ILLINOIS POLLUTION CONTROL BOARD
June 10, 1981

MERCY HOSPITAL AND MEDICAL CENTER, Petitioner,	)	
v.	)	PCB 80-218
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

MR. JEFFREY W. MAYSENT OF THE ILLINOIS HOSPITAL ASSOCIATION APPEARED ON BEHALF OF THE PETITIONERS (KANE AND URBANA COUNTY HEARINGS).

MR. GEORGE WILLIAM WOLFF, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF RESPONDENT (KANE COUNTY HEARING).

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by J. Anderson):

The Board entered its Opinion and Order granting variance from its emergency rules implementing the Section 21(h) of the Environmental Protection Act (Act) prohibition of landfilling of hazardous hospital waste on December 19, 1980. Having learned that the Section 37 notice required to be published by the Agency stated that objections could be filed through December 24, 1980, the Board on January 8 and 22, 1981 authorized the holding of hearings at which objections filed pursuant to this notice could be heard. In its Order of January 8, the Board stated that "[u]pon completion of these hearings, the Board shall modify its Order of December 19, 1980, ...if and as necessary" in exercise of its retained jurisdiction.

Hearings were accordingly held in Geneva, Kane County on February 10, 1981, in DeKalb, DeKalb County on February 11, 1981, in Urbana, Champaign County on February 25, 1981, in Louisville, Clay County on February 26, 1981, and Kankakee, Kankakee County on March 3, 1981. The hearings in all but Kane County can be briefly summarized.

In DeKalb County (R. DeKalb pp. 99-124), testimony in support of the variance was presented by James Ahrens and John A. Gjertson of the Illinois Hospital Association (IHA) and by Dr. Richard Morgan of the DeKalb County Health Department. No objections to the grant of variance were made at hearing, although questions were asked of the witnesses by objector Clarence Colton, the only member of the public in attendance. Questions were asked, but ultimately no

objections were made, by Marjorie Checkoway who filed the objection requesting a hearing and who was one of two members of the public present in Champaign County (R. Champ. 2-88) Petitioner's testimony was presented by James Ahrens of the IHA, Dr. Stuart Levin of Rush-Presbyterian St. Luke's Medical Center in Chicago and consultant to the Chicago Board of Health, Dennis Egan of Burnham Hospital in Champaign, George Lane and Raymond Moenich of Carle Foundation Hospital in Urbana, and Robert Mann of Mercy Hospital in Urbana.

Neither the petitioners nor members of the public, appeared to present testimony at the Kankakee County hearing ((R. Kank. 1-4). (It must be noted that objector Valerie Jean Fisher withdrew her objection, on February 9, but that the hearing proceeded because notice of hearing had been given prior to the objection's withdrawal.) Objector Bob Graham appeared in Louisville, Clay County to express his general concern about the possibility of contamination of the well water supply in Flora, Illinois. Mr. Graham presented no evidence, nor did petitioners, who were not represented (R. Clay 1-8). The one other member of the public made no comment.

The issues were most completely aired and examined at the hearing held in Kane County. Members of the public were present. James Ahrens of the IHA presented testimony concerning the general compliance problems facing the hospital community at large. Mr. Ahrens stated that, since the Board's first interim, emergency regulations clarifying both the scope of the infectious waste stream and the hospital's disposal options and responsibilities were not in place in advance of the compliance deadline, hospitals could not intelligently assess either the volume of waste which could no longer be landfilled or the cost of various disposal options. This aggravated existing time problems and constraints. If the choice is made to purchase on-site disposal equipment such as incinerators or sterilizers, depending on the size of the capital expenditure involved, a hospital could become involved in the perhaps months-long process of applying for approval of the expenditure from the Illinois Health Facilities Planning Board. Even upon receipt of approval, a hospital could become involved in equipment delivery delays, such as a 6 to 8 month delay for delivery and installation of an incinerator (R. Kane 10-13).

The question of the environmental effects of the grant of variance was addressed by reference to a general written statement of Dr. Stuart Levin (Pet. Kane Ex. 1, Attach. A), and the specific statement of the Agency concerning the variance petition. Dr. Levin's testimony focused primarily on the merits of the statute not of the variance. Dr. Levin's belief, in summary, is that "[t]here is no evidence that any garbage dump in the U.S. exists as a public health risk or has been an infectious public health risk or is associated with causing infections in human beings (excluding scavengers in the dump who are not supposed to be there)" (R. Kane 17). It is accordingly the opinion of Dr. Levin

that Section 21(h) of the statute is "a solution for a problem that does not exist--a solution which will cost patients and the average taxpayer tens of millions of dollars per year" (R. Kane 18). The IHA then noted and concurred with the Agency's Recommendation in support of the variance which stated that "storage [of hazardous hospital waste] could result in an environmental problem which is perceived as more serious than ...[if such waste] is disposed of at hazardous waste disposal sites" (R. Kane 13-14).

Hospital administrators supported these general contentions, and related their efforts, discoveries and concerns relative to achieving compliance.

Thomas Lehman of Mercy Center in Aurora stated that his hospital had begun investigating compliance options in April, 1980, based on its best guess that less than 10% of its waste was infectious. While Mercy could use its current sterilizers to treat its waste, its Infection Control Committee was concerned about the problems of storage of this volume of waste near the sterilizers pending sterilization, because of the attendant risks of greater exposure of staff and patients to infection from this short term waste storage. Concerning incinerators, Mercy learned that the capital cost for a small incinerator would be $50,000 to $65,000 (to be delivered 12 to 18 months after order), and that the energy and labor costs for the estimated daily one-hour of burn time needed are not justifiable for a hospital its size. Mercy accordingly sees a central incineration facility as the most efficient, cost effective compliance option. However, Mr. Lehman noted that Mercy's scavenger (which had refused to accept any hazardous hospital waste effective February 15, 1981--despite existence of the variance) had advised that while a central incinerator was in the planning stages in the Chicagoland area, its installation is not anticipated to be completed in less than two to three years.

It was also the testimony of Mr. Orcutt of Mary Thompson Hospital and Mr. Rupiper of Copley Memorial that their hospitals were having difficulty in determining the best compliance option, in part because of the lack of a permanent, final definition of the infectious waste stream. In addition, he stated that special and other limitations of Mary Thompson's location prohibits installation of an incinerator on the hospital grounds. As its current autoclaves cannot handle the quantity of waste generated, it is examining purchase of large sterilizers as a compliance option. The testimony concerning deliberations at Copley suggests that purchase of a large sterilizer may necessitate the building of special facilities for the processing of waste, to avoid contamination of the patient care items which are routinely sterilized before they are re-used (R. Kane 71-74, 76-78).

Representative Jill Zwick, original objector in this action, cross-examined various witnesses and introduced evidence of her own. Representative Zwick questioned the failure of the IHA to

take steps earlier in dealing with the problems involved in implementation of the mandate of Section 21(h). Inasmuch as the landfill prohibition became law in November, 1979 to take effect January 1, 1981, Mrs. Zwick suggested that when no regulations were seen to be in place by May-June, 1980, it was remiss of the petitioners not to have taken the initiative at that time in applying for a variance, investigating the compliance options, and so forth (R. Kane 33-38).

Representative Zwick thereafter identified by name an existing commercial hazardous waste incinerator in Sauget, Illinois, as well as introducing an Agency listing of all the incinerators in the State of Illinois having permits to burn pathological waste (R. Kane 62-63, 69 Zwick Ex. 1-2). Hospitals should, in her opinion, have done research into the availability of excess capacity in these and municipal incinerators. Representative Zwick, in closing argument, summarized her position, which is that:

> "The law can be complied with. I don't think anyone here today has shown that the law can't be complied with. They have perhaps argued on the merits of the law, but no one has shown that the law cannot be complied with in a safe method and one that would be much more beneficial to all of our futures environmentally" (R. Kane 91).

Based on the records of these five hearings, the Board does not believe its Order of December 19, 1980 is in need of modification. The hardship caused by administrative uncertainty due to lack of final regulations defining the infectious waste stream has only recently been ended by the Board's adoption of final rules in R80-19 by its Order of May 19, 1981. The testimony concerning the existence of some unused incinerator capacity within the state is insufficient to counter the concern for the public health raised by statements of IHA, hospital administrators, and the Agency concerning the hazards of accumulating infectious waste within or around a hospital on a long or short term basis. Petitioners' allegations that immediate compliance would impose an immediate economically unreasonable hardship have similarly not been rebutted.

Roughly one-third of the hospitals in Illinois have certified their need for variance relief. While it may well be argued that hospitals should have perceived and taken action concerning the economic and resource management effects and implications of Section 21(h) of the Act at an earlier date, the variance conditions require these hospitals to promptly proceed to use the additional time to reach orderly, cost-effective compliance with the statute and the regulations. The Board remains convinced that, on balance, compliance with Section 21(h) and the Board's implementing rules will be achieved in a more environmentally sound, economically reasonable fashion by continuation of the variance as granted, than by its termination.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Board hereby reaffirms, and declines to modify its Order of December 19, 1980 in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion and Order was adopted on the 10th day of June, 1981 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board