

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1984

IN THE MATTER OF:)
)
DEFINITION OF LIQUID)
HAZARDOUS WASTE (Emergency) R83-28A
Rule))

ORDER OF THE BOARD (by J. Marlin):

On July 6, 1984 Citizens for a Better Environment (CBE) filed a motion for clarification and reconsideration, a supporting memorandum and motion for stay of the Board's June 29, 1984 Order adopting emergency rules. On July 17, 1984 CBE filed a motion to present oral argument. CBE is a proponent in this rulemaking. The emergency rules prohibited the land disposal of liquid hazardous waste, and allowed land disposal of residuals from treatment of liquid hazardous waste if the residual was non-hazardous, resulted from removal of liquid or resulted in solidification, as opposed to absorption, of the liquid.

CBE's motions address the following areas:

1. §729.301: suggested addition of the words "adsorbent or other materials" to the definition of treatment.
2. §729.310(b): suggested addition of a prohibition on the use of biodegradable materials in solidification processes.
3. §729.310(b): suggested addition of leachability and permeability criteria to the solidification test.
4. §729.301(b): suggested deletion of the exclusion from the definition of liquid hazardous waste of labpacks, ampules and containers designed to hold free liquids for use other than storage, such as batteries and capacitors.

The motion to stay relates to item four only: CBE wants the exclusions stayed, so that ampules, labpacks and containers would be prohibited immediately by the emergency rules.

With respect to item one, the adopted definition of "treatment" incorporates the Part 720 definition by reference and specifically includes addition of adsorbent. CBE wants the words "adsorbent or other materials" added to the specific

inclusion. This is not necessary. The Part 720 definition is clearly broad enough to cover the addition of adsorbents or other materials:

"Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage or reduced in volume.

The definition includes addition of absorbents, also. These are specifically mentioned, however, because of possible confusion since addition of absorbents is specifically excluded in two instances in which the word "treatment" is used in the RCRA rules: §703.121(a) and §703.123(h); and, §724.101(b) and §724.101(g)(10).

With respect to item two, CBE did not propose inclusion of a biodegradability test in the rules prior to or at the public hearings. The language now suggested by CBE is too vague to be enforceable, and the testimony is inadequate to allow the Board to write an enforceable rule.

Dr. Ginsburg suggested at the hearings that the problem with biodegradable absorbents is that they may decompose more quickly than the absorbed waste (R.216). The Board takes notice of testimony in R81-25, which was subjected to cross-examination by CBE, suggesting that even chlorinated solvents are biodegradable (R81-25 transcript at pages 1116, 1121, 1125, 1127, 1129, 1136 and 1140). To accomplish the intended purpose it may be necessary to write a rule comparing the biodegradability of the waste to that of the absorbent.

The Board's reasons for not including leachability and permeability tests in the emergency rules are discussed at length in the Opinion of July 19, 1984. In order to comply with §6.02 of the Administrative Procedure Act, the Board needs actual copies of the referenced testing protocols. Furthermore, William Webster, testifying for CBE, stated that the leachability and permeability criteria were interrelated (R.164, 189, 198). The language CBE now suggests does not take this interrelationship into account.

The major portion of CBE's motion addresses item four, whether to delete the exclusion of labpacks, ampules and containers such as batteries from the definition of liquid hazardous waste. This is discussed at length in the Opinion of July 19, 1984. The discussion will be repeated here.

The exclusions are identical to the exclusions in the landfilling bans in Parts 724 and 725. The RCRA rules prohibit containers holding free liquids with three exceptions [Sections 724.414(b) and 725.414(b)]. Ampules are very small containers, holding only a few grams of waste. Labpacks are containerized liquid wastes in "overpacked drums": drums to which sufficient absorbent material has been added to completely absorb all of the liquid contents of the inside containers [Sections 724.416 and 725.416]. The third exception is containers designed to hold free liquids for use other than storage, such as batteries or capacitors [Sections 724.414(b)(3) and 725.414(b)(3)].

The inclusion of the exceptions was proposed by Waste Management. If liquids in containers such as batteries were prohibited, equipment would be required to shred or puncture the containers prior to disposal. Waste Management presently has such an operation in Kansas, but not Illinois (R.290, 366). There appears to be no such operation in Illinois. Capacitors and transformers containing polychlorinated biphenyls are prohibited by regulations pursuant to the Toxic Substances Control Act and could not be landfilled regardless of this proposal (R.289).

Ampules and labpacks tend to be produced by research and analytical laboratories. The existence and efficient operation of laboratories to characterize hazardous wastes and monitor compliance is necessary for the success of this and related hazardous waste regulatory proposals. These laboratories produce small quantities of hazardous waste. There is presently no capacity to treat these wastes, and immediate prohibition would result in severe hardship for Illinois laboratories (R.337).

Waste Management has asked the Board to consider the rationale of the federal RCRA regulations on which the exclusions were based: 40 CFR 264.314, 264.316, 265.314 and 265.316. Section 22.4(a) of the Act required the Board to adopt these provisions as State rules, which it did in the Sections quoted above (R81-22, R82-18 and R82-19). The Board was required to accept the rationale of the federal rules in adopting regulations pursuant to Section 22.4(a). The Board takes official notice of USEPA's supporting materials, particularly 45 Fed. Reg. 33215 (May 19, 1980) and 46 Fed. Reg. 56592-56596 (November 17, 1981). The rationale of USEPA in adopting these rules in no way controls the Board's action in implementing §§22(b) and 22.6(b). However, the Board takes notice of the rationale.

Ampules and containers such as batteries were excluded from the federal RCRA regulations when they were originally adopted (45 Fed. Reg. 33066, 33250, May 19, 1980). USEPA stated that:

These types of containers are not likely to contribute substantial volumes of liquid to most landfills, and the

difficulty of opening and emptying them appears to outweigh the small benefit gained.

(46 Fed. Reg. 33215, May 19, 1980)

Labpacks were excluded by a later amendment (46 Fed. Reg. 56592, November 17, 1981). USEPA stated that disposal of hazardous wastes in labpacks was a common practice for many small volume generators (not necessarily small quantity generators). These include government, commercial and school laboratories. Disposal in labpacks is preferable to dumping these wastes into sewers. Even schools which are small quantity generators under the federal RCRA rules preferred to dispose of their wastes in labpacks in permitted hazardous waste landfills (46 Fed. Reg. 56592). The Illinois ban would prohibit disposal in all landfills even by small quantity generators.

Laboratories generate a large number of wastes in small quantities, often thousands of wastes per month in quantities less than one gallon. Commercial treatment, recycling or incineration operations typically accept only reasonably sized lots of well-characterized wastes. The cost to characterize lab wastes is often prohibitive (46 Fed. Reg. 56593).

USEPA believes that disposal of labpacks in landfills is an environmentally sound practice. The requirement of sufficient absorbent to completely absorb all liquids will prevent labpacks from contributing significant volumes of liquid to landfill leachate (46 Fed. Reg. 56593).

Dropping the labpack, container and ampule exemptions appears to involve bringing a large number of generators, and an even larger number of wastestreams, into the landfill prohibition system; yet, this would involve only a small quantity of waste. The statutory ban was signed into law on January 5, 1984, and the implementing procedures finalized on June 29, 1984. The Agency will face a formidable challenge in administering the ban in a timely manner even with the labpacks, containers and ampules excluded (R.20, 28). Exclusion will allow the Agency to initially concentrate on fewer generators producing a larger volume of waste.

There are three statutory bases for adoption of these exclusions. First, Section 5(b) of the Act provides that the Board "shall determine, define and implement" environmental control standards. Second, under Section 22(b), the Board is to adopt standards for the "handling, storing, processing, transporting and disposal of hazardous waste." Thirdly, under Section 22.6(b) the Board is to adopt regulations which "prohibit or set limitations on the type, amount and form of liquid hazardous wastes that may be disposed of in landfills based on the availability of technically feasible and economically reasonable alternatives to land disposal."

Based on limited, but unrebutted evidence, sufficiently persuasive to include the exclusion in the emergency rules, the Board has exercised its authority to exclude these wastes from the definition of liquid hazardous waste for purposes of the emergency rules. This action will ease administration of the emergency rules, preserve the status quo and allow further inquiry into the legislative intent.


The Board solicits additional comment, both in support of and in opposition to the retention of the exclusions.

The Board does not view adoption of these exclusions in the emergency rules as a precedent or as a bar to their subsequent modification or deletion in the temporary or permanent rules.

The motion for clarification and reconsideration, the motion for stay and the motion to present oral argument are denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19th day of July, 1984 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board