ILLINOIS POLLUTION CONTROL BOARD
May 18, 1984

IN THE MATTER OF:	)	
	)	
PERMIT AND INSPECTION FEES	)	R84-7
FOR HAZARDOUS WASTE DISPOSAL	)	
FACILITIES (FINAL RULE)	)	

PROPOSED RULE. SECOND NOTICE

SECOND PROPOSED OPINION OF THE BOARD (by J. Anderson):

This matter concerns a proposal by the Illinois Environmental Protection Agency (Agency) that the Board adopt a schedule of permit and inspection fees for hazardous waste disposal sites requiring a RCRA permit. The proposal was filed pursuant to Section 5(f) of the Environmental Protection Act (Act), as amended by P.A. 83-0938, otherwise known as S.B. 143, which became effective on December 12, 1983. The relevant portion is Sections 5(f) and 5(g), which are set forth below.

The Agency filed its proposal in 4 pieces in R84-1:

1. Recommended Schedule and First Statement of Reasons, January 3, 1984.

2. Second Statement of Reasons, January 11, 1984.

3. Proposed Codification and Third Statement of Reasons, January 23, 1984.

4. Amendment to Proposed Codification, January 23, 1984.

The Board conducted 3 public hearings, as follows:

1. Springfield, February 16, 1984;

2. Chicago, February 17, 1984;

3. Chicago, February 23, 1984.

During the course of the hearings and afterwards, the Board received written comments as follows:

PC 13 Standard Oil (Indiana), Ms. Melanie S. Toepfer, February 17, 1984

PC 14 Clayton Chemical Co., Mr. Dave Wieties, February 23, 1984

PC 15 Illinois Power Co. and Johns-Manville Sales Corp., Ms. Carolyn A. Lown, February 24, 1984

PC 16 Chemical Waste Management, Ms. Sheri K. Swibel, February 27, 1984

PC 17 Jones and Laughlin Steel Corp., Ms. J. M. Blundon, February 27, 1984

PC 18 Hydropoll, Inc., Dr. Rauf Piskin, February 29, 1984

PC 19 Allied Chemical, Mr. Richard L. Purgason, February 29, 1984.

On February 29, 1984, in order to comply with the time limit specified in Section 5(f) of the Act, the Board adopted 35 Ill. Adm. Code 718 as an emergency rule. At the same time the Board opened Docket Number R84-7, and proposed to adopt Part 718 as a permanent rule. On March 6, 1984 the Hearing Officer incorporated the entire record in R84-1 into R84-7, so that it became in essence a continuation of R84-1. The emergency rules were filed and became effective on March 13, 1984.

On March 21, 1984 the Board adopted a Final Opinion in R84-1 and Proposed Opinion in R84-7.

The proposed and emergency rules were published at 8 Ill. Reg. 3513 and 3786, March 23, 1984.

Additional public hearings were held as follows:

4. Chicago, March 29, 1984;

5. Springfield, April 9, 1984.

On April 4, 1984 an appeal of the emergency rules in R84-1 was filed in the Third District Appellate Court by Allied Chemical Co., Jones and Laughlin Steel Inc., Keystone Steel and Wire Co. and Northwestern Steel and Wire Co.

Following the public hearings the Board received the following additional written public comment:

PC 1 Illinois Environmental Protection Agency, Mr. Phillip Van Ness, April 2, 1984

PC 2 Cecos International, Mr. Ernest C. Neal, April 26, 1984

PC 3 Representative James McPike, April 27, 1984

PC 4 Illinois Environmental Protection Agency, Mr. Phillip R. Van Ness, April 27, 1984

PC 5 Chemical Waste Management, Inc., Ms. Sheri K. Swibel, April 27, 1984

PC 6 Jones & Laughlin Steel, Mr. P. N. Schlingman, April 30, 1984

PC 7 Illinois State Chamber of Commerce, Mr. Sidney M. Marder, April 27, 1984

PC 8 Illinois Power, Ms. Carolyn A. Lown, April 26, 1984

PC 9 Marathon Oil Co., et al., Mr. Andrew H. Perellis, April 27, 1984

PC 10 Velsicol Chemical Co., Mr. Jeff S. Brown, April 30, 1984

PC 11 Northern Petrochemical, Ms. Catherine Patriquen, March 29, 1984

PC 12 League of Women Voters, Ms. Jean Peterson, Ms. Judy Beck, Ms. Gretchen Monti, April 26, 1984

SUMMARY OF TESTIMONY AND COMMENTS

At the first hearing the Agency presented a single witness and exhibits in support of its proposal. At the third hearing it modified many of its figures, and presented the data on which the emergency rules were largely based. The Board received public testimony at all five hearings, all of which testimony opposed at least some aspects of the proposals. Included in the major criticisms were the following:

1. Whether the legislature intended the Agency to expand its inspection program, or merely to recover the costs of its existing program (R. 117), or whether the Board should specify the program size at all;

2. Whether the proposed inspection schedule was reasonable;

3. Whether the extent of federal grant funding was to be considered in determining the Agency's costs (R. 360, 574, 580, 592, 596);

4. Whether fees should be charged for actual or projected inspections;

5. Whether injection wells were to be included as "hazardous waste disposal facilities requiring a RCRA permit" (R. 93, 127, 247);

6. Whether the volume disposed of criterion was fair to injection wells which dispose of large volumes of dilute waste (R. 94);

7. Whether to reduce the number of inspections for facilities with good operating histories (R. 88, 111, 267);

8. Whether the fees should be payable on an annual or shorter basis (R. 73, 154, 415, 439, 452);

9. Whether permit fees could be charged for permits other than the actual RCRA permit (R. 403, 409, 415, 417, 432);

10. Whether to allow credits for shutdowns (R. 413, 426, 558);

11. Whether the Agency's overhead was properly accounted for;

12. Whether the criteria concerning the distances from the facility to wells or residences were fair to on-site facilities where the disposal activities are conducted on a small portion of the facility;

13. Whether to include start-up costs;

14. Whether to reduce first-year fees to allow for a phase-in of the program (R. 593).

15. Whether all of the fees should be payable on July 1, 1984.

SCOPE OF FEE REQUIREMENT

Section 5(f) requires the Board to adopt a schedule of reasonable permit and inspection fees for "hazardous waste disposal facilities requiring a RCRA permit". The Board has adopted a definition of "hazardous waste disposal facilities requiring a RCRA permit" which interprets Section 5(f) and determines the scope of the fee requirements. The definition of "hazardous waste disposal facility requiring a RCRA permit", found in Section 718.102, reads as follows:

a) A facility as defined in 35 Ill. Adm. Code 720,

b) Which requires a RCRA permit pursuant to Section 21(f) of the Act,

c) Which includes one of the following disposal units:

1) A landfill receiving hazardous waste; or

2) A waste pile or surface impoundment, receiving hazardous waste, in which waste residues are expected to remain after closure; or

3) A land treatment unit receiving hazardous waste; or,

4) A well injecting hazardous waste.

d) A facility in closure or post-closure care is specifically excluded from this definition.

This definition elaborates two important phrases in Section 5(f): "hazardous waste disposal facilities" and "requiring a RCRA permit". The former is broken into two portions: "facility" and "hazardous waste disposal". The Act includes no definition of "facility". However the term is defined in Section 720.110:

> "Facility" means all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments or combinations of them).

Under this definition a "facility" is an area of land which includes one or more treatment, storage or disposal units. It should be noted that, although the Act contains no definition of "facility", it defines "site" as a rough

equivalent of "facility" as defined above. In the definition of "site", "facility" is used in a manner implying that it is the equivalent of "treatment, storage or disposal unit" in the RCRA rules. It is thus arguable that the legislature meant "facility" to be the equivalent of "treatment, storage or disposal unit" in the RCRA rules. However, rather than drawing this inference, the Board concludes that the legislature intended "facility" to have the meaning given in the regulations implementing the RCRA permit requirement.

The Section 5(f) fees will apply to facilities which "require" a RCRA permit, regardless of whether the permit has actually been issued.

Section 3 of the Act includes a definition of "disposal" which relates to hazardous waste:

> "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Section 720.110 of the RCRA rules includes a similar definition:

> "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Section 720.110 goes on to define a "disposal facility":

> "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

Paragraph (c) of the definition deals with the element of "hazardous waste disposal" in Section 5(f) (R. 127, 156). The definition identifies four types of disposal unit which, if present on a facility, make the facility subject to the fee system.

If the facility includes a landfill receiving hazardous waste it is subject to the fee system. This is the simplest type of disposal which was obviously intended to be included in the program.

Surface impoundments and waste piles are included if they receive hazardous waste and if waste residues are expected to remain on closure. Note that it does not matter whether the residues would be hazardous (see Secs. 724.328 and 724.358). If the waste residues are to be removed periodically or at closure, the lagoon or pile is a treatment or storage unit which would not cause the facility to be subject to the fee system.

Land treatment units receiving hazardous waste are subject to the fee system as disposal units since waste residues will remain after closure (R. 340).

Injection wells are also regarded as disposal: hazardous waste is injected into a well so that the waste or derived products remain in the ground. Although the waste may be neutralized in the formation, there is no opportunity to examine it after this "treatment" prior to ultimate disposal; indeed, the injection is the ultimate disposal.

It should be noted that injection wells are not disposal units to which the RCRA permit requirement attaches; they are, rather, regulated by the UIC permit program. A facility with an injection well would not necessarily require a RCRA permit, in which case the fees would not be applicable under paragraph (b). On the other hand, if there were a hazardous waste treatment or storage unit, requiring a RCRA permit, on the facility, the fee program would apply even though the well itself did not require a RCRA permit (R. 121, 303, 306).

SIZE OF PROGRAM

At the public hearings following the first notice, a sharp split developed as to whether the authorizing legislation intended the Board to adopt fees to cover the costs of the present inspection program, or, on the other hand, to determine a reasonable level of inspections on which to base the fees. This question is linked to the question, first raised in the Dissenting Opinions of Board Members Dumelle and Meyer, as to whether the Board can indirectly dictate the size of the inspection program to the legislature which must actually appropriate the money from the permit and inspection fund.

It should be noted that the issues concerning the size of the program are limited to the fees intended to recover inspection costs: the size of the permit program is dictated by the statutes which require the permits. The permit fees have been based on the historical record and sound projections of the costs which will be incurred in issuing RCRA permits. Although these costs may change due to inflation, and the projected replacement of supplemental permits with waste-stream authorizations pursuant to Section 22.6 of the Act, these should be gradual changes which can be accomplished through rulemaking should fee revenues become significantly different from costs.

On the other hand, the level of inspection could conceivably vary from a single inspection per facility per year, as required by federal regulations, through 1095 inspections per facility per year, representing continuous inspection, three shifts per day, 365 days per year. The actual range of proposals suggested in this record vary by a factor of about 40 to 1. It is clearly necessary to know the inspection level to set a simple numerical fee which will result in revenues approximately equal to costs.

The Agency proposed a program which would generate sufficient revenue to provide 2444 inspections per year at the facilities thought to be subject to the proposal. There was no requirement that the Agency is literally bound to inspect at this level, although the Agency intended to develop a program that would reasonably reflect this level.

The Board proposed a program which would recover startup and overhead costs to purchase and maintain equipment sufficient to conduct 2444 inspections at these facilities. The Board proposed a fee to be billed for each actual inspection to recover the direct labor costs. This portion of the Board proposal could be recovered only to the extent that the legislature appropriated enough money from the permit and inspection fee fund to allow the inspections to actually take place. The Board proposal also included a cap on the number of inspections the Agency could bill, potentially restricting the legislature's ability to expand the program while recovering costs through the fees.

At the fourth hearing the Illinois State Chamber of Commerce presented a proposal which purported to raise sufficient revenue to recover the costs of the existing program. The aggregate revenue from the facilities thought to be subject to the program was about $171,000. This would provide sufficient revenue for around 350 inspections per year, back calculating from the Agency's proposal. These fees would be payable regardless of whether the Agency actually conducted the inspections.

The Chamber argued that the intent of S.B. 143 was that the Board immediately adopt fees to recover the costs of the existing program pursuant to Section 5(f), and to address any expansion of the program after an economic impact study pursuant to Section 5(g). The Agency disagreed, stating that the intent was an expanded program and that the Agency was to "hit the deck running".

Sections 5(f) and 5(g) of the Act, as amended by S.B. 143, provide as follows:

> (f) Not later than January 1, 1984, the Agency shall recommend a schedule of reasonable permit and inspection fees for hazardous waste disposal facilities requiring a RCRA permit under subsection (f) of Section 21 of this Act. Not later than March 1, 1984, the Board shall prescribe such a fee schedule. Such fees in the aggregate shall be sufficient to adequately cover all costs to the State for the Agency's permit and inspection activities applicable to hazardous waste disposal facilities requiring a RCRA permit. Section 27(b) of this Act shall not be applicable to rulemaking under this Section.
>
> (g) The Board may prescribe reasonable fees for permits required pursuant to this Act. Such fees in the aggregate may not exceed the total cost to the Agency for its inspection and permit systems.

These Sections include no explicit statement supporting the Chamber's contention; indeed, the principal division between the paragraphs appears to be quick, mandatory action on hazardous waste disposal facilities, to be followed by full rulemaking should the Board wish to impose fees for other types of permits and inspections.

The legislative history contains nothing suggesting the Chamber's two-phase approach to establishing the fee program for "hazardous waste disposal facilities requiring a RCRA permit". The legislative history is confusing in that S.B. 143 has a remarkable genesis from H.B. 1108 and H.B. 1257. There are at least two passages in the record of H.B. 1108 which suggest that the emergency that the sponsors of the predecessors to S.B. 143 were addressing was the lack of availability of money for an adequate inspection program rather than the lack of money to sustain the existing program:

> The amendment now becomes the Bill and what the Bill does now because of all the publicity and lawsuit, etc. that was filed by our Attorney General on the

> waste management site there in my district in Calumet City...we started out with a bill that wasn't palatable and one of the prime reasons for the first section is to require the Pollution Board to prescribe scheduled and reasonable permit and inspection fees for hazardous waste disposal facilities.
>
> When we had the hearings in Calumet City, we couldn't pin the EPA down as to how many times they came out and inspected the hazardous wastes that were coming in. The records were really not too clear, so what we tried to do was come in with some permanent inspections, for this stuff coming in, which will put industry on notice that they can't ship anything illegal to a landfill that accepts their landfill plus it would monitor everything coming in by the inspector and in order to do that EPA said we need some, some, teeth and we need some money. So this bill now, the way it is, is going to permit the EPA Control Board to determine how many inspectors, how they can tighten it up, and provide the inspection fees that they will get from the landfill owners to conduct the necessary inspections to make it safe. (Rep. Giglio, House Committee on Energy, Environment and Natural Resources hearing on H.B. 1108, May 6, 1983; Exhibit 26.)
>
> What it says is that the Board will impose, has to impose, inspection fees on landfill disposal sites. We're all aware that there are problems out there. The inspection system is not working adequately to enforce restrictions on the disposal of hazardous waste. This will ensure that there's the money available in the Agency to do the job. (Rep. Currie, debate on H.B. 1108, May 26, 1983; Exhibit 8.)

There is a single statement on H.B. 1108 which could be construed as indicating the contrary intent:

> The intent is to allow the Board to adopt the regional fees that apply only to the actual cost. We don't intend for the Illinois Environmental Protection Agencies to expand their bureaucracy by the industrial fees. (Rep. Giglio, Debate on H.B. 1108, May 26, 1983; Exhibit 8.)

One problem with construing this to require funding of only the existing inspection levels is that the statement was addressing the entire bill, rather than just a provision for emergency fees. An equally likely interpretation is that Rep. Giglio was addressing the limitation to "actual cost".

The Board concludes that both the plain meaning of Sections 5(f) and 5(g) of the Act and the legislative history suggest that the inspection fee program is not to be limited by the existing program, but that the legislature intended the Board to act quickly to provide fees which would recover the costs of a reasonable level of inspections at hazardous waste facilities. This still leaves unanswered the question of whether the Board should set a fee system to recover the costs of a certain level of inspections on the assumption that the legislature will appropriate money from the fund to support that level of inspections. There is no indication that the legislature had any such intention to delegate its appropriation discretion. Sec. 22.21 of the Act clearly states that expenditures in the permit and inspection fund are subject to legislative appropriation, rather than being a revolving fund.

The Agency's proposal recovers the costs of a program of 2444 inspections per year, while the Chamber's proposal recovers for about 350 inspections. Neither of these proposals would recover revenues approximately equal to inspection costs unless the legislature appropriated money to support a program approximately equal to the level the program assumes. If the Agency's proposal were adopted, but the legislature appropriated only enough to support the existing program, a substantial surplus would result in the fund. If the Chamber's proposal were adopted, the legislature would have to appropriate from general revenue if it wished to expand the program. In either case the fee would fail to meet the statutory mandate to recover "all costs" (Section 5(f)).

The first notice proposal, with its inspection fee charged on the basis of actual inspections, would provide for some adjustment in revenue to match changes in program level dictated by the appropriation process. However, the startup and overhead costs are fixed at a level to recover the costs of a 2444 inspection program. The first notice proposal would fail to generate revenue approximately equal to costs if the legislative appropriation fluctuated significantly from the 2444 inspections program, or any program level for that matter. In an effort to respond to fluctuations in appropriations, the Board could be in continual rulemaking following each legislative session in order to match fees to the appropriations. And, under the full and lengthy Sec. 5(g) rulemaking procedures, the rule might not be filed in time for the Agency to utilize the funds appropriated in that fiscal year.

An obvious remedy would be to devise a per inspection fee which included the overhead, and possibly the startup, costs. Exhibit 27 illustrates this approach. The legislature would control the program size by appropriating money for personnel and equipment requested by the Agency in its budget. The Agency's budget proposal would indicate the size of the inspection program the Agency thought was appropriate for the coming year, and detail the costs anticipated in carrying out the program. The budget would also project the revenue anticipated from the program. The year's inspection program would be finalized in the appropriation process. The Agency would recover costs by deploying the personnel and equipment and billing for actual inspections conducted.

One problem with this approach is that certain overhead items must be purchased in large pieces: lab equipment and personnel. This fee approach would recover the costs of fractional equipment and workers at certain program levels. This could throw the cost and revenue out of balance, since these items must be purchased in whole units.

Another problem is that the Agency objects to billing on a per inspection basis. The administrative costs claimed by the Agency would be a significant fraction of the projected revenue.

A totally different approach is illustrated in Exhibit 28. The Board has proposed for second notice a modified version of Exhibit 28.

Section 718.321 sets relative inspection fees to be billed by the Agency. The relative fee table is based on the relative expected cost of inspections at facilities of each surveillance level. The Agency proposed to conduct 260, 52 and 26 inspections per year at the three surveillance levels, respectively. This is a relative ratio of 10 to 2 to 1. The relative costs of inspections at each facility in each surveillance level is roughly the same as the relative frequency of inspections. The ratio of 15 to 2.5 to 1 reflects greater time projected to be spent at higher surveillance level sites.

Section 718.321 and Appendix A provide a methodology whereby the Agency computes a fee for each site, based on its appropriation and the number of facilities in each surveillance level as of the beginning of the year. The resulting fees show the ratios specified in the Board rule, and are at a level which recovers the state costs, assuming the number and distribution of facilities will not change.

Each year the Agency's budget proposal would reflect the personnel and equipment to conduct the fee supported inspections at the level it feels is appropriate. After legislative review and completion of the appropriation process, the Agency will compute the fees based on the number and distribution of facilities as of July 1. The Agency will send out bills showing the computation of the fees and the quarterly payments expected from the facility. The fees will be payable quarterly as specified by the Agency, but in no event less than 30 days after the bill is sent.

The methodology allows the legislature to estimate the effect of its appropriations on both the level of fees and the size of the program. Costs and revenues in the appropriation will be based on projections available when the budget is proposed. These, of course, may change during the fiscal year. Facilities may be added to or dropped from the fee-supported program, or as they change surveillance level. Section 718.321(c) prohibits recalculation of the fees for other facilities in the program when these happen during the fiscal year. Such recalculation would be administratively costly and would make the fees too variable for the subject facilities to plan, since a change to one facility would change everybody's fees. The limitation on adjustments could result in a surplus or shortfall of revenue which may require legislative action through a supplemental appropriation if it is serious enough.

RELATIVE RATIO

Section 718.321 specifies the relative fees to be charged facilities of each surveillance level. These ratios are drawn from the Agency's proposal as developed at the first three hearings and summarized in Exhibit 13. Although the ratios are derived from a proposal to establish a certain program level, they in no way fix the program level.

There are several ratios which could be used to determine the relative ratios. These are:

1. The number of inspections;

2. Travel time;

3. Number of samples;

4. Field labor hours used in actual inspections.

The simplest ratio is the number of inspections at each surveillance level. The Agency proposed to inspect the three surveillance levels at an annual rate of 260, 52 and 26 inspections. This produces a ratio of 10:2:1. The first notice proposal allocated the inspection overhead costs and startup costs according to this ratio. The Agency's calculations in Exhibit 13 did so also.

The equipment purchase and overhead costs are mostly for vehicles and lab equipment and personnel. Vehicles could be allocated according to travel time, and lab equipment and personnel according to sampling effort. The Agency's proposal assumed that travel time would be the same for all sites and that sampling would be proportional to the number of inspections. With these assumptions the vehicle and lab costs are forced to the 10:2:1 ratio. It is quite possible, however, that both would tend to follow field labor hours in actual practice: the inspectors would tend to drive the vehicles around the sites, and would tend to take more samples if they were at a site for a longer time.

The field labor hours depart from the ratio of inspections because the Agency proposes to spend more time per inspection at the higher surveillance level sites, and to spend more time on paperwork at these sites. The direct field hours per inspection proposed by the Agency are 12 hours per inspection at "continuous" sites, 10 hours at "intensive" and 8 hours at "routine" sites. Multiplying by 260, 52 and 26 inspections per year yields 3120, 520 and 208 field hours per year at facilities of the three surveillance levels. This is a ratio of 15:2.5:1.

To summarize, it appears that equipment costs may be best allocated according to the relative ratio of inspections, or 10:2:1, while field labor costs may be best allocated according to the ratio of 15:2.5:1. To determine the overall ratio of the program one needs to assume an actual dollar amount for labor costs, and to assume an actual inspection level from which to develop total labor and equipment needs. However, this is what the Board has determined to leave to control through the appropriation process.

The 2444 inspection program outlined in the First Notice Order and Exhibit 13 allocated inspection, overhead and start up costs costs to the three surveillance levels as follows: $133,400, $23,960 and $10,940. This is a ratio of about 12.2:2.2:1. This is the largest program suggested in this record.

On the other hand, a program equal to the existing program would require only minimal equipment costs, since the equipment already exists to inspect at this level. The cost would be largely the field labor costs of conducting the inspections. Such a program should exhibit a ratio of 15:2.5:1.

The ratios of costs of intermediate sized programs should lie between these extreme examples.

Appendix A to the Order shows the computation of fees for a $500,000 annual program, based on the 15:2.5:1 ratio, assuming the distribution of facilities indicated by the record. The following table compares the annual fees to those from the same sized program with a 12.2:2.2:1 ratio:

Surveillance Level	15:2.5:1	12.2:2.2:1
5	$54,800	$54,100
3	9,100	9,800
1	3,600	4,400

The fees for each surveillance level change by only $700 or $800 per year at this program level over the range of possible ratios. This is probably a lot less than the uncertainty involved in estimating the Agency's actual costs which will be attributable to these sites.

The Board has decided to base the relative ratios on the field labor hour ratio of 15:2.5:1. This is a simple number to derive from the relative number of inspections and the direct field hours at each surveillance level. It is the best approximation for a small program. At higher program levels actual equipment costs may tend to follow this ratio instead of the number of inspections.

TYPES OF COSTS TO BE RECOVERED

Section 5(f) of the Act provides in part:

> Such fees in the aggregate shall be sufficient to adequately cover all costs to the State for the Agency's permit and inspection activities applicable to hazardous waste disposal facilities requiring a RCRA permit.

The Board construes the phrase "hazardous waste disposal facilities requiring a RCRA permit" to mean the same thing as in the first sentence of Section 5(f), which phrase has been discussed at length above. The Board construes the

sentence above to require recovery of all costs for permit and inspection activities applicable to such facilities, not just costs for RCRA permits or inspection of the hazardous waste disposal activities. This is what the letter of the statute says, and the Board sees no reason to depart from the plain meaning.

The Agency has presented cost data only for waste permits and waste inspections at the subject facilities. It seems consistent with the statutory intent to limit cost recovery to waste permits and inspections, as opposed to permits issued by, and inspections carried out by, other Agency Divisions such as Air. The Board has noted this limitation in the introductory language to Subparts B and C.

The Board also construes Section 5(f) as allowing recovery only of routine "preventive maintenance" inspections which can be planned and budgeted. Costs of extra inspections related to an investigation in anticipation of an enforcement action or in response to an accident or spill have not been allowed in the projections, and should be taken from general revenue rather than being controlled by the size of the permit and inspection fee fund. The Agency may however address complaints and accidents in the course of routine inspections. The Board also notes that the fees are not lowered for "good" site management, but rather are based on the level of risk as determined by the criteria. Good site management is expected. And, while a good self-monitoring program is obviously beneficial for all concerned, it is an adjunct to, not a substitute for, a good inspection program.

The Board does not construe Section 5(f) as necessarily requiring the recovery of start-up costs. However, the fee system will recover these costs to the extent the Legislature appropriates for them from the permit and inspection fee fund.

The Board expects the Agency to maintain detailed records of its fee supported activities. These rules may require adjustments if costs prove to be significantly out of line with revenues from the fees.

The Proposed Opinion of March 21, 1984 in R84-7 is withdrawn. Because of their length, the Second Proposed Opinion and Order will not be published in the Opinion volumes, but will be distributed to participants. The final Opinion and Order will be published. This Second Proposed Opinion supports the Board's Proposed Rule, Second Notice Order of this same date. This Second Proposed Opinion is limited because of time constraints in adopting a final rule to replace the emergency rules by July 1, 1984. A more complete Opinion will be adopted supporting the Final Order, Adopted Rules.

IT IS SO ORDERED.

Board Members J.D. Dumelle and J.T. Meyer concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 16th day of May, 1984 by a vote of 6-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board