

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

IN THE MATTER OF:)
)
PETITION OF ILLINOIS WOOD ENERGY)
PARTNERS, L.P. FOR AN ADJUSTED)
STANDARD FROM 35 Ill. Adm. Code) AS 94-1
807 OR, IN THE ALTERNATIVE, A) (Adjusted Standard)
FINDING OF INAPPLICABILITY.)

CONCURRING OPINION (by G. T. Girard):

I agree with the majority interim opinion that the "produced wood fuel" as proposed by Wood Energy¹ is a solid waste subject to the requirements of Part 807 of the Act. However, I concur because the majority opinion did not consider a critical aspect of the Wood Energy proposal and may be interpreted to establish an overly broad precedent.

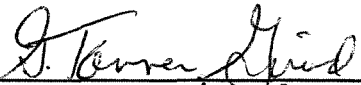
A key aspect of this case is the various materials that Wood Energy would mix to make "produced wood fuel". Wood Energy anticipates receiving wood from industry, construction, demolition, forest land management, general land clearing operations, sawmills, wood product manufacturers, and other urban sources (ICC Pet. at 3). As a mixture, "produced wood fuel" from these combined sources is properly considered a waste subject to the requirements of Part 807 of the Act. However, some subsets of this mixture should not be subject to Part 807 requirements.

The definition of waste in Section 807.104, which includes the statutory language of 415 ILCS 5/3.53, is instructive. In pertinent part it reads, "waste means...discarded material...resulting from industrial, commercial, mining, and agricultural operations, or from community activities....". (35 Ill. Adm. Code 807.104.) Applying the definition to the Wood Energy sources of wood shows that discarded wood from industry, construction, demolition, wood product manufacturers, and other urban sources is properly classified as a waste. It is unclear from the definition whether or not wood fuel derived individually from general land clearing or sawmills should be subject to Part 807 regulations, and I will not make that determination here. Wood fuel derived from forest land management should not be considered a waste because "forestry" operations are clearly not included in the definition of waste at Section 807.104 and 415 ILCS 5/3.53.

By not distinguishing wood fuel derived from forest land management from regulation by Part 807, the majority opinion

¹Short form references in this concurring opinion conform to the conventions used in the majority interim opinion.

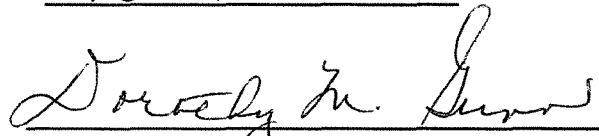
could be interpreted to mean that Illinois citizens who burn wood to heat their homes would be subject to Part 807 requirements. Most of the heating wood used by citizens is derived from forest land management. If we follow the majority opinion analysis on page 10, since energy is a by-product of incineration leading to disposal, the wood fuel is a solid waste governed by Part 807. Therefore, this reasoning potentially leads to the conclusion that all citizens who burn wood in their homes are subject to the Part 807 requirements for handling solid waste. This potential result would clearly be incorrect and, hence, I respectfully concur.



 G. Tanner Girard
 Board Member

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 3rd day of November.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board