ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

IN THE MATTER OF:	)	
	)	
DEVELOPMENT, OPERATING AND	)	R88-7
REPORTING REQUIREMENTS FOR	)	(see R84-17)
NON-HAZARDOUS WASTE LANDFILLS	)	

PROPOSED RULE. FIRST NOTICE.

PROPOSED OPINION OF THE BOARD (by J. Anderson):

SUMMARY OF TODAY'S ACTIONS*

This Proposed Opinion articulates the rationale for actions taken by the Board in four separate Orders in various regulatory dockets. The purpose of all of these related actions is modernization of the state's regulations for the management of non-hazardous wastes.

1) Opening of Docket R88-7

2) Dismissal of R84-17, Dockets A, B, C, D.

In Docket R88-7, the Board has adopted a set of proposed regulations for first notice publication in the Illinois Register. These proposed regulations contain development, operating and reporting requirements applicable to new and existing landfills which dispose of non-hazardous waste. In

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* At the outset, the Board wishes to commend the Board's Scientific/Technical Section (STS) for the quality of its participation in this proceeding. A special acknowledgment is due to Richard A. DiMambro, both as coordinator of the various consultants and other experts whose testimony has been sponsored by the Board's STS during the course of this proceeding, and as principal author of the STS Recommendations. The Board also acknowledges the contributions made to the STS Recommendations by STS environmental scientist Dr. Harish Rao, Dr. Gilbert Zemansky (during the course of his former employment as STS Chief), and Karen Mystrik (during the course of her former employment as STS librarian).

The Board also wishes to acknowledge the special contribution made by attorney assistant Kathleen M. Crowley, who has served as Hearing Officer throughout these proceedings, and who has participated in the drafting of the Board's Opinion and Order in this and related matters.

adopting this proposal, the Board has considered the extensive record developed in R84-17, Dockets A, B, C and D. The Board's proposal is largely based on the proposal submitted by the Board's Scientific/Technical Section (STS) which was the subject of hearings in R84-17, Docket D. This Opinion must be read in conjunction with the STS "Recommendations For a Non-Hazardous Waste Disposal Program In Illinois and A Background Report To Accompany Proposed Regulations For Solid Waste Disposal Facilities, Part A: Landfills" (Final, March 7, 1988) which is entered as Exhibit 1 in Docket R88-7; as explained in more detail later, this Opinion does not reiterate much of the analysis of the proposals submitted in Dockets A, B, and C. R84-17, Dockets A, B, C, and D are being dismissed by the Board to make quite clear that the Board does not intend to adopt as its own any of these proposals in their entirety, although elements of each proposal are included in the Board's R88-7 proposal.

The Board will accept written comments concerning its R88-7 proposal for 45 days following the publication of the proposal in the Illinois Register. Decision on the number and scope of any additional hearings in this docket will be deferred until after expiration of the comment period.

3) Dismissal of Docket R84-22(D)

The R84-22(D) docket was initiated to make technical corrections to the Board's existing regulations for financial assurance for closure and post closure care of waste disposal sites. The docket is being dismissed because 1) the technical corrections are being addressed in the R88-7 proposal, and 2) the interrelationship between matters of financial assurance requirements for closure and post closure care, and the design and operating standards being proposed in R88-7 are such that it is no longer necessary or advisable to treat them in separate dockets.

4) Opening of Docket R88-8

The records developed in the R84-17 and R84-22 dockets highlights, in the absence of reporting requirements, the lack of data concerning the location of permit exempt waste generators who treat, store or dispose of waste generated by their own activities on that site, let alone the types and quantities of waste treated, stored, or disposed at such sites. The Board has opened Docket R88-8 for the purpose of considering proposal of regulations requiring a "census" of such facilities, and has directed staff to prepare a regulatory proposal designed to elicit basic information.

Finally, the Board notes that it is currently investigating new regulations to address other facilities that handle solid waste, temporary waste storage areas, solid waste treatment

operations, surface impoundments, and recycling operations. Regulations are under consideration for haulers and generators of solid waste. A separate Board proceeding, R85-27, will address the issues surrounding special waste evaluation and handling.

PROCEDURAL HISTORY

The Board adopted its "Chapter 7" regulations covering operations of sanitary landfills in 1973. These regulations, since codified as 37 Ill. Adm. Code Part 807, have remained virtually unchanged since that time, save for the addition of regulations concerning financial assurance for closure and post-closure care. In 1976, the Board adopted its "Chapter 9" regulations concerning the hauling of special waste. These regulations, since codified as 35 Ill. Adm. Code Part 809, have also existed virtually without change, except for the addition of regulations concerning hauling and disposal of hazardous hospital waste.

Abortive attempts to modernize these rules commenced in the 1980. Docket R80-20 was initiated by a proposal of the Illinois Environmental Protection Agency (Agency) to update Chapter 7, and Docket R81-31 was initiated by a Board proposal to update Chapter 9. These proposals were consolidated and dismissed by Order of the Board on October 5, 1982, after hearings indicated that extensive revision of the proposals was necessary. In that Order, the Board noted that:

> The Agency and the Illinois State Chamber of Commerce [ISCC] indicated that they were working together on a substitute proposal which would replace both Chapters 7 and 9. During [the hearing] process it has become clear first that the subject matters of Chapters 7 and 9 require coordination to insure consistency and, second, that it will be difficult to relate the testimony on the former proposals to the evolving combined proposal. The Board therefore hereby consolidates R80-20 and R81-31, and at the same time dismisses both.

In that same Order, Docket R82-21 was opened to consider the anticipated Agency/ISCC proposal for permits for waste management and hauling, and Docket R82-22 was opened to consider the anticipated proposal for landfill operating criteria. The Agency filed a proposal in the R82-21 docket only, which proposal was the subject of hearings. Both dockets were closed by Order of June 16, 1983, as a result of Agency withdrawal of its R82-21 proposal. The proposal was withdrawn as the Agency believed that

the best solution to various problems identified at hearing was submission of an amended and expanded proposal.

This docket, R84-17, was initiated to consider a draft proposal filed by the Agency on May 31, 1984. Two inquiry hearings were held at which participants identified concerns with the proposal and questioned the Agency concerning its intent. At the last hearing the Agency indicated its intention of filing a revised proposal. As the Board noted in its Resolution of December 6, 1984 announcing its intention of committing some of the resources of the Scientific Technical Section (STS) to this proceeding, no revised proposal had been submitted. Although the Agency has been a very active and helpful participant in subsequent phases of this proceeding, it has not filed a new proposal or presented evidence in support of the existing draft proposal.

On April 4, 1985, the ISSC filed an alternate proposal. By Order of April 18, 1985, the Board established Docket B for consideration of this proposal. Four hearings were held in Docket B concerning this proposal.

On August 15, 1986, Waste Management of Illinois filed another alternate proposal, which the Board designated as R84-17 Docket C. This proposal was the subject of nine hearings.

Concurrently with the hearings held in Dockets B and C, the Board held additional hearings in Docket A. The purpose of these hearings was presentation of testimony by various consultants and other scientific experts whose appearance was arranged by the STS. These consultants and other experts did not critique the various proposals pending before the Board, but instead provided testimony concerning their research and experience concerning subjects integral to analysis and/or development of comprehensive regulations for the management of waste.

By its Order of February 19, 1987, the Board determined that only one additional hearing would be held in Dockets A, B, and C. One basis for this determination was that:

> "The record to date in R84-17 is sufficient to enable the Board to determine that, while each proposal has meritorious components, no single proposal pending before it is sufficiently refined or comprehensive to be adopted by the Board as the Board's own proposal for the purposes of first notice publication pursuant to the Illinois Administrative Procedure Act, and resulting additional hearings. It is clear to the Board that the Board itself, with the assistance of its scientific/technical and legal staff, must craft a proposal to address

the sum of the various concerns which have been brought to the Board's attention."

The Order went on to establish the form and procedures for the filing of a proposal by the STS, including required filing of documents for public inspection contemporaneously with distribution of copies to the Board Members, consistent with ex parte restrictions articulated in the Board's "Protocols of Operation For the Scientific/Technical Section", RES 86-1, January 26, 1986 and the Board's Procedural Rules, 35 Ill. Adm. Code 101.121.

By Order of March 5, 1987, the Board established that the final hearing in Dockets A, B, and C would be held on April 28, 1987, that the public comment period would close on May 20, and that the Board would commence deliberations on May 28, 1987.

Consistent with the directives in the Board's Orders of February 19 and March 5, 1987, on May 22 and May 26, 1987, the STS filed an initial set of proposed regulations consisting of new Parts 810, 811 and 812 with its supporting "Recommendations for Non-Hazardous Waste Disposal Program in Illinois and A Background Report To Accompanying Proposed Regulations For Solid Waste Disposal Facilities" (Background Report). On June 12 and June 21, 1987, the STS filed another set of proposed regulations, consisting of Parts 813 and 814 and a supporting Background Report.

By Orders of May 28 and June 22, 1987, the Board authorized the STS proposal for hearing. The May 28 Order established a Docket D for consideration of the STS proposal. The Board expressly noted that it was taking no action at that time on the proposals in Dockets A, B, C.

The STS proposal was the subject of ten hearings. To expedite the proceedings, participants were required to file written questions and comments concerning the STS proposal, to which the STS provided written responses to be discussed at hearing. The comment period was closed in Docket D on December 30, 1987.*

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* Post-hearing comments will sometimes be referred to herein by Public Comment (P.C.) number without identification of submitter. The following is a listing of post-hearing public comments by number and submitter: P.C. 42, Wagner Casting Company by James Mason, Vice President Manufacturing Services; P.C. 43, Andrews Environmental Engineering, Inc. by J. Douglas Andrews, P. E., President; P.C. 44, Northeastern Illinois Planning Commission by Lawrence B. Christmas, Executive Director; P.C. 45, Environmental Reclamation Company by Carl Ball, President; P.C. 46, McHenry County Defenders by Gerald A. (continued)

At hearing, the STS had committed to redrafting various portions of the proposal in response to testimony and to consider redrafting in response to any subsequent written comment received. Accordingly, the STS filed revised versions of various portions of its proposed rules and Background Report on January 15, February 4 and 18. Consistent with prior practice in this docket, the STS dealt with the Agency's untimely comment, filed January 5, 1988, as a matter of discretion and to the extent that time permitted.

By Order of February 4, 1988, the Board adopted an Order which realigned its relationship with the STS. The Board's Order stated:

> The Board has been deliberating the STS revised proposal, as well as the records in Docket A, B, & C since January 21, 1988. The Board has limited its discussions with the STS consistent with the February 19, 1987, Order and the Board's Protocols. The Board has found that in order to fully and expeditiously deliberate these matters it is necessary to informally consult with STS staff concerning the technical details in the voluminous R84-17 record.
>
> As the bases for and comments concerning the STS proposal are a matter of public record, the Board now feels that it may, without prejudice to the integrity of its process, terminate its "arm's length" dealing with STS staff. Accordingly, as of this date, the STS staff will no longer be considered "exterior" to the Board within the meaning of the Protocols. STS staff is directed to resume communications with the Board in the usual Board/staff relationship. The ex parte constraints of 35 Ill. Adm. Code 101.121(b) shall apply to STS communications with persons other than Board Members and staff.

Paulson; P.C. 47, National Soild Wastes Management Association Final Comments by Fred C. Prillaman, Esq.; P.C. 48, Pioneer Processing, Inc. by William A. Speary, Jr., General Counsel; P.C. 49, Land and Lakes Co. by James T. Ambroso, Environmental Manager; P.C. 50, Illinois Environmental Regulatory Group by James T. Harrington, Esq.; P.C. 51, Waste Management of Illinois, Inc. by Percy L. Angelo, Esq.; P.C. 52, Illinois Department of Energy and Natural Resources by Fred Zalcman, Esq.; P.C. 53, Illinois Environmental Protection Agency by Phillip R. Van Ness, Esq.

Deliberations continued on February 5, 1988.

On February 11, 1988, the Board adopted an Order directing its staff to develop a revised proposal for its consideration on February 25, 1988 finding that:

> The Board is in full agreement with the essential elements of the proposal. However, the Board wishes to see regulatory language embodying certain concepts which either are not contained in the existing proposal, are not clearly expressed, or are alternative to those presently proposed.

By its Order today, the Board adopts its own proposal for first notice publication in the Illinois Register.

MAJOR PARTICIPANTS

The record in this matter is too voluminous for the Board to synopsize all testimony presented. The following individuals and organizations have made contributions to this proceeding as noted.

The Agency (Proponent in Docket A)

Questions concerning the Agency's Docket A informal proposal were received by:

Lawrence Eastep, P. E.
Permit Manager, Division of Land Pollution Control (DLPC)

Harry Chappel, P. E.
Manager, Compliance Section, DLPC

Monte Nienkirk
Manager, State Site Mangement Unit, Remedial Project Management Section, DLPC

Linda J. Kissinger
Environmental Protection Specialist, DLPC

Scott O. Phillips, Esq.
Enforcement Programs

Virginia Yang, Esq.
Enforcement Programs

Gary King, Esq.
Enforcement Programs

Of this group, Mr. Eastep and Mr. Chappel have continued involvement on the part of the Agency, which is currently also represented by:

Edwin C. Bakowski
Manager, Solid Waste/UIC Unit, DLPC

Phillip Van Ness, Esq.
Enforcement Programs

ISCC (Proponent in Docket B) Illinois Environmental Regulatory Group.

The Docket B proposal was prepared by the Illinois Waste Regulatory Committee of the ISCC. Testimony concerning the language of the Docket B proposal was presented by:

Sidney M. Marder
Environmental Consultant

Jeffrey C. Fort, Esq.
Martin, Craig, Chester and Sonnenschein

The Illinois Environmental Regulatory Group (IERG), formed in 1986, is an affiliate of the ISCC which currently represents some 34 Illinois Industries interested in the development of the state's environmental regulations (P.C. 50, p. 1). Since formation of IERG, ISCC has not participated in the R84-17 docket as a separate entity. IERG is currently represented in this proceeding by:

Sidney M. Marder
Executive Director, IERG

Katherine D. Hodge, Esq.
General Counsel, IERG

James T. Harrington, Esq.
Ross & Hardies

In addition to presentation of testimony by Mr. Marder, both ISCC and IERG have sponsored technical testimony in Dockets B & D concerning the properties of wastes generated by certain industries and the state of the research concerning disposal of such wastes. These industries, and their representatives have been:

Illinois Steel Group:
David H. Miller
Consulting Engineer

Thomas M. Barnes, Venture Manager
Outokumpu, Oy(sic)

Utility Industry:
Thomas Hemminger
Director of Water Quality, Commonwealth Edison

Foundry Industry:
Michael Slattery
President, Illinois Cast Metals Association

Thomas Kunes:
Executive Vice President, RMT, Inc.
Chairman, American Foundryman's Society
Committee 10F on Water Quality & Solid Wastes

Waste Management of Illinois, Inc. (Proponent in Docket C)

Various representatives of Waste Management of Illinois (WMI), its parent corporation Waste Management, Inc. (WM, Inc.), and Waste Management of North America (WMNA), another WM, Inc. subsidiary, presented testimony in support of WMI's Docket C proposal, as well as considerable comment concerning the STS Docket D proposal. The representatives for Waste Management have been:

Peter Vardi
Vice President For Environmental Management, WM, Inc.

Gary Williams
Director, Environmental Compliance WM, Inc.
Ronald Poland
Director, Environmental Engineering, WM, Inc.

John Baker
Manager, Environmental Monitoring Programs, WM, Inc.

Henry L. Martin
Manager, Gas Recovery, WMNA

Tom Tomaszewski
General Manager, CID Processing, WMI

Dale Hoekstra
General Manager, Midway Landfill, WMI

Dr. Jay Lehr
Professor of Groundwater Hydrology, Ohio State University;
Executive Director, National Water Well Association

E. Clark Boli
President, Meredith/Boli and Associates

Carolyn Lown, Esq.
WM, Inc.

Percy Angelo, Esq.
Mayer, Brown & Platt

STS (Proponent in Docket D)

The STS sponsored the testimony of various witnesses in Docket A, which testimony served as the basis for some components of the STS proposal supported by further testimony in Docket D. The STS witnesses and consultants, and the subjects of their testimonies were:

Richard DiMambro Environmental Engineer, STS	STS Proposal
Dr. Richard C. Berg, Thomas M. Johnson, Dr. William R. Roy, Dr. Robert A. Griffin Illinois State Geological Survey	Various geological considerations regarding landfill siting and potential for groundwater contamination
Dr. David E. Daniel, Assistant Professor University of Texas	Landfill/Liners and other earthen barriers
Dr. Robert K. Ham, Professor of Civil & Environmental Engineering University of Wisconsin	Generation and characteristics of landfill leachate and gas
Dr. Cecil Lue-Hing, Director of Research and Development Metropolitan Sanitary District of Greater Chicago	A case history of landfill leachate treatment at a publicly owned treatment works (MSGDC Calumet Sewage Treatment Works)
Dr. Aaron A. Jennings, Associate Professor of Civil Engineering University of Toledo (Ohio)	Groundwater contamination modeling

Department of Energy and Natural Resources

The Division of Energy and Environmental Affairs of the Department of Energy and Natural Resources (DENR) has participated throughout these proceedings for the purpose of determining whether DENR would prepare an economic impact study concerning the various proposals and the scope of any such study. DENR employees present for these purposes have included:

Bonnie Eynon Meyer
Coordinator, EcIS Analysis Program

Elliott Zimmerman
Resource Planner

Stanley Yonkauski, Esq.

Fred Zalcman, Esq.

Technical testimony concerning special waste disposal issues was presented by a representative of another division of DENR:

David Thomas
Director, Hazardous Waste Research and Information Center

The Board further notes that the Illinois State Geological Survey is also a division of DENR.

Illinois Chapter, National Solid Waste Management Association, and Various Landfill Operators

The Illinois Chapter of the National Solid Waste Management Association (NSWMA) has sponsored testimony and comments on behalf of the Illinois Chapter and its various member disposal facilities. As the Illinois Chapter has not provided the Board with a membership list, the Board is unsure of how many of the individual waste management companies who have participated in this proceeding are NSWMA members. In listing these companies in this section for convenience, the Board is not implying that these companies are necessarily affiliated with NSWMA. These participants have been:

Joseph R. Benedict
Chairman, Illinois Chapter, NSWMA
Director of Regulatory Affairs, Sexton Companies

Dr. Charles A. Johnson
Technical Director, NSWMA

Dr. Edward Repa
Institute of Solid Waste Disposal, NSWMA

Bob Peters
State Program Manager, NSWMA

Fred A. Prillaman, Esq.
Mohan, Alewelt, & Prillaman

James Ambroso
Environmental Manager, Land & Lakes, Co.

Carl Ball
President, Environmental Reclamation Co.

Paul DeGroot
President, States Land Improvement Co.

Leo Lentz
Modern Landfill Co.

Francis J. O'Brien
Environmental Control Manager, Browning Ferris Industries of Illinois, Inc.

William A. Speary, Jr., Esq.
General Counsel, Pioneer Processing, Inc.

Environmental Groups

Various environmental groups have participated in these proceedings through their directors, as well as through counsel representing a coalition of groups. (Individual members of these groups are too numerous to list). These have been:

Patricia A. Sharkey, Esq., representing
Citizens for a Better Environment (CBE),
Great Lakes Sierra Club, McHenry County Defenders (MCD),
Center for Neighborhood Technology,
Coalition For Appropriate Waste Disposal,
South Chicago Development Commission

CBE: Kevin Greene
Research Director

Dr. Robert Ginsberg
Midwest Research Director

MCD: Gerald Paulson
Executive Director

Grey Lindsay
Environmental Consultant

Environmental Consultants

In addition to those previously listed, various environmental consulting firms have participated, particularly in Docket D, on behalf of themselves or their clients. These include:

James Douglas Andrews, P. E.
Andrews Environmental Engineering

Darryl Bauer
Baxter and Woodman, Inc.

Daniel P. Dietzler, P.E.
Patrick Engineering, Inc.

Richard W. Eldredge, P.E.
Eldredge Engineering Associates, Inc.

Roberta L. Jennings
Consultant Hydrologist

WMI Objection to February 4, Order

On February 10, 1988, WMI filed an objection to the February 4 Order realigning the relationship of the Board and the STS. The essence of WMI's objection is that:

> While fully recognizing the good faith of the STS staff WMI notes that the process of first creating a separate staff proposal supported by informal contacts and then attempting to reestablish the usual Board/staff relationship inescapably presents serious conflicts of interest. . . .
>
> WMI assumes that it is improper for an advocate of a certain proposal to have direct access to the Board to support its views no matter how much it believes they may be meritorious.
>
> Certain Board Members have commented that in agencies it is sometimes necessary to "wear two hats." If that means that agency

> personnel are on occasion called upon to be both advocates and decisionmakers, we respectfully suggest that it is not proper for such personnel to assume both roles in the same case. Once a "Chinese Wall" is constructed to deal with a potential conflict situation it is not possible to dismantle it when it becomes inconvenient.

The Board notes that, while WMI has lodged an objection for the record, that it has not either generally or specifically requested that the Board take action on its objection. The Board accordingly will offer only three comments in response to the objection.

First, as a matter of policy, the Board is now, and has been throughout the course of this proceeding, highly cognizant of its obligation to base its decision on information contained in the record.

Second, the Board did not issue its February 4 Order for the purpose of giving the STS an opportunity to "lobby" the Board in support of its proposal; the Board did so to allow it to ask clarifying questions of the one member of its STS staff able to provide timely clarification of some aspects of this record. The STS staff currently consists of three members, one of whom has been assigned to this R84-17 docket since the STS was staffed in 1985 and who prepared the Docket D proposal and background report at the behest of the Board. Neither of the other two STS staff members is familiar with the voluminous record in R84-17, and neither is particularly suited by way of scientific training or recent prior experience to quickly assimilate this record and respond to questions by the Board. One member's primary area of concentration has been in the area of air quality, and the other's in the area of promulgation of state rules implementing the federal NPDES and RCRA hazardous waste programs.

Third, the Opinion and Order adopted by the Board today reflect the collective judgment of this seven Member Board based on the record developed to date, a judgment which is markedly different from that of the STS in a number of areas.

INTER-RELATION WITH STS BACKGROUND REPORT

While the Board has not adopted the STS proposed rules without change, the Board does endorse the technical analysis and rationale behind the major components of the proposal. Areas in which the Board's first notice proposal diverges from the STS Recommendations will be discussed in some detail in this Opinion*; in areas which the Board's thinking is similar to that

of the STS, this Opinion will provide only supplementary comments.

This Opinion should be read together with the STS Background Report, as, for the purposes of this first notice proposed Opinion, the Board has not engaged in the mechanical task of selective incorporation of portions of the Background Report. As earlier noted, the STS Background Report, as filed on March 7, 1988 with final edits pursuant to leave of the Board granted in its Order in R88-7, will be introduced as Exhibit 1 in R88-7. The references listed at pages 114-131 of the Background Report will be introduced as Group Exhibit 2.

DISMISSAL OF DOCKETS A,B,C, AND D AND CREATION OF DOCKET R88-7

At several earlier points in this proceeding, the Board has indicated that the proposals in Docket A, B, and C would not be adopted by the Board for first notice publication, and indicated in its February 11 Order that neither would the Docket D proposal. In its December 30, 1987 public comment (P.C. 52), DENR raised many concerns concerning the economic impact statement (EcIS) process in this proceeding. One of these is, in essence, that the continued pendancy in this docket of proposals other than that adopted by the Board raises questions as to whether an EcIS must compare and contrast the economic effects of each proposal.

In reviewing this record, the Board has found that it is virtually impossible to compare the proposals on a point by point basis, as the Docket A,B,C and D proposals differ so markedly in their structure, in their proposed scope of facilities to be covered, and in their approaches to a variety of issues such as that of location standards.

To remove any questions concerning the Board's view of the status of these proposals, and of the scope of DENR's statutory obligations, the Board has, by separate Order, dismissed the proposals in Dockets A,B,C and D and two established a new Docket, R88-7, for its own proposal. The record in Dockets A,B,C and D are incorporated into the record in Docket R88-7. The caption in this proceeding, which was drawn from the Agency's May, 1984 proposal, will also be amended to reflect the fact that the R88-7 proposal establishes requirements for all landfills,

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* In areas where the Board has declined to accept specific STS Recommendations, the STS recommendations will continue to appear in the Background Report, but will be discussed without a prefatory rule number heading. The purpose in so doing is to provide a clear record of the evolution of this proposal.

but does not impose requirements for generators and haulers of special waste.

In dismissing the Dockets A,B,C, and D proposals, the Board wishes to note, as has the STS in its Background Report at p. 2-3, that elements of each of the proposals have been incorporated into the STS Docket D proposal; many of these have accordingly been adopted by the Board in the R88-7 proposal. While some provisions of the proposals will be discussed in conjunction with various provisions of the Board's R88-7 proposal, some general comments about these proposals in Dockets A,B and C are in order.

Each of these three proposals suggests some changes, whether small or large, in 35 Ill. Adm. Code, Part 809, which establishes requirements for hauling, delivery, and acceptance of special waste. The Board's proposal does not reach to Part 809. Dismissal of the proposals to amend Part 809 should not be construed as a determination by the Board that no changes are needed in Part 809 specifically, or in the state's special waste system generally.

Parallel to and contemporaneously with the R84-17 proceeding, the Board has been considering special waste issues in two proceedings, Docket R84-43 and Docket R85-27, into which R84-43 has been subsumed. These dockets were initiated, respectively, in response to legislative mandates codified as Sections 22.01 and 22.9 of the Act. Throughout the course of these proceedings, the inter-relationship of landfill design and operating issues with special waste issues has been a subject of discussion at hearings, and the question has arisen as to whether one docket could proceed in advance of another.

The Board has concluded that this proposal for design and operation of landfills can appropriately proceed while work progresses on specific special waste issues. The design standards contained in this proposal do not, by their terms, depend for applicability upon whether a landfill receives waste which is currently classified as a special waste or which may be so classified in future. Instead, they depend upon the chemical and biological properties of the waste.

As to operating standards, this proposal does contain some general procedures for identification and handling of special wastes which are intended to supplement Part 809. It is clear from the records in these proceedings that there may well be specific waste streams for which specific more stringent disposal standards should be developed, such as bulk liquids, as WMI suggests in its Docket C proposal, or automobile tires and incinderator ash which are recognized in the popular press as well as the scientific literature as posing peculiar public health and disposal hazards. However, at this time, none of the records in any of the proceedings before the Board are

sufficiently developed to allow the Board to propose regulations on a wastestream by wastestream basis. The Board believes that the operating standards of this proposal are so structured as to permit the later addition of more specific procedures, and that proposal of the general rules should not be delayed pending development of rules for exceptions.

SUMMARY OF PROPOSAL

The following is a "broadbrush" overview of the major elements of this proposal. It must be read in conjunction with the Board proposal and STS Background Report.

Type and Number of Facilities Affected

At the risk of oversimplification, the type of waste which has been the target of this regulatory docket can generally be characterized as solid waste which is not regulated as a hazardous waste pursuant to Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the 1984 Hazardous and Solid Waste Amendments (HSWA), 42 USC Section 6901 et seq. The Board has adopted rules "identical in substance" to the RCRA rules adopted by the United States Environmental Protection Agency (USEPA); the Board's rules are codified at 35 Ill. Adm. Code Parts 700-750.

For the purposes of this discussion, "solid waste management" is a term which commonly includes a variety of waste handling methods. These include 1) the permanent deposit of solid waste in landfills which meet all regulatory requirements, as well as such deposit in non-complying facilities which are categorized as "open dumps"; 2) the combustion of solid waste in incinerators which meet all regulatory requirements, as well as such combustion in non-complying facilities which is categorized as "open burning"; 3) the treatment, storage and/or disposal of solid waste in waste piles; 4) the treatment, storage, and/or disposal of solid waste in surface impoundments (also known as pits, ponds, and lagoons); 5) application of solid waste onto or into the soil (also known as land farming and land spreading); 6) temporary storage of waste at transfer stations pending its transportation to another solid waste management facility; and 7) the recycling and reclaiming of solid waste for beneficial re-use.

Today's proposal does not cover the entire universe of solid waste management practices and facilities; it is confined to facilities here defined as "landfills": areas of land or an excavation in which wastes are placed for permanent disposal. Excluded are facilities whose emissions are regulated under other federal or state programs for protection of land application units, surface impoundments, and injection wells. Included for

the present purposes are waste disposal piles. (See 35 Ill. Adm. Code 700.102(b)). These regulations do not cover facilities which haul, treat, store or recycle solid waste. Such activities are not presently governed by detailed regulations at either the state or federal level; these activities will be addressed in future regulatory proceedings.

Today's proposed rules would establish minimum standards for the design and operation of all new landfills whether they are required to have a permit or are exempt from permitting, and in general would establish requirements for the upgrading of existing landfills. Landfills which are exempt from permit requirements which, by way of example, are those where an industry disposes of its own wastes on its own property, will be required to submit to the Agency essentially the same type of data which is required of permitted facilities.

As explained later in some detail, the Agency reports that there are 146 existing landfills with permits. No data is presented on either reported or calculated remaining lives for 13 of these sites. Of the remaining, the Board calculates that some 64 expect to close within 0-5 years, 25 within 6-10 years, and 44 within 11-234 years.

Little hard data is available concerning the number of currently existing landfills which are operating pursuant to the permit exemption. Since existing rules have not required even that such landfills file reports concerning their operations, their existence comes to the attention of the Agency only where, in the course of other business, for instance, an air permit inspector notices a landfill operation, or it receives complaints of environmental problems. Agency personnel testified that as a "ballpark figure", the Agency knows of some 40-50 landfills in this category.

New Landfill Design and Operation

Three new categories of non-hazardous solid waste are defined: inert, putrescible and chemical. These wastes must be placed in disposal facilities best equipped to prevent the escape of pollutants into the environment, with the "worst" type of wastes requiring the most stringent controls.

Inert waste will not burn, biodegrade, cause an odor, serve as food for birds and animals, form a gas, or form a contaminated leachate. The requirements for disposal of inert waste are minimal and mainly deal with surface water pollution, and windblown dust and debris.

Putrescible waste includes household refuse, garbage, commercial waste, and any other material that can biodegrade at a rapid rate to form landfill gas and a contaminated leachate.

Putrescible wastes must be placed in disposal facilities equipped with a liner and a leachate collection system to prevent the discharge of leachate to groundwater. Systems to monitor the buildup and migration of landfill gas must be placed around the landfill and groundwater monitoring wells must be sampled on a monthly basis.

Chemical wastes are, generally, industrial solid wastes that are not hazardous but, nevertheless, must be placed in a facility that controls and monitors the discharge of leachate. Chemical wastes are usually placed in a dedicated disposal facility on the site at which they are generated.

For new landfills, minimum design requirements include a compacted three-foot earthen liner, a leachate collection system, and a series of monitoring wells. Each new facility must investigate the hydrogeology beneath and around the site in a three-phase program to determine potential groundwater contamination pathways. A groundwater impact assessment is specified so that the adequacy of the liner design can be tested at the site.

The landfill owner must determine the quality of the groundwater at the proposed site, including the background concentrations of certain indicator constituents. The proposed site design must demonstrate that it will comply with the performance standard: that any contaminant emissions from the facility will not cause an increase in the levels of the background constituents within 100 years at a measuring point 100 feet from the edge of the landfill's disposal area or at the property boundary, whichever is closer. (This measuring point is called the zone of attenuation.) Additional, more stringent design requirements will be required if a site cannot demonstrate that it will comply with this goal.

This proposal does not, with some exceptions mandated by statute, specifically pinpoint areas of the state in which landfills should or should not be located.

In cooperation with the Board, the Illinois Geological Survey is conducting a computer modeling project to quantitatively assess the potential for contaminant migration through 15 sequences of geologic materials typical in Illinois using two landfill design scenarios and six contaminants. (See Background Report, pp. 78-91) One of the landfill designs is that proposed here, a three foot clay liner and leachate collection system; the other, representing current design practice, is a 10 foot liner and no leachate collection system. The Survey's preliminary results indicate that using the Board's minimum proposed liner/leachate collection system design, the proposed "no increase in background concentration" standard could be met with various geological settings which comprise 47.0% of

the state's land surface. Of the remaining areas, it is possible that some could be made suitable by adding to the minimum design standards or could be suitable for industrial uses producing a leachate less contaminated than that produced by, for instance, a municipal waste landfill.

Under these circumstances, it would appear that the economics of complying with more stringent design requirements would naturally motivate a landfill operator to choose a more geologically preferable site. On the other hand, in cases where use of a less preferable site is imperative for reasons of industrial or economic development, the opportunity to "design up to standard" is available.

To insure that predicted performance of an otherwise suitable design is not undermined by shoddy construction techniques, a construction quality assurance (CQA) program must be implemented during the construction of each structure. The regulations are intended to insure that the facilities are constructed to meet all of the design and performance requirements. The CQA officer must be a person other than the operator and must be a professional engineer registered with the State of Illinois.

The CQA officer must be present at various stages of, and certify to the construction including installation of the liner, the leachate drainage and collection system, the gas control systems, and the final cover. Other duties include sampling the quality of material and procedures used, supervising all inspectors and preparing a summary report for each day of construction activity.

During the time a landfill is accepting waste, it must comply with general standards for site security, surface water control, daily and intermediate cover, maintenance, fire protection and flood protection. The landfill operator must monitor the environment for effects produced by waste disposal. Groundwater monitoring effects must be concentrated in an inner zone defined as being halfway to the edge of the zone of attenuation. Any unanticipated seepage of leachate will, therefore, be detected before reaching the edge of the zone of attenuation. An assessment and a remedial action procedure if indicated, must be implemented if a statistically significant increase in the concentration of any contaminant is detected by the monitoring network. Monitoring must continue for a minimum of five years after closure, until contaminated leachate is no longer generated at the facility.

Landfill gases are also extensively regulated. Methane and carbon dioxide are the primary gases produced by disposal sites. A network of gas monitoring devices must be placed around the landfill and a gas collection and disposal system must be

installed if excessive gas migration is observed. Monitoring must continue until gas is no longer generated in significant quantities.

Once a portion of the facility ceases to accept waste, that portion must be covered with a composite cover system consisting of two layers. The bottom layer is intended to prevent precipitation infiltration into the waste and will be a relatively impermeable compacted earth layer or synthetic sheet. The upper, protective layer is intended to offer protection to the relatively impermeable layer and support vegetation to minimize erosion and dust. This top layer will consist of at least three feet of good quality topsoil capable of supporting vegetation.

The facility is required to provide proof of its financial ability to comply with all required closure and post-closure requirements.

Permitting of New Landfills

In the existing regulations, facilities are required to obtain development permits, operating permits, and, if accepting special waste, supplemental waste stream permits. Except for the latter in some cases, all of these permits have been "life of site" permits.

Under this proposal, permits would be renewable every five years, as is currently the case for air and water permits. In the usual case, an owner will submit an application to develop a tract of land for landfill use; for a number of economic and other reasons, this proposal fosters subdivision of the tract into planned disposal units. That is, it is anticipated that, for instance, an owner would plan to seek authorization to develop a 100 acre site by sequentially opening and closing 10 units of 10 acres each, rather than digging 1 trench of 100 acres. To avoid controversy as to what permit(s) are renewable at the end of five years, this proposal does away with the concept of separate operating permits. The facility will be issued one permit, the development permit, and authorization to operate will be granted by way of modification of the facility's single permit. Regardless of what year during a five year permit term a unit is authorized to begin operations, the time for permit renewal "relates back" to the issue date of the development permit.

The proposal specifies which of various changes which can occur at a site are "significant", requiring the filing of an application for permit modification.

Existing Landfills' Design and Operation

As a practical matter, all existing facilities cannot be expected to comply with all requirements applicable to new facilities. For instance, retrofitting of such existing sites with leachate collection systems of the design required for new facilities is clearly impractical; performance of the detailed hydrogeological site investigation may also be impractical.

The proposal therefore sets intermediate standards against which the facility must assess its operations to determine when it must begin closure. Units which have not accepted waste prior to the effective date of these regulations are required to meet all standards for new facilities.

The primary yardstick for gauging performance is the "no increase in background concentration" groundwater standard. Existing units which meet the standard, are equipped with some type of leachate collection system and upgrade their financial assurance instruments are exempt from certain location and site analysis and investigation requirements; these may remain open for a period greater than seven years.

Existing units which cannot meet the no-increase standard, but which can meet the drinking water standards at a point measured at the edge of the unit rather than at the zone of attenuation, may remain open for up to seven years with the same exemptions and upgrading requirements as for facilities above.

Facilities which cannot meet either of these sets of requirements must initiate closure within two years.

Re-Permitting of Existing Landfills

The proposal requires existing facilities which do not intend to close within two years to apply for modification of their existing permits no later than 48 months after the effective date of the rules, or one year after the Agency "calls in" the permit for review, whichever first occurs. Facilities which timely file applications for modification may continue to operate pursuant to the terms of their original permit pending Agency decision on the application and any subsequent appeals of that decision.

Reporting Requirements For Non-Permitted Landfills

Non-permitted landfills are required to file three types of reports. The facility's initial report, to be filed within two years, must contain much of the same information as required in a permit application. Annual reports must be filed containing a summary of the year's waste disposal activities, modifications made to the facility, results of monitoring data concerning

leachate, gas and groundwater, and projected activities for the coming year. Quarterly ground water modeling reports are also required. Information developed pursuant to the rules, including that not yet submitted to the Agency, must be retained on site for Agency inspection.

OVERVIEW: THE WASTE DISPOSAL SYSTEM IN ILLINOIS

Deliberations in this docket have been more than usually complex and problematic due to the large number of sources potentially regulated and the lack of data concerning many of these sources; the complexity of the technical issues in the area of waste disposal, which concern effects on the quality of air, land, surface waters and ground waters; and the legislative and regulatory initiatives and constraints which may direct as well as circumscribe the Board's actions in this area. Some prefatory discussion of these subjects is a necessary aid to understanding the Board's decision to proceed with regulations at this time and the form these regulations take.

The Statutory Framework

Over the past two decades, the legislative policy at both the state and federal levels has been to impose increasingly more stringent controls on the disposal of waste. In its creation of the modern day Illinois environmental system through adoption of the Illinois Environmental Protection Act (Act), Ill. Rev. Stat. ch. 111 1/2, par. 1001 et seq., the General Assembly specifically noted in Section 20 that:

> "economic and population growth and new methods of manufacture, packaging and marketing, without the parallel growth of facilities enabling and ensuring the recycling, re-use and conservation of natural resources and solid waste, have resulted in a rising tide of scrap and waste materials of all kinds; that excessive quantities of refuse and inefficient and improper methods of refuse disposal result in scenic blight, cause serious hazards to public health and safety, create public nuisances, divert land from more productive uses, depress the value of nearby property, offend the senses, and otherwise interfere with community life and development; that the failure to salvage and reuse scrap and refuse results in the waste and depletion of our natural resources and contributes to the degradation of our environment".

As part of its intended purpose in 1970 of "upgrading waste collection and disposal practices", in Section 21 the General Assembly banned the disposal of waste in sites which failed to meet the requirements of the Act, and required a permit for waste disposal operations with one significant exception: what is commonly referred to as the Section 21(d) on-site exemption. As it currently exists, the exemption provides that:

> "no permit shall be required for any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated"

The Section 21(d) on-site exemption does not apply to hazardous waste. (This exemption will be further addressed in later portions of this Opinion).

The Board's existing non-hazardous waste regulations were, when adopted in 1973, "state of the art" regulations proposed by the Agency and designed to foster abandonment of waste disposal in "town dumps" in favor of disposal in modern, permitted "sanitary landfills." Examination of the regulations makes clear that the primary operational concerns were that wastes be adequately covered and litter collected. While the rules contain general prohibitions against air pollution and water pollution, as the STS Background Report notes at p. 2 "they barely recognize the problems of landfill gas monitoring and collection, groundwater monitoring and liners and leachate collection systems." The regulations do not contain specific standards for facilities other than "sanitary landfills", and none have been proposed to the Board since adoption of Part 807.

In 1974, USEPA adopted guidelines for the thermal processing of solid wastes, and for the land disposal of solid wastes (40 CFR Part 243). These guidelines are, viewed today, no more sophisticated than the Board's Part 807.

Congress' adoption in 1976 of the Resource Reclamation and Recovery Act has had a profound impact on the path that the state's regulatory program for solid waste management has taken. While Subtitle D of RCRA addresses disposal of non-hazardous solid waste, until recently Subtitle D-related activities took a back seat to activities relative to the Subtitle C hazardous waste program. The Code of Federal Regulations contains only one nine-page Part, Part 257 adopted in 1979, containing criteria for non-hazardous solid waste disposal facilities and practices pursuant to Subtitle D of RCRA. By contrast, since 1980 Subtitle C regulatory activities have generated over 40 new parts to the Code of Federal Regulations totalling some 500 pages.

In 1981, in adopting P.A. 82-380, the General Assembly amended Section 20 of the Act to direct the Board and the Agency to take all steps necessary to secure federal approval of an Illinois hazardous waste management program pursuant to Subtitle C of RCRA and resulting funding of such program. The Board and the Agency have done so, and have secured the necessary federal approval.

However, one of the inevitable results of receipt of such funding is that the state's regulatory program and priorities are driven by those of its federal paymaster. As aforementioned, while the Agency has made abortive attempts to develop and present non-hazardous waste regulations for the Board's consideration, these attempts have been abandoned in favor of meeting federal requirements of the Subtitle C program.

The Board, however, which has not heretofore been dependent on federal funding, has devoted considerable resources to development of a modern non-hazardous waste program while at the same time fulfilling its obligations under the Subtitle D program. The Board's efforts have been particularly aided by its receipt of the general revenue funding which created the Board's Scientific/Technical Section, which become operational in early 1985.

The lack of modern regulations for the disposal of non-hazardous waste has prompted both Congress and the General Assembly to mandate focus on this area by regulatory authorities. The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require USEPA to study the adequacy of the Subtitle D criteria and its efficacy in protecting groundwater and to recommend whether additional authorities are needed to enforce them. USEPA was directed to promulgate revisions to the Subtitle D criteria by March, 1988.

While the record in R84-17 is replete with references to federal activity concerning Subtitle D regulations, most of this information is anecdotal. USEPA has not formally published draft regulations in the Federal Register, and has not, to the Board's knowledge, formally announced a schedule for promulgation of Subtitle D rules.

The General Assembly, for its part, has passed several bills directing regulatory and other activity by state agencies in the solid waste area. Section 21.1 of the Act, adopted in P.A. 83-775, prohibited operation of permitted waste disposal sites after March 1, 1985 unless the site possessed a performance bond or other security for the purpose of insuring closure and post-closure care in accordance with the Act and Board rules; the Board's implementing regulations are codified at 35 Ill. Adm. Code 807.501 et seq. The Illinois Solid Waste Management Act, enacted by P.A. 84-1319, effective September 4, 1986 and codified

at Ill. Rev. Stat. ch. 111 1/2, par. 7051 et seq. establishes as state policy reduction of reliance on land disposal of solid waste in favor of (in descending order of preference) volume reduction, recycling and reuse, combustion with energy recovery, combustion for volume reduction, with landfill being the last preference. While no regulatory activity is mandated by this legislation, the Agency is directed to annually publish a report on projected landfill disposal capacity. DENR is directed to engage in various activities to assist in initiation of a comprehensive statewide approach to address local and regional solid waste management needs; some of these activities are issuance of various grants, provision of siting and technical assistance for solid waste management facilities, and coordination of solid waste research by the University of Illinois.

Finally, and perhaps most importantly, in the last legislative session the General Assembly has enacted legislation which sets in motion a massive effort by numerous state agencies and local governments for study, classification, categorization and protection of the state's groundwater resources. This is the Illinois Groundwater Protection Act, P.A. 85-863, effective September 24, 1987, which is codified at Ill. Rev. Stat., ch. 111 1/2, par. 7451 et seq. and which also adds several new sections to the Act. In the regulatory arena, the Agency is directed to propose, and the Board to adopt, regulations in the following areas:

A. Comprehensive Ground Water Quality Standards

These regulations are to be proposed by the Agency by July 1, 1989 and adopted by the Board within two years of proposal. Section 8 of the Groundwater Protection Act, codified at Ill. Rev. Stat., ch. 111 1/2, par. 7458, provides in pertinent part that:

> (a) In preparing such regulations, the Agency shall address, to the extent feasible, those contaminants which have been found in the groundwaters of the State and which are known to cause, or suspected of causing, cancer, birth defects, or any other adverse effect on human health according to nationally accepted guidelines. ...
>
> (b) In promulgating these regulations, the Board shall, consider the following:
>
> (1) recognition that groundwaters differ in many important respects from

surface waters, including water quality, rate of movement, direction of flow, accessibility, susceptibility of pollution, and use;

(2) classification of groundwaters on an appropriate basis, such as their utility as a resource or susceptability to contamination;

(3) preference for numerical water quality standards, where possible, over narrative standards, especially where specific contaminants have been commonly detected in groundwaters or where federal drinking water levels or advisories are available;

(4) application of non-degradation provisions for appropriate groundwaters, including notification limitations to trigger preventive response activities;

(5) relevant experiences from other states where groundwater protection programs have been implemented; and

(6) existing methods of detecting and quantifying contaminants with reasonable analytical certainty.

B. Maximum setback zones for community water supply wells

Section 14.2 (Ill. Rev. Stat. ch. 111 1/2, par. 1014.2) of the Act provides for a minimum 200 foot setback from existing drinking water wells. Section 14.3 provides a mechanism whereby a community water supply well may request that the Agency petition the Board for establishment of a maximum setback where "the outermost boundary of the lateral area of influence of the well under normal operational conditions exceeds the radius of the minimum setback zone". Such Agency petitions may be filed after July 1, 1989.

C. Standards for Various Waste Management Facilities

Section 14.4 of the Act provides that the Agency is to propose regulations no later than January 1, 1989, and that the Board is to promulgate regulations governing existing facilities within two years of the proposal's submittal. Section 14.4(a)

and (b) provide in pertinent part:

Section 14.4:

(a) No later than January 1, 1989, the Agency .... shall propose regulations to the Board prescribing standards andrequirements for the following activities:

(1) landfilling, land treating, surface impounding or piling of special waste and other wastes which could cause contamination of groundwater and which are generated on the site, other than hazardous, livestock and landscape waste, and construction and demolition debris;

(2) storage of special waste in an underground storage tank for which federal regulatory requirements for the protection of groundwater are not applicable;

(3) storage and related handling of pesticides and fertilizers at a facility for the purpose of commercial application;

(4) storage and related handling of road oils and de-icing agents at a central location; and

(5) storage and related handling of pesticides and fertilizers at a central location for the purpose of distribution to retail sales outlets.

In preparing such regulation, the Agency shall provide as it deems necessary for more stringent provisions for those activities enumerated in this subsection which are not already in existence. Any activity for which such standards and requirements are proposed may be referred to as a new activity.

(b) Within 2 years after the date upon which the Agency files the proposed regulations pursuant to subsection (a) of this Section, the Board shall promulgate

appropriate regulations for existing activities. In promulgating these regulations, the Board shall consider the following:

(1) appropriate programs for water quality monitoring;

(2) reporting, recordkeeping and remedial response measures;

(3) appropriate technology-based measures for pollution control; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any existing activity which is located:

(a) within a setback zone regulated by this Act, other than an activity located on the same site as a non-community water system well and for which the owner is the same for both the activity and the well; or

(b) within a regulated recharge area as delineated by Board regulation, provided that:

(i) the boundary of the lateral area of influence of a community water supply well located within the recharge area includes such activity therein;

(ii) the distance from the wellhead of the community water supply to the activity does not exceed 2500 feet; and

(iii) the community water supply well was in existence prior to January 1, 1988.

In addition, the Board shall ensure that the promulgated regulations are consistent with

and not pre-emptive of the certification system provided by Section 14.5.

The certification system of Section 14.5 allows the Agency to certify that sites "represent a minimal hazard with respect to contamination of groundwaters by potential primary or potential secondary sources "as defined in Sections 3.59 and 3.60 of the Act. Such certification is to be based on the type of activities which have or will take place at the site. A certified site is exempt from regulations adopted pursuant to Sections 14.2 and 14.4.

D. Additional Regulations For New Disposal Activities

Section 14.4(c) of the Act provides:

> (c) Concurrently with the action mandated by subsection (a), [set forth above] the Agency shall evaluate, with respect to the protection of groundwater, the adequacy of existing federal and State regulations regarding the disposal of hazardous waste and the off-site disposal of special and municipal wastes. The Agency shall then propose, as it deems necessary, additional regulations for such new disposal activities as may be necessary to achieve a level of groundwater protection that is consistent with the regulations proposed under subsection (a) of this Section.
>
> (d) Following receipt of proposed regulations submitted by the Agency pursuant to subsection (a) of this Section, the Board shall promulgate appropriate regulations for new activities. In promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:
>
> (1) appropriate programs for water quality monitoring, including, where appropriate, notification limitations to trigger preventive response activities;
>
> (2) design practices and technology-based measures appropriate for minimizing the potential for groundwater contamination;

(3) reporting, recordkeeping and remedial response measures; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any new activity which is to be located within a setback zone regulated by this Act, or which is to be located within a regulated recharge area as delineated by Board regulation. In addition, the Board shall ensure that the promulgated regulations are consistent with and not pre-emptive of the certification system provided by Section 14.5.

E. Boundaries of Regulated Recharge Areas

In distinction to most areas to be regulated pursuant to the Groundwater Protection Act, there is no timetable set for determinations concerning boundaries of regulated recharge areas pursuant to Sections 17.3 and 17.4. These sections provide in pertinent part that:

Section 17.3

(a) The Agency may propose to the Board a regulation establishing the boundary for a regulated recharge area if any of the following conditions exist:

(1) the Agency has previously issued one or more [groundwater contamination hazard] advisories within the area [as provided in Section 17.1(g)];

(2) the Agency determines that a completed groundwater protection needs assessment [developed pursuant to Section 17.1] demonstrates a need for regional protection; or

(3) mapping completed by the Department of Energy and Natural Resources [DENR] identifies a recharge area for which protection is warranted.

(b) The Agency shall propose to the Board, pursuant to Section 28, a regulation

establishing the boundary for a regulated recharge area if a regional planning committee [establishing pursuant to Section 17.2] files a petition requesting and justifying such action, unless the Agency [makes certain determinations].

Section 17.4

(a) In promulgating a regulation to establish the boundary for a regulated recharge area, the Board shall ... consider the following:

(1) the adequacy of protection afforded to potable resources groundwater by any applicable setback zones;

(2) applicability of the standards and requirements promulgated pursuant to Section 14.4;

(3) refinements in the groundwater quality standards which may be appropriate for the delineated area;

(4) the extent to which the delineated area may serve as a sole source of supply for public water supplies.

(b) The Board may only promulgate a regulation which establishes the boundary for a regulated recharge area if the Board makes a determination that the boundary of the delineated area is drawn so that the natural geological or geographic features contained therein are shown to be highly susceptible to contamination over a predominant portion of the recharge area.

(c) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act.

The Decision To Adopt A First Notice Regulatory Proposal At This Time

As the foregoing discussion demonstrates, after years of inactivity, solid waste regulation has risen to the top of both

the state and federal regulatory agenda. During the course of hearings in this matter, and in closing comments, the Board has been requested to defer adoption of its own proposal for publication in the Illinois Register until after various actions are taken by the legislature, USEPA, the Agency and DENR.

The Board does not believe that it is in the best interests of the State to delay publication of the Board's best thinking on what constitute minimum requirements for the operation of new and existing landfills. Prior to discussing the specific arguments against proceeding at this time, the Board will discuss the two overriding arguments in favor of expeditious action: the need to facilitate siting of new and expanded landfills which are defined as "new regional pollution control facilities" subject to the local government site location suitability approval process of Sections 39.1 and 40.1 of the Act, commonly known as the SB172 process, and the need to collect data concerning the operations and effects of landfills which enjoy the Section 21(d) on-site exemption from permitting and whose activities have accordingly been largely exempt from scrutiny.

The Impact of the SB172 Process on Illinois' Landfill Disposal Capacity

In its first report pursuant to the Solid Waste Management Act, Available Waste Disposal Capacity For Solid Waste In Illinois (R84-17D, Exh. 31), the Agency reported that in 1970, there were over 1,200 garbage dumps and 10 municipal incinerators operating in the State. In 1987, there are 146 permitted sanitary landfills and 1 municipal solid waste incinerator in operation. (Id., p. 13, 15) The Agency further reports that:

> Of the State's 102 counties, 24 have no landfills, or received no waste at their facilities. This means that these counties export their wastes to counties with available capacity. Only 34 of the State's counties have the capacity to adequately dispose of their own wastes; many also import waste. It is apparent that almost half of the State's counties must export wastes elsewhere, to counties or other states with available capacity. Counties face the problem of adequate capacity that is accessible at a reasonable cost. (Id., p. 18)

Based on reports that the state disposes of 51,906,710 cubic yards of waste annually, and an estimated remaining disposal capacity of 273,274,983 cubic yards, the Agency calculates that the State, as a whole, has a remaining disposal capacity of 5.3 years. (Id., p. 21) This can be further broken down by region, as follows based on information and tables appearing on pp. 23-56

of the Agency's Report:

PROJECTED REGIONAL LANDFILL-LIFESPANS

Region	Counties Included	Remaining Years At Current Disposal Volumes	Number of Landfills
1	Boone Bureau Carroll DeKalb Jo Davies LaSalle Lee Ogle Putnam Stephenson Whiteside Winnebago	5.7	19
2	Cook DuPage Grundy Kane Kankakee Kendall Lake McHenry Will	3.9	33
3	Fulton Hancock Henderson Henry Knox Marshall Mercer McDonough Peoria Rock Island Stark Warren Woodford	9.4	21
4	Champaign Clark Coles Crawford Cumberland DeWitt Douglas Edgar	8.0	24

Region	Counties Included	Remaining Years At Current Disposal Volumes	Number of Landfills
	Effingham Ford Iroquois Jasper Livington Macon McLean		
5	Adams Brown Calhoun Cass Christian Greene Jersey Logan Macoupin Mason Menard Montgomery Morgan Pike Sangamon Schuyler Scott	8.5	16
6	Bond Clinton Fayette Madison Marion Monroe Randolph St. Clair Washington	5.6	15
7	Alexander Clay Edwards Franklin Gallatin Hamilton Hardin Jackson Jefferson Johnson Lawrence Massac Perry	33.0	18

Region	Counties Included	Remaining Years At Current Disposal Volumes	Number of Landfills
	Pope		
	Pulaski		
	Richland		
	Saline		
	Union		
	Wabash		
	Wayne		
	White		
	Williamson		
	Statewide	5.3	

In its report, the Agency notes that the number of development permits applied for and processed annually has steadily decreased from 1981 to 1986, with a slight increase in 1983. Between 1981 and 1987, the Agency issued 69 of the 146 permits applied for: 21 permits were issued in 1981, 12 in 1982, 19 in 1983, 7 in 1984, 4 in 1985, 3 in 1986, and 3 in 1987.

Concerning the decrease in the number of applications, the Agency speculates that:

> The trend toward fewer requests for development permits may be a function of several variables. First, the State's siting process has changed significantly since the passage of SB172 in 1981. SB172 removed siting authority from the IEPA and granted county boards or municipal governing bodies initial approval of regional pollution control facilities (e.g. landfills) based on seven criteria. This codification of seven review criteria has led to an increase in the amount of information, time, money and scrutiny devoted to siting applications. The IEPA cannot begin its technical review of a development permit unless siting approval has been granted. Second, the closure, post-closure and financial assurance requirements instituted in 1985 increased the regulatory and financial requirements for landfill developers. The new requirements may have decreased the number of potential applicants by eliminating those who did not have the up front capital to meet the financial assurance requirement. Third, there is a trend toward developing larger, more regional landfills

> which results in fewer individual applications. (Id., p. 15-16).

The Board has no reason to doubt the validity of the Agency's second and third speculations, and the Board has the experience reason to verify the accuracy of its first speculation.

At the outset, the following discussion is not intended to critize or "place blame" on anyone. Many questions and comments in the R84-17 record reflected a concern about how the Agency's permitting process under the Board's proposed regulations and the SB172 process affect each other. These concerns were voiced by the Agency, the waste disposal industry, and the environmental community as a result of its participation in SB172 proceedings. A bit of history might be helpful to an understanding of these concerns.

Since passage of SB172 in 1981, the Board has received 41 appeals of local sitting decisions (three of which are currently pending). As the sole state agency which reviews local governments' records in their entirety*, the Board is uniquely qualified to assert that the process is proving to be a resource-intensive and exhausting experience for landfill applicants, local government officials, concerned citizens and the Board alike.

A major source of the local "record growth" is the evolution of criterion 2 of SB172. Criterion 2 requires an applicant to prove that "the facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected. This criterion has been interpreted quite literally, to allow, and in effect to force, local governments to take on the role of making technical siting decisions.

Historically, the disposal of solid waste has been a local governmental function. Passage of the Act in 1970 provided for state involvement in the solid waste disposal process by requiring issuance of landfill permits by the Agency. In 1972, the Illinois Supreme Court held that Winnebago County could not use a zoning ordinance to prohibit development of a landfill if a permit was obtained from the Agency. O'Connor v. City of Rockford, 52 Ill. 2d 360, 288 N.E.2d 432 (1972).

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* Contrary to the belief of many, the Agency is not required or usually requested to review the local SB172 record, although it must receive proof of local approval prior to issuance of any permit. Moreover, Agency personnel have testified in this record that if the Agency receives any excerpts of transcripts, that they are usually submitted by landfill opponents. (R84-17D, R. 1451-1452).

In 1976, the Court held that a non-home rule municipality could not use a local "environmental protection ordinance", which includes the requirement of compliance with zoning ordinances, to regulate the siting and operation of landfills. Carlson v. Village of Worth, 62 Ill. 2d 406, 343 N.E.2d 493 (1976). Thus, local non-home rule governments were pre-empted from any participation in the landfill sitting process.

This pre-emption of local authority generated much protest. In response to the public outcry over this issue, the Illinois General Assembly enacted Senate Bill 172. This bill created Section 39.2 of the Act, which allows local units of government to review the site suitability of a new "regional pollution control facility" based on only those criteria set forth in that section.

The courts have held that local governments may consider technical aspects of landfill design when considering Criterion #2 two. See, e.g., Waste Management of Illinois, Inc. v. Pollution Control Board, No. 87-0029 (2d Dist., September 11, 1987); McHenry County Landfill, Inc. v. Illinois Environmental Protection Agency, 154 Ill. App. 3d 89, 506 N.E.2d 372 (2d Dist. 1987). This has resulted in each locality applying engineering and technical information in its own way.

The Agency is not required by statute to participate in the SB172 hearing process, and does not do so for a variety of reasons, not the least of which is that these proceedings are very resource intensive. (See, e.g. R84-17D, R. 1775-1778) Additionally, the Agency successfully argued and won a case very early on in the life of SB172 which establishes that under existing law the Agency cannot be required to include in its permits, or to enforce, conditions which local governments impose as conditions on SB172 approvals. Browning-Ferris Industries, Inc. v. County of Lake, 120 Ill. App. 3d 89, 457 N.E. 2d 1309 (2nd Dist. 1983).

As the system currently works, then, the local siting process precedes the Agency permitting process, and both make determinations about landfill design and operation in isolation from each other; the Agency does not make necessarily any determination at all unless the local government first approves. (See, e.g., R. 2322-2334).

One result has been that the public focus on design and operation matters has shifted almost completely from the AGency to the local siting hearings, hearings that are required under SB172. The Act contains no explicit Agency public participation requirements analogous to those either in SB172, or for those existing for permits to be issued pursuant to the Clean Air Act, Clean Water Act, or RCRA; these require the Agency to respond to public comment and hold a hearing on request. While the Act does

not limit the Agency's authority to provide for public participation, this record indicates that practical realities of resource allocation can and do. The Agency has stated that, as a matter of practicality, where SB172 hearings have been held, "it doesn't seem to make sense to reinstitute another public participation process". (R84-17D, R. 2426). The Agency's decision making process is now less likely than before to involve the public.

It has been strongly suggested to the Board that it can take two actions which will improve the existing landfill siting and permitting processes: adoption of modern technical landfill standards, which the Board is now proposing, and establishment of a public participation process. As stated in testimony on behalf of Citizens For A Better Environment:

> Given the active interest of citizens in many siting cases, we believe it would be a mistake for the Board not to adopt specific procedures allowing citizens to participate in the Agency's permitting process. We expect that participation in this process will increase after the Board updates its solid waste regulations. This is because some of the technical issues that are now the subject of many siting hearings will be clarified under state regulations. As a result, citizens will shift some of their attention to the permitting process to ensure that the Board regulations are fully implemented.
>
> We believe public participation procedures should be required for permit applications, and permit renewals. While the Agency might balk at applying these provisions to significant modifications, we believe that there are long term benefits to updating the public about operating changes that might be occurring at a nearby landfill. Any modification, assuming it is appropriate, would more likely be accepted by local citizens if they are notified in advance and given the opportunity to ask clarifying questions or express concerns. If citizens find out about the change after it occurs, it will only cause more distrust of state's environmental system at the local level. While the Agency may have to expend additional resources in explaining its activities,* we believe it will benefit in the long run as citizens become more familiar with the state's updated solid waste

regulations. (R84-17D, Exh. 41 and generally R.2347-2352)

The Board can proceed with only one component of this suggestion: adoption of technical standards. Adoption of the suggested procedural requirement would be beyond the Board's statutory authority, as the Act has been interpreted by the courts.

In Village of Hillside v. John Sexton Sand and Gravel Corp., 434 N.E. 2d 382 105 Ill. App. 3d 533 (1st Dist. 1982), one of the issues considered by the Appellate Court was the validity of Board regulations which required the Agency to adopt procedures for the transfer of landfill permits from one owner to another, and established public notification requirements to be followed by the Agency in adopting such procedures. Citing the Illinois Supreme Court's holding in Landfill, Inc. v. Pollution Control Board, 387 N.E. 2d 258, 264, 74 Ill. 2d 541, 577 (1978) which invalidated rules which purported to establish rights to third party appeals of landfill permits, the Appellate Court found the Board's rules to be invalid. After examining the various duties and authorities allocated by the Act to the Board and the Agency, the court concluded:

> We think it clear, in light of the statutory scheme and case law, that the Act requires the Board to adopt rules requiring permits and to set substantive standards under which the Agency may issue such permits. The purpose of the Agency, on the other hand, is to establish procedures for the administration of the permit system in order to insure that those standards are met. Thus, the Agency is authorized to determine if a permit should issue or be transferred for a particular

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* At hearing, the Agency provided testimony that, based on its experience with RCRA public participation procedures, its preliminary estimates are that such a program for non-hazardous facilities would require significant expenditures of monetary and personnel resources. (R84-17D, R. 2427-2432). The Agency did not calculate the one time costs for re-permitting the 146 existing facilities. Based on the projected submission of 15-20 new landfill permit applications per year, the Agency predicts that some 4 1/2 to 5 work years would be required to comply with proposed paperwork requirements for Agency preparation of summaries of permit applications and its proposed permitting actions, and responses to comments received. The Agency did not calculate the resources necessary to conduct transcribed hearings, but did note that newspaper costs of notice publications would average some $250 per required notice.

> refuse-disposal facility and to adopt appropriate procedures. The Board may not require the Agency to adopt procedures or impose procedures on it for issuing or transferring permits. 434 N.E. 2d at 388.

Based on Hillside, then, it is clear that any mandate for inclusion of a public participation component in the Agency permitting process can issue only from the General Assembly, and not from the Board.

The Section 21(d) Permit Exemption

As earlier noted, an exemption to the permit requirements of Section 21(d) has been contained in the Act since 1970. While in its original form the exemption was for "refuse generated by the operators own activities" except for hazardous waste, since 1981 the exception has been limited to wastes generated by the operators own activities which are stored, treated, disposed or transported within the site where such wastes are generated.

Since its inception, the exemption has been troublesome to the Board and the Agency; while the exemption serves to reduce paperwork requirements on generators, the exemption is a blanket one which does not by its terms require consideration of the suitability of the site for disposal of the type of wastes there generated. Beginning in 1975, the Board began construing the exemption as applicable to "minor amounts of refuse which could be disposed of without environmental harm on the site where it was generated", a position which has been consistently sustained by the courts, despite the "plain language" of Section 21. See Pielet Bros. Trading, Inc. v. Pollution Control Board, 442 N.E. 2d 1374, 1377-1378, 110 Ill. App. 3d 752 (5th Dist. 1982) which traces the legislative history of the exemption and case law at the Board and appellate court levels.

While on-site disposal facilities can be permitted, then, consistent with existing law when problems are identified by citizens or the state, there exists a larger problem: lack of the sort of data concerning such sites which is ordinarily generated pursuant to conditions contained in permits.

As WMI has aptly noted in its December 30, 1987 comment:

> There is great pressure today for adoption of an Illinois version of New Jersey's ECRA, the statute which requires environmental cleanup upon sale of an industrial property. As anyone involved in the environmental, corporate acquisition or real estate fields knows, however, very few properties of any significance are sold or financed today without some kind

> of environmental review or investigation, and frequently a private agreement for environmental cleanup. In other words, if the information as to environmental problems is available, the marketplace will often force cleanups as a condition of sale or financing.
>
> The big problem, however, is the lack of information. A purchaser or lender reviewing a property is handicapped by the lack of very simple information, where are your refuse disposal areas, where are your tests showing what went into the fill, what are your monitoring results? As the Agency commented at hearing in Docket D, it receives frequent enquiries in connection with purchases of properties which it is not able to answer because of the lack of on-site reporting. The public expects the Agency to have this kind of information and is frustrated to find it isn't available.*/ [R84-17D], R. 2312-13, 2315-16, 2318-19.*/ This lack of on-site data has recently been the subject of significant public attention. See, e.g., the report of the Joint Committee on Hazardous Waste in the Lake Calumet Area.
>
> P.C. 51 at p. 21-22 (footnote in original)

As a first step to remedying this lack of data, in this R88-7 proposal the Board has chosen to include a reporting requirement for all landfills exempt from permit requirements. As the Act does not by its terms preclude the Board from requiring such facilities to file reports, it is the Board's belief that it can lawfully adopt such rules. However, the Board is aware that there may well be legal arguments to be made that the Board is acting beyond the scope of its statutory authority by attempting to do indirectly what it cannot do directly, i.e., to require in the name of "reporting" data which otherwise could be required only in the context of "permitting". While such arguments have been raised in summary fashion in this record, they have not been articulated in detail or fully briefed. As it will do concerning other specific points in this proposal, the Board specifically solicits comments concerning this issue.

As a second step to remedying this lack of data, the Board has today in a companion order opened another docket, R88-8, Census of Solid Waste Management Facilities Exempt from Requirements for a Permit pursuant to Section 21(d) of the Act. This docket directs the Board's staff to prepare a proposal applicable to all facilities which treat, store and dispose of solid waste and which are subject to the Section 21(d)

exemption. The Board intends that the Agency be notified of the existence of such facilities and of the type of wastes they manage.

Economic and Legal Concerns Asserted By The Participants

Having discussed the strong reasons which it sees in favor of proceeding with this proposal, the Board will now turn to the reasons advanced against so proceeding.

The Economic Impact Study

Section 27(a) of the Act charges the Board, in promulgating regulations, to consider the "technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." The bulk of the record amassed to date in the R84-17 docket generally, and most specifically Docket D, has related to issues of technical feasibility. As some participants have noted, see e.g. P.C. 50, p.2-3, P.C. 52, p. 1, the record does not contain sufficient economic information to support final adoption of any proposal. Many of the arguments against the Board's moving forward with its own proposal at this time are based on a theory that the Board should "wait and see" the results of various legislative, regulatory, and research efforts to avoid economically unreasonable results.

Much of the economic data in the record at this point is in fact "anecdotal", or "intuitive" in nature, rather than hard data. One witness for WMI, for instance, in response to a question concerning the economic effects of the Docket D proposed standards to disposal of industrial waste as well as municipal waste, commented that:

> I have prepared no calculations. I'm not aware that other people in my organization have done that. Our perspective and our general philosophy is that the types of management systems we are advocating are the most cost effective means to manage the materials long term. (R84-17D, R. 1730).

Another commenter, on the other hand, is convinced that:

> from both a practical/policy point of view, as well as a strictly legal point of view, the IPCB's adoption of such a major regulatory overhaul [of existing regulations], without a corresponding legislative overhaul of applicable provisions of the [Act], and substantial additional funding necessary to staff the IEPA sufficiently to meet the increased burdens of implementing such a

> program, would not only be an act of regulatory suicide, but also an act which in the long run will be determined to be illegal or unconstitutional ... at least insofar as it is made applicable to existing facilities with development and/or operating permits issued under the old program. Additionally, in the short term, these proposals will create an economic dysfunction which will make the solid waste industry less attractive to sources of capital and will result in fewer new entries into the solid waste disposal/treatment industry in Illinois. Such a regulatory climate will not only increase the overall cost of living in Illinois as fewer facilities will exist, which are controlled by fewer companies, it will also severely restrict Illinois' efforts to make the State's economy attractive to both the private and public sector as a place to locate or expand their operations. This is particularly critical in the short term as Illinois seems to be rebounding from the regional recession and high unemployment period of the late seventies and early eighties. Long term problems will involve an ever increasing inability on the part of Illinois citizens and industry to attract capital to replace or expand or maintain existing facilities in order to keep up with any projected increase in demand caused by the much hoped for and anticipated growth in the region. (footnote omitted) (P.C. 48, p. 2)

While NSWMA has submitted some hard data concerning compliance costs generally (P.C. 47), much of this data concerns potential costs of compliance with potential RCRA Subtitle D regulations. One operator of an existing downstate landfill has provided certain cost projections at hearing and by way of post hearing comments (R84-17D, R. 1511-1546, P.C. 45), but the applicability and accurancy of these projected costs as applied to that landfill or the other 145 currently permitted landfills have not been explored.

The record developed to date strongly supports the Board's intuitive conclusion that imposition of more stringent landfill design and performance, and post-closure care standards will increase "up-front, out of pocket" disposal costs for individuals, business and government. It supports the further intuitive conclusion that the cost benefits, by way, for example, of avoidance of government and private clean-up costs of "Superfund sites", will be difficult to quantify. Finally, it

supports the conclusion that some fine-tuning of these technically feasible proposed rules may well be necessary for economic reasons, but that the record provides little evidence upon which to base an informed decision.

This lack of data has proven frustrating to DENR, which has commented:

> It is manifest that an EcIS is particularly appropriate is this situation. The pending regulatory proposals call for a significant departure from the means by which Illinois has theretofore managed its solid waste. It is beyond dispute that these regulatory changes will significantly impact every sector of society, and every generator, hauler, and disposer of the waste stream in its trek from "cradle to grave". One would expect that under these circumstances, the affected participants would come forward with information on the economic impact of these proposals. And yet, despite the fact that there have been nearly 30 hearings in this matter, there remains a dearth of economic information on record. Indeed, in the December 4 Hearing Officer order, there is an attempt to bolster the record regarding the economic effects of the proposals by inviting landfill operators, to provide cost estimates of waste disposal at their facilities - this comes after three years of proceedings and countless hours of testimony. The Department has been diligent in its attempt to glean economic information from the numerous witnesses called to testify; however, the witnesses have been able to provide little in the way of specific data useful to a comprehensive benefit - cost, analysis. (P.C. 52, p. 1-2)

The Board too has been surprised that so few members of the affected community have actively participated in this proceeding. However, the Board also notes that many potential participants may have felt no urgency to participate heretofore, given the multiplicity of proposals pending before the Board. Now that the Board has "stopped the moving train", potential participants will have the incentive, as well as the ability, to analyze the effects of the proposal on their operations and to provide relevant information to the Board and DENR.

The Board further observes that Illinois Register publication of its proposal should enhance the data collection

process: despite the Board's publication of general notice of the proposals and hearings in its Environmental Register and distribution of individual notices to a mailing list of over 200, there have been protests at hearing that notice of the proceeding has not reached all potentially interested persons. Given its fiscal constraints, the only vehicle by which the Board can give notice of its proposal to a more general audience is by way of Illinois Register First Notice.

Finally, the Board notes that DENR expressed some concerns about the effects of first notice publication as it relates to the time necessary to complete its EcIS. Based on the pendancy of four proposals, DENR has projected that, once a contract has been let, that its contractor could need 12-18 months to complete an EcIS. DENR noted that Section 5.01(d) of the Illinois Administrative Procedure Act, (APA) Ill. Rev. Stat., ch. 127, par. 1005.01(d) provides that "No rule ... may be adopted ... more than one year after the date the first notice period ... commenced," and was concerned that the one year period would constrain its EcIS activities.

Dismissal of the prior proposals, leaving only the Board's proposal outstanding, should alleviate many of DENR's concerns. The Board also notes, however, that the APA one year period is a constraint upon the Board, and not upon DENR. In the event that the production of the EcIS, the holding of the hearings required by Section 28 of the Act, Board deliberation, and APA second notice review by the Joint Committee On Administrative Rules (JCAR) cannot all be completed in a one year period, the Board must, as it has in the past under such circumstances, cause the publication of a second first notice publication to restart the one year timeclock. In so saying, the Board can only hope that a repeat of First Notice will not be necessary.

Anticipated USEPA Subtitle D Regulation

The suggestion that the Board should defer action until USEPA's issuance of RCRA Subtitle D regulations is in large measure a two-part economic one. The first part is that Illinois should wait for USEPA action and adopt regulations "identical in substance" to federal ones, to avoid placing the state at the competitive disadvantage to others which would occur if Illinois adopted more stringent regulations. The second part is that it would be administratively inefficient to propose regulations which would later need revision.

As earlier noted, the timing of USEPA's release of RCRA Subtitle D regulations is unknown; based on the difficulities USEPA experienced in drafting Subtitle C regulations, and the evidence in this record regarding its Subtitle D process, the HSWA deadline of March, 1988 may be missed. Anecdotal information in this record indicates that the USEPA's approach to

the rules has been in a state of flux, so that the form its regulations may eventually take is unpredictable.

The General Assembly has not mandated that the state's environmental agencies cease regulatory activities pending issuance of federal non-hazardous waste regulations. It has in fact issued contrary mandates in, for instance, Section 14.4 of the Groundwater Protection Act, which directs that rules be proposed and adopted covering various solid waste management activities, and has not precluded adoption of regulations more stringent than federal ones.

As to revision of the Board's proposal, the Board acknowledges that revisions may be necessary if any elements of this proposal (such as leachate recycling) are precluded by Subtitle D regulations, or if USEPA regulations contain required elements (such as a bulk liquids disposal ban) not contained here. The Board will address any such major inconsistancy as quickly as they are identified following promulgation of federal rules.

Consistency With The Groundwater Protection Act

The primary challenges asserted to the Board's proceeding with regulations at this time are based on the impending regulatory proceedings mandated by the Groundwater Protection Act.

The Agency has stated:

> The Agency urges the Board to proceed with caution with rulemaking in this important area. While it is clear that the present rules are woefully inadequate, the Agency is concerned that the Board's announced intention to adopt these rules piecemeal may cause further problems later. Policies adopted in these proceedings with regard to solid waste disposal may adversely affect subsequent proceedings regarding treatment, storage and other modes of dealing with solid wastes; in addition, such policies may be subject to radical change due to rulemaking shortly to be conducted under the Groundwater Protection Act. The Agency would prefer that comprehensive rules be adopted for coherency. (P.C. 53, p. 1)

This is a two part comment: one facet cautions against regulating only one set in the universe of waste management activities, and the other cautions against regulating activities since the state's groundwater standards are under review.

As to the first caution, in the "best of all possible worlds", the Board, too, would prefer that a comprehensive set of rules for all types of facilities be adopted at one time. However, as examination of the procedural history of this proposal makes clear, since 1980 repeated attempts by the Agency and others to develop comprehensive rules have foundered. The result is that fifteen year old rules have not been modernized for any one type of facility because of the difficulty of writing rules to cover all types of facilities.

The Board acknowledges that, as set out earlier in some detail, the Groundwater Protection Act mandates the Agency by January 1, 1989 to propose regulations for certain on-site facilities disposing of "special and other wastes which could cause groundwater contamination" as well as other enumerated facilities. (Section 14.4(a)) as well as regulations for new off-site disposal facilities (Section 14.4(c)), and that it further mandates the Agency to propose groundwater quality standards six months thereafter, or by January 1, 1989. Assuming that the Agency meets its deadlines to propose regulations, and the Board meets its deadline to promulgate regulations two years after their proposal, a comprehensive set of facility design and operating standards will not exist before January 1, 1991 and a set of groundwater standards will not exist before July 1, 1991.

The Board does not construe passage of the Groundwater Protection Act as indicative of intent by the General Assembly to frustrate fruition of the Board's pre-existing regulatory effort at a date earlier than that mandated for adoption of Agency-proposed rules. The Board will proceed to propose these landfill regulations; the Agency is, as always, free to concentrate its efforts on proposals to fill other gaps in the state's regulatory program.

A second challenge made by the Agency, and other major participants as well, generally involves the groundwater standards by which facility performance is judged in this proposal.

As to the issue of groundwater standards themselves, all participants agree that there has been no review of the water quality standards specifically as related to groundwater, a lack which the legislature has directed be remedied. All participants agree that the Groundwater Protection Act requires promulgation, where possible, of numerical standards for discharges of listed contaminants into groundwater, and that such standards should apply to discharges from landfills. At this juncture, the issue then becomes whether any new landfill regulations should be proposed during this three year interim period pending review of the groundwater standards, and what existing standards may properly be applied during the interim period.

At risk of oversimplification, the groundwater standards embodied in the Board's proposal for new facilities is that any contaminant emissions from the facility will not cause an increase in the levels of the background concentrations of indicator constituents within 100 years at a measuring point 100 feet from the edge of the landfills' disposal area or at the property boundary. Constituents to be monitored are those which appear, or are expected to appear in leachate, and for which the Board has adopted drinking water standards including standards for discharge to surface water, or which may otherwise contribute to groundwater pollution.

The streamlined adjusted standards procedure may be used by a facility to obtain relaxed standards in two instances. First, where the pre-siting natural groundwater quality is already "degraded" below existing numerical standards, the Board may relax standards to any appropriate number. Second, where pre-siting groundwater quality is better than required by the existing numerical standards, the Board may relax the standard, but to a number no less stringent than existing standards. While a discharger would seek permission to degrade groundwater by discharging contaminants in excess of current standards, the procedural mechanism for obtaining such relief would be by way of a general or site-specific rulemaking; this is to allow for participation by DENR in determining economic impacts on the people of the State of Illinois of the potential restriction of present or future uses of groundwater which such petitions may likely represent.

As explained in some detail in the Background Report, the STS (pp. 59-60,78) Recommendation is based on the goal of the Clean Water Act that dischargers use the best available technology economically available (BACT) to remove pollutants from the discharge regardless of the quality of the receiving water. In the absence of groundwater-specific standards, the STS proposal incorporates the drinking water standards as well as the surface water quality standards, as the minimum standards, consistent with the Illinois Supreme Court's finding in and CIPS v. PCB, 116 Ill.2d 397, 507 N.E.2d 819, 107 Ill.Dec. 666 (1987), affg. (CIPS v. PCB, 142 Ill.App.3d 43, 491 N.E.2d 176, 97 Ill.Dec. 362 (4th Dist 1986) that "While there are no specific standards for groundwater, groundwater is subject to existing general water quality standards" which vary depending on the use or potential use of the water involved.

The essence of the argument in opposition to regulatory use of this standard, even on an interim basis, is that it will lead to gross over-design of facilities in an attempt to prevent migration into groundwater of constituents which have not been proven harmful to groundwater either on a general or a site-specific basis.

> IERG argues that reliance on CIPS is misplaced because the applicability of Section 302 of the CWA to groundwater was never made an issue in the CIPS court cases. By failing to explore the possibility that the standards from which it sought a site-specific rule change had never actually applied to it, CIPS may have simply balanced the cost of litigating the issue against the cost of pursuing the rule change and chose the latter. One company's failure to raise an issue does not bar others from pursuing it. Nor does the fact that CIPS and the IEPA essentially stipulated to the standard's applicability on review enable the Board's Scientific/Technical Section to cite to the CIP'S Illinois Supreme Court case, supra, as having any precedential value.
>
> Even if the issue had been raised and argued before the Illinois Supreme Court, the Board would be free to readdress the issue in a rulemaking proceeding such as this one. (P.C. 50, p. 6)

Reminding the Board of various findings in its Groundwater Report*, IERG suggested that more reasonable, if not totally

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* Page ii

--groundwaters differs in many critical respects from surface waters, including water quality, rate of movement, direction of flow, accessibility, and use; these differences dicate differences in protection strategy.

--the variety of compositions and uses of groundwater makes the objective of groundwater protection less readily identificable than that for surface water protection; the groundwater objective is not likely to be the same as that for surface water...

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--existing ambient water quality standards are not ideally suited to the task of protecting groundwater.

--ambient standards suitable to protection of groundwaters are likely to be significantly different from those designed to protect surface waters...

--recommendations for the application of either "general (continued)

appropriate, interim standards at this time would be the Illinois and federal drinking water standards. A similar interim approach has been advocated by WMI and NSWMA.

The Board does not consider it appropriate to readdress the issue of groundwater quality standards at this time. Even if the existing regulations which are in dispute here are at the very least the standards for discharge to surface water, as the STS notes in its Background Report, the Board has already determined that drinking water uses are not the only ones made of groundwater and are not the only uses to be protected. Withdrawals of groundwater for agricultural uses, including irrigation, account for some 24% of current groundwater usage in Illinois; drinking water standards alone may not protect such uses. Moreover, since natural groundwater discharges occur at the site of springs, streams, lakes and wetlands, application to groundwater of standards for discharge to surface water cannot be deemed inappropriate across the board.

The assumption which appears to underly many of the objections to the non-degradation standard which is here proposed is that the eventual outcome of regulatory proceedings pursuant to the Groundwater Protection Act will be a wholesale relaxation of existing standards for discharges to surface water. The Board cannot presume that such is the case. As more site-specific data is collected pursuant to the mandates of the Groundwater Protection Act, it is clearly contemplated that the Agency may propose and the Board may adopt standards specifically tailored to specific areas, whether they be "setback zones" or "regulated recharge areas", standards which may well be more restrictive than those in place currently.

Moreover, the Groundwater Protection Act does not explicitly require the Board to adopt any specific regulations and does not explicitly forbid the Board from adopting any regulations. In fact, that Act explicitly provides that it is not intended to

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use" or "drinking water" standards to groundwaters cannot be endorsed at this time:...

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From the practical perspective, the dissimilarities between surface waters and groundwaters would suggest that the General Use Standards, in large part conditioned on protection of habitat for aquatic life and for recreation uses, may not be appropriate to groundwater protection...

it is possible that such a determination would be judged arbitrary and capricious given the questionable applicability of aquatic-life criteria to ambient groundwaters.

preclude the Board from exercizing its general authority to adopt regulations pursuant to Title VII of the Environmental Protection Act.

The thrust of the Groundwater Protection Act is to protect the quality of water at the supply intake, i.e. the wellhead; to construe that Act as intending to forbid the Board from regulating a discharger so as to protect other groundwater uses is absurd. Section 27(a) states "the generality of this grant of authority shall only be limited by the specifications of particular classes of regulations elsewhere in this Act". Examples of such limitations are the exemption of certain sporting activities from noise regulations and the restraint on requiring Stage II vapor recovery systems in air regulations absent a federal mandate. Insofar as the Groundwater Protection Act, like any Act, establishes locational bans or constraints, like the setback zones, the proposed regulations are drafted so as to in no way conflict with them.

BOARD COMMENTS, AND REQUEST FOR COMMENTS, CONCERNING SPECIFIC RULES

In this portion of this Opinion, the Board will specifically request comments, or provide supplemental comments, primarily in areas in which it has amended the STS R84-17 Docket D proposal and/or questions whether the proposal should be further modified.

First, however, the Board wishes to specifically comment on a few specific major elements of the proposal which it has not amended.

Generic Adjusted Standard Rule

This proposal embodies two mechanisms by which articulated standards may be modified without resorting to variance or rulemaking procedures. In areas where it has been possible to articulate equivalent performance standards and criteria for Agency determinations of equivalency, to avoid unlawful subdelegation of authority to the Agency, the proposal leaves such modifications to the Agency, e.g. modifications of cover requirements in Section 811.106(b). The proposal also provides for application to the Board for an adjusted standard pursuant to Section 28.1 of the Act when, as that Section requires, the Board has been able to "specify the level of justification required of a petitioner to qualify for an adjusted standard e.g. alternative groundwater standards pursuant to Section 811.320(b).

IERG has suggested (R84-17D, Exh. 33, and generally R. 1893-2009) that the Board adopt a "generic" adjusted standards rule to allow for modification of any standard contained in Part 811. Pursuant to the IERG proposal, such standards are to be granted

upon demonstration that the adjusted standard "will result in an equivalent degree of environmental protection as would the standards of Part 811".

While the Board is cognizant that adoption of this proposal would avoid rulemaking delays which occur when DENR determines that an EcIS must be performed, the Board does not believe that this generic rule can be lawfully adopted. The Board construes Section 28.1 as requiring detailed specification, in the particular rule from which adjusted standards may be sought, of the types of justification which must be submitted in identified areas, see e.g. 35 Ill. Adm. Code Section 306.350-306.374 establishing requirements for exceptions to the Board's combined sewer overflow regulations. It is the Board's belief that Section 28.1 specifically prohibits the type of generic rule here advocated. Comments on this interpretation are specifically invited.

Industry-Specific Exemptions Pending Adoption of Industry-Specific Regulations or Adjusted Standards

The records in R84-17 Dockets B and D contain considerable testimony from the foundry industry (e.g. R84-17D, R.2006-2099, Ex. 34-38) and the utility industry (e.g. R84-17B, R.77-158, 288-301,460,516, Group Ex. 3,5; R84-17D, R.2168-2275, Ex. 40). Each of these industries has stated that years of research effort concerning their specific wastestreams is coming to fruition, with the result that each industry feels that it can propose alternative, industry-specific, design and operating standards for landfills disposing solely of such wastes on or about July 1, 1989. Each industry has accordingly requested an exemption from these rules pending their proposal, and the Board's promulgation, of industry specific rules.

The Board commends the research efforts of each industry, as well as the quality of the testimony and data which each has presented. The Board does not question the good faith estimate each has made as to the timing of completion of their research efforts. However, this record contains little specific information as to the identity and status of existing facilities affected, or proposed facilities anticipated to be constructed. Given this lack, the Board cannot determine the environmental effects of any exemption it might grant. Accordingly, unless persuaded otherwise by additional comments, the Board is inclined to believe that these industries' situations are best handled by variances from, rather than exemptions to, the proposed rules.

While the Illinois Steel Group (ISG) has not committed to making the same type of industry specific proposal as have the foundry and utilities industries, it has produced testimony suggesting that many of its wastes, e.g. steel slags, should be considered "inert", and has also suggested test methodologies for

determining leachate composition. (R84-17D, R.2110-2167, 2276-2307, Ex. 39.)

The proposal defines as "inert" wastes whose leachate does not contain constituents in levels which violate the existing drinking water/discharge to surface water standards. ISG seeks to make the case that the discharge to groundwater of certain constituents characteristics of, for instance, its slag wastes, i.e. increases of calcium and magnesium and associated hardness and pH, have no or only benign impacts on groundwater.

Given the Board's determination that it is not appropriate to engage in wholesale revision of existing groundwater standards in this proceeding, ISG is invited to initiate an appropriate proceeding.

Proposed Phased Closing of Units Within Two and Seven Years

Part 814 provides that, based on an existing landfill's ability to meet interim standards, that initiation of closure could be required within two or seven years after the effective date of these proposed regulations. Given the lack of input from operators of existing landfills on this issue, the Board is unsure how adoption of these regulations will affect current estimates of the remaining landfill disposal either statewide or on a regional basis. Comment is accordingly requested on the appropriateness and feasibility of the time frames contained in this proposal; it is not the Board's intention either to precipitate a waste disposal crisis or to unduly prolong a phase-out of non-conforming sites.

A related concern has been articulated to some extent by downstate landfill operators who have suggested that various proposed standards, e.g. leachate collection and treatment, should be relaxed for small landfills to prevent them from pricing themselves out of the disposal market with a projected resulting increase in open dumping of waste in their area. (See, e.g, P.C. 45, R84-17D, R.1515,1519,1548) It is axiomatic that the size of a landfill does not dictate its potential for environmental harm, which relates instead to the type of waste received at the facility, the facility's underlying hydrogeology, its design and its operations. Again, absent production of data by existing facilities, small or large, the Board has no basis on which to determine whether or how these proposed regulations could or should be tailored generally, on a site-specific basis, or on some basis in between.

Section 106.410: Adjusted Standards Procedures

The adjusted standards procedures currently existing in the Board's procedural rules were adopted by the Board in the R86-46 RCRA Update proceeding on July 16, 1987. The sole change in

these rules, which were modelled on the procedures for CSO exceptions, is to make them applicable to adjusted standards from non-hazardous, as well as hazardous waste regulations.

The Board wishes to emphasize a fact which has been obscured in the prior proceedings. The adjusted standards proceeding need not be an adversarial one, as the procedures allow for the applicant to seek Agency concurrence on its request in advance. If the Agency concurs, a joint petition can be filed. If it does not, the applicant can file a single petition and contested issues or conditions can be litigated before the Board.

Section 807.105: Relation To Other Rules

This is a new section. In adopting 35 Ill. Adm. Code Part 700 et seq. and codifying old Chapters 7 & 9, the Board announced its intent to eventually codify all waste regulations with numbers in the 700 series. The Board now believes it is impracticable to do so, and intends to use numbers in the 800 series for non-hazardous waste regulations. As Part 700 et. seq. specifically directs attention to Part 807, the instant new section is needed to provide a "road map" to the proposed new landfill regulations.

The Agency (R84-17D, R.1784-1787) and WMI (P.C. 51, P. 24) expressed concern regarding the interface of the STS proposal as drafted and the Board's RCRA rules. The Board believes that addition of this rule, as well as modification of the definition of "solid waste" in Part 810 and modification throughout the scope and applicability sections should satisfy these concerns. If not, comments should address what further specific modification is needed.

Part 810: General Provisions

The scope and applicability sections have been amended in this section, and throughout the rules, to make it clear that the proposal encompasses only landfills which are not regulated pursuant to the RCRA rules. Some definitions have been added: landfill, land treatment unit, waste pile, surface impoundment. Language for these is drawn from the most recent USEPA Subtitle D draft in the record. Other definitions have been moved from numbered sections into the rules: new, existing, contaminated leachate.

Part 811: General Standards For All Landfills

Subpart A

Section 811.102 Location Standards

As explained in the STS Background Report at pp. 16-17, the

location standards are largely derived from federal and corresponding state requirements. To the extent that compliance with various state and federal acts will require a "sign'off" from Agencies administering such acts, the Board will specifically solicit comments from affected agencies.

In Section 811.101(c), the STS modified federal requiremets to include state landmarks. The Board further modifies the section to include as unacceptable for landfill use areas which are designated Illinois Nature Preserves by the Illinois Nature Preserves Commission.

This will provide some protection to the Nature Preserves system from the threat of harm or destruction by new facilities. The Board believes that the Illinois Nature Preserves deserve at least as much protection as national natural landmarks and other areas included under 811.102. A list of dedicated Natural Preserves will be included as an exhibit in R88-7. The Board solicits comments on this action.

As the STS notes, various commenters have requested that these regulations include a prohibition of landfill construction within the 100 year floodplain regardless of floodproofing (e.g. P.C. 44,46). The Board specifically requests additional comment on the proposal as it relates to the 100-year floodplain, specifically noting the recent Illinois experience of the variability of the contours of such floodplains.

Subpart C

Section 811.306 Liner Systems

The proposal specifies a minimum liner thickness of three feet. (See STS Background Report, pp. 32-38) The current practice has been to require emplacement of a 10 foot liner. The Agency advocated retention of this requirement to avoid the piercing of the liner by a long object, such as a 6-foot fencepost, during initial waste placement. (See e.g. R84-17D, R.1739-1748). The Board believes that this concern may be obviated by the addition in Section 811.321 "Operating Standards" of special procedures for initial placement of the first five feet of waste.

A further concern has been raised that the three-foot thick earthen liner might not be emplaced correctly because of cold or rainy weather or operator, skills or occasional lack of supervision. A five-foot thick liner has been suggested to give a "factor of safety" should less than ideal construction occur (e.g. R84-17D, R.2395). Comment is requested by the Board on this alternative rule.

Section 811.317 Groundwater Impact Assessment

Section 811.319 Procedures For Groundwater Monitoring Programs

These sections involve an issue which is related to the groundwater standard issue, not previously addressed by the Board: the appropriateness of the use proposed here of a contaminant transport model. This concern has been consistently expressed by WMI and NSWMA. (See STS Background Report, pp. 59-69) The Board is not persuaded by comments heretofore filed that the use is inappropriate, but will entertain further comment.

Section 811.319(a)(4) Organic Chemicals Monitoring Program

The Board has added a new concept which was not present in the original STS proposal, groundwater quality monitoring for organic chemical contaminants. This concept is intended to apply to all facilities that accept putrescible or chemical waste and that are new facilities or existing facilities that intend to remain in operation for more than seven years. This concept would apply whether the facilities need a permit or are exempted from permits under Section 21(d) of the Act. The rule provides that all such facilities shall acquire this information within one year of the effective date of the regulations and within one year of the establishment of any new monitoring well. The information must be updated at least once every five years for every well.

The monitoring requirements obligate the operator to analyze for at least 58 organic chemical contaminants. The United States Environmental Protection Agency ("USEPA") has established testing procedures for the organic chemical contaminants in drinking water. USEPA determined that testing procedures were readily available, reliable and cost effective at approximately $150 to $200 per sample. 50 FR 46902 (November 13, 1985). The operator would not be required to use the specific testing protocols described by USEPA, but any alternative testing protocols must provide reliable results for at least as many chemicals to at least low a level of detection. The Board solicits comment on whether the testing protocols are appropriate for determining whether organic chemical contamination is occuring in the area of the facility, as well as whether such testing protocols are available and cost effective for Illinois facilities.

The primary purpose of the organic chemical testing requirements is to ensure that baseline concentrations are established for a wide range of contaminants. These baseline concentrations, with certain modifications pursuant to Section 811.320(d)(1), would become enforceable water quality standards. Any subsequent statistically significant increase in the concentration of any parameter which is attributable to the facility would be a water quality violation. The baseline concentration for each of the 58 parameters at each well outside

Section 813.103 Agency Decision Deadline

The Board has revised subsection (d) to provide that final action is deemed to have taken place when the Agency's notice is signed, rather than when mailed. This change is proposed in response to Agency testimony concerning administrative difficulties under the current practice. (R84-17D, R. 1778-80). Comment is solicited.

Section 813.108 Term of Permit

The regulation specifies a five year term of permit, consistent with terms of permits in other media in Illinois. (See STS Background Report, p. 101) NSWMA has presented testimony (R. 1491-1508) suggesting that a 10 year term may be preferable to eliminate difficulties in funding post-closure requirements. Additional comment is solicited.

Section 813.110 Adjusted Standards To Engage In Experimental Practices

As described at pages 102-103 of the STS Background Report, the experimental practice procedure would be utilized by an operator to avoid a "Catch-22" situation in which experimental technology could not be employed because information demonstrating that its use would or would not violate the Act or Board regulations could not be conclusively provided until after the experimental technology had in fact been used. While Landfill, Inc., supra, makes it clear that the Agency, and not the Board, is the permitting authority pursuant to Section 39(a) of the Act, it is also clear that the Agency may not issue permits absent proof that the environmental standards established by the Act and by the Board will be complied with. The only procedures available for relaxation of environmental standards are through petitions for variance, adjusted standards, and site-specific rules. The Board believes that the STS has correctly identified the adjusted standard as the most appropriate procedure of the three. The Board also notes, based on this record, its belief that authorization of an experimental practice absent opportunity for public participation in the decisionmaking process would hardly serve to foster public confidence in such authorization.

The Agency has expressed concerns (P.C. 53, p.3-4) that it has no "up-front" ability to participate in the standard setting process, a misapprehension which the Board hopes the earlier discussion of Section 106.410 has laid to rest. The Agency additionally questions whether the Board could [as the rule is written] grant an "anything goes" adjusted standard. While the Board hypothetically could do so, just as it hypothetically could grant an "anything goes" variance. Any such action would clearly be contrary to the Act and would doubtless be appealed by the

the zone of attenuation or zone of compliance would be listed as part of the groundwater monitoring program pursuant to Section 812.317(1). If a water quality violation was detected, the organic chemical analyses from those wells inside the zone of attentuation or zone of compliance would help determine whether the facility was the source of contamination.

The Board specifically solicits comments concerning this subsection.

Subpart G: Financial Assurance for Closure and Post-Closure Care

This Subpart is essentially an amended version of the existing Part 807 financial assurance rules. As the amendments were not discussed at previous hearings, comment is specifically solicited.

The Board has not chosen to propose amendments to, or repeal of, the Part 807 rules at this time on the belief that these rules should remain intact until all existing facilities have been repermitted under Part 813 of these proposed regulations. Comments on this strategy are solicited.

As proposed, this Section does not repromulgate the financial assurance forms currently contained in Appendix A to Sections 807.600-807.666. Instead, this Subpart specifies throughout that operators must provide financial assurance on "forms specified by the Agency". Comment is requested on the advisability of this proposed change.

Part 812: Information To Be Submitted In A Permit Application

There are no specific Sections in this Part concerning which the Board specifically seeks comment.

Part 813: Procedural Permitting Requirements

This Part has been the subject of redrafting by the Board in various areas. Various statutory provisions, including reference to the prohibition on Agency issuance of permits without any necessary SB172 approvals, have been included in the rules. There are two notable deletions: the STS proposed rules for "Agency Review For A Complete Filing" and "Agency Concurrence On Phase I and Phase II Geohydrological Investigations", which relates to the completeness review issue. (See STS Background Report, pp. 99-101) Pursuant to the Village of Hillside, supra, the Board believes that it lacks statutory authority to mandate that the Agency employ the administrative procedures suggested by the STS. One effect of this holding, then, is that it remains in the Agency's discretion as to whether it begins technical review of a permit application needing SB172 approval prior to its receipt of that approval.

Agency on that basis. The Board believes that the rule as now drafted clearly specifies what is to be contained in the petition, and specifies, to the extent practicable, criteria for Board review. Additional comments, however, are welcome.

Subpart B — Procedures Applicable To Significant Modification of Permits

This Subpart has been revised to make clear that authorization to operate a unit must be obtained by way of permit modification.

Subpart C — Procedures Applicable To The Renewal of Permits

A section has been added embodying the language of 16(a) of the APA, providing that a landfill operator who timely files an application for permit renewal may continue to operate under the terms of the old permit during the time the application is being processed and any appeals to the Board of Agency decisions on that application are being heard.

Part 814 — Interim Standards For Existing Landfills

Subpart A — General Requirements

This Subpart has been the subject of substantial revision by the Board. The primary purpose of the revisions is to create a procedure for the orderly "call in" and modification of existing permits consistent with due process requirements. Various commenters (e.g. P.C. 48,49) have suggested that presently existing "life of site" permits cannot be lawfully modified, and should be "grandfathered" into any new system. However, the Board notes that existing Section 807.209(a) under which the permits were issued provides that "the Agency shall revise any permit issued by it to make the permit compatible with any relevant new regulations adopted by the Board."

Section 814.102 — Compliance Date

It is not the Board's intent to have all existing facilities thrown into a non-compliance status immediately on passage of the new rules. The six month compliance date ties into the notification deadline of Section 814.103.

Section 814.103 — Notification To Agency of Facility Status

The STS had proposed that this notification take place within two years of the effective date of the rules. The Board's proposal requires the notification within six months, to allow the Agency to analyze the data and prepare a prioritized "call in" schedule over a four year period. The Board solicits comment

on whether the six month time frame is an appropriate time frame in which to expect compliance.

Section 814.104 Applications

This section imposes a duty on the operator to file an application for modification no later than 48 months after the effective date of the rules, or at such earlier time as the Agency calls in the permit. The STS had chosen a 42 month deadline, which the Board modified in response to Agendy testimony that a full 4 year call in period was administratively necessary to allow for repermitting of existing facilities within 5 years (r84-17D, R. 1781).

Section 814.105 Effect of Timely Filing

The purpose of this section is to make clear that a permitee who timely files both the status notification and the permit modification application is deemed in compliance with the new-regulations, and may lawfully continue operations under the terms and conditions of its Part 807 permit until 1) such permit is revoked pursuant to any enforcement action, or 2) a revised permit has been issued and any appeals to the Board thereof are exhausted. P.C. 48 suggests that Part 807 permits cannot be modified unless a hearing has been held by the Agency; (citing Martell v. Mauzy, 511 F. Supp. 729 N.D. Ill 1981). Martell involved a suit requesting injunctive relief ordering issuance of a landfill operating permit for three disposal trenches which the Agency had denied, without prior hearing, pursuant to Section 39(e)(1) of the Act. It was undisputed that the trenches had been properly developed; the basis of the denial was nine instances of alleged, but not adjudicated, misconduct on the part of the owner. The result of the denial was a shut-down of the landfill. The District Court ordered issuance of the permit pending completion of an adjudicatory hearing.

The situation here is completely distinguishable. No existing facility which complies with procedural filing requirements would be deprived of the opportunity to continue operating pursuant to the terms and conditions of its Part 807 permit, consistent with procedures established in Section 16(b) of the APA for the renewal of permits. The Board does not believe that the due process hearing to which an operator is entitled prior to modification or termination of rights conferred by an existing permit need necessarily be held by the Agency. In IEPA v. IPCB, 138 Ill. App. 3d 550, 486 N.E. 2d 293, 294 (3rd Dist. 1985), aff'd. 115 Ill. 2d 47 (1986), the Court observed:

> In a [landfill] permit case, such as this, the process involving the EPA and the PCB is an administrative continuum. It became complete only after the PCB had ruled. the EPA permit

denial did not involve the issuance of detailed findings of fact and conclusions of law. EPA is only required to give reasons for denial, the basis for which the applicant had no opportunity to challenge. WMI had no means of disputing any contrary evidence relied on by EPA until the PCB hearing was held. In short, as to the EPA hearing alone, there is nothing resembling a hearing where adversaries submit proofs to a neutral and detached decisionmaker. The hearing before the PCB, however, includes consideration of the record before the EPA together with the receipt of testimony and other proofs under the full panoply of safeguards normally associated with a due process hearing. (Cf., Borg Warner v. Manuzy, 100 Ill. App. 3d 862, 427 N.E. 2d 415 (3rd Dist. 1981)).

Part 815 Reporting Regulations For Landfills Exempt From Permits

As this Part has been added since the close of hearings, comments on the language are solicited generally.

CONCLUSION

As this rulemaking enters a new phase, in which the Board has itself initiated a proposal, the Board wishes to commend all participants in the R84-17 proceeding for their thoughtful testimony and comments, and to encourage their contained participation. At the same time, the Board wishes to emphasize to affected individuals and organizations who have not previously explained their situations and voiced their concerns that the time to focus on this proceeding is now, as the Board intends to exercise all deliberate speed in final adoption of modern landfill regulations.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 25th day of February, 1988, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board