

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1992

IN THE MATTER OF:)
)
AMENDMENTS TO LANDFILL) R92-19
REGULATIONS: DELETION OF) (Rulemaking)
35 ILL. ADM. CODE 811.310(d)(1)(F))
AND 813.106(b) PURSUANT TO)
WASTE MANAGEMENT of ILL. v. IPCB)
(1st Dist. 1992).)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

On June 11, 1992, the appellate court affirmed in part and reversed in part portions of the Board's landfill regulations (R88-7) appealed by Waste Management of Illinois, Inc. (Waste Management). Waste Management of Illinois, Inc. v. IPCB (1st Dist. June 11, 1992), Nos. 1-90-2702 and 1-90-2818 Cons. The appellate court's mandate was issued on August 13, 1992.

In all respects but two, the appellate court rejected the challenges to the Board's landfill regulations. The Board is initiating this rulemaking solely for the purpose of deleting the two provisions that the court has found invalid, and for accepting comment as to whether a third provision should also be deleted. The two provisions that the appellate court found invalid and which the Board proposes to delete are as follows:

35 Ill. Adm. Code 811.310(d)(1)(F)

d) Parameters to be monitored

- (1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:

....[delete the following]

- (F) Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.

35 Ill. Adm. Code 813.106(b)

....[delete the following]

- (b) Any Agency action to deny a permit or to grant a permit with conditions will not be deemed final for the purposes of appeal if the applicant has requested Agency reconsideration of that action

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prior to the filing of a petition pursuant to this Section.

We will not fully repeat here, but will only summarize, the appellate court's reasoning. The complete appellate court opinion is hereby entered as Exhibit #1 in this proceeding.

Regarding 35 Ill. Adm. Code 811.310(d)(1)(F), the appellate court first noted that Section 9.5(c) of the Environmental Protection Act (Act), Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1009.5(c), specifically provides that the public hearing and comment provisions of Section 27(b) of the Act, the Economic Impact Study (EcIS) requirements, shall not apply to the air toxics contaminants list rulemaking. The court concluded that the Board, by incorporating in its landfill regulations the not yet promulgated air toxics list, failed to meet the procedural requirements of Section 27(b) of the Act. Waste Management, slip. op. at 10-13. We note that this holding will have little, if any, precedential effect, in that P.A. 87-860, signed by the Governor on July 1, 1992, deletes the Section 27(b) EcIS requirements from the Act.

Regarding 35 Ill. Adm. Code 816.106(b), the appellate court, citing prior case law, stated that the Agency has no authority under the Act to reconsider its decisions, and thus the Board did not have statutory authority to purport to delay the finality of an Agency decision by rule. Section 40 of the Act gives an applicant for a permit 35 days to appeal an Agency decision. Waste Management, slip. op. at 28-32. We are particularly concerned that an applicant would delay an appeal beyond the 35 days in false reliance on an invalid Board rule.

As to the third provision, we request that participants in the rulemaking address the issue as to whether 35 Ill. Adm. Code 811.310(c)(5) should also be deleted because it references 35 Ill. Adm. Code 811.310(d)(1)(F).

In the interests of administrative economy, the Board intends to fulfill the Act's requirement that there be two public hearings by dovetailing them with other regulatory public hearings.

ORDER

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

PART 811
 STANDARDS FOR NEW SOLID WASTE LANDFILLS

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SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control
811.110	Closure and Written Closure Plan
811.111	Postclosure Maintenance

SUBPART B: INERT WASTE LANDFILLS

Section	
811.201	Scope and Applicability
811.202	Determination of Contaminated Leachate
811.203	Design Period
811.204	Final Cover
811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal Systems
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management Systems
811.312	Landfill Gas Processing and Disposal Systems
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment
811.318	Design, Construction, and Operation of Groundwater Monitoring Systems
811.319	Groundwater Monitoring Programs
811.320	Groundwater Quality Standards
811.321	Waste Placement

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811.322 Final Slope and Stabilization
 811.323 Load Checking Program

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section

811.401 Scope and Applicability
 811.402 Notice to Generators and Transporters
 811.403 Special Waste Manifests
 811.404 Identification Record
 811.405 Recordkeeping Requirements
 811.406 Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section

811.501 Scope and Applicability
 811.502 Duties and Qualifications of Key Personnel
 811.503 Inspection Activities
 811.504 Sampling Requirements
 811.505 Documentation
 811.506 Foundations and Subbases
 811.507 Compacted Earth Liners
 811.508 Geomembranes
 811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

811.700 Scope, Applicability and Definitions
 811.701 Upgrading Financial Assurance
 811.702 Release of Financial Institution
 811.703 Application of Proceeds and Appeals
 811.704 Closure and Postclosure Care Cost Estimates
 811.705 Revision of Cost Estimate
 811.706 Mechanisms for Financial Assurance
 811.707 Use of Multiple Financial Mechanisms
 811.708 Use of a Financial Mechanism for Multiple Sites
 811.709 Trust Fund for Unrelated Sites
 811.710 Trust Fund
 811.711 Surety Bond Guaranteeing Payment
 811.712 Surety Bond Guaranteeing Performance
 811.713 Letter of Credit
 811.714 Closure Insurance
 811.715 Self-Insurance for Non-commercial Sites

811.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 Postclosure Care
Illustration G	Operator's Bond Without Surety
Illustration H	Operator's Bond With Parent Surety
Illustration I	Letter from Chief Financial Officer

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027).

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at _____ Ill. Reg. _____, effective _____.

NOTE: Capitalization indicates statutory language.

Section 811.310 Landfill Gas Monitoring

- a) This Section applies to all units that dispose putrescible wastes.
- b) Location and Design of Monitoring Wells
 - 1) Gas monitoring devices shall be placed at intervals and elevations within the waste to provide a representative sampling of the composition and buildup of gases within the unit.
 - 2) Gas monitoring devices shall be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the liner system or the top elevation of the groundwater, whichever is higher.
 - 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
 - 4) Gas monitoring devices shall be constructed from materials that will not react with or be corroded by the landfill gas.
 - 5) Gas monitoring devices shall be designed and constructed to measure pressure and allow collection of a representative sample of gas.
 - 6) Gas monitoring devices shall be constructed and maintained to minimize gas leakage.

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- 7) The gas monitoring system shall not interfere with the operation of the liner, leachate collection system or delay the construction of the final cover system.
- 8) At least three ambient air monitoring locations shall be chosen and samples shall be taken no higher than 0.025 meter (1 inch) above the ground and 30.49m (100 feet) downwind from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency

- 1) All gas monitoring devices, including the ambient air monitors shall be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
- 2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
- 3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.
- 4) After a minimum of five years or, in the case of landfills, other than those used exclusively for disposing of wastes generated at the site, a minimum of fifteen years after closure, monitoring shall be discontinued if the following conditions have been met for at least one year:
 - A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and
 - B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1).
- 5) The operator shall include in the permit, a list of air toxics to be monitored in accordance with subsection (d). The Agency shall determine the monitoring frequency of the listed compounds based upon their emission rates and ambient levels in

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the atmosphere.

d) Parameters to be Monitored

- 1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:
 - A) Methane;
 - B) Pressure;
 - C) Nitrogen;
 - D) Oxygen;
 - E) Carbon dioxide; and
 - F) ~~Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.~~
- 2) Ambient air monitors shall be sampled for methane namely when the average wind velocity is less than 8 kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet) from the edge of the unit or the property boundary, whichever is closer to the unit.
- 3) All buildings within a facility shall be monitored for methane by utilizing continuous detection devices located at points where methane might enter the building.

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

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

PART 813
 PROCEDURAL REQUIREMENTS FOR PERMITTED LANDFILLS

SUBPART A: GENERAL PROCEDURES

Section
 813.101 Scope and Applicability

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813.102 Delivery of Permit Application
 813.103 Agency Decision Deadlines
 813.104 Standards for Issuance of a Permit
 813.105 Standards for Denial of a Permit
 813.106 Permit Appeals
 813.107 Permit No Defense
 813.108 Term of Permit
 813.109 Transfer of Permits
 813.110 Adjusted Standards to Engage in Experimental Practices
 813.111 Agency Review of Contaminant Transport Models

**SUBPART B: ADDITIONAL PROCEDURES FOR MODIFICATION AND
 SIGNIFICANT MODIFICATION OF PERMITS**

Section
 813.201 Initiation of a Modification or Significant
 Modification
 813.202 Information Required For a Significant Modification of
 an Approved Permit
 813.203 Specific Information Required For a Significant
 Modification To Obtain Operating Authorization
 813.204 Procedures For A Significant Modification of an
 Approved Permit

SUBPART C: ADDITIONAL PROCEDURES FOR THE RENEWAL OF PERMITS

Section
 813.301 Time of Filing
 813.302 Effect of Timely Filing
 813.303 Information Required For a Permit Renewal
 813.304 Updated Groundwater Impact Assessment
 813.305 Procedures for Permit Renewal

**SUBPART D: ADDITIONAL PROCEDURES FOR INITIATION AND TERMINATION
 OF TEMPORARY AND PERMANENT CLOSURE AND POSTCLOSURE
 CARE**

Section
 813.401 Agency Notification Requirements
 813.402 Certification of Closure
 813.403 Termination of the Permit

SUBPART E: REPORTS TO BE FILED WITH THE AGENCY

Section
 813.501 Annual Reports
 813.502 Quarterly Groundwater Reports
 813.503 Information to be Retained at or near the Waste
 Disposal Facility

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and
 28.1, and authorized by Section 27 of the Environmental

Protection Act 1027 and 1028.1 (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027).

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15814, effective September 18, 1990; amended in R92-19 at _____ Ill. Reg. _____, effective _____)

NOTE: Capitalization indicates statutory language.

Section 813.106 Permit Appeals

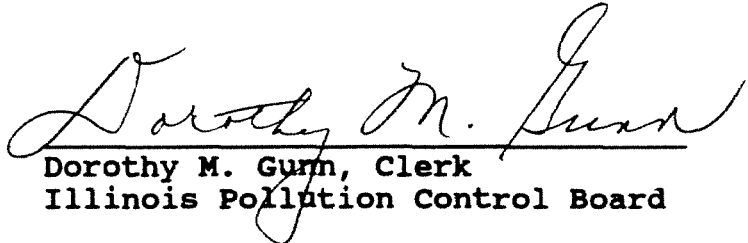
a) If THE AGENCY REFUSES TO GRANT OR GRANTS WITH CONDITIONS A PERMIT THE APPLICANT MAY, WITHIN 35 DAYS, PETITION FOR A HEARING BEFORE THE BOARD TO CONTEST THE DECISION OF THE AGENCY. (Section 40(a)(1) of the Act) The petition shall be filed, and the proceeding conducted, pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105.

~~b) Any Agency action to deny a permit or to grant a permit with conditions will not be deemed final for the purposes of appeal if the applicant has requested Agency reconsideration of that action prior to the filing of a petition pursuant to this Section.~~

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

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of October, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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