

ILLINOIS POLLUTION CONTROL BOARD
May 4, 2023

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820) R 23-17
GENERAL CONSTRUCTION OR) (Rulemaking - Land)
DEMOLITION DEBRIS RECOVERY)
FACILITIES)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by M. Gibson):

The Board today proceeds to second notice with a new Part 820 of the Board’s waste disposal rules. On August 1, 2022, the Illinois Environmental Protection Agency (IEPA or Illinois EPA or Agency) proposed that the Board adopt a new Part 820 of its waste disposal regulations to establish rules for permitting, operating, and closing general construction or demolition debris (GCDD) recovery facilities.

Illinois EPA filed this proposal to comply with Public Act 102-310, which became effective on August 6, 2021. Among its provisions, Public Act 102-301 added a subsection (n) to Section 22.38 of the Environmental Protection Act (Act). Subsection (n) requires IEPA to propose rules to the Board for permitting GCDD recovery facilities that include specified provisions within one year of the effective date of Public Act 102-310. The Board must adopt those rules within one year after receiving the IEPA’s proposal. On January 19, 2023, the Board proposed a new Part 820 of its waste disposal rules and submitted it to first-notice publication. *See* 47 Ill. Reg. 1812 (Feb. 10, 2023).

This opinion begins with an abbreviated procedural history of this rulemaking docket. It then reviews the single first-notice comment and considers the economic reasonableness and technical feasibility of the proposal. The Board then concludes to propose rules to the Joint Committee on Administrative Rules for second-notice review. *See* 5 ILCS 100/5-40(c) (2020). After its order, the Board includes the proposed rules.

ABBREVIATED PROCEDURAL HISTORY

On August 1, 2022, IEPA filed its rulemaking proposal and included a Statement of Reasons (SR) and Technical Support Document (TSD). The Board accepted the proposal on August 11, 2022. Also on August 11, 2022, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of IEPA’s proposal by September 26, 2022. *See* 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request.

The Board held two hearings on IEPA’s proposal, the first on September 27, 2022, and the second on November 16, 2022.

On January 19, 2023, the Board adopted a first-notice proposal (First Notice). *See* 47 Ill. Reg. 1812 (Feb. 10, 2023). The Board’s first-notice opinion discusses the rulemaking record in detail, including a section-by-section review of the proposal. Instead of reproducing that opinion here, the Board directs readers to the Clerk’s Office On-Line (COOL) on the Board’s website (pcb.illinois.gov), where the entire docket including the first-notice opinion and order can be viewed under this docket number R 23-17.

On March 3, 2023, the Board docketed as a public comment (PC 2) an email between the staff of the Board and JCAR, which posed questions about the first-notice proposal and suggested 118 changes to it. On April 19, 2023, the Board filed as a public comment (PC 3) its responses to JCAR’s questions and suggested changes.

FIRST-NOTICE COMMENT

During the first-notice comment period, the Board received a single comment. On March 3, 2023, the Board docketed an email from JCAR’s staff to the Board as PC 2. JCAR suggested 118 changes to the Board’s proposal. These largely propose non-substantive clarifications concerning matters such punctuation and organization. The Board largely includes JCAR’s suggested changes in its second-notice proposal. For a limited number of them, the Board respectfully declines JCAR’s suggestion and explains its reasons for doing so in its response. PC 3 at 7-16. JCAR’s comment also asked six questions about the proposed rules, and the Board’s responses addressed each of them. *Id.*

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Affected Facilities

IEPA’s proposed Part 820 would apply “to all GCDD recovery facilities subject to Section 22.38 of the Act.” SR at 4. The proposed rules would apply statewide and affect “currently permitted facilities that receive GCDD as well as facilities that were previously exempt from permitting prior to Public Act 102-310.” SR at 4. IEPA estimates that there are 52 GCDD recovery facilities that the proposal would affect. *Id.* at 5; TSD at 3. IEPA adds that, since enactment of Public Act 96-611 in 2009, each of these facilities has been permitted under 35 Ill. Adm. Code 807. TSD at 3.

The proposed rules would not apply “to a GCDD recovery facility located at a facility permitted under other solid waste rules (35 Ill. Adm. Code 807 or Parts 811 through 814) and regulated under that permit.” SR at 4. The proposal also “would not apply to a facility or location that does not meet the definition of a GCDD recovery facility.” *Id.*, citing 415 ILCS 5/3.160(a-1); P.A. 102-310; *see* Prop. at 3-4.

Technical Feasibility

At first notice, the Board concluded, based on the record then before it, that its proposal was technically feasible. First Notice at 57.

IEPA argued that its original proposal built on rules that have applied to GCDD recovery facilities since 2009, when Public Act 96-611 added permitting requirements. SR at 6. IEPA suggested that its proposal was consistent with current operating and permitting requirements “as well as the statutory amendments under Public Act 102-310.” *Id.*; *see* TSD at 7.

IEPA also argued that the proposed financial assurance requirements did not affect the technical feasibility of its proposal. It asserted that the proposed requirements are similar to existing Board rules. IEPA suggested that it appropriately minimized risks to the environment and taxpayers’ resources. TSD at 7.

Since the Board found its first-notice proposal technically feasible, no addition to the record has persuasively disputed that finding. Based on its review of the record now before it, the Board concludes that its second-notice proposal implements Public Act 102-310 in a manner that is technically feasible.

Economic Reasonableness

Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2020)), the Board in a letter dated August 11, 2022, requested that DCEO conduct an economic impact study of IEPA’s proposed rules. The Board requested that DCEO determine by September 26, 2022, whether it would conduct such a study. The Board received no response to this request. No person at either hearing testified or commented on the Board’s request or the lack of a response from DCEO.

Implementation

At first notice, the Board concluded, based on the record then before it, that its proposal was economically reasonable. First Notice at 58.

IEPA argued that its original proposal was similar to current requirements, so it “can be implemented without a significant new economic burden on the regulated community.” SR at 6; TSD at 7. While IEPA acknowledged that financial assurance requirements may generate new compliance costs, it asserted that “those costs are consistent with other regulated industries in an effort to avoid obligating taxpayers with liability associated with facility closure costs.” SR at 6; *see* TSD at 7.

Conclusion

Since the Board found its first-notice proposal economically reasonable, no addition to the record has persuasively disputed that finding. Based on its review of the record now before it, the Board concludes that its second-notice proposal implements Public Act 102-310 in a manner that is economically reasonable and will not have an adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b)(2) (2020).

CONCLUSION


For the reason above, the Board concludes to revise its waste disposal rules by proposing a new Part 820 to comply with Public Act 102-320 and adopt standards for GCDD recovery facilities. The Board finds that its proposed rules are technically feasible and economically reasonable and will not have an adverse economic impact on the people of the State of Illinois. The Board submits its proposed rules to JCAR for second-notice review.

ORDER

The Board directs the Clerk to submit the second-notice proposal to JCAR for its review.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 4, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board