

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1992

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL.ADM.) R92-7
CODE 101.103(d) REGARDING) (Rulemaking)
RECYCLED PAPER)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

On May 19, 1992, Business and Professional People for the Public Interest (BPI) filed a petition to amend the Board's rule requiring the use of recycled paper. BPI seeks to make technical corrections to the rule, because the statutory definition of recycled paper has been revised and recodified. On May 21, 1992, this Board accepted the proposal. The Board noted that because this proposal seeks to amend a procedural rule, several aspects of "regular" rulemaking do not apply to this proceeding. For example, the Board is not required to hold hearings other than within the context of the Administrative Procedure Act (APA). (Ill.Rev.Stat.1991, ch. 127, par. 1001 et seq.) On June 4, 1992, the Board sent the proposal to first notice, without taking a substantive position on the merits of the proposal. The proposed rule was published in the Illinois Register on July 6, 1992, at 16 Ill.Reg. 10387.

PROPOSAL

The Board's recycled paper rule, adopted in R90-24 and found at 35 Ill.Adm.Code 101.103(d), refers to Section 3(f) of the Illinois Solid Waste Management Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 7053(f)) for the definition of "postconsumer material."¹ In its proposal, BPI states that Section 3(f) of the Illinois Solid Waste Management Act no longer exists in the same form. BPI states that the General Assembly amended Section 3 by changing the definition of recycled paper and recodifying the definition.² The Illinois Solid Waste Management Act now requires that recycled paper contain at least 50% "recovered

¹ The Board notes that although BPI states that the existing rule refers to Section 3(f) for the definition of "recycled paper", in fact the existing rule refers to Section 3(f) only for the definition of "post-consumer material."

² The change was made in Public Act 87-485, effective January 1, 1992.

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paper material", and establishes a phased-in schedule under which the percentage of postconsumer material in "recovered paper material" is 20% in 1992, increasing to 50% by the year 2000. Therefore, BPI contends that to ensure consistency between the Board's rule and the statutory language, and to avoid any confusion, the Board's rule should be amended to incorporate the new definition of recycled paper.

At first notice, the Board made minor changes to the language and organization of the proposal. Instead of incorporating a reference to the statute as amended, as BPI proposed, the Board spelled out the requirements for "recycled paper" within the text of the rule. Additionally, the Board proposed definitions of "deinked stock", "recovered paper material", and "postconsumer material" in the existing definitions section (Section 101.101). These definitions are based upon the statutory language of Public Act 87-485, adding new Section 3(f) to the Illinois Solid Waste Management Act. The changes were proposed to conform to APA and Administrative Code Division requirements, and in an attempt to avoid further regulatory amendments in the event of another recodification.

PUBLIC COMMENTS

The Board received only two public comments on this proposal. The Administrative Code Division suggested several technical changes, which the Board will make. (P.C. #1.) The Sierra Club, Illinois Chapter, also filed a comment. (P.C. #2.) The Sierra Club noted that it supported the initial adoption of the recycled paper rule, and stated that it supports BPI's proposal making technical changes in the rule. The Sierra Club maintains that using recycled products is a crucial step in developing the markets necessary for large-scale recycling. Finally, the Sierra Club stated that it has found recycled paper products to be very cost-competitive with non-recycled products, and compatible with office equipment.

CONCLUSIONS

After considering the record in this proceeding, the Board proposes, for second notice, to amend its procedural rule requiring recycled paper to reflect legislative changes. It would be unnecessarily confusing for the Board's rule to refer to an old statute, especially when the "new" section has the same number as the "old" section. Additionally, the Board believes that its changes to the proposal, as made at first notice, will clarify the rule and avoid further amendments in the event of another statutory change. Except for the technical corrections suggested by the Administrative Code Unit, the rule proposed today is identical to the rule proposed for first notice.

ORDER

The Board hereby proposes the following amendments for second notice. The amendments are to be filed with the Joint Committee on Administrative Rules.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE A: GENERAL PROVISIONS
 CHAPTER I: POLLUTION CONTROL BOARD

PART 101
 GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section 101.101 Definitions

The definitions of the Environmental Protection Act (Ill.Rev.Stat. ~~1987~~1991, ch. 111 1/2, par. 1001 et seq.) apply to this Part unless otherwise provided. The following definitions also apply to this Part:

"Act" means the Environmental Protection Act (Ill.Rev.Stat. ~~1987~~1991, ch. 111 1/2, par. 1001 et seq.)

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act (Ill.Rev.Stat. ~~1987~~1991, ch. 127. par. 1001 et seq.)

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clean Air Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq. (1988~~91~~)).

"Clean Water Act" means the federal Clean Water Act (33 U.S.C. 1251 et seq. (1988~~91~~)).

"Clerk" means the Clerk of the Board.

"Contested case" means an adjudicatory proceeding, including but not limited to enforcement, variance, permit appeal, adjusted standard, and administrative citation proceedings, but not including regulatory,

quasi-legislative, informational, or similar proceedings.

"DEINKED STOCK" MEANS PAPER THAT HAS BEEN PROCESSED TO REMOVE INKS, CLAYS, COATINGS, BINDERS AND OTHER CONTAMINANTS. (Illinois Solid Waste Management Act, Section 2.1, P.A. 87-485, effective January 1, 1992.)

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Evidence" means a paper, drawing, map, chart, report, study, or other tangible thing produced and submitted at hearing, or testimony received at hearing.

"Initial filing" means the filing which initiates a Board proceeding. For example, the initial filing in an enforcement proceeding is the complaint; in a permit appeal is a petition for review, and in a regulatory proceeding is the proposal. There is only one initial filing in each Board proceeding.

"JCAR" means the Joint Committee on Administrative Rules.

"Material" means relating to any substantive issue that is of consequence to the determination of a proceeding.

"Participant" means any person, not including the Board or its staff, who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including, but not limited to, filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Party" means a person authorized by the Act to bring, defend, or intervene in a contested case before the Board.

"Person" means any person defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"Postconsumer material" means PAPER, PAPERBOARD, AND FIBROUS WASTES FROM RETAIL STORES, OFFICE BUILDINGS, HOMES, AND SO FORTH, AFTER THE WASTE HAS PASSED THROUGH ITS END USAGE AS A CONSUMER ITEM, INCLUDING USED CORRUGATED BOXES, OLD NEWSPAPERS, MIXED WASTE PAPER, TABULATING CARDS, AND USED CORDAGE. "Postconsumer material also includes ALL PAPER, PAPERBOARD, AND FIBROUS WASTES THAT ARE DIVERTED OR SEPARATED FROM THE MUNICIPAL SOLID WASTE STREAM. (Illinois Solid Waste Management Act, Section 3(f)(2), P.A. 87-485, effective January 1, 1992.)

"Procedural rules" means the Board's procedural rules, contained in 35 Ill. Adm. Code 101 through 120.

"Recovered paper material" means POSTCONSUMER MATERIAL, AND DRY PAPER AND PAPERBOARD WASTE GENERATED AFTER COMPLETION OF THE PAPERMAKING PROCESS (THAT IS, THOSE MANUFACTURING OPERATIONS UP TO AND INCLUDING THE CUTTING AND TRIMMING OF THE PAPER MACHINE REEL INTO SMALLER ROLLS OR ROUGH SHEETS), INCLUDING ENVELOPE CUTTINGS, BINDERY TRIMMINGS, AND OTHER PAPER AND PAPERBOARD WASTE RESULTING FROM PRINTING, CUTTING, FORMING, AND OTHER CONVERTING OPERATIONS, OR FROM BAG, BOX AND CARTON MANUFACTURING, AND BUTT ROLLS, MILL WRAPPERS, AND REJECTED UNUSED STOCK. "Recovered paper material" also includes FINISHED PAPER AND PAPERBOARD FROM OBSOLETE INVENTORIES OF PAPER AND PAPERBOARD MANUFACTURERS, MERCHANTS, WHOLESALERS, DEALERS, PRINTERS, CONVERTERS, OR OTHERS. (Illinois Solid Waste Management Act, Section 3(f)(3), P.A. 87-485, effective January 1, 1992.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service of notices for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service of notices for that entity in Board proceedings.

"Relevant" means having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without that information.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq. (1988~~91~~)).

"SDWA" means the federal Safe Drinking Water Act (42 U.S.C. 300f et seq. (1988~~91~~)).

"Site-specific rule" means a proposed or adopted regulation, not of general applicability, which applies only to a specific facility or geographic site.

"Undue delay" means a delay which is unwarranted, unjustified, improper, or is more delay than necessary.

"USEPA" means the United States Environmental Protection Agency.

(Amended at 16 Ill.Reg. _____, effective _____)

Section 101.103 Form of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation", "Complaint", "Petition for Variance", "Petition for Review", "Motion", or "Public Comment".
- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or subpoena need be filed with the Clerk.
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.
- d) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy and double-spaced on uncoated white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch. As of January 1, 1992, all documents, excluding exhibits, filed with the Board by attorneys or by organized

environmental and trade groups shall be submitted on recycled paper. For purposes of this Section, "recycled paper" means paper which contains at least ~~40% postconsumer~~ 50% recovered paper material. ~~The definition of "postconsumer material" is set forth in Section 3(f) of the Illinois Solid Waste Management Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 7053(f)).~~ The recovered paper material shall contain at least 20% deinked stock or postconsumer material, until July 1, 1994; beginning July 1, 1994, shall contain at least 25% deinked stock or postconsumer material; beginning July 1, 1996, shall contain at least 30% deinked stock or postconsumer material; beginning July 1, 1998, shall contain at least 40% deinked stock or postconsumer material; and beginning July 1, 2000, shall contain at least 45% deinked stock or postconsumer material. Either the certificate or proof of service or the notice of filing accompanying all documents filed by attorneys or by organized environmental or trade groups shall state "THIS FILING IS SUBMITTED ON RECYCLED PAPER". This statement shall be made at the bottom of the first page of the certificate or proof of service, or the notice of filing. This recycled paper requirement does not apply to stationery, such as letterhead, when used for cover letters or similar purposes. Additionally, the Board encourages all participants to double-side copies of documents filed with the Board.

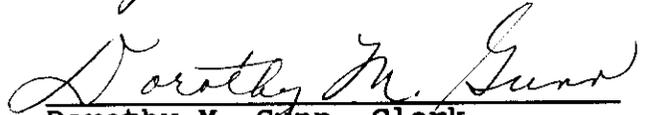
- e) The requirements of subsections (b), (c), and (d) above may be waived by the Board upon written request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d) above. However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.
- h) Except as otherwise provided by Sections 1 through 4 of

"AN ACT in relation to the reproduction of public records on film and the destruction of records so reproduced" (Ill.Rev.Stat. ~~1987~~1991, ch. 116, pars. 35-38), or by leave of the Board, documents on microfiche are not acceptable for filing.

(Source: Amended at 16 Ill.Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17th day of September, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board