

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:                    )  
  )  
MUNICIPAL SOLID WASTE LANDFILL    ) R98-9  
(MSWLF) RULES; AMENDMENTS TO 35   ) (Rulemaking - Land)  
ILL. ADM. CODE 811, 813, and 848   )

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Lisa Knight Cosimini, CSR, RPR-RMR, a notary public within and for the State of Illinois, before MARIE TIPSORD, Hearing Officer, at James R. Thompson Center, 100 West Randolph, Room 11-500, Chicago, Illinois, on the 19th day of November, 1997, commencing at the hour of 10:00 a.m.

A P P E A R A N C E S :

HEARING OFFICER:

MS. MARIE TIPSORD  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
(312) 814-4925

COUNSEL FOR ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

MS. JUDITH DYAR  
1021 North Grand Avenue East  
Springfield, Illinois 62702

COUNSEL FOR NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION:

MR. PHILLIP R. VAN NESS  
202 Lincoln Square  
Urbana, Illinois 61803-10189

ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

DR. G. TANNER GIRARD  
MS. KATHLEEN M. HENNESSEY  
MR. ANAND RAO  
MR. JOSEPH YI

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY REPRESENTATIVES:

MR. EDWIN C. BAKOWSKI  
MR. KENNETH W. LISS  
MS. JOYCE MUNIE

ALSO PRESENT:

MR. MARK ALLENDORF  
MR. JAY CORGIAT  
MR. CRAIG S. RAWLINSON  
AND OTHER INTERESTED PARTIES

L. A. REPORTING (312) 419-9292

I N D E X

Page

GREETING BY HEARING OFFICER ..... 4

GREETING BY DR. GIRARD ..... 6

STATEMENT BY MS. DYAR ..... 6

STATEMENT BY MR. VAN NESS ..... 9

QUESTION BY MR. RAWLINSON ..... 11

QUESTION BY MR. CORGIAT ..... 12

QUESTION BY MR. RAWLINSON ..... 15

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E X H I B I T S

EXHIBIT NUMBER 5 ..... 7

1 HEARING OFFICER TIPSORD: I have 10:00. So, I think we'll  
2 go ahead and start.

3 Good morning. My name is Marie Tipsord, and I've been  
4 appointed by the board to serve as hearing officer in this  
5 proceeding entitled: In The Matter of Municipal Solid Waste  
6 Landfill Rules; Amendments to 35 Ill. Admin. Code 811, 813, and  
7 848, Docket Number R98-9.

8 To my left is Dr. Tanner Girard, one of the presiding board  
9 members assigned to this matter. And to his left is Kathleen  
10 Hennessey, one of the board members -- one of our board members.  
11 Also, member Joseph Yi is here with us today.

12 In addition, we have John Knittle, Joseph Yi's assistant;  
13 Cindy Ervin, who is Chairman Manning's assistant, since Chairman  
14 Manning couldn't be with us today. And Anand Rao is here as  
15 well. And I think that covers the board's staff I see here.

16 This is the second hearing in this proceeding, and the  
17 first hearing was held in Springfield on October 27, 1997.

18 This is a joint proposal filed on August 11th of 1997 by  
19 the Illinois Environmental Protection Agency and the National  
20 Solid Wastes Management Association.

21 Along with the proposal, the proponents filed a motion  
22 asking the Board to limit the scope of this proceeding. On  
23 August 21, 1997, the Board accepted the proposal, and I will  
24 quote from that order.

1 Quote: The Board notes the proponents' desire to proceed  
2 with this rulemaking in an expeditious manner, and their  
3 concern's that expansion of the scope of the proposal to include  
4 other regulatory wish lists would unduly delay the Board's  
5 deliberation. However, the Board will not limit the discussion  
6 of any regulatory alternatives proposed in public testimony or  
7 comment concerning subject matters addressed by this proposal.

8 Therefore, at this time, the Board agrees to limit the  
9 scope of this proceeding in that the Board will not entertain  
10 requests from other parties to expand the list of sections  
11 proposed for amendment. The Board will accept comments on the  
12 proposed language for the sections opened in the proposal,  
13 including any potential suggestions regarding alternatives,  
14 closed quote.

15 Therefore, the Board has limited the scope of this  
16 proceeding, and I will limit the scope of the hearing consistent  
17 with the Board's order.

18 Outside the door are sign-up sheets for notice and service  
19 lists. If you wish to be on the service list, you will receive  
20 all pleadings and all pre-filed testimony in this proceeding.  
21 In addition, you must serve all of your filings on the persons  
22 on the service list.

23 If you wish to be on the notice list, you will receive all  
24 board and hearing office orders in this rulemaking.

1 If you have any questions about which list you wish to be  
2 placed on, please see me at a break. There are also copies of  
3 the current notice and service lists outside the door.

4 The Board received pre-filed testimony from the Agency in  
5 this proceeding. We will allow specific questions to each  
6 person testifying; and if there's -- if they would like to do a  
7 summary of their testimony, we will do that as well, and we'll  
8 begin with the pre-filed testimony.

9 After we finish with the pre-filed testimony, we will  
10 proceed with anyone else who might wish to present testimony  
11 today and questioning of those -- of that testimony.

12 At this time, I would like to ask Dr. Girard if he wishes  
13 to say anything further or --

14 DR. GIRARD: Well, thank you. I would like to welcome  
15 everyone to the board. Please forgive us for the cramped  
16 quarters. You can see we're upgrading our computer system, and  
17 we don't have very much space here to do the work; and we look  
18 forward to an efficient hearing this morning. Thank you.

19 HEARING OFFICER TIPSORD: And with that, we'll proceed to  
20 the Agency's testimony. Ms. Dyer.

21 MS. DYER: Good morning. My name is Judy Dyer. I'm here  
22 today on behalf of the Illinois Environmental Protection Agency,  
23 and I'm starting to get a little hoarse. So, I'm hoping that my  
24 voice will hold out.

1 I'd like to introduce three witnesses on behalf of the  
2 Agency here with me today. On my immediate left is Joyce Munie.  
3 And on her left, is Ken Liss. And on my right is Ed Bakowski.

4 As the hearing officer mentioned, the Agency pre-filed  
5 testimony, some brief supplemental testimony, addressing  
6 questions from the Board at the last hearing. Rather than  
7 having our witnesses summarize their testimony, if it's okay  
8 with the Board, I'd like to move that their testimony be entered  
9 as if read in the record.

10 HEARING OFFICER TIPSORD: Let's swear the witnesses first  
11 before we do that.

12 MS. DYER: Okay.

13 (Whereupon, Kenneth Liss, Edwin Bakowski  
14 and Joyce Munie were duly sworn.)

15 HEARING OFFICER TIPSORD: Okay. Is there any objection to  
16 accepting the testimony as if read?

17 (No response.)

18 HEARING OFFICER TIPSORD: Seeing none, we will mark the  
19 testimony of Kenneth Liss, Edwin Bakowski, and Joyce Munie as  
20 Exhibit Number 5.

21 (Brief pause in proceedings.)

22 HEARING OFFICER TIPSORD: Is there any objection to  
23 admitting it as one exhibit, or would the proponents prefer that  
24 we admit them each individually?

1 MS. DYER: One.

2 HEARING OFFICER TIPSORD: All right. We'll admit it as one  
3 exhibit then.

4 And did you have copies of that available?

5 MS. DYER: Yeah. I wanted to mention that there are copies  
6 outside the door of our supplemental testimony; and before I  
7 offer our witnesses as a panel for questions, I want to point  
8 out one typo.

9 In the supplemental testimony of Kenneth W. Liss, under  
10 Section 811.309, the suggested or recommended language, we've  
11 struck out the word "with," and it should not be struck out.

12 HEARING OFFICER TIPSORD: Okay. Thank you.

13 And at this time, are there any questions of the Agency's  
14 witnesses on the testimony? Or, actually, are there any  
15 questions at this time?

16 (No response.)

17 HEARING OFFICER TIPSORD: All right. Seeing none, we'll  
18 move along.

19 Did the Agency have any other testimony it wished to  
20 present today that was not pre-filed?

21 MS. DYER: No. The Agency will be addressing a written  
22 comment, additional issues raised by the Board, as indicated by  
23 the Agency at the last hearing.

24 HEARING OFFICER TIPSORD: Okay. Thank you.

1 Is there anyone else who wants to present testimony today?

2 MR. VAN NESS: Well, let me first introduce myself on the  
3 record. My name is Phillip Van Ness. I'm representing the  
4 National Solid Wastes Management Association.

5 To my left is Mr. Tom Hilbert; and we would not be  
6 tendering additional pre-filed testimony on his part, but we  
7 would first remind the Court, for the record, that Mr. Hilbert  
8 has pre-filed testimony previously. And copies of that  
9 pre-filed testimony are also available on the small table  
10 outside the door to this room.

11 And we would ask that Mr. Hilbert be sworn in as well as a  
12 witness so that he can be incorporated into the panel as a whole  
13 for purposes of fielding questions from board members and staff  
14 and any members of the public that may be interested.

15 HEARING OFFICER TIPSORD: All right. May we have him  
16 sworn?

17 (Whereupon, Tom Hilbert was duly sworn.)

18 HEARING OFFICER TIPSORD: All right. Anything further  
19 or --

20 MR. VAN NESS: Nothing further.

21 HEARING OFFICER TIPSORD: Is there -- are there any  
22 questions, then, of the panel from the Board or anyone here  
23 regarding the proposal as filed with the Board?

24 (No response.)

1 HEARING OFFICER TIPSORD: Okay. I don't see any.

2 Was there any other business that you had to present today?

3 (No response.)

4 HEARING OFFICER TIPSORD: Then I'm going to ask, if you

5 don't mind, if we go off the record for a few minutes but we

6 stay convened for at least the next 25 minutes or so, in case

7 someone from the public does wander in late that may have

8 questions, if you don't have an objection to that.

9 MR. RAWLINSON: I think that's a good idea. I'm expecting

10 a few other people who will be here.

11 HEARING OFFICER TIPSORD: Okay. All right. Could you

12 identify yourself, please?

13 MR. RAWLINSON: Craig Rawlinson with STS.

14 HEARING OFFICER TIPSORD: All right. Let's, let's recess

15 then, and we'll recess until, let's say, 10:30; and we'll

16 reconvene at 10:30 and see if there's anyone else that may have

17 questions. And we'll see where we're at then. Okay.

18 (Recess, 10:10 a.m. to 10:30 a.m.)

19 HEARING OFFICER TIPSORD: Let's go back on the record.

20 I notice we've had some people join us. Just to summarize,

21 the Agency has submitted pre-filed testimony which we've

22 admitted as an exhibit, and the panel has all been sworn and are

23 available to answer any questions regarding the proposal on

24 R98-9.

1 And are there any questions?

2 (No response.)

3 MR. RAWLINSON: I'd like to make one comment. Would it be  
4 possible now with the passage of the geologists' registration  
5 requirements to recognize geologists who are submitting certain  
6 portions of landfill reporting, be it quarterly reporting or  
7 some sig. mods., significant modifications, under the  
8 geologists' registration number as opposed to having had a  
9 professional engineer certify all work?

10 I'm talking about geology-related, nondesign aspects of the  
11 landfill reporting.

12 HEARING OFFICER TIPSORD: I need you to identify yourself.

13 MR. RAWLINSON: Craig Rawlinson with STS Consultants,  
14 Deerfield.

15 I think before when this was introduced, maybe the  
16 geologists' certification wasn't in place at that time.

17 HEARING OFFICER TIPSORD: Is there a comment from the  
18 panel?

19 MR. VAN NESS: I guess my offering on that, Madam Hearing  
20 Officer, is that I don't know that we take a position  
21 particularly, except that this is, obviously, beyond the scope  
22 of the rulemaking pursuant to the Board's order.

23 My understanding was that this would be technically off  
24 limits in terms of a proposal. We're not taking any particular

1 position on that. The registration certification of a  
2 professional geologist simply has not been a subject discussed  
3 or considered heretofore for some of the reasons that were  
4 mentioned. It didn't exist before.

5 So, I guess I would say that we have no position in terms  
6 of the substance of it procedurally. It may not be the  
7 appropriate thing to do. But I would leave that to the Board's  
8 discretion as to whether they want to open it up to that.

9 HEARING OFFICER TIPSORD: Does the Agency have any comment?

10 MR. BAKOWSKI: Yeah. I just believe at this time the  
11 Agency is aware of its recent passage, and I think it's just  
12 under review right now as to how it's going to impact what we do  
13 at the Agency.

14 I don't think we have any official position on it yet.

15 HEARING OFFICER TIPSORD: Okay. Do you have a follow-up,  
16 or --

17 MR. RAWLINSON: No, I don't. I just would like it  
18 considered by the Board.

19 HEARING OFFICER TIPSORD: Okay.

20 MR. CORGIAT: I have a procedural question.

21 HEARING OFFICER TIPSORD: Could you identify -- excuse me.  
22 Could you identify yourself?

23 MR. CORGIAT: Sure. I'm Mr. Jay Corgiat.

24 I had a procedure question. Are we trying to focus only on

1 the language that's been changed or on these parts of the -- of  
2 the regulations, I guess, that are changing?

3 HEARING OFFICER TIPSORD: The Board's order basically  
4 indicated that we would accept comments on the proposed language  
5 for the sections opened, and we are limiting the scope of the  
6 proceeding in that we will not add any new sections.

7 MR. CORGIAT: Okay. I guess with that in mind, I have a  
8 question about the, in the gas treatment section. It says  
9 that --

10 HEARING OFFICER TIPSORD: Could you identify it by section  
11 number, please?

12 MR. CORGIAT: Sure. 811.312(b): Except as allowed in  
13 subsection (g), which is for gas processing facilities that are  
14 off site, it says, basically, that all the landfill gas  
15 processing equipment, to paraphrase, must remain under the  
16 control of the operator and shall be considered part of the  
17 waste disposal facility.

18 I wondered how the EPA was gonna handle a lot of these  
19 third-party landfill gas energy companies and how they're going  
20 to be covered in the regs. Will they be considered an operator,  
21 or can there still be a separate operator from the land -- from  
22 the third-party vendor?

23 MS. MUNIE: You want me just to answer?

24 MR. BAKOWSKI: You want to do it?

1 MS. MUNIE: Sure.

2 Right now, a third-party operator who would operate a  
3 landfill gas energy facility on the landfill facility would have  
4 to have a permit as the owner of the land, being the landfill  
5 owner; and then the operator of the facility could be either  
6 identified as the third party, or it could be the operator of  
7 the landfill, depending on how the landfill chose to set up  
8 their contractual agreement there. That's really entirely a  
9 contractual agreement.

10 And the permit itself, however, is held by the landfill and  
11 is the responsibility of the landfill owner/operator.

12 HEARING OFFICER TIPSORD: Are there any other questions for  
13 the panel?

14 (No response.)

15 HEARING OFFICER TIPSORD: Did you have anything?

16 (No response.)

17 HEARING OFFICER TIPSORD: Okay. All right. Seeing none,  
18 then we'll proceed to the next order of business, and that is  
19 that this rulemaking has not yet been proposed for first notice  
20 with the, under the Illinois Administrative Procedure Act, and  
21 that would -- the Board's next step would be to determine  
22 whether or not it merits proceeding and, if so, to do that  
23 first-notice proposal.

24 So, at this time, I would like to set up an

1 agreed-upon schedule for filing comments prior to the Board  
2 taking an action on either proceeding to first notice; or the  
3 Board has the option, of course, of dismissing a proposal if it  
4 doesn't merit proceeding.

5 So, let's go off the record for just a second and start  
6 talking about dates.

7 (Discussion off the record.)

8 HEARING OFFICER TIPSORD: Let's go back on the record.

9 Before we set the final comment date, we do have one more  
10 question. Go ahead.

11 MR. RAWLINSON: Okay. My question is: This semiannual  
12 monitoring, which list of constituents would that reflect?  
13 Would it be the burden of the applicant to propose a list, or  
14 would it be subtitle (d), Appendix 1 list that's currently  
15 required by the Federal Regulations by default?

16 MS. MUNIE: Which section are you referring to here? Is it  
17 the 319? I just want to make sure it's the 319 and not the 309.

18 MR. RAWLINSON: Yes, 811.319(b) -- wait. I'm sorry.

19 MS. MUNIE: (a)(1)(A).

20 MR. RAWLINSON: (a)(1)(A), yeah.

21 MR. LISS: And the question is: You'd like to know if that  
22 includes or does not include the appendix side list?

23 MR. RAWLINSON: We just want to know: Is it up to the  
24 applicant, then, at that point when they go forward to request a

1 switch to semiannual after they have their background to five?

2 Would it be up to them to propose a list again? Would it be an

3 Appendix 1 reasonable list? Or would it be something that's --

4 MR. LISS: Yeah. I anticipated that it would be whatever's

5 in your permit; and if you wanted to propose at that time

6 something different --

7 MR. RAWLINSON: So, you're thinking it would be (g)(2), the

8 annual list or the routine list that's in the permits?

9 MR. LISS: The annual list is, is done annually anyway.

10 So, I don't think we make anyone do that semiannually.

11 MR. RAWLINSON: Okay.

12 MR. LISS: So, it would be whatever is in your permit for

13 quarterly; and at the time, when you wanted to get reduction in

14 sampling, we would probably just use that list unless you

15 propose something different.

16 So, the annual list isn't quarterly. So, therefore, it's

17 not part of this.

18 Does that answer your question?

19 MR. RAWLINSON: It's just the quarterly list --

20 MR. ALLENDORF: For one of the semiannual events, and then

21 the annual list for the second semiannual --

22 HEARING OFFICER TIPSORD: You need to identify yourself.

23 MR. ALLENDORF: Mr. Mark Allendorf with Browning-Ferris

24 Industries.

1 HEARING OFFICER TIPSORD: Could you repeat what you said?

2 MR. ALLENDORF: Sure.

3 My understanding is that the first semiannual event -- or  
4 one of the semiannual events would be the typical short (g)(1)  
5 list, if you will, that are typically in the permits; and then  
6 the annual list would be the second semiannual event.

7 MR. LISS: Correct.

8 And I can clarify that for the record. When he indicates  
9 (g)(1) or (g)(2), that's the Agency's method of identifying  
10 quarterly parameters versus annual parameters.

11 The (g)(1) would be the constituents that we routinely  
12 monitor quarterly; so, they would be going off. Under this  
13 proposal, you could -- that list or some other list that you  
14 would propose would remain, but it would go quar-- semiannually.  
15 And then once a year at one of those semiannual events would be  
16 the (g)(2) or annual list.

17 MR. RAO: And just a clarification, this (g)(2) list that  
18 you just mentioned, is it a more comprehensive list than the  
19 (g)(1) list?

20 MR. LISS: Yes.

21 MR. RAO: Okay.

22 HEARING OFFICER TIPSORD: Okay. Are there any other  
23 questions?

24 (No response.)

1 HEARING OFFICER TIPSORD: Okay. And also, just to be sure,  
2 there's no one else here who wishes to present testimony today;  
3 is that correct?

4 (No response.)

5 HEARING OFFICER TIPSORD: Okay. All right. Then after  
6 discussion off the record, we will set December 19th for the  
7 deadline to file comments prior to the Board's proceeding with  
8 this rulemaking either to first notice or whatever action is  
9 taken.

10 That is mailbox rule so that they can be mailed on December  
11 19th. The Board will consider any comments received as up to  
12 that date when it proceeds next with the rulemaking. This does  
13 not mean that comments will be cut off as of December 19th; it  
14 means merely that to ensure that we consider them before we move  
15 to the next step, you need to have them in by December 19th.

16 After we -- if the Board goes to first notice, after that,  
17 there's an additional 45-day public comment period at a minimum;  
18 and we can also at that time revisit the issue of a hearing,  
19 another hearing at that point in time.

20 So, if there's nothing further, I want to thank you all for  
21 coming, and I appreciate it. I think you've done a fine job,  
22 and I look forward to seeing your comments.

23 Thank you very much. We're adjourned.

24 HEARING CONCLUDED AT 10:50 A.M.

1 STATE OF ILLINOIS )  
                                  ) SS  
2 COUNTY OF C O O K )

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CERTIFICATE OF REPORTER

5

6 I, LISA KNIGHT COSIMINI, CSR, RPR-RMR, Notary Public

7 in and for the State of Illinois, do hereby certify that the

8 foregoing transcript, consisting of pages 1 through 18, both

9 inclusive, constitutes a true and accurate transcript of the

10 original stenographic notes recorded by me of the foregoing

11 proceedings had before Marie Tipsord, Hearing Officer for the

12 Illinois Pollution Control Board, on the 19th day of November,

13 1997.

14

15 Dated this 2nd day of December, 1997.

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LISA KNIGHT COSIMINI, CSR, RPR-RMR  
Illinois License No. 084-002998

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