

ILLINOIS POLLUTION CONTROL BOARD
December 24, 1980

In The Matter Of:)
Hazardous Hospital Wastes,) R80-19
Sections 3(jj) and 21(h) of the)
Environmental Protection Act,)

EMERGENCY RULE.

OPINION OF THE BOARD (by J. Anderson):

Section 21(h)(formerly g) of the Environmental Protection Act (Act), P.A. 81-1186 (H.B. 1919), was signed by the Governor on November 29, 1979. It states that no person shall:

"Deposit any hazardous hospital waste in any landfill on or after January 1, 1981. All such waste shall be properly incinerated or processed by an alternative method pursuant to regulations adopted by the Board. This requirement shall take effect January 1, 1981."

As no draft rules to implement this legislation had been submitted to the Board, on October 2, 1980 the Board on its own motion authorized the scheduling of inquiry hearings. Two such inquiry hearings were held, the first in Springfield on November 14 and the second in Chicago on November 17. The emergency rules adopted by the Board on December 18, 1980 were based on information generated during these hearings and written comments* received pursuant to the hearings.

At the outset, the Board notes that Section 21(h) [with supporting definitional Section 3(jj)], is itself equivalent to a prohibitory rule, complete with compliance deadlines, and itself precisely specifies the results to be reached. During the course of its inquiry hearings, the Board discovered that there was confusion as to the proper interpretation of this legislative mandate, particularly as it relates to other state and federal legislation and regulations. While the Board would usually not write an extensive, advisory Opinion in support of adoption of an emergency

*Written comments were received from the Rockford School of Medicine (PC 1), Abraham Lincoln Memorial Hospital (PC 2), Illinois Hospital Association (PC 3), South Suburban Hospital (PC 4), Illinois Department of Public Health (PC 5), Single Service Institute (PC 6), the Illinois State Medical Society (PC 7), and Representative Virginia B. Macdonald (PC 8).

rule, the Board is doing so today for two reasons: 1) to provide immediate guidance to the generators and disposers of hazardous hospital waste, and 2) to provide the needed focus for hearings to be scheduled and held for the purpose of developing permanent rules.

Rule 901 DEFINITIONS

As both the testimony at hearing and the public comments received indicate, the very definition of "hazardous hospital waste" has generated substantial apprehension and confusion, as it is susceptible of an interpretation which could include all waste generated by any provider of medical care to humans or animals in any facility. Participants in the Board's hearings have also indicated, by the definitions that they have suggested to the Board, that they believe that "hazardous hospital waste" pursuant to Section 21(h) and 3(jj) of the Act may mean the same thing as the as yet federally undefined "infectious waste" under the Resource Recovery and Conservation Act (RCRA), and Section 22.2 and 3(g) of the Act.*

*The United States Environmental Protection Agency has not promulgated regulations to implement §§3001, 3002, and 3004 of the Resource Conservation and Recovery Act of 1976, 42 USC §§6901-6987 (RCRA). RCRA, in §1003(5), includes as a hazardous waste any waste whose infectious characteristics may--

- (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
- (B) pose a substantial present or potential danger to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (42 USC §6921(a)).

Section 3(g) of the Act also defines hazardous waste in these terms, and directly references RCRA and RCRA regulations. Section 22.2 of the Act (otherwise known as H.B. 453, P.A. 81-0856 signed September 21, 1979) created a "Hazardous Waste Fund" and a system of collecting fees from owners or operators of hazardous waste disposal sites for hazardous wastes received. To implement this legislation, on September 5, 1980 the Illinois Environmental Protection Agency (Agency) adopted final "Criteria for Identification of Hazardous Wastes." 4 Ill. Reg. 125-137. Section 3.4 as defines "infectious waste" as:

"Any pathological specimens and any articles attendant thereto that may be disposed of from humans and animals known to be contaminated with organisms that may produce communicable diseases which must be reported to the Illinois Department of Public Health. Pathological specimens shall include all solid tissue, excreta, and secretions (followed by reportable disease list).
Id. at 133-134.

Thus, at hearing, and in the comment submitted by the Illinois Hospital Association (IHA)(PC 3), it was suggested that the Board should adopt the Agency's Section 22.2 "infectious waste" definition as a definition for "infectious agent" under Section 21(g).

The Illinois Department of Public Health (IDPH), on the other hand, submitted a definition, which it would like to see federally adopted, of "Pathogenic (Hazardous) Waste" which includes but is not limited to pathogens of disease it lists as reportable (Ex. 1, 1A). The testimony of the Environmental Protection Agency (Agency), while somewhat confusing, indicates that it favors adoption of its §22.2 infectious waste definition. The Agency further noted that upon federal adoption of RCRA regulations, its definition of infectious waste, as well as any such definition adopted by the Board, would require revision to bring it into conformity with the federal definition.

As a matter of statutory construction, the Board rejects the contention that the legislature intended that "hazardous hospital waste" be given the same meaning as "infectious waste." This is clear from the histories of H.B. 1919 [Sec. 21(h)], and of H.B. 453 (Sec. 22.2), which were introduced and passed during the same legislative session.

H.B. 1919, as originally introduced by sponsor Representative Virginia Macdonald, referred to raw infectious waste or hospital waste. At a tape-recorded but untranscribed meeting held April 27, 1979 by the Environment, Energy and Natural Resources Committee, Representative Macdonald explained that certain of the red or orange bags in which hospitals place infectious waste had been found floating in the Peoria River. The purpose of the bill was to prevent such occurrences by providing that such waste be incinerated or sterilized, rather than deposited in a landfill. It was further stated that the bill was not intended to "copy" federal regulations, or to control disposal of animal wastes.

At the bill's second House reading on May 10, 1979, Representative Macdonald offered House Amendment No. 1, redefining the waste as "hazardous hospital waste." She stated that the purpose of the amendment was to "tighten up" the "broad definition" included in the original bill. At third reading, the sponsor explicitly stated that "House Bill 1919 standardizes the disposal and waste of hospitals. "...[it] describes hazardous hospital waste and it also mandates that they must be burned at very high temperatures or else disposed of in a manner which has been promulgated by sterilization that will be promulgated by the Pollution Control Board (sic)" (Transcript of Ill. House of Representatives Floor Debates; May 10, 1979, p. 11-12, May 15, 1979, p. 226-228). In a letter to the Board dated December 18, 1980 (PC 8), Representative Macdonald again stated "it must be clearly understood that House Bill 1919 addressed itself only to hospitals."

H.B. 453, which directly references RCRA and regulations promulgated thereunder and establishes a fee system to be paid by hazardous waste site operators, passed both Houses June 28, 1979 (Legislative Synopsis and Digest of the 1979 Session of the 81st General Assembly of the State of Illinois, Volume II, No. 23, 1330-1334, 2277-2278). The Board therefore concludes that, since both bills were under simultaneous scrutiny, that it was intended that H.B. 1919 was intended to create special disposal requirements for only a limited sub-group of the universe of the "infectious waste" encompassed by H.B. 453.

"Hospital" Giving the words of definitional Section 3(jj) their natural meaning, the Board finds that the landfill prohibition applies to the wastes generated by institutions of the type defined as "hospitals," in Ill. Rev. Stat. Ch. 111½, §144, the Hospital Licensing Act. The Board's definition does not incorporate the statutory exclusion of federal and state government maintained hospitals, as this relates only to licensing jurisdiction and not to source of waste generated. This definition excludes facilities such as nursing homes, the offices of medical care providers, funeral homes, veterinary hospitals and other generators of infectious wastes.

"Contaminated or may be contaminated with an infectious agent capable of causing an infection" The Board has substantially adopted the IDPH definition of "infectious agent," which includes but is not limited to agents of reportable diseases. The Board has not accepted the Agency limitation, because, in our admittedly limited study, it appears that the recommended "best hospital practice" is to take special precautions with waste generated by patients suffering from diseases other than those on the reportable list. (Compare Ex. 2, Agency definition of "infectious waste," 4 Ill. Reg. 133-134, with Ex. 1B, Isolation Techniques For Use In Hospitals, App. II "Diseases Listed Alphabetically With Type And Duration Of Isolation Or Precaution," U.S. Dept. of H.E.W., Public Health Service, Center for Disease Control, 2d ed. 1975.) Where it is established hospital procedure to isolate "unlisted" wastes for the protection of its patients and staff, such wastes should continue to be segregated and not reintroduced into the general hospital waste stream.

The "contaminated with or may be contaminated with" language could embrace all hospital waste, including the facial tissue used by the skier suffering from both the common cold and a broken leg. This interpretation would create an arbitrary and capricious result.

This language should be construed in light of the realities of hospital practice. When, for instance, a patient suffering from serious, infected burns is placed in strict isolation, both the "contaminated" dressings, and other patient wastes and contact items which "may be contaminated" are segregated and receive special handling.

Construing the phrase as a whole, then, the Board believes that "hazardous hospital waste" is that waste which receives and/or is recommended to receive special handling because it has been generated in connection with care of a patient suffering from a disease requiring use of isolation procedures (i.e. strict and respiratory isolation, or enteric, wound and skin, discharge, and blood precautions--see generally Ex. 2). Based on the statements at hearing of IDPH and hospital representatives, the Board believes that such an interpretation, reflecting standard hospital procedure, will be understandable, workable, and will adequately protect the public health and interest.

"Innocuous" and "Normal" Hospital Waste "Normal" hospital waste has been defined as suggested by IDPH. The definition of "innocuous" waste has been included to identify waste which may be deposited in a landfill.

Rule 902 DISPOSAL METHODS

The IHA argued that Section 21(h)'s prohibition of deposit of hazardous hospital waste in "any landfill" should be read as "any landfill other than a hazardous waste landfill" (R.19-20). The Board cannot accept this strained interpretation of clear language, and provides that such waste must either be incinerated, sterilized, or, where lawful, deposited into a sewerage system (e.g. blood or urine samples).

The Board acknowledges that it has received considerable testimony concerning the cost to hospitals of eliminating the option of landfill disposal of wastes, and has received comment from manufacturers of disposable patient care items whose business would be curtailed (R. 131-185, Ex. 4, PC 6). The IDPH and IHA have presented their opinions and have referenced those of other organizations and individuals that contaminated hospital wastes may be safely disposed of in landfills if double-bagged at the source and not compacted, although there was little specific comment about methods of protection of the bags before pickup and during transport to a landfill.

These arguments would be relevant if this were a proceeding before the Board pursuant to Section 22(h) to determine whether land burial of this waste should be prohibited, taking into account the technical feasibility, economic reasonableness, and environmental soundness of the disposal options. In this case the legislature has itself made the determination and established the prohibition. Arguments concerning the economics and feasibility must therefore be made, if at all, to the legislature, and not to the Board in subsequent hearings. The Board does, however, request testimony concerning the nature of and extent to which hospital wastes are disposed of in sanitary sewer systems.

Rule 903 RENDERING WASTE INNOCUOUS

The Board has adopted the IDPH's proposals concerning methods for sterilization by heat. However, this record does not contain enough information for the Board to adopt a rule concerning chemical sterilization, particularly since objection to the looseness of the proposed rule was raised at hearing. The Board will therefore invite testimony concerning the question of chemical or other means of sterilization at hearings to be scheduled.

Rule 904 INCINERATOR PERMIT ISSUANCERule 905 AGENCY CRITERIA

The language of these rules is drawn from Rules 501 and 502 of Chapter 4, and was subject to public comment during the course of that regulatory proceeding (cite). While the Agency currently classifies incinerators as to type of materials which may be incinerated, it would seem that pathological incinerators, for instance, are not currently certified as capable of producing ashes which are bacteriologically innocuous (R. 230). It is not the intent of the Board to prohibit the use of existing incinerators while permanent rules and criteria are being developed, but rather to insure that new incinerators have this capability before use, and that existing incinerators are properly permitted as promptly as possible. Accordingly, permits which have been issued pursuant to Chapter 2 shall be deemed permits issued pursuant to Chapter 9, Part IX, until a permanent rule is promulgated to replace the emergency rule.

Rule 906 RECORDKEEPING

As it remains an open question as to whether the generator as well as the ultimate disposer of hazardous hospital waste is liable for its improper disposal, the Board is adopting limited recordkeeping requirements for the protection of the generator as well as the disposer (see Rule 906). The intent of the Board is to keep recordkeeping as simple as possible; therefore records of these tests and sterilization activities need not be submitted to the Agency, but must instead be available for inspection.

Rule 907 DEFENSE TO ENFORCEMENT ACTION

The purpose of this rule is to provide legal protection to a non-generator (e.g. landfill operator or waste hauler) who in good faith accepts "innocuous" hospital wastes, which are later proven to be hazardous hospital wastes.

RELATION TO OTHER LEGISLATION AND REGULATIONS

At hearing, several questions were raised as to the relation of Section 21(h) to various other Board rules. In order to avoid confusion, the Board will address some of these issues.

It is the Board's opinion that Hazardous Hospital Waste, a special waste, is subject to the supplemental permit, and manifest requirements if transported off-site for sterilization or incineration. Also, such hazardous hospital waste received by the owner or operator of a hazardous waste disposal site is subject to the disposal fee system of \$22.2. Assuming, of course, that no other special waste component is present, if a hazardous hospital waste is properly sterilized on-site, the resulting innocuous waste is no longer a special waste, subject to special waste requirements or a fee since it no longer poses a "potential threat to human health or to the environment." The ashes from on site incinerated hazardous hospital waste are to be treated as a special "industrial process waste."

For all of the reasons previously stated, and to avoid a public health emergency occasioned by possible refusal of landfill operators to accept certain medical care wastes, the Board has adopted emergency Part IX to Chapter 9: Special Waste. Part IX will become effective January 1, 1981 and is being filed with the Secretary of State as provided by Rule 5.01 of the Secretary of State's Rules on Rules and Section 5(a) of the Illinois Administrative Procedures Act [Ill. Rev. Stat. 1979, Ch. 127, Section 1005(b)].

The Board will retain jurisdiction in this matter.

Mr. Werner concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 24th day of December 1980, by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board