

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2009

IN THE MATTER OF:)
FINANCIAL ASSURANCE) R10-09
INSTRUMENTS—RENEWAL AND) (Rulemaking - Land)
TERMS: AMENDMENTS TO 35 ILL.)
ADM. CODE 807.SUBPART F, 810.104, and)
811.SUBPART G)

ORDER OF THE BOARD (by G.T. Girard):

SUMMARY OF TODAY’S ACTION

The Illinois Environmental Protection Agency (Agency) filed a proposal for statewide general rulemaking before the Board on July 27, 2009. This order accepts that proposal for hearing and grants the Agency leave to file fewer than four copies of each document proposed for incorporation by reference.

The Agency has requested that the Board update specific segments of the Illinois non-hazardous waste landfill regulations. The segments relate to financial assurance. The Agency wants the Board to update them to more nearly correspond with hazardous waste financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C (42 U.S.C. 6921 *et seq.* (2007)) hazardous waste regulations. The subject matter of the Agency proposal is briefly described below.

Accompanying the Agency proposal were two motions: (1) a motion requesting that the Board accept the proposal for hearing; and (2) a motion for leave to file fewer than four copies of documents that Agency would have the Board incorporate by reference. By accepting this matter for hearing, the Board grants the first Agency motion. A description of the Agency’s second motion follows the brief description of the Agency’s proposal.

The Board grants the Agency’s first motion and directs the hearing officer to proceed to hearing in this matter in as expeditious a manner as Board scheduling and resource constraints will allow. The Agency’s second motion is discussed below, after a brief description of the Agency’s proposal.

BRIEF DESCRIPTION OF THE AGENCY’S PROPOSAL

The Agency requests that the Board update various non-hazardous waste regulations. Of concern are the financial assurance requirements in two bodies of the Illinois solid waste regulations: 35 Ill. Adm. Code 807. Subpart F and 35 Ill. Adm. Code 810.Subpart G. The Agency states that the purpose of the amendments is to achieve greater consistency among the various land-related financial assurance requirements in the Illinois regulations. The Agency

points to the financial assurance requirements in the hazardous waste treatment, storage, and disposal facility standards at 35 Ill. Adm. Code 724.Subpart H and 725.Subpart H (derived from 40 C.F.R. 724, subpart H and 725, subpart H); in the underground injection well standards at 35 Ill. Adm. Code 704.Subpart G (derived from 40 C.F.R. 144.Subpart G); and in the used and waste tire management facility standards at 35 Ill. Adm. Code 848.Subpart D (no federal counterpart).

Specifically, the Agency proposal discusses two of the amendments that it seeks. The Agency wants the Board to modify the required language for letters of credit (35 Ill. Adm. Code 807.Appendix A, Illustration E and 810.Appendix A, Illustration E) to incorporate “evergreen renewal language” (*see* Agency proposal at p. 3) as is included in the more recently adopted financial assurance requirements. *See* 35 Ill. Adm. Code 704.240, 724.251, and 725.251 (2008) (each incorporating federal requirements by reference); 35 Ill. Adm. Code 848.Appendix A, Illustration C (2008) (setting forth the required language); *see also* 40 C.F.R. 144.70(d) and 264.151(d) and (k) (2008) (setting forth the federal wording of letters of credit). Such language would generally allow the Agency to draw on the letter of credit unless the facility owner or operator has timely either gained renewal of the letter of credit for another term or provided substitute financial assurance to the Agency. Agency proposal at pp. 3-4.

The Agency further wants the Board to change the term of the letter of credit to be consistent with the more recently adopted financial assurance requirements. Agency proposal at pp. 2-3. The current term required in the non-hazardous solid waste rules is four or five years, depending on the body of regulations involved. 35 Ill. Adm. Code 807.662(g)(1) and 811.714(g)(1). The more recently adopted regulations include a one-year minimum term for letters of credit. *See* 35 Ill. Adm. Code 704.217(e), 724.243(d)(5), 724.245(d)(5), and 725.251 (2008) (each incorporating federal requirements by reference); 35 Ill. Adm. Code 848.Appendix A, Illustration C (2008); *see also* 35 Ill. Adm. Code 724.243(h)(3) and 725.243(h)(3) (2008) (incorporating the federal wording for letters of credit for liability coverage); 40 C.F.R. 264.151(k) (2008) (setting forth the federal language for letters of credit for liability coverage).

AGENCY’S MOTION TO FILE FEWER THAN FOUR COPIES OF DOCUMENTS REQUESTED FOR INCORPORATION BY REFERENCE

Accompanying the Agency’s proposal was a “Motion Regarding Incorporations by Reference.” By this motion, the Agency requests leave to file fewer than four copies of each document that it wishes the Board to incorporate by reference in this proceeding. The two documents are financial accounting standards: (1) a two-volume publication of The American Institute of Certified Public Accountants (AICPA), entitled “AICPA Professional Standards” (June 1, 2008); and (2) the two-volume publication of the Financial Accounting Standards Board (FASB), entitled “Current Text 2008/2009 Edition: Accounting Standards as of June 1, 2008.” The Agency states as follows in support of its motion: “Given the current fiscal situation of the State, copy costs for multiple copies would be unwarranted.” Agency motion.

The Board procedural rules require four things of any person wanting the Board to incorporate a document by reference in the regulations. First, the person must submit a written

request for incorporation of the document by reference. Second, the person requesting the incorporation must provide one original and four copies of each document for which incorporation is requested. Third, the requestor must provide written notice to all participants in the proceeding. Finally, the person making the request must authenticate the document and justify its incorporation in the rules. The procedural rules, however, allow that person to request leave to file fewer copies of the document. 35 Ill. Adm. Code 101.360(a).

The Board finds that the Agency has presented sufficient justification for filing fewer than the required four copies of the AICPA and FASB documents. The Board grants the Agency's motion and will allow the filing of the single copy of each reference presented by the Agency in its original filing. The Board directs the Hearing Officer to undertake the following with regard to these documents at the conclusion of this proceeding: (1) to replace the documents with a document that indicates their location in the Clerk's permanent record of this proceeding; and (2) to locate the AICPA and FASB reference documents (four volumes total) in the Board's central repository of incorporated materials for public inspection and copying.

CONCLUSION

The Board granted the Agency's motion to file a single copy of each AICPA and FASB reference document for the reasons given above. The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102. The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed under the rulemaking provisions of the Act and the Board's procedural rules. 415 ILCS 5/27, 28 (2006); 35 Ill. Adm. Code 102. After conducting one or more hearings on this proposal, the Board will consider whether to proceed to first notice.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion on August 6, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board