

ILLINOIS POLLUTION CONTROL BOARD  
October 9, 1986

IN THE MATTER OF )  
HAZARDOUS WASTE PROHIBITIONS )

R86-9 Docket A

CONCURRING OPINION (by J. Theodore Meyer):

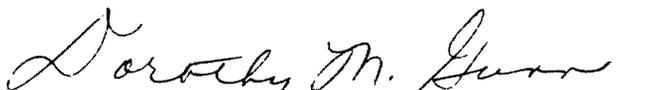
Although I concur with the majority's action today of putting these emergency rules out for comment I believe in one important respect the rules go too far in implementing Section 39(h). As now proposed, the rules rely on the concept of a land disposal unit in order to integrate various disposal prohibitions. While underground injection wells and discharges to sewers are excluded from the definition of a land disposal unit based on the Board's interpretation of the word "deposit", these exclusions do not go far enough. In fact, in my view, Section 39(h) was intended only to apply to landfills and not to surface impoundments, waste piles or land treatment units as currently provided in the proposed emergency rules. The majority itself notes that the legislative history focused solely on landfilling (see Exs. 5 and 6). And while the opinion reminds us that "[no]where in the legislative debates is underground injection or discharge to a sewer discussed," it ignores the fact that similarly there was no discussion of or intention to include surface impoundments, waste piles or land treatment units. A review of the legislative debates in fact reveals that the sponsor of the bill in the House, Representative Hannig, was principally concerned with the status of hazardous waste landfills in his county. In this regard it is of note that Representative Hannig was from the Wilsonville district in which one of the largest hazardous waste landfills in the state is and was located. As explained by him, "I represent a district where we do have a hazardous waste dump and where we have had problems with hazardous waste...." and "[T]he theory behind this concept is that burying hazardous wastes is probably the worst way to dispose of them and in those cases where it can be documented that reasonable methods of disposal are available then burying should be prohibited." (Emphasis added). This brief quote of the debate is illustrative of the House's understanding that the scope of the prohibition applied only to landfills. This same preoccupation is evidenced in the Senate debate where Senator DeMuzio, also from the Wilsonville area, sponsored the bill. In explaining the effective date the Senator stated that Section 39(h) was an "implementation of the prohibition against landfilling" and that "the EPA may grant authorization for land disposal only after the generator has reasonably demonstrated that the waste cannot be reasonably recycled." (Emphasis added).

Despite my objections to the overly broad scope of these rules in implementing Section 39(h), I will concur in this action for the following reason. It is imperative that these emergency rules be put out for public comment so that some guidance as to the implementation of the Section 39(h) prohibition will be provided to the regulated community. According to my understanding of the tripartite system established by the Environmental Protection Act, that guidance must issue from the Board and not the Agency. Under Sections 30 and 31 of the Act the Agency is required to investigate possible violations and engage in enforcement proceedings where a violation is discovered. Substantive regulations of the type necessary to effectuate Section 39(h) are to be promulgated by the Board. Section 27. Thus, the Agency's attempts to provide "guidelines" as to how they will administer the Section 39(h) prohibition intrude too far on powers invested only in the Board. Indeed Section 39(h) itself clearly contemplates that the Board will provide regulations to effectuate it, while the Agency will administer the prohibition consistent with those regulations. Thus, I believe the Board would be abdicating its responsibility under the Act and Section 39(h) if it were to allow the Agency to implement this program.

For the foregoing reasons, I concur.

  
J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 9<sup>th</sup> day of October, 1986.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board