

ILLINOIS POLLUTION CONTROL BOARD
February 29, 1984

IN THE MATTER OF:)
)
PERMIT AND INSPECTION FEES) R84-1

DISSENTING OPINION (by J. D. Dumelle):

The Emergency Rule enacted by the Board majority today is of doubtful legality, serves no purpose, is much too complex, does not follow the statute, and will, if finally enacted in R84-7, generate a great many needless appeals.

Emergency rules may only be enacted if the "public interest, welfare or safety is threatened." Since the fees to be paid are not to become effective until July 1, 1984 and since a permanent rule is expected by June 15, 1984 there is no reason now for an Emergency Rule.

The argument that the Legislature's setting of March 1, 1984 for the Board's action on this matter somehow negates the plain language quoted above is wrong. There is, in fact, no "emergency" as one usually defines the word.

Today's Order thus serves no purpose. It cannot "guide the Legislature" in its appropriation process because it is a temporary rule that expires on July 28 (150 days from today). The Board, I am certain, is not prejudging R84-7. What then is the purpose of today's enactment?

The adopted rule is much too complex. It has levels of surveillance determined by a subjective point system. It has four different fee schedules. I would have much preferred a single lump sum fee for each of the three categories as much more understandable and easier to administer. And to propose to add inflation factors into the future will only make it even more complex. Will the Board also adjust these fees as the cost of "moonsuits" varies?

That portion of the rule that provides for billing of actual inspections performed is a precedent for all future inspection fee rules. If, in the future, the Board sets fees for air and water and water supply inspections then those too will have to be on a billing basis for actual inspections performed. The administrative burden to the IEPA will be a major one to record and bill and collect.

The statute requires that the fees return the State's cost. The Division of Land Pollution Control is now 75% funded by Federal funds. I would have used the IEPA costs given and reduced them by 75% to allow for this. To assert that this hazardous waste inspection program is a new one (in fact, it is ongoing) and to be 100% State-funded is an exercise in "voodoo bookkeeping". Any other program within the Division could equally well have been excluded from Federal funding.

If this rule becomes final in its present form in R84-7 it will generate a great many needless appeals. Was the inspection in fact performed? Was the inspection of too short duration? Why do not two private wells near a landfill count as much in the ranking system as a single private well and a public water supply? Why should neutralization (a chemical treatment process) and landfilling on the same site require an increased number of inspections?

The rule, as enacted, would impose fees in the highest categories as follows: off-site disposal, \$153,400; on-site disposal, \$138,200; underground injection, \$141,800.

To me the greatest need is to thoroughly check off-site disposal sites. Manifests and cargoes and barrels should be checked intensively. A daily inspection is needed. Using appropriate costs to the State (the 25% factor) I would have set an annual fee of about \$20,000.

On-site disposal involves generally the same wastes year-in and year-out unless a product line changes. A weekly inspection should be sufficient and a fee of about \$8,000 is recommended.

Lastly, underground injection needs little inspection and a monthly frequency seems adequate. A fee of about \$6,000 is recommended.

For these reasons, I dissent.



 Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 1st day of March, 1984.



 Christan L. Moffett, Clerk
 Illinois Pollution Control Board