

ILLINOIS POLLUTION CONTROL BOARD

August 17, 2006

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO SOLID ) R07-8  
WASTE LANDFILL RULES, 35 ILL. ADM. ) (Rulemaking - Land)  
CODE 810 AND 811 )

ORDER OF THE BOARD (by A.S. Moore):

On July 27, 2006, the Board received a proposal (Prop.) to amend Parts 810 and 811 of the Board's regulations, which concern non-hazardous solid waste management facilities, and a request for waiver of the 200-signature requirement (Req.). 35 Ill. Adm. Code 810, 811. These filings were submitted by the Illinois Chapter of the National Solid Wastes Management Association (NSWMA), which states that it is "a not-for-profit trade association representing companies that provide solid, hazardous, and medical waste collecting, recycling, and disposal services." Req. at 1. NSWMA also requests that the Board waive the requirement that it must submit copies of materials to be incorporated by reference within the proposed rule. Prop. at 18; see 35 Ill. Adm. Code 102.202(d).

For the reasons stated below, the Board accepts the proposal for hearing but directs NSWMA to address two informational deficiencies in writing prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer. The Board also grants NSWMA's request for waiver of the 200-signature requirement and its request that the Board waive the requirement that NSWMA file copies of materials to be incorporated by reference in the proposed rule.

**BACKGROUND**

In its proposal, NSWMA states that it seeks to update the Board's regulations to reflect current solid waste disposal practices. Prop. at 1. NSWMA notes that many of the rules proposed for amendment have been in effect since 1990. *Id.*; see Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills, R88-7 (Aug. 17, 1990). NSWMA states that its proposal reflects both practical experience with implementing these regulations and increased technical and scientific knowledge. Prop. at 1. NSWMA describes its proposal as "the culmination of almost seven years of discussions" with the Illinois Environmental Protection Agency (Agency). *Id.* NSWMA states that the Agency "supports and concurs with all of the proposed amendments." *Id.*

NSWMA expects the following benefits to result from adoption of its proposal. Prop. at 1. First, "it will eliminate or modify certain regulations that are no longer technically reasonable in that they do not reflect current and accepted practice in the industry." *Id.* Second, NSWMA believes that the proposal will generate more accurate data, leading to improved regulatory decision-making and environmental protection. *Id.* Third, NSWMA believes that the proposal will improve efficiency both for the Agency and for regulated solid waste facilities. *Id.*

## **MOTIONS**

As stated above, NSWMA filed two motions with its proposal: a request for waiver of the 200-signature requirement and a request that the Board waive the requirement that NSWMA must submit copies of materials to be incorporated by reference within the proposed rule. No participant has filed a response to these motions. If a party files no response to a motion within 14 days, the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). The Board will address NSWMA's two motions in turn.

### **Motion for Waiver of 200-Signature Requirement**

The Board's procedural rules require a proponent other than the Agency or the Department of Natural Resources to submit "a petition signed by at least 200 persons." 35 Ill. Adm. Code 102.202(g). With its rulemaking proposal, NSWMA filed its request for a waiver of that requirement. In that request, NSWMA states that it is a trade association including "numerous member companies in Illinois which serve every region of the State of Illinois." Req. at 1. NSWMA further states that it has long participated in rulemaking proceedings before the Board and that its members requested that it submit this proposal. *Id.* at 2. NSWMA further states that preparation of a petition with 200 signatures "would present an unnecessary burden in both time and expense." *Id.* Consequently, NSWMA requests that the Board grant this request for a waiver of the petition requirement. The Board grants NSWMA's request and waives the signature requirement.

### **Motion to Waive Filing Requirement**

NSWMA requests that the Board waive the requirement that it must submit copies of materials to be incorporated by reference within the proposed rule. Prop. at 18; *see* 35 Ill. Adm. Code 102.202(d). NSWMA states that "[t]he materials incorporated by reference in [proposed] Section 810.104 are portions of federal regulations and US EPA documents consisting of approximately 1,000 pages. This reference material is likely available at the IEPA/Board library and is readily available on-line." Prop. at 18.

Specifically, NSWMA refers to a United States Environmental Protection Agency publication entitled "Test Methods for Evaluating Solid Waste, Physical/Chemical methods, EPA Publication SW-846 (Third Edition, 1986 as amended by Update I, II, IIA, IIB, III, IIIA and IIIB (June 2005))." Prop., Att. A at 1. Because the Board has this Publication SW-846 in its possession, the Board grants the request and waives the requirement to file that document under Section 102.202(d). NSWMA also refers in its request to waive this filing requirement for 40 C.F.R. 258.Appendix I (2006). Because the Board also has this appendix in its possession, the Board grants the request and waives the requirement to file that document under Section 102.202(d).

## **PROPOSAL CONTENT REQUIREMENTS**

In reviewing the proposal for compliance with the rulemaking proposal requirements of 35 Ill. Adm. Code 102.202, the Board has identified deficiencies. First, the Board notes that the proposal states only:

NSWMA will present testimony in support of this proposal, as may representatives of one or more of its member companies. It is also anticipated that one or more Illinois EPA witnesses will testify in support of the proposed amendments as well. Prop. at 18.

While NSWMA indicates that it will file testimony according to any schedule set by the hearing officer (*id.*), the Board finds that these statements do not outline the proponent's testimony sufficiently to constitute the required "synopsis of all testimony to be presented by the proponent at hearing." 35 Ill. Adm. Code 102.202(c).

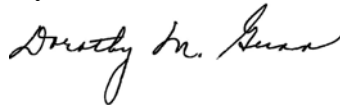
Second, NSWMA stated that, "[i]n conjunction with the presentation of testimony, witnesses may reference published studies or research reports used or considered in the development of these proposed amendment." Prop. at 18. The Board finds that this statement does not fully address the applicability of or provide the information requested in the "published study or report" requirement of Section 102.202(e) of the Board's procedural rules. 35 Ill. Adm. Code 102.202(e); *see also* 35 Ill. Adm. Code 102.202(k) (justification for inapplicability or unavailability).

### CONCLUSION

The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed expeditiously under the rulemaking provisions of the Environmental Protection Act and the Board's procedural rules. 415 ILCS 5/27, 28 (2004); 35 Ill. Adm. Code 102. After conducting one or more hearings on this proposal the Board will consider whether to proceed to first notice. The Board requests, however, that NSWMA address the two informational deficiencies noted above in writing prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 17, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board