950(a)(5) ensures that any sludge which is applied to land, which is not regulated by some agency other than the Environmental Protection Agency or by some other Board regulation, will be applied pursuant to procedures which have been reviewed by the Agency.

Rule 950(b) and (c)

These paragraphs add another level of scrutiny by the Agency over exempted sites. They allow the Agency to require permits on a case-by-case basis for sites which would be otherwise exempted. Upon an Agency determination that a potential for pollution exists at such a site, the Agency may give written notice that a permit is required. Users of sludge falling under the exemption of Rule 950(a)(1) through (5) may assume no permit is necessary unless notified otherwise by the Agency.

A listing of factors which the Agency shall consider in making a determination that special circumstances exist which require a permit is included in this paragraph. If the permit requirement is attacked, the burden shall be on the Agency to demonstrate the special circumstances which demonstrate that the potential for harm to the environment or the public health justifies the requirement of a permit.

Finally, the last sentence of Rule 950(c) indicates that the requirement of a permit may only be reviewed in a permit appeal proceeding. The Agency comments recommend that language be added to allow for such review in the context of an enforcement proceeding. The Board declines to add such language. It appears that the Agency has misapprehended the substance of this sentence.

The Agency argues that there is no means for enforcement of its determination that a permit is required under these subsections unless the user applies for a permit and is either denied or wishes to contest conditions of it. The Agency argues further that there would be no reason for the user to make such application. That is not, in fact, the intent of this rule. As soon as the Agency notifies the user that a permit is required, that requirement becomes effective. If the user fails to apply for a permit, he will then be operating without a required permit and will be subject to an enforcement action on that basis and in which the requirement of a permit will not be reviewed. This should give the user considerable incentive to apply for a permit in a timely fashion. If the Board were to follow the Agency's comment, the following circuitous situation would be likely to result. The Agency brings an enforcement action for operating without a permit; the permit requirement is upheld by the Board; the user applies

for a permit and is denied; finally, the Board again reviews the permit in a permit appeal proceeding. By requiring the permit to be attacked in a permit appeal proceeding in this first instance, this possibility of double review is avoided, and the matter is expedited.

Rule 950(d)

On March 15, 1979 the Board adopted Chapter 9 by which the transport of special wastes is regulated under a permit and manifest system (R76-10). Rule 211(C) of Chapter 9 states that "Any person who hauls only municipal water or wastewater treatment plant sludge pursuant to established Agency policy need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter." However, the Board did "... reserve consideration of the sludge exemption from the requirements of this proposed Chapter for the concurrent proceeding R77-12, Docket B." (R76-10 Opinion, page 26.)

Rule 950(d) is the Board's proposal for final action on the question of exclusion of municipal water and wastewater treatment plant sludges from the requirements of Chapter 9, Special Waste Hauling Regulations. The Board finds that only municipal sludges, which are applied to land and regulated under proposed Rule 950 and Agency policy adopted pursuant to Rule 967 of Chapter 3, should be exempt from the requirements of Chapter 9. All sludge destined for landfills should be tracked through the manifest system which, in turn, will provide a means for monitoring the generator's implementation of the approved sludge management program, as regards the transport of sludge for purposes other than land application. The exemption is intended to encourage land application where that practice is a reasonable and safe management alternative.

Rule 950(e) and (f)

These paragraphs, which were not part of any Agency proposal, were added by the Board in an attempt to retain the essence of the Agency's proposal as well as to alleviate concerns expressed by MSD regarding the possibility of an unauthorized subdelegation to the Agency.

The major problem that these paragraphs address is the function of Agency criteria (WPC 3 and LPC 77). The Agency's Petition for Amendment (Attachment C, p.5) included in what is now being proposed as Rule 950(a)(5)(C) a condition that the sludge be transported, stored and applied in compliance with Agency criteria. The Board's proposal, on the other hand, requires compliance with an approved sludge management scheme. The Board finds that this distinction is crucial to the avoidance of unauthorized subdelegation of the Board's regulatory powers, and yet also finds that the ability of the Agency to adopt such criteria could be quite useful in assuring an efficient regulatory scheme.

Therefore, paragraph (e) enables the Agency to adopt such criteria; whereas paragraph (f) makes it clear that these criteria are not given the force and effect of regulations. Pursuant to the Board's proposal, the Agency's criteria act, in effect, as a model permit. If the permit applicant desires to simply adopt the Agency criteria as its sludge management scheme, the submission of the application to the Agency shall be accepted as a prima facie showing that the scheme will not violate the Act or Chapter 3. If, however, the applicant desires to be permitted to utilize an alternate scheme, that scheme shall be approved upon an adequate demonstration that the sludge will be stored, transported and applied so as not to cause a violation of the Act or of Chapter 3.

In this way the Agency criteria are reviewable by the Board, and the applicant will not be faced with the necessity of conforming to the design criteria without an opportunity to present a workable alternative.

At the same time, the criteria can be easily amended without resorting to the Board's requirements for rulemaking. The Board finds that such a mechanism is appropriate in this matter. If the Board were to take the alternative route of examining the criteria and promulgating them as rules, the Board would be tied, for example, to specific cadmium limitations which may well change in the near future (R.V-356). Since there is presently considerable disagreement over these numbers because sludge management is an infant science, this allows flexibility (R.V-357). Further, the United States Environmental Protection Agency (USEPA) will presumably be promulgating such standards, and Illinois will be required to conform to them (R.V-340). Again, this calls for the greater flexibility of criteria.

The Board finds that the Agency criteria are not presently before the Board and makes no finding as to their sufficiency or desireability. However, since their effect is essentially being limited to that of guidance documents, the Board finds that they do not constitute an unauthorized subdelegation of regulatory authority.

Rule 211 of Chapter 9: Special Waste Hauling Regulations

The Board proposes that Rule 211(C) of Chapter 9 be amended to substitute language parallel to that proposed in Rule 950(d). The interim character of the exemption in Chapter 9, as noted above, and the Board's continuing jurisdiction over the matter are implicit in the statement "Until the Board makes a decision upon Docket B, the pollution control waste exclusion of water and wastewater treatment plant sludge and the Rule 211(C) exemption will continue as part of this Chapter." (R76-10 Opinion, p. 26.) Proposed Rule 950(c) states the scope of the exemption, as originally intended by the Agency, and provides notice in the appropriate place for those affected by the exemption.

Finally, the Board retains jurisdiction over these proceedings until January 31, 1982, and requires the Agency to submit any adopted criteria under Rule 950, in order that it can reassess its position on the Agency criteria in light of any changes in the state of the art of sludge management and any federal promulgations which arise between the date of this Order and that date.

ORDER

The Board proposes to adopt the language of the Order of December 4, 1980 with a correction of the numbering of the definitional rule in Chapter 3 to Rule 104, the addition of the amendment to Rule 104 of Chapter 3 concerning the definition of "FWPCA", and the amendment of Rule 950(a)(5)(A) which simply conforms the language of that subparagraph to the originally proposed Agency language which was inadvertently changed in the First Notice. Lastly, the definition of "wastewater" has been omitted in that the Board no longer intends to amend it.

Any Agency criteria established under Rule 950 and any revisions thereto shall be filed with the Board by the Agency. The Board will retain jurisdiction over this regulatory proceeding until January 31, 1982. The Clerk is directed to institute the Second Notice period. The language of the Second Notice proposed rules is below. Language which is new with respect to existing rules is underlined, and deletions are stricken.

104 Definitions

"FWPCA" means the Federal Water Pollution Control Act, as amended, U.S.C. 1251, et seq., Public Law 92-500, enacted by the Congress October 18, 1972, as amended; by the "Clean Water Act," Public Law 95-217, enacted December 12, 1977, as amended.

"Pretreatment Works" means a treatment works designed and intended for the treatment of wastewater from ~~a major contributing industry~~ an indirect discharge or industrial user, as defined in 40 CFR ~~128~~ Part 403, before introduction into a sewer system tributary to a publicly owned or publicly regulated treatment works.

"Sludge means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

949 Terms and Conditions of NPDES Permits Concerning Sewage Sludge Disposal

In addition to Agency authority granted in Rule 910, in establishing the terms and conditions of each issued NPDES permit, the Agency shall apply and ensure compliance

with applicable regulations promulgated under Section 405 of the FWPCA governing the disposal of sewage sludge from treatment works.

950 *Permits for Sites Receiving Sludge for Land Application*

(a) A construction and an operating permit are required under this Chapter for any site receiving sludge for land application unless:

(1) The site receives only livestock wastes; or

(2) The site receives only septic tank sludges generated from domestic sources; or

(3) The site is regulated under Chapter 7 of the Board's regulations; or

(4) The site is specifically identified in an approved sludge management scheme of an operating or NPDES permit issued by the Agency and receives sludge exclusively from the permittee; or

(5) All of the following conditions are satisfied:

(A) The site is not specifically identified in an NPDES or operating permit of any treatment works or pretreatment works but receives sludge from a treatment works or pretreatment works which has a valid operating permit issued by the Agency, or an NPDES permit with a sludge management scheme approved by the Agency. The sludge generator shall inform the user that this requirement has been met; and

(B) The sludge user apples the sludge to less than 300 acres under common ownership or control in any year; and

(C) The sludge is transported, stored and applied by the user in compliance with the approved sludge management scheme of the generator from which the user receives the sludge. Any person who intends to transport, store, or apply sludge in any manner other than that described in the approved sludge management scheme must apply for a permit.

(b) Notwithstanding subparagraphs (1) through (5) of paragraph (a), the Agency may require a user receiving sludge for land application to obtain a permit under this rule when the Agency determines that special circumstances exist such that a permit is required to protect the environment or the public health. In making its determination, the Agency shall consider the following factors:

(1) Where the sludge will be stored;

(2) The proposed rate and method of application of the sludge to the receiving site;

(3) The quality (constituents and concentrations) of the sludge to be applied to the receiving site; and,

(4) The geological and hydrological characteristics of the receiving site, including proximity to waters of the state.

(c) No permit may be required under Rule 950(b) for a user receiving sludge for land application unless the owner or operator is notified in writing of the requirement to apply for a permit. That notification shall include a statement of the special circumstances requiring the site to be permitted. The requirement of a permit is reviewable only in a permit appeal proceeding.

(d) Generators and haulers of municipal water or wastewater treatment plant sludge, which is to be applied to land and which is regulated under this Chapter, need not obtain a special waste hauling permit or prepare, carry and complete a manifest under Chapter 9 of the Board's regulations.

(e) The Agency may establish and revise criteria in accordance with Rule 967 of this Chapter for the design, operation, and maintenance of facilities regulated under this Rule.

(f) For purposes of permit issuance and approval of a sludge management scheme, proof of conformity with Agency criteria shall be prima facie evidence of no violation of the Act or Chapter 3. However, nonconformity with Agency criteria shall not be grounds for permit denial, or for failure to approve a sludge management scheme, if the applicant submits adequate information showing that the sludge will be stored, transported and applied so as not to cause a violation of the Act or Chapter 3.

Chapter 9: Special Waste Hauling Regulations

211 Exemptions for Special Waste Haulers

Items A,B,D,E,F,G, and H are not changed.

(C) Generators and haulers of ~~any person who hauls only~~ municipal water or wastewater treatment plant sludge which is to be applied to land and which is to be regulated under Chapter 3 pursuant to ~~established~~ a sludge management scheme approved by the Agency ~~policy~~ need not obtain a special waste hauling permit or prepare, carry and complete a manifest under this Chapter for that sludge.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19th day of March, 1981 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board