

ILLINOIS POLLUTION CONTROL BOARD
September 23, 1993

IN THE MATTER OF:)
)
EMERGENCY AMENDMENTS TO THE) R93-25
LANDFILL RULES FOR ON-SITE) (Rulemaking)
BURIAL OF DEAD ANIMALS IN)
FLOOD-DISASTER COUNTIES)
35 ILL. ADM. CODE 807.106)

ADOPTED EMERGENCY RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This matter comes before the Board on an September 15, 1993 proposal for emergency rulemaking filed by the Illinois Environmental Protection Agency (Agency). The purpose of the rulemaking is to allow the burial, without permit but subject to conditions designated to protect human health and the environment, of dead animals on the property upon which they are found in all designated state and federal "disaster area" counties which have been impacted by the recent flooding of the Mississippi River and its tributaries. As of September 15, forty-three (43) counties had been so designated: Adams, Alexander, Boone, Brown, Calhoun, Carroll, Cass, Cook, DuPage, Fulton, Greene, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Kane, Knox, Lake, Lee, Madison, Mason, Massac, McHenry, Mercer, Monroe, Morgan, Ogle, Peoria, Pike, Pope, Pulaski, Randolph, Rock Island, Schuyler, Scott, Stephenson, St. Clair, Union, Warren, Whiteside and Winnebago.

For the reasons stated below, the Board finds, pursuant to Section 27(c) of the Environmental Protection Act (Act) Ill. Rev. Stat. 1991 ch. 111 1/2, par. 1027(c), 5 ILCS 5/27(c) and Section 5-45 of the Illinois Administrative Procedure Act (APA) (Ill. Rev. Stat. 1991 ch. 127, par. 1005-45, 5 ILCS 100/5-45), that a "situation exists which reasonably constitutes a threat to the public interest, safety or welfare".

The Board today adopts as an emergency rule new section 807.106 Emergency Exemption for On-Site Burial of Dead Animals in Flood-Disaster Counties. The rule exempts the burial of dead animals on the property on which they are found from the landfill design, construction, operation and reporting requirements of 35 Ill. Adm. Code 807 through 815. Such burial must be conducted in a manner which will not cause water pollution. Burial must also be in compliance with the Illinois Dead Animal Disposal Act. (Ill. Rev. Stat. 1991 ch. 8, par. 149-167(a), 225 ILCS 610/1.2-19(a) (1992)). This rule will become effective upon filing with the Secretary of State for a period of 150 days.

STATUTORY PROVISIONS

The Board presently anticipates rule filing will occur on or about September 27, 1993.

The Board's rulemaking requirements in this matter are contained in the APA and the Act. Section 5-45 Illinois Administrative Procedure Act provides in pertinent part:

"Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare. If any agency finds that any emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing of notice of emergency rulemaking with the Secretary of State under Section 5-70. . . Subject to applicable constitutional or statutory provisions, an emergency rule become effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The Agency shall take reasonable and appropriate measures to make emergency rules shown to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded.

Section 27(c) of the Environmental Protection Act provides:

When the Board finds that a situation exists which reasonably constitutes a threat to public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5.02 of the Illinois Administrative Procedure Act.

Emergency rules are scrutinized by both the Joint Committee on Administrative Rules and by the courts to determine whether "there exists a situation which reasonably constitutes a threat to the public interest, safety or welfare". Citizens for a Better Environment v. Illinois Pollution Control Board, (1st Dist. 1983) 162 Ill. App.3d 105, 504 N.E. 2d 166, 169.

THE AGENCY'S PROPOSALDescription of the Emergency

The Agency's September 15, 1993 three-page statement of justification for its emergency rule proposal states that:

Due to a series of severe thunderstorms and torrential rains throughout the Mississippi River Basin, many Illinois counties have experienced record flood levels that have adversely impacted and continue to threaten public health, safety and welfare. The flooding has resulted in extensive damage to homes, farms, businesses, livestock, roads and other property. In an effort to aid those counties affected by the adverse weather, the President of the United States and Governor Edgar have declared numerous Illinois counties as federal and State disaster areas. In a number of Gubernatorial Proclamations, Governor Edgar has sought to coordinate the assistance of State agencies in providing reasonably necessary emergency measures to assist the flood victims.

This Emergency Rulemaking is being proposed in order to provide necessary assistance to persons in various Illinois counties whose health, welfare and safety have been and continue to be directly impacted by the Mississippi River and its tributaries.

The flooding of the Mississippi River and its tributaries has resulted in dead animals that have accumulated in areas affected by the flood. Under the current landfill regulations, the burial of these dead animals may be considered conducting a waste disposal operation without a permit. These dead animals continue to pose a serious public health risk. The purpose of this is to exempt the burial of these dead animals from the landfill regulations at 35 Ill. Adm. Code Parts 807 through 814.

The expeditious disposal of these dead animals through on-site burial will mitigate the risks to public health, safety and welfare. (Proposal, p. 1-2)

Description of the Proposed Amendments

The Agency describes its proposed amendments as follows:

The current landfill regulations at 35 Ill. Adm. Code Parts 807 through 814 require persons to obtain an Agency permit in order to lawfully conduct a waste disposal operation. The flooding of the Mississippi River and its tributaries has resulted in numerous dead animals that have accumulated in areas affected by the flooding.

This Emergency Rulemaking proposal exempts those persons who bury dead animals on the property upon which they are found from complying with the landfill permit requirements.

Conditions have been included in this proposal that are necessary to assure the protection of public health. They include a provision against the burial of dead animals in a manner so as to cause or threaten to cause water pollution. This Emergency Rulemaking proposal is applicable to the counties along Illinois' western border, which have been directly impacted and threatened by the flooding of the Mississippi River and its tributaries. (Proposal, p. 2)

THE BOARD'S ADOPTED RULES

Consistent with the Governor's directive to the executive agencies to coordinate flood relief activities, the Agency advised the Board of its intent to file this proposal. The staff of the Administrative Code Unit of the Division of Index, for its part, has graciously agreed to give prior review for format of the copy for filing with the Secretary of State to avoid paperwork delays.

In prior regulatory proceedings the Board has given exhaustive consideration to the dangers to public health posed by unmanaged waste, which may become a breeding ground for disease vectors including mosquitoes, vermin and birds. The decomposition of unmanaged putrescible wastes can lead to contamination of surface water and groundwater. The sheer volume of waste created by the recent flooding which must be relatively quickly and efficiently handled is unprecedented in the state's history and, more specifically in the Board's 23-year history. While landfill disposal of all flood-generated wastes may be

possible given extended periods of time and unlimited funds, this disposal must be made at the same time that individuals and governments are struggling to restore essential community elements and services including drinking water supplies and sewage treatment systems, housing and medical facilities, and highways and bridges. The rule as proposed by the Agency and adopted by the Board will allow for environmentally sound disposal of dead animals, but will not require compliance with the full range of standards applicable to general household waste (which often contains chemicals which require disposal with greater environmental precautions). The emergency exemption is from rules in 35 Ill. Adm. Code Parts 807 through 815.

Having considered these factors and the information provided by the Agency, the Board finds that "a situation exists which reasonably constitutes a threat to the public interest, safety or welfare", within the meaning of Section 27(c) of the Act and Section 5-45 of the APA.

The rule adopted by the Board is essentially the rule proposed by the Agency. Some format changes and additions have been made to comport with APA requirements. In consultation with the Agency, the Board has moved the exemption section into Part 807, rather than placing it in Part 811 as proposed. The Board believes that its placement in Part 807 will make the exemption section easier for the affected community to locate, as Part 807 is the first of the series of Parts to which the exemption applies, and is the Part which explains the inter-relationship of all of the landfill rules. Additionally, as amendments to Part 811 are extensively involved in two other pending proceedings,¹ placement of the exemption in Part 807 will minimize administrative problems.

Another change made in consultation with the Agency is extension of the scope of the amendment. The proposal as filed exempted on-site burial from the requirements of Parts 807 through 814, but not from the extensive recordkeeping and reporting requirements applicable to on-site, unpermitted landfills in Part 815. The Board and the Agency believe that this recordkeeping and reporting would be unduly burdensome given the nature of the dead animal waste being buried, and the continuing requirement that burial be made in accordance with the Illinois Dead Animal Disposal Act and in a manner to prevent water pollution.

Finally, the Board observes that today's emergency rule will

¹ See In the Matter of: RCRA Subtitle D Amendments, R93-10 (September 15, 1993) and In the Matter of: Steel and Foundry Industry Amendments to the Landfill Regulations (Parts 810-815), R90-26 (September 23, 1993).

expire within 150 days of its filing the maximum term of any emergency rule. The APA prohibits adoption of an emergency rule "more than once in any 24 month period" (5 ILCS 100/5-45), so that any extension of this five month emergency exemption must be obtained through regular rulemaking or through the Act's other regulatory relief mechanisms.

ORDER

The Board hereby adopts the following emergency rule. The Clerk is directed to cause its filing with the Secretary of State.

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

PART 807
 SOLID WASTE

SUBPART A: GENERAL PROVISIONS

Section	
807.101	Authority, Policy and Purposes
807.102	Repeals
807.103	Severability
807.104	Definitions
807.105	Relation To Other Rules
807.106	<u>Emergency Exemption for On-Site Burial of Dead Animals</u>
EMERGENCY	<u>in Flood-Disaster Counties</u>

SUBPART B: SOLID WASTE PERMITS

Section	
807.201	Development Permits
807.202	Operating Permits
807.203	Experimental Permits
807.204	Former Authorization
807.205	Applications for Permit
807.206	Permit Conditions
807.207	Standards for Issuance
807.208	Permit No Defense
807.209	Permit Revision
807.210	Supplemental Permits
807.211	Transfer of Permits
807.212	Permit Revocation
807.213	Design, Operation, and Maintenance Criteria
807.214	Revised Cost Estimates

SUBPART C: SANITARY LANDFILLS

Section	
807.301	Prohibition
807.302	Compliance with Permit
807.303	Methods of Operation
807.304	Equipment, Personnel and Supervision
807.305	Cover
807.306	Litter
807.307	Salvaging
807.308	Scavenging
807.309	Animal Feeding
807.310	Special Wastes
807.311	Open Burning
807.312	Air Pollution
807.313	Water Pollution
807.314	Standard Requirements
807.315	Protection of Waters of the State
807.316	Application
807.317	Operating Records
807.318	Completion or Closure Requirements

SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section	
807.501	Purpose, Scope and Applicability
807.502	Closure Performance Standard
807.503	Closure Plan
807.504	Amendment of Closure Plan
807.505	Notice of Closure and Final Amendment to Plan
807.506	Initiation of Closure
807.507	Partial Closure
807.508	Certification of Closure
807.509	Use of Waste Following Closure
807.523	Post-Closure Care Plan
807.524	Implementation and Completion of Post-Closure Care Plan

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE

Section	
807.600	Purpose, Scope and Applicability
807.601	Requirement to Obtain Financial Assurance
807.602	Time for Submission of Financial Assurance
807.603	Upgrading Financial Assurance
807.604	Release of Financial Institution
807.605	Application of Proceeds and Appeal
807.606	Release of the Operator
807.620	Current Cost Estimate
807.621	Cost Estimate for Closure
807.622	Cost Estimate for Post-closure Care
807.623	Biennial Revision of Cost Estimate
807.624	Interim Formula for Cost Estimate

807.640 Mechanisms for Financial Assurance
 807.641 Use of Multiple Financial Mechanisms
 807.642 Use of Financial Mechanism for Multiple Sites
 807.643 Trust Fund for Unrelated Sites
 807.644 RCRA Financial Assurance
 807.661 Trust Fund
 807.662 Surety Bond Guaranteeing Payment
 807.663 Surety Bond Guaranteeing Performance
 807.664 Letter of Credit
 807.665 Closure Insurance
 807.666 Self-insurance for Non-commercial Sites

SUBPART G: SITE-SPECIFIC RULES AND EXCEPTIONS NOT OF GENERAL APPLICABILITY

Section

807.700 Cretex Pressure Pipe, Inc. Concrete Waste Disposal Site

APPENDIX A Financial Assurance Forms

ILLUSTRATION A Trust Agreement
 ILLUSTRATION B Certificate of Acknowledgment
 ILLUSTRATION C Forfeiture Bond
 ILLUSTRATION D Performance Bond
 ILLUSTRATION E Irrevocable Standby Letter of Credit
 ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure Care
 ILLUSTRATION G Operator's Bond Without Surety
 ILLUSTRATION H Operator's Bond With Parent Surety
 ILLUSTRATION I Letter from Chief Financial Officer

APPENDIX B Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 21.1 and 22 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1005, 1021.1, 1022 and 1027) [415 ILCS 5/5, 5/21.1, and 5/27 (1992)].

SOURCE: Adopted as an emergency rule and filed with the Secretary of State July 27, 1973; amended at 2 Ill. Reg. 16, p. 3, effective April 10, 1978; codified at 7 Ill. Reg. 13636; recodified from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; emergency amendment in R84-22A at 9 Ill. Reg. 741, effective January 3, 1985, for a maximum of 150 days; amended in R84-22B at 9 Ill. Reg. 6722, effective April 29, 1985; amended in R84-22C at 9 Ill. Reg. 18942, effective November 25, 1985; amended in R84-45 at 12 Ill. Reg. 15566, effective September 14, 1988; amended in R88-7 at 14 Ill. Reg. 15832, effective September 18, 1990; emergency amendment in R93-25 at 17 Ill. Reg. _____, effective _____ for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 807.106
EMERGENCY

Emergency Exemption For On-Site
Burial of Dead Animals in Flood-Disaster
Counties

- a) This emergency exemption applies to counties that have been declared federal or state disaster areas due to flooding during the summer of 1993.

BOARD NOTE: As of the effective date of this Section, the following counties have been declared federal or State disaster areas: Adams, Alexander, Boone, Brown, Calhoun, Carroll, Cass, Cook, DuPage, Fulton, Greene, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Kane, Knox, Lake, Lee, Madison, Mason, Massac, McHenry, Mercer, Monroe, Morgan, Ogle, Peoria, Pike, Pope, Pulaski, Randolph, Rock Island, Schuyler, Scott, Stephenson, St. Clair, Union, Warren, Whiteside and Winnebago.

- b) The burial of bodies or parts of bodies of dead animals, poultry, or fish on the property upon which they are found is exempt from the provisions of this Part and from 35 Ill. Adm. Code 808 through 815.
- c) Notwithstanding subsection (b), no person shall bury bodies or parts of bodies of dead animals, poultry or fish:
- 1) so as to cause or threaten to cause water pollution in violation of Section 12 of the Act;
 - 2) within 200 feet from the nearest potable water supply well; or
 - 3) within 1 foot of the water table.
- d) Any person who disposes of bodies or parts of bodies of dead animals, poultry or fish shall comply with the Illinois Dead Animal Disposal Act, (Ill. Rev. Stat. 1991, ch. 8, pars. 149-167(a) [225 ILCS 610/1.2-19(a) (1992)] and 8 Ill. Adm. Code 90.
- e) This exemption does not apply to bodies or parts of dead animals, poultry or fish removed from the property upon which they are found.

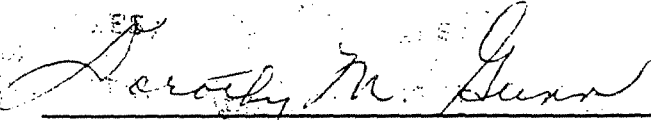
(Source: Emergency rule added at 17 Ill. Reg. _____,
effective _____ for a maximum of 150 days)

IT IS SO ORDERED.

Sections 29 and 41 of the Environmental Protection Act, 415

ILCS 5/41 (1992), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 23rd day of September, 1993, by a vote of 7-6.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board