

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
April 9, 1992

IN THE MATTER OF:)
)
UTILITY INDUSTRY AMENDMENTS) R90-25
TO THE LANDFILL REGULATIONS) (Rulemaking)
(PARTS 810-816))

ORDER OF THE BOARD (by J. Anderson):

On January 27, 1992, the Board held the last in a series of five hearings in this matter. At that time, the participants were informed that there would be a 45 day comment period and that any comments were to be filed with the Board on or before March 12, 1992. On March 16, 1992, the Illinois Utility Group (Utility Group) filed a motion for an extension of time in which to file its comments. That motion was granted via a March 20, 1992 hearing officer order. On March 25, 1992, the Illinois Environmental Protection Agency (Agency) filed its comments in this matter. On March 26, 1992, the Utility Group filed a motion to dismiss.

In its motion to dismiss, the Utility Group requests the Board to dismiss the proceeding and states that it is withdrawing its regulatory proposal in its entirety. The Utility Group states that, subsequent to the January 27, 1992 hearing in this case, it met to discuss the status of the proceeding and future activities. The Utility Group determined that a more prudent course of action would be for those companies immediately affected by the Board's landfill regulations to seek regulatory relief via individual adjusted standard petitions. Specifically, Commonwealth Edison will be filing an adjusted standard petition for one of its facilities in the near future. The Agency, in its comments, states that it does not object to the Utility Group's motion.

Before acting on the motion to dismiss, we wish to express our concern over the supporting reasons given by the Utility Group, i. e. that: it "anticipated" that grant of category-specific relief for the utilities' landfills was "unlikely"; it "appeared" that the "Board was troubled" by the broad category relief, preferring adjusted standards instead; and "regulation of ash ponds, along with the alternative groundwater quality standards, continued to be problematic issues."

In granting the motion to dismiss, the Board emphasizes that its action should not be construed in any manner as implying agreement with the Utility Group's supporting reasons, which are essentially a speculative assessment of Board reaction. As the proponents surely know from past experience before the Board, it is the record that must support any Board decision, and that

record must be thorough enough for the Board to make an informed decision, as well as to withstand any appeal of that decision either by the proponent or another person. Close questioning to "flesh out" the record here was particularly important, for the reasons summarized below.

The records in this proceeding and in the regulatory proceeding in R88-7 (the new landfill regulations) show that the Utility Group shifted a number of times regarding not only the nature of the relief it was seeking, but also the category of facility it was including. The Board spent considerable resources essentially trying throughout the past sixteen months of this proceeding to discern what the Utility Group was proposing and to clarify what was the then-supporting justification.

In fact, in our June 7, 1990 second notice opinion in R88-7, the Board specifically noted that "the ground continues to shift regarding the industries' intent, timetable, and what they are requesting, including whether their proposal would cover existing landfills." (see Second Notice opinion (June 7, 1990) p. 5, 112 PCB 83; Second First Notice opinion (March 1, 1990) p. 38-40, 109 PCB 38-40). In the instant docket, the Utility Group's first proposal, which was filed on November 29, 1990, encompassed their new and existing ash landfills. On March 13, 1991, the Utility Group filed an amended proposal which covered their new and existing ash landfills and "utility NPDES permitted surface impoundments" upon closure.¹ Also included was a brief reference to preserving authority to sell or re-use the wastes. On June 10, 1991, the Utility Group filed a second amended proposal covering their new and existing ash landfills and their new and existing ash ponds. The re-use provisions were somewhat expanded. Finally, on October 11, 1991, the Utility Group filed a third amended proposal covering their new and existing ash landfills and their new, but not existing, ash ponds.² It was also in this last proposal that the Utility Group first introduced the concepts of re-use and recycling. The re-use provisions were fully detailed in this last proposal. We note that because of the Administrative Procedure Act's time limits and the substantive changes that were made to the proposal during

¹We note that the Utility Group made no specific distinction between new and existing surface impoundments. We also note that certain existing surface impoundments do not have any monitoring wells.

²Even though the Utility Group deleted existing utility ash ponds from its proposal, today's dismissal should not be construed as a determination that existing utility ash ponds do not become landfills upon closure.

the course of this proceeding, the proposal needed to go back to a second First Notice.

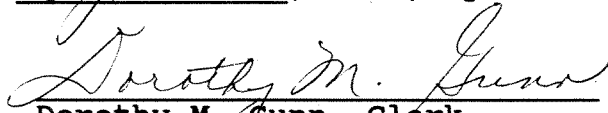
We wish to take note, moreover, of a comment that was made by the Agency. The Agency notes that, in light of the complexity of the subject matter, it will request an extension of the 30 day review period provided by 35 Ill. Adm. Code 106.714 if and when any adjusted standards are filed.

We suggest that the Agency's anticipated need for an extension beyond the 30 days may be avoided. The regulations anticipate that the proponent of the adjusted standard petition first submit its proposal to the Agency for pre-filing review so that the Agency can conduct an "up-front" review the proposal's merits and so that the Agency can determine whether it wishes to act as a co-competitor pursuant to 35 Ill. Adm. Code 106.704. (see In the Matter of: Petition of Keystone Steel and Wire Company for Hazardous Waste Delisting, (May 23, 1991), AS 91-1). Even if there should be disagreement, a review of the proposal and a 106.704 determination by the Agency at the outset will, in turn, allow for an expeditious proceeding before the Board and save the resources of the participants and the Board.

Accordingly, the Board hereby grants the Utility Group's motion to dismiss and closes the docket in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, hereby certify that the above order was adopted on the 9th day of April, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board