

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2012

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO SPECIAL) R13-8
WASTE HAULING PERMIT) (Rulemaking - Land)
REGULATIONS TO IMPLEMENT PUBLIC)
ACT 97-1081: 35 ILL. ADM. CODE 809.204)
and 809.212)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

The Board today proposes amendments to its solid waste and special waste hauling regulations for second-notice review by the Joint Committee on Administrative Rules (JCAR).

In an order dated September 20, 2012, the Board proposed these amendments without commenting on their substantive merits. The proposed amendments sought to implement a provision of Public Act 97-1081 amending Section 22.2(l) of the Environmental Protection Act (Act) by extending the duration of special waste hauling permits from one year to three years. 415 ILCS 5/22.2(l) (2010); Public Act 97-1081, eff. Aug. 24, 2012; *see* 36 Ill Reg. 14600 (Oct. 5, 2012). During the statutory 45-day comment period (*see* 5 ILCS 100/5-40(b) (2010)), the Board received no public comment on its proposal. Today, the Board submits its first-notice proposal without substantive amendment to second-notice review by JCAR (*see* 5 ILCS 100/5-40(c) (2010)).

In this opinion, the Board first provides the procedural history of this rulemaking before summarizing the relevant provisions of Section 22.2(l) of the Act. After a summary of its second-notice proposal, the Board addresses the issues of economic reasonableness and technical feasibility. Finally, the Board reaches its conclusion and issues its order setting forth the proposed amendments for second-notice review by JCAR.

PROCEDURAL HISTORY

In an order dated September 20, 2012, the Board proposed amendments to its solid waste and special waste hauling regulations without commenting on their substantive merits. *See* 36 Ill. Reg. 14600 (Oct. 5, 2012).

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) the Board requested in a letter dated September 20, 2012, that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the rulemaking proposal. The Board requested that DCEO respond to this request “no later than Thursday, October 25, 2012.” On November 21, 2012, the Board received a letter dated October 22, 2012, from DCEO Director David Vaught. The letter acknowledged that DCEO received the Board’s request and responds

that, “[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request.”

In an order filed September 20, 2012, the hearing officer scheduled two hearings: the first on Thursday, October 18, 2012, in Chicago with pre-filed testimony due by Thursday, October 4, 2012; and the second on Thursday, November 15, 2012, in Springfield with pre-filed testimony due by Thursday, November 1, 2012.

The first hearing took place as scheduled on October 18, 2012, and the Board received the transcript (Tr.1) on October 22, 2012. Although no participant pre-filed testimony for the first hearing, Mr. David Walters appeared and testified on behalf of the Illinois Environmental Protection Agency (Agency).

The second hearing took place as scheduled on November 15, 2012, and the Board received the transcript (Tr.2) on November 19, 2012. No participant pre-filed testimony and no witness offered testimony at the second hearing. During the second hearing, the hearing officer afforded those present an opportunity to testify or comment on the Board’s request that DCEO conduct an economic impact study and DCEO’s response, but no participant did so. Tr.2 at 5-6. Also during the second hearing, the hearing officer set a deadline of Monday, November 26, 2012, to file post-hearing comments. *See* Tr.2 at 6. No participant filed a post-hearing comment.

The Board received no public comment during the statutory 45-day comment period, which ended Monday, November 19, 2012. *See* 5 ILCS 100/5-40(b) (2010); 36 Ill. Reg. 14600 (Oct. 5, 2012).

STATUTORY AND REGULATORY BACKGROUND

Prior to the enactment of Public Act 97-1081, Section 22.2(l) of the Act provided in pertinent part that

Beginning January 1, 1988, the Agency shall annually collect a \$250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of \$20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. 415 ILCS 5/22.2(l) (2010); *see* Public Act 97-1081.

With the enactment of Public Act 97-1081, effective August 24, 2012, Section 22.2(l) now provides in pertinent part that

Beginning January 1, 1988, and prior to January 1, 2013, the Agency shall annually collect a \$250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of \$20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. Beginning January 1, 2013, the Agency shall issue 3-year Special Waste Hauling Permits instead of annual Special Waste

Hauling Permits and shall collect a \$750 fee for each Special Waste Hauling Permit Application. In addition, beginning January 1, 2013, the Agency shall collect a fee of \$60 for each waste hauling vehicle identified in the permit application and for each vehicle that is added to the permit during the 3-year period. Public Act 97-1081 (Section 20).

Section 809.212(a) of the Board's special waste hauling permit regulations provides in its entirety that "[a]ll permits issued under this Part shall be issued for a period not to exceed one year and are renewable." 35 Ill. Adm. Code 809.212(a).

Section 809.204(a) addresses the filing of applications and provides in its entirety that "[a]n application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees." 35 Ill. Adm. Code 809.204(a).

SUMMARY OF BOARD'S SECOND-NOTICE PROPOSAL

In its first-notice opinion and order, the Board noted that the extended permit duration and corresponding application fees had been enacted and take effect on January 1, 2013, little more than three months from the date of that order. At that time, the Board's regulations would become inconsistent with the Act. Consequently, the Board opened this rulemaking docket with a first-notice proposal without commenting on its substantive merits.

Accordingly, the Board proposed to make Section 809.212(a) consistent with revised Section 22.2(1) of the Act as follows: "Prior to January 1, 2013, all~~Al~~ permits issued under this Part will be issued for a period not to exceed one year and are renewable. Beginning January 1, 2013, all permits under this Part will be issued for a period not to exceed three years and are renewable." See Public Act 97-1081; 35 Ill. Adm. Code 809.212(a). During the first hearing, Mr. Walters testified on behalf of the Agency and indicated the Agency's support for this amendment. Tr.1 at 8. In its order below, the Board submits this first-notice proposal without substantive amendment to second-notice review by JCAR.

Also, in order to clarify that the "correct fees" for special waste hauling permit applications are established by the Act, the Board proposed to amend Section 809.204(a) as follows: "[a]n application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees pursuant to Section 22.2(1) of the Act [415 ILCS 5/22.2(1)]." See Public Act 97-1081; 35 Ill. Adm. Code 809.204(a). During the first hearing, Mr. Walters testified on behalf of the Agency and indicated the Agency's support for this amendments. Tr.1 at 8. In its order below, the Board submits this first-notice proposal without substantive amendment to second-notice review by JCAR.

JCAR has proposed a small number of non-substantive changes, which are not discussed in this opinion but which are incorporated in the Board's order below.

SUMMARY OF ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Request for Economic Impact Study

As noted above under “Procedural History,” the Board requested in a letter dated November 17, 2011, that DCEO conduct an economic impact study of the Agency’s rulemaking proposal. 415 ILCS 5/27(b) (2010). The Board requested that DCEO respond to this request “no later than Thursday, October 25, 2012.” On November 21, 2012, the Board received a letter dated October 22, 2012, from DCEO Director David Vaught. The letter acknowledged that DCEO received the Board’s request and responds that, “[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request.” During the second hearing, the hearing officer noted the Board’s request. Tr.2 at 5-6. Although the hearing officer afforded those present an opportunity to testify or comment regarding the request, no participant did so. *See id.*

Economic Reasonableness

In adopting its first-notice opinion and order, the Board proposed amendments without commenting on their substantive merits. Proposed Amendments to Special Waste Hauling Permit Regulations to Implement Public Act 97-1081: 35 Ill. Adm. Code 809.204 and 809.212, R13-9, slip op. at 3 (Sept. 20, 2012). Accordingly, the Board encouraged “the Agency and regulated entities to comment on these proposed amendments, particularly with regard to . . . economic reasonableness.” *Id.* Although the Board expected “that any economic effects of this proposal stem from Public Act 97-1081 itself,” the Board anticipated that “regulated entities will realize savings from less frequent permit applications and that the Agency will realize administrative savings from a reduced number of applications for permit renewal.” *Id.*, citing 10-Year Federally Enforceable State Operating Permits (FESOP): Amendments to 35 Ill. Adm. Code Part 201.162, R10-21, slip op. at 5-6 (Nov. 18, 2010) (extending duration of FESOP from five to ten years). As noted above, however, the Board received no public comment during the first-notice period.

Since proceeding to first notice, no addition to the record has disputed the Board’s expectation that any economic effects of this proposal stem from legislative adoption of Public Act 97-1081. Similarly, the record does not dispute the Board’s anticipation that adoption of this proposal will result in savings for both regulated entities and the Agency. Consequently, the Board finds that the proposed amendments implement Public Act 97-1081 in a manner that is economically reasonable. In addition, the record now before the Board contains no persuasive evidence that adoption of this proposal would impose unreasonable costs on the Agency or regulated entities. The Board finds that this second-notice proposal has no “adverse economic impact on the People of the State of Illinois” within the meaning of Section 27(b) of the Act. 415 ILCS 5/27(b) (2010).

Technical Feasibility

In proceeding to first notice, the Board encouraged “the Agency and regulated entities to comment on these proposed amendments, particularly with regard to their technical feasibility. . .

.” Proposed Amendments to Special Waste Hauling Permit Regulations to Implement Public Act 97-1081: 35 Ill. Adm. Code 809.204 and 809.212, R13-9, slip op. at 3 (Sept. 20, 2012). As noted above, however, the Board received no public comment during the first-notice period.

The Board expects that any technical effects of this proposal stem from legislative adoption of Public Act 97-1081. Furthermore, noting in the record now before the Board persuasively indicates that the first-notice proposal is not technically feasible. Consequently, the Board finds that the proposed amendments implement Public Act 97-1081 in a manner that is technically feasible.

CONCLUSION

As described above in this opinion, the Board proposes to amend Part 809 of its solid waste and special waste hauling regulations. The Board found above that the proposed amendments implement Public Act 97-1081 in a manner that is economically reasonable and technically feasible. Based on the record before it, the Board finds that the amendments generate no “adverse economic impact on the People of the State of Illinois” within the meaning of Section 27(b) of the Act. 415 ILCS 5/27(b) (2010). In its order below, the Board directs the Clerk to submit the proposed amendments to Part 809 to JCAR for second-notice review.

ORDER

The Board directs the Clerk to submit its first-notice proposal without substantive amendments to JCAR for second-notice review. Proposed additions are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 809
 SPECIAL WASTE HAULING

SUBPART A: GENERAL PROVISIONS

Section	
809.101	Authority, Policy and Purposes
809.102	Severability
809.103	Definitions
809.104	Incorporations by Reference
809.105	Public Records

SUBPART B: SPECIAL WASTE HAULING PERMITS

Section	
809.201	Special Waste Hauling Permits – General
809.202	Applications for Special Waste Hauling Permit – Contents
809.203	Applications for Special Waste Hauling Permit – Signatures and Authorization
809.204	Applications for Special Waste Hauling Permit – Filing and Final Action by the Agency
809.205	Special Waste Hauling Permit Conditions
809.206	Special Waste Hauling Permit Revision
809.207	Transfer of Special Waste Hauling Permits
809.208	Special Waste Hauling Permit Revocation
809.209	Permit No Defense
809.210	General Exemption from Special Waste Hauling Permit Requirements
809.211	Exemptions for Special Waste Transporters
809.212	Duration of Special Waste Hauling Permits
809.213	Compliance with Federal Requirements

SUBPART C: DELIVERY AND ACCEPTANCE

Section	
809.301	Requirements for Delivery of Special Waste to Transporters
809.302	Requirements for Acceptance of Special Waste from Transporters

SUBPART D: PERMIT AVAILABILITY AND SYMBOLS

Section	
809.401	Permit Availability
809.402	Special Waste Symbols

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section	
809.501	Manifests, Records, Access to Records, Reporting Requirements and Forms

SUBPART F: DURATION OF SPECIAL WASTE HAULER PERMITS AND TANK NUMBERS

Section	
809.601	Duration of Special Waste Hauler Permits and Tank Numbers (Repealed)

SUBPART G: EMERGENCY CONTINGENCIES FOR SPILLS

Section	
809.701	General Provision

SUBPART H: EFFECTIVE DATES

Section	
809.801	Compliance Date
809.802	Exceptions (Repealed)

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

Section	
809.901	Definitions (Repealed)
809.902	Disposal Methods (Repealed)
809.903	Rendering Innocuous by Sterilization (Repealed)
809.904	Rendering Innocuous by Incineration (Repealed)
809.905	Recordkeeping Requirements for Generators (Repealed)
809.906	Defense to Enforcement Action (Repealed)

SUBPART J: REQUIREMENTS FOR HAULERS PREVIOUSLY PERMITTED UNDER THE UNIFORM PROGRAM

Section	
809.910	Uniform State Hazardous Waste Transportation Registration and Permit Program (Repealed)
809.911	Application for a Uniform Permit (Repealed)
809.912	Application for Uniform Registration (Repealed)
809.913	Payment of Processing and Audit Fees (Repealed)
809.914	Payment of Apportioned Mile Fees (Repealed)
809.915	Submittal of Fees (Repealed)
809.916	Previously Permitted Transporters (Repealed)
809.917	Uniform Registration and Uniform Permit Conditions (Repealed)
809.918	Uniform Registration and Uniform Permit Revision (Repealed)
809.919	Transfer of Uniform Registration and Uniform Permits (Repealed)
809.920	Audits and Uniform Registration and Uniform Permit Revocation (Repealed)
809.921	Permit No Defense (Repealed)
809.1001	Transporters Previously Permitted Under Uniform Hazardous Waste Transportation Permit and Registration Program

809.APPENDIX A Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22.2 and 27] (see P.A. 90-219).

SOURCE: Adopted in R76-10, 33 PCB 131, at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment in R76-10, 39 PCB 175, at 4 Ill. Reg. 34, p. 214, effective August 7, 1980, for a maximum of 150 days; emergency amendment in R80-19, 40 PCB 159, at 5 Ill. Reg. 270, effective January 1, 1981, for a maximum of 150 days; amended in R77-12(B), 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R80-19, 41 PCB 459, at 5 Ill. Reg. 6378, effective May 31, 1981; codified in R81-9, 53 PCB 269, at 7 Ill. Reg. 13640, effective

September 30, 1983; recodified in R84-5, 58 PCB 267, from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at 14 Ill. Reg. 14076, effective August 15, 1990; amended in R91-18 at 16 Ill. Reg. 130, effective January 1, 1992; amended in R95-11 at 20 Ill. Reg. 5635, effective March 27, 1996; amended in R98-29 at 23 Ill. Reg. 6842, effective July 1, 1999; amended in R00-18 at 24 Ill. Reg. 14747, effective September 25, 2000; amended in R06-20(A) at 34 Ill. Reg. 3317, effective February 25, 2010; amended in R06-20(B) at 34 Ill. Reg. 17398, effective October 29, 2010; amended in R12-13 at 36 Ill. Reg. 12332, effective July 18, 2012; amended in R13-08, at 36 Ill. Reg. _____, effective _____.

SUBPART B: SPECIAL WASTE HAULING PERMITS

Section 809.204 Applications for Special Waste Hauling Permit—Filing and Final Action by the Agency

- a) An application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees (see Section 22.2(1) of the Act [415 ILCS 5/22.2(1)]).
- b) If the Agency fails to take final action (which includes granting or denying the special waste hauling permit as requested, or by granting the special waste hauling permit with conditions) within 90 days after the date the completed application is filed, the applicant may deem the special waste hauling permit granted for a period of one calendar year commencing on the 91st day after the application was filed.
- c) The Agency will send all denials by U.S. Registered or Certified Mail, Return Receipt Requested. All other final Agency decisions may go by regular U.S. Mail or electronic mail. The Agency will be deemed to have taken final action on the date that the notice of final action is mailed or sent. Within 35 days after the Agency's final action, the applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.
- d) The Agency will require the application to be complete. If incomplete, the application will be returned, and the transporter will be required to resubmit a complete application. The application must be consistent with the provisions of the Act and Board regulations. The Agency may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application. If the application is complete and granting it will not violate the Act or Board regulations, the Agency will grant the permit.
- e) When an application is denied because it fails to comply with the Act or Board regulations, any fees submitted with the application will be non-refundable. Any subsequent re-filing of the application will be considered a new application for

which an application fee must be included in accordance with Section 22.2 of the Act.

- f) When the Agency rejects an application because it is incomplete, any fees submitted will be non-refundable. The applicant can receive credit for the payment with a resubmitted application if the resubmittal is complete and returned to the Agency within 30 days after the initial date-stamped rejection.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 809.212 Duration of Special Waste Hauling Permits

- a) Prior to January 1, 2013, all AH permits issued under this Part will be issued for a period not to exceed one year and are renewable. Beginning January 1, 2013, all permits under this Part will be issued for a period not to exceed three years and are renewable.
- b) Applications for renewal of a special waste hauling permit should be made prior to the expiration date of the permit on the application forms prescribed in Section 809.302.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 6, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board