

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1988

VINCENT A. KOERS, and DANVILLE)
CITIZENS FOR CONTROL OF)
HAZARDOUS WASTE INJECTION,)
)
Petitioners,)
)
v.) PCB 88-163
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
ALLIED-SIGNAL, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Anderson):

On October 28, 1988, Allied-Signal, Inc. ("Allied") filed a motion for Robert F. Van Voorhees and Barton D. Day of Bryan, Cave, McPheeters & McRoberts of Washington, D.C. to appear pro hac vice. That motion is granted.

In addition, Allied also filed a motion to dismiss the petition for hearing and appeal regarding its underground injection control permit. No decision will be made on this motion pending the appropriate responses.

Allied's motion asserts that ground for dismissal of all or part of this petition exist independently of the Section 40 standing issue which the Board directed the parties to brief on or before November 15 by Order of October 20. On p. 2 of its motion, Allied proposes to defer briefing of the alternative grounds for dismissal raised in its October 28 motion until the Board rules on the standing issue. The Board will not require briefing of these issues at this time.

As to the Section 40 issue, the Board on its own motion extends the briefing schedule from November 15 to November 28. In order to provide the Board with a fully developed issue, the Board requests that the briefs include some discussion of the third party appeal issue in relation to the Board's mandate to adopt rules "identical in substance" to USEPA's RCRA and UIC rules and any inter-relationship between RCRA and UIC permits, and how it may relate to the history of adoption and amendments to Section 40(b) of the Act. The parties may wish to consider the materials listed below in preparing such discussion; this listing is by no means intended to prevent the parties from considering other relevant materials.

Board Opinions and Orders, Federal Register

Section 705.212 governs appeals of RCRA and UIC permits. Section 705.212 was adopted with the UIC rules in R81-32, 47 PCB 95, May 13, 1982. It was amended with adoption of the RCRA permit rules in R82-19, 53 PCB 131. The text of the amendment is at 7 Ill. Reg. 14282. There have been no further amendments to this Section.

The Section 705.212 appeal provision is analogous to the provision of 40 CFR 124.19 for appeals to the Administrator of permitting decisions by the Regional Administrator. 40 CFR 145.11(a) (24)-(31) sets forth which provisions of 40 CFR Part 124 must be included for authorization of State UIC programs and 40 CFR 271.14 (t)-(aa) sets forth which provisions of 40 CFR Part 124 must be included for RCRA programs.

The UIC and RCRA rules were recently amended in R87-39 and R88-2, June 16 and 30, 1988 to include the USEPA's HSWA codification rules at 52 Fed. Reg. 45797, December 1, 1987. Attention is directed to the USEPA's preamble to these rules, especially 52 Fed. Reg. 45791-45793.

There is a general discussion of the nature of a RCRA permit appeal in the RCRA procedural rules Opinion (R84-10, January 10, 1985, 62 PCB 349, 355.)

Public Acts Affecting Section 40

Section 40 was established in P.A. 76-2428 (HB 3788), approved June 29, 1970.

P.A. 81-856 (HB 453), effective January 1, 1980 established Section 40(b) and allowed third party appeals of Agency development permits for hazardous waste disposal sites. (Also see definitions of "Disposal" and "Hazardous Waste Disposal Site). P.A. 81-856 also mandated Board adoption of RCRA "identical in substance" regulations in Section 22.4.

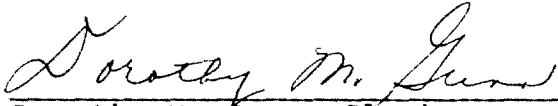
P.A. 82-380 (SB 875), effective September 3, 1981 amended Section 40(b) to allow for third party appeals of RCRA permits for hazardous waste disposal sites. It also mandated adoption of UIC "identical in substance" regulations in Section 13(c-d).

Finally, the Board notes that the Agency submitted a brief on the Section 40 issue on November 2, 1988. The Agency is requested and given leave to supplement this brief by November 15, 1988 consistent with this Order.

Again, as aforementioned, briefs on this issue are now due November 28.

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 3rd day of November, 1988, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board