R84-22

Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites

PUBLIC COMMENTS

PC#	Date	By:
1.	8-15-84	Kenneth W. Smith, Department of Insurance
2.	9-7-84	Ernest C. Neal, CECOS International
3.	9-19-84	Forest Preserve District of DuPage County
4.	10-18-84	The Surety Association of Illinois
5.	10-19-84	Chicago Association of Commerce and Industry
6.	10-20-84	Sexton Contractors Company
7.	10-25-84	Granite City Steel et al
8.	10-25-84	Chicago Association of Commerce and Industry
9.	10-25-84	Illinois Power Company
10.	10-26-84	National Solid Wastes Management Association
11.	10-26-84	Agency's Comments by Scott O. Phillips
12.	9-17-84	GRCDA by H. Lanier Hickman, Jr.
13.	10-30-84	Illinois Chapter of National Solid Wastes Management Association (supplemental)
14.	11-1-84	ICF, Incorporated
15.	4-1-85	Fred Prillaman, Mohan, Alewelt and Prillaman

R84-22 (Docket D)

FINANCILA ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES

Public Comments

PC#	DATE	BY:
1.	6-26-85	Gary P. King, Senior Attorney, Enforcement Programs, Division of Land Pollution Control IEPA, Springfield, IL 62706

ORIGINAL

BEFORE THE

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

FINANCIAL ASSURANCE CLOSURE AND POST-CLOSURE CARE OF WASTE AND DISPOSAL SITES	)))))	No. R84-22

Held on Tuesday, July 2, 1985, commencing at the hour of 10:00 o'clock a.m., at 100 West Randolph Street, Suite 9-034, State of Illinois Center, Chicago, Illinois, Ms. Kathleen Crowley, Hearing Officer, presiding.

PRESENT:

<u>Members of the Board:</u>

Mrs. Joan G. Anderson, Member

ALSO PRESENT:

Mr. Morton F. Dorothy,
Assistant to the Board

Mr. Scott Phillips, Attorney
on behalf of the Illinois
Environmental Protection Agency

Mr. Stanley Yonkauski, Attorney
Mr. William Zeiler
Mr. George S. Tolley
Mr. Miquel Garcia,
on behalf of the Department of Energy
and Natural Resources

ALSO PRESENT: (Continued)

Mr. James T. Harrington
Rooks, Pitts & Poust,
on behalf of Granite City Steel,
Division of National Steel Corporation;
Interlake, Inc.; Keystone Steel and
Wire Co.; Northwestern Steel and Wire
Company; Republic Steel Corporation;
LTV Steel Company; and United States
Steel Corporation

Ms. Sheri Sweibel,
on behalf of Waste Management
of Illinois

Members of the Public

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22
	)	
	)	

PC #10

NOTICE OF FILING

TO: Each Person Named on Attached Service List

Please take notice that we are filing this date, October 25, 1984, the "Comment of Illinois Chapter of National Solid Wastes Management Association, by submitting twelve (12) copies to the Clerk of the Illinois Pollution Control Board, and by submitting three (3) copies to the Illinois Environmental Protection Agency. A copy of the Comment of Illinois Chapter of National Solid Wastes Management Association is attached hereto and hereby is served upon you.

MOHAN, ALEWELT & PRILLAMAN,
Attorneys for THE NATIONAL
SOLID WASTES MANAGEMENT
ASSOCIATION

By _____
Fred C. Prillaman

FRED C. PRILLAMAN
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Phone: (217) 528-2517

DATED: This 25th day of October, 1984

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22
	)	
	)	

COMMENT OF ILLINOIS CHAPTER OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

The Illinois Chapter of the National Solid Wastes Management Association (hereinafter "NSWMA") has attended, through its attorney and through employees and members, each of the five (5) merit hearings in this regulatory proceeding. NSWMA has also presented witnesses in an attempt to assist the Board in arriving at a fair and workable set of regulations, both in the short-term and in the long-term, pertaining to financial assurance for closure and post-closure care of waste disposal sites.

The Illinois Chapter of NSWMA presently consists of 168 members, many of whom are owners and operators of landfills in Illinois, including both large and small sanitary landfills. The President of the Illinois Chapter is John Nord of Bloomington, whose family has been involved in the waste service industry for a number of years. Mr. Nord also serves as Chairman of the Steering Committee, which creates and carries out Chapter policy on pending legislative and regulatory matters affecting the private sector of the waste service industry.

During the course of these hearings, the Illinois Chapter of NSWMA has stressed the need for an interim, or short-term, formula, as opposed to a detailed plan submitted as a permit application, in order to meet the March 1, 1985 deadline. The desirability of such an interim formula was echoed by Patrick Lynch, a practicing Environmental Engineer who was called to testify for the Board. Even Larry Eastep, Manager of the Permit Section of Illinois EPA's Division of Land Pollution Control, agreed that it would be nearly impossible for the Agency to process detailed closure/post-closure plans for all facilities covered by these proposed regulations, if they were to be submitted as permit applications, as presently proposed. The only area of difference between the other witnesses and Mr. Eastep was the per-acre cost of closure. All witnesses apparently agreed that some kind of formula should be used in lieu of a plan which would be submitted as a permit application, but the per-acre cost to be plugged into such a formula ranged from $3,725 (Dave Beck) to $10,000 (Larry Eastep).

The Illinois Chapter of NSWMA respectfully submits that a fair and simple "short-form" method of establishing closure and post-closure care cost estimates (which would be used for posting financial assurance by March 1, 1985, and which would remain effective only until such time as R84-17 closure and post-closure care standards are established)[1]

---

1. We have assumed that R84-17 revisions will be adopted

is that which Mr. Beck suggested at the close of the last hearing in Springfield on October 9, 1984. If you recall, his suggestion was to subtract from an operator's permitted landfill acreage any final cover acreage which has been certified by IEPA, then take 25% of that figure (as an arbitrary maximum area which could require closure at any one given point in time -- this is a much higher figure than is necessary, but it is suggested in order to avoid any argument on the point) and multiply it times $5,000. This would yield a closure cost estimate.

The post-closure care cost estimate would be as originally proposed by Mr. Beck and as essentially agreed to by both Pat Lynch and, in his final statements regarding the estimated average cost of monitoring per well, by Larry Eastep.

All of this can be set forth on a simple, one-page form, which could be substantially similar to that which is attached as Appendix A to the following revisions to the Board's proposal (page 22). The operator could eliminate further work on the part of the Agency reviewer by attaching as an exhibit the first page of his permit which gives the permitted landfill acreage, an exhibit which proves that any particular area has been finally covered and certified as so

---

[1] (Cont'd.) within 2 years of the effective date of R84-22. In anticipation of this, we have proposed that closure and post-closure care plans be included in all applications filed 2 years after the effective date of R84-22. See Sections 807.205, 807.206, 807.501, 807.503, 807.523, and 807.601.

by IEPA, and a permit showing the number of monitoring points to be used in establishing the post-closure care cost estimate.

As set forth in our proposed revisions to Sections 807.503 and 807.523 (pages 12 and 16, respectively), existing permitted sites will comply with the March 1, 1985 deadline by filing this simple, short-form estimate sheet (page 22, which will appear as Appendix "A" to Part 807). Not until 2 years after the effective date of R84-22 (which we have assumed will be the date on which R84-17, containing the new, substantive closure and post-closure care standards will become effective) will site operators be required to include detailed plans in their permit applications.

The main theme running through the attached revisions (pages 6 through 22) is that financial assurance should, for the short-term, be accomplished through use of this simple, easy to verify formula, and not through use of complex, difficult to verify "plans," and certainly not through the permit review process, at least not until the Agency and the Board have settled on what they want the substantive closure and post-closure standards to say. This we have assumed will be established when R84-17 becomes effective. If that happens less than 2 years from the effective date of R84-22, then the requirement that such plans be prepared and filed and made permit conditions can become effective at that time.

Minor themes running through these revisions include elimination of all references to "owner or" (the Act clearly intends the Board to regulate those who conduct the operations, not those who simply own the land) and clarified use (where possible) of the "unit/site/facility" terms. In all cases, we believe the suggested revisions are supported by the record.

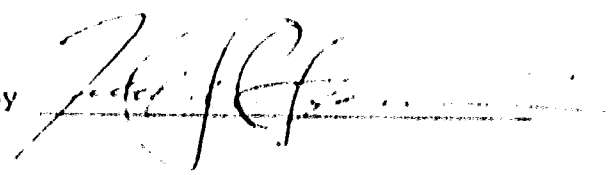
On the following pages, the double-underlined words are ours; the single-underlined words are the Board's, as originally published in the First Notice. Strikeouts are intended to eliminate either the language of the present regulations (no underlining) or language in the Board's proposal (single underlining). The only exception to this is Appendix "A" (page 22), which is NSWMA's proposed "short-form" estimate form, wherein no underlining appears.

NSWMA appreciates the Board's consideration of these comments and proposed revisions.

Respectfully submitted,

ILLINOIS CHAPTER OF NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

By MOHAN, ALEWELT & PRILLAMAN, Its Attorneys

By 

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SUBPART A: GENERAL PROVISIONS

Section 807.104: Definitions

* * *

"Operator" means a person who ~~owns, leases or~~ manages a solid waste management ~~facility~~ site.

Section 807.202: Operating Permits; Prohibitions

* * *

c) After final authorization of the RCRA hazardous waste permit program of 35 Ill. Adm. Code 702 and 703, the owner or operator of a hazardous waste management facility for which an actual RCRA permit has been issued must obtain a permit pursuant to this Section only for treatment, storage and disposal units which accept solely non-hazardous waste. The on-site permit exemption of Paragraph (d) continues to apply.

Section 807.205: Applications for Permit

* * *

j) Any person adversely affected by the issuance of a permit may petition the Board to a hearing before the Board to contest the issuance by the Agency. Beginning 2 years after the effective date of this Section, all All applications for development permits and for modification of operating permits shall include a closure plan pursuant to Subpart E and financial assurance when required pursuant to Subpart F. If the site includes a disposal unit, such application shall include and a post-closure care plan pursuant to Subpart E and financial assurance when required pursuant to Subpart F, showing how the operator will close each unit and provide post-closure care in accordance with all applicable regulations. Provided, however, that such plans and assurances need not be included if the activity which is the subject of the application will not require amending those which have been previously approved by the Agency.

k) Applications shall include financial assurance when required pursuant to Subpart F.

Section 807.206: Permit Conditions

* * *

c) Beginning 2 years after the effective date of this Section, all All development and operating permits, and all revisions thereto shall include the following conditions:

1) A closure plan;

2) A post-closure care plan if required;

3) A requirement that ~~execution~~ implementation of the closure plan commence within 30 days after the unit receives its final volume of waste, or by such later date as the Agency may establish for good cause;

~~4) A requirement that any application to modify a closure plan be filed at least 180 days prior to receipt of the final volume of waste;~~

~~5)~~ 4) A requirement that the operator provide financial assurance in accordance with Subpart F, in an amount equal to the current cost estimate for closure and post-closure care;

~~6)~~ 5) A requirement that the operator update cost estimates for closure and post-closure care annually in accordance with Subpart F.

Section 807.209: Permit Revision

* * *

(c) The owner or operator of each permitted site which accepts waste after the effective date of this Section, or which has not completed closure as provided by Section 807.310(c) before the effective date of this Section, must file an application for modification of the permit to include a closure plan pursuant to Subpart H within 90 days after the effective date of this Section. If the owner or operator of a multiple unit facility seeks permit modification to include a post-closure care plan for fewer than all units, the application must demonstrate adequate financial assurance as required by Subpart F.

SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section 807.501: Purpose, Scope and Applicability

* * *

b) This Subpart requires a closure plan and, for some sites disposal units, a post-closure care plan, to be included in all applications for development permits and in all applications for permit modifications filed with the Agency beginning 2 years after the effective date of this Section. These plans will become permit conditions.

c) The closure plan and post-closure care plan form the basis of the cost estimates and financial assurance required by Subpart F for disposal sites. The closure plans are also used for making the determination as to whether a unit is a disposal unit, which must provide financial assurance.

d) ~~Existing interim status required to file applications for permit modification pursuant to Section 807.209(e):~~

Section 807.503: Closure Plan

a) Until such time as an operator of an existing permitted waste management site is required to apply for modification of the permit, he shall not be required to prepare or file a closure plan, but instead shall file with the Agency, on or before March 1, 1985, a completed estimate form identical to that which appears as Appendix "A" to this Part, together with such financial assurance as is required pursuant to Subpart F of this Part.

a) b) An ~~owner or~~ operator of a waste management site for which the Agency has issued a development or operating permit, or a revision thereto, 2 years after the effective date of this Section, shall have a written closure plan which shall be a condition of ~~the site~~ such permit or revised permit, and

b) ~~An owner or operator of a waste management site~~ shall keep and maintain a copy of the closure plan and all revisions to the plan at the site until closure is completed and certified in accordance with Section 807.508.

* * *

Section 807.505: Notice of Closure and Final Amendment to Plan

a) An ~~owner or~~ operator of a waste management site shall send to the Agency a notice of closure at least 30 days before:

~~1)~~ a) The date of cessation of waste acceptance when the final volume of waste is received at a waste management site for treatment, storage or disposal; or

~~2)~~ b) Expiration of an operating permit issued pursuant to Section 807.202, whichever comes first.

~~b) The owner or operator of a waste management site shall file any application to modify the closure plan at least 180 days before closure of the site. Failure to timely file shall not constitute a bar to consideration of such an application, but may be alleged in an enforcement action pursuant to Title VIII of the Act.~~

Section 807.506: Implementation of Closure

Except as provided in Paragraph (b), an owner-or operator of a waste management site shall begin the treatment, removal from the site or disposal of all wastes:

a) Within 90 days after either the date of cecessation of waste acceptance at the site or expiration of the operating permit, whichever occurs first; and

b) In accordance with the any closure plan required under Section 807.503 and with applicable provisions of this Part and the operating permit.

Section 807.508: Certification of Closure

a) When closure is completed, the ~~owner or~~ operator of a waste management site shall submit to the Agency:

1) Plan sheets for the closed site;

2) Certification by the ~~owner or~~ operator and by a professional engineer that the site or unit has been closed in accordance with ~~the~~ any closure plan and with applicable provisions of this Part and the operating permit; and

3) Operating records, if any, which designate the locations and quantities of any special wastes received at the site.

b) If the Agency finds that the ~~facility~~ site or unit has been closed in accordance with the specification of the closure plan, if any, and the closure requirements of this Part, the Agency shall, within 60 days after receiving the certification required by Subsection (a)(2), above:

1) ~~Notify~~ Certify in writing to the ~~owner or~~ operator ~~of a waste management facility in writing~~ that any applicable post-closure period has begun; and

2) Provide the date the post-closure care period begins.

Section 807.523: Post-Closure Care Plan

a) Until such time as an operator of an existing permitted disposal site is required to apply for modification of the permit, he shall not be required to prepare or file a post-closure care plan, but instead shall file with the Agency, on or before March 1, 1985, a completed estimate form identical to that which appears as Appendix "A" to this Part, together with such financial assurance as is required pursuant to Subpart F of this Part.

~~a)~~ b) An ~~owner or~~ operator of a disposal site for which the Agency has issued a development or operating permit, or a revision thereto, 2 years after the effective date of this Section, shall have a written post-closure care plan which shall be a condition of ~~the site~~ such permit, or revised permit, and

b) ~~An owner or operator of the disposal site~~ shall keep and maintain a copy of the post-closure care plan at the site until closure is completed and certified in accordance with Section 807.508.

* * *

Section 807.524: Implementation and Completion of Post-Closure Care Plan

a) The owner and operator of a waste disposal site shall implement the post-closure care plan or, if there is no plan, shall implement post-closure care in accordance with applicable provisions of this Part and the operating permit, commencing with receipt of a certification of closure pursuant to Section 807.508.

b) The Agency shall terminate the site permit when it determines:

1) That the post-closure care plan, if any, has been completed; and,

2) That the site will not cause future violations of the Act or this Part.

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE

Section 807.601: Purpose, Scope and Applicability

a) This Part Subpart provides procedures by which an operator of a disposal unit can give "financial assurance" satisfying the requirement of Section 21.1(a) of the Act that such operator post with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with the Act and Board Rules.

b) Each operator ~~must file a closure plan as part of a permit application; the operator of a disposal unit must also file a post-closure care plan (Section 807.202);~~ The operator of a disposal unit must prepare a cost estimate of closure and post-closure care, either on the form which appears as Appendix "A" to this Part for existing permitted sites, or as part of an application, filed 2 years after the effective date of this Section, for a development or operating permit or for a modification of same. Each operator shall and provide financial assurance in this amount. Financial assurance may be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or performance, letter of credit, or insurance. The cost es-

timate and amount of financial assurance is to be updated on an annual basis.

c) This Subpart applies only to the operators of disposal units. Whether a unit is a disposal unit or, alternatively, a treatment or storage unit, depends on whether the closure plan provides for removal of ~~all~~ sufficient wastes and waste residues from the unit prior to completion of closure so as to remove a threat of water pollution or air pollution.

~~d) The owner or operator of an existing site is required to provide financial assurance as provided by Section 807.209.~~

Section 807.603: Release of the Owner or Operator

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan, the Agency will notify the owner or operator in writing that it is no longer Upon receipt of certification of closure from the Agency [Section 807.508(b)], the operator shall no longer be required by this Subpart to maintain financial assurance for closure of the particular facility site. unless the Agency has reason to believe that closure has not been in accordance with the closure plan:

Section 807.661: Trust Fund

* * *

i) After beginning closure, an owner or operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure or post-closure care expenditures by submitting itemized bills to the Agency. Within 60 10 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure or post-closure care plan or otherwise justified, and if so, it will instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing. ~~If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance for closure and post-closure care.~~

APPENDIX A TO PART 807

CLOSURE AND POST-CLOSURE CARE

LANDFILL UNITS

- COST ESTIMATE COMPUTATION -

IDENTIFICATION

SITE NAME: _____

SITE I.D. NO.: _____

PERMIT NUMBER: _____

CLOSURE COST ESTIMATE

POTENTIAL LANDFILL ACREAGE[1] = _____

FINAL COVER ACREAGE CERTIFIED BY EPA[2] = _____

POTENTIAL CLOSURE ACREAGE = _____

POTENTIAL CLOSURE ACREAGE _____ * $_____ = CLOSURE COST ESTIMATE

POST-CLOSURE CARE COST ESTIMATE

POTENTIAL LANDFILL ACREAGE[3] = _____

CLOSURE ACREAGE[4] = _____

POST-CLOSURE CARE ACREAGE = _____

POST-CLOSURE CARE ACREAGE _____ * $_____ = ANNUAL MAINTENANCE COST ESTIMATE

ANNUAL MAINTENANCE COST ESTIMATE _____ * $_____ = ANNUAL GROUNDWATER MONITORING COST ESTIMATE

ANNUAL MAINTENANCE COST ESTIMATE _____ + ANNUAL GROUNDWATER MONITORING COST ESTIMATE _____ = ANNUAL POST-CLOSURE CARE COST ESTIMATE _____ * 5 YEARS = POST-CLOSURE CARE COST ESTIMATE

FOOTNOTES:

1. Total acreage permitted for use in waste management activities, not the total land parcel which may include buffer zones, office/maintenance areas, etc.
2. Area that has its final cover approved in writing by EPA.
3. Area that has satisfied closure, maintenance, monitoring and documentation requirements of Rule 807.311

PROOF OF SERVICE

The undersigned certifies that copies of the foregoing document, to-wit, Comment of Illinois Chapter of National Solid Wastes Management Association, were served upon all interested parties to this cause, as shown on the attached sheet, by enclosing the same in an envelope addressed to each such person at their business address as shown, with postage fully prepaid, and by depositing said envelope in a U. S. Post Office Mail Box in Springfield, Illinois on the 25th day of October, 1984.

FRED C. PRILLAMAN

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22
	)	
	)	

PC#11

COMMENTS

The Illinois Pollution Control Board (hereafter "Board") requested that the Illinois Environmental Protection Agency (hereafter "Agency") respond to several inquiries posed by the Board in the above-referenced matter. These responses, as well as several additional comments, are set forth below:

1. Board Inquiry: How often does the Agency inspect nonhazardous waste landfills?

   Response: The frequency of Agency inspections at nonhazardous waste landfills varies. Sites which chronically disregard the Act or Board regulations are inspected more frequently than those sites found in compliance. However, generally speaking, nonhazardous waste landfills are inspected at least once a year.

2. Board Inquiry: Could the Agency provide the data used by Mr. Larry Easter in the preparation of Exhibit 1R?

   Response: The data which Mr. Easter used is attached hereto and identified as Attachment 1.

3. Board Inquiry: Does the Agency have an estimate of the number of on-site nonhazardous waste disposal facilities in Illinois?

Response: On-site nonhazardous waste disposal sites are generally not required to have a permit under Section 21(d)(1) of the Environmental Protection Act (hereafter "Act"), Ill. Rev. Stat. 1983, Ch. 111 1/2, par. 1021(d)(1), nor are such facilities presently under any regulatory requirement to report their activities to the Agency. As a result, the Agency does not have sufficient data upon which to base an estimate of the number of on-site nonhazardous waste facilities in Illinois.

4. Board Inquiry: In 35 Ill. Adm. Code 807.207, the standard for issuance has been changed to reference "this Part" instead of "the Rules." Are there provisions outside of 35 Ill. Adm. Code 807 with which the applicant should show compliance?

Response: The Agency recommends that the standard for issuance in 35 Ill. Adm. Code 807.207 not be changed to reference "this Part" instead of "the Rules."

Section 39(a) of the Act mandates that:

> "...it shall be the duty of the Agency to issue...a permit upon proof by the applicant that the facility...will not cause a violation of this Act or of regulations hereunder (emphasis added)."

The previously-cited language clearly indicates that an applicant must demonstrate compliance with all provisions of the Act and Board regulations in order to be eligible for a permit under the Act. Obviously, there may be certain statutory and regulatory requirements which are inapplicable in any given case. However, to the extent that the provisions of other Board regulations outside of 35 Ill. Adm. Code 807 are applicable to a particular facility, the Agency is under a statutory obligation not to issue a permit under 35 Ill. Adm. Code 807 unless and until these other requirements are met.

For example, the Agency cannot issue a permit under 35 Ill. Adm. Code 807 for a facility that also requires a NPDES permit under Subtitle C unless the facility demonstrates to the Agency that it has applied for and can be issued a NPDES permit. Depending on the type of facility for which a permit under 35 Ill. Adm. Code 807 is requested, regulations from additional Board subtitles (e.g. Subtitle H) may be applicable as well.

5. Board Inquiry: Which types of waste management sites should be required to submit closure and post-closure plans for Agency review:

Response: Owners and operators of disposal units should be required to submit closure and post-closure plans for Agency review. Whether a unit is a disposal unit or, alternatively, a treatment or storage unit depends on whether the waste and waste residues are removed from the unit prior to closure.

6. Board Inquiry: As proposed, the closure and post-closure care requirements would not apply to on-site disposal. Is this consistent with Section 21(d) of the Act?

Response: Section 21(d)(2) of the Act provides that a person conducting a waste treatment, storage or disposal operation must comply with Board regulations. Section 21(d)(2) does not distinguish between on-site and off-site facilities; consequently, both on-site and off-site facilities must comply with Board regulations. This does not mean, however, that the Board cannot distinguish between on-site and off-site facilities where cause for such a distinction exists. However, if a Board regulation is silent as to whether the regulation is intended to apply to on-site facilities, off-site facilities or both, under Section 21(d)(2), the regulation could be construed as being applicable to both.

7. Board Inquiry: In 35 Ill. Adm. Code 807.601(c), is this sufficient to allow the Agency to tell the difference between a disposal and a treatment or storage unit?

Response: As drafted, 35 Ill. Adm. Code 807.601(c) may present some problems. The Board should realize that it may be impossible to remove "all" wastes and waste residues from certain waste management units. Consequently, if the word "all" is to be interpreted as an absolute (i.e. 100), it may necessitate characterizing certain types of

units as "disposal units" even if most but not "all" of the waste and waste residue has been removed. If the Board intends that the word "all" means something less than 100%, the Board should specify how much less than 100% would be acceptable.

8. Board Inquiry: Does the Agency believe that a Board Order should be a necessary precondition for the application of proceeds from financial assurance?

Response: A Board Order should not be a necessary precondition for the application of proceeds from financial assurance.

9. Board Inquiry: Does the Agency agree that the actions listed in 35 Ill. Adm. Code 807.602(c)(1) should be subject to appeal?

Response: The actions listed in 35 Ill. Adm. Code 807.602(c)(1) appear to be a final administrative decision by the Agency. If such actions are final administrative decisions by the Agency, they should be appealable to the Board.

10. Board Inquiry: In 35 Ill. Adm. Code 807.640, the Board proposes to use mechanisms similar to the federal RCRA mechanisms except for the self-insurance test. Does the Agency support a self-insurance test? If not, why?

Response: The Agency does not support a self-insurance test. Prior witnesses in this proceeding, Mr. Paul E. Baily and Mr. Thomas B. Golz enumerated several problems with the financial (i.e., self-insurance) test as adopted by USEPA in the RCRA rules. Mr. Baily indicated that in establishing the RCRA financial test, USEPA did not consider data from commercial waste firms (p. 17 of Exhibit 4). Since

only commercial (i.e., off-site) facilities will be required to provide a performance bond or other security under the Board regulations, the RCRA financial test could not be applied with any degree of certainty that test will accurately reflect the financial strength of the commercial facilities and their ability to provide appropriate closure and post-closure care.

Mr. Golz testified that the RCRA financial test was based on a ten-year retrospective study of bankruptcies occurring between 1965 and 1975. Mr. Golz further testified that the reasons businesses failed in 1965 may differ from the reasons they fail in 1984 (p. 5 of the Testimony of Thomas B. Golz). Based on Mr. Golz's testimony, the RCRA financial test may not be a reliable indicator of the financial strength of a company and its ability to provide appropriate closure and post-closure care.

11. Board Inquiry: If the Board were to adopt a self-insurance test, does the Agency see any advantage in requiring the operator to promise to pay the cost estimate unless he provides closure or post-closure care?

Response: As stated in paragraph 10 of these COMMENTS, the Agency does not support a self-insurance test. A "promise to pay the cost estimate" would be advantageous if it creates a stronger basis for recovery of closure and post-closure costs, or if it places the State of Illinois in a preferred position as against other possible creditors.

12. Comment: The Agency does not have the resources to review and modify all outstanding waste management permits within the time frame proposed by the Board in 35 Ill. Adm. Code 807.209(c). The Agency supports the adoption of an interim measure which would require owners and operators of existing waste disposal sites to provide a performance bond or other security in an amount based upon a fixed amount per acre. The fixed amount which is established by the Board should reflect the cost which would be incurred by the State of Illinois if it had to engage a contractor to complete closure and post-closure care at the site. The Agency provided its estimate of closure costs per acre in Exhibit 14.

The Agency recommends that owners and operators of existing waste disposal sites be required to maintain a performance bond or other security in an amount established under the interim measure until the site requests any modification of its operating permit. At the time such a modification is requested, the owner and operator would have to provide a closure and post-closure plan, a closure and post-closure cost estimate based on these plans, and a performance bond or other security in amount at least equal to the closure and post-closure cost estimate. If the performance bond or other security held by the Agency under the interim measure is of a value in excess of the closure and post-closure cost estimate, this excess should be returned to the owner and operator. Similarly, if the value of the instruments held under the interim measure is less than the amount of the closure and post-closure cost estimate, the owner and operator will have to provide additional financial assurance before the operating permit can be issued.

As stated previously, the proposed interim measure would apply only to existing waste disposal sites. Owners and operators of new waste disposal sites should be required to provide a closure and post-closure plan, a closure and post-closure cost estimate based on these plans, and a performance bond or other security in amount at least equal to the closure and post-closure cost estimate, as part of the application for the site's development permit.

13. Comment:

35 Ill. Adm. Code 807.202(d) should be amended so as to clearly indicate that if the owner and operator of a disposal unit has provided financial assurance for the unit in accordance with 35 Ill. Adm. Code 724 or 725, and such financial assurance is of an amount sufficient to provide closure and post-closure care of the disposal unit, the owner and operator need not file duplicative financial assurance under Subpart F of 35 Ill. Adm. Code 807. However, if both hazardous and nonhazardous waste is disposed in the unit, this exemption should be available only if the closure and post-closure plan, the closure and post-closure cost estimate, and the financial assurance prepared under 35 Ill. Adm. Code 724 or 725 also address the nonhazardous waste disposed in the disposal unit and are sufficient to provide adequate closure and post-closure of such a unit.

In addition, the term "unit of local government" as used in 35 Ill. Adm. Code 807.202(d)(1) should be defined by the Board. An entity determined by the Board to be a "unit of local government" should be exempt from providing financial assurance only if that entity is identified as the operator of the site in the operating permit.

14. Comment: The Agency recommends that 35 Ill. Adm. Code 807.205(j) be drafted so as to clearly indicate that the closure plan and post-closure care plan contained in the application must address the entire site, except for those areas of the site which are the subject of a closure plan and post-closure care plan that has been previously approved by the Agency.

15. Comment: The 90-day time frame for completion of closure established under 35 Ill. Adm. Code 807.206(c)(3) differs from the 60-day time frame for application of final cover established under 35 Ill. Adm. Code 807.305(c). The Board may wish to reconcile these two provisions.

16. Comment: The Agency proposes that 35 Ill. Adm. Code 807.209(c) be modified to reflect an interim financial assurance measure such as that which was discussed in paragraph 12 of these COMMENTS.

17. Comment: Several witnesses expressed some uncertainty as to whether the cover requirements set forth in 35 Ill. Adm. Code 807.305 are intended to be cumulative, or whether they are intended to be absolute amounts and therefore not cumulative. Since the cost of providing cover is a major cost in the closure of a site, it is imperative that both the Agency and the regulated community understand the meaning of this rule. The Agency recommends that the Board discuss the intent of 35 Ill. Adm. Code 807.305 in its opinion in this matter.

18. Comment: The Agency recommends that 35 Ill. Adm. Code 807.501 be modified so as to expressly state the on-site disposal facilities are required to prepare closure and post-closure plans. These plans need

not be submitted to the Agency for approval, but the plans should be retained at the facility and be available for inspection by the Agency.

In addition, 35 Ill. Adm. Code 807.501(d) may have to be amended as a result of modifications made to 35 Ill. Adm. Code 807.209(c) (see paragraph 16 of these COMMENTS).

19. Comment: In addition to the requirements set forth in 35 Ill. Adm. Code 807.503(c)(1) through (7), the Agency proposes that a closure plan also include an estimate of the maximum number of acres which have received and will receive waste, and which have not yet received final cover.

20. Comment: 35 Ill. Adm. Code 807.507(a) presently requires an owner or operator to dispose of all waste and residues prior to closure. The Agency proposes that 35 Ill. Adm. Code 807.507(a) be amended so as to allow an owner or operator the option of removing all waste and residues from the site for off-site treatment, recycling, or disposal.

21. Comment: Upon completion of closure, 35 Ill. Adm. Code 807.508(a) requires the owner and operator to submit plan sheets, a certification of closure, and operating records. It is unclear whether the procedures set forth in 35 Ill. Adm. Code 807.508 apply if only a portion of a site is closed. The Agency proposes that 35 Ill. Adm. Code 807.508 be amended so as to clearly indicate that if a partial closure occurs then plan sheets, a certification of closure, and operating records must be submitted to the Agency for that closed portion.

22. Comment: The Agency supports the Board's proposed language in 35 Ill. Adm. Code 807.661(i) which states as follows:

> "...If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold

reimbursement of such amount as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance for closure and post-closure care."

Mr. Charles A. Johnson of the National Solid Waste Management Association testified that he believed that such a provision would somehow reduce the "incentive" for an operator to engage in closure and post-closure care at a site (pp. 5-7 of the Testimony of Charles A. Johnson). The Agency strongly disagrees with Mr. Johnson.

Since the closure and post-closure plans will be included in a permit as a condition (see 35 Ill. Adm. Code 807.206), a failure by an operator to provide closure and post-closure care in accordance with the approved plans would be a violation of a permit condition. The violation of a permit condition is a violation of Section 21(d)(1) of the Act. A violation of the Act subjects the violator to substantial civil penalties (up to $25,000 per day for certain types of violations) and also criminal fines and imprisonment. Such sanctions would appear to be a considerable "incentive" to an operator contemplating closing his or her facility. Inclusion of the Board's proposed language would certainly not reduce this "incentive."

In fact, if the proposed language is deleted and the Agency is not authorized to withhold payments where inadequate financial assurance exists, the Board would inadvertently be creating an inducement for certain operators to intentionally underestimate their closure and post-closure costs since any additional costs could be recovered only in a civil enforcement action. During the pendency of the enforcement action, the site would remain an unclosed environmental risk. By the time a judgment is reached in the enforcement action, the defendant may not have sufficient assets to complete closure and post-closure care. These are the types of problems which Section 21.1 of the Act and these proposed regulations were intended to address. Deletion of the Board's proposed language

in 35 Ill. Adm. Code 807.661(i) would not be consistent with the legislative intent of Section 21.1 of the Act. Therefore, the Agency urges the Board to retain the proposed language.

23. Comment: A brief summary of the qualifications of Agency witnesses Larry Eastep and Andy Vollmer is attached hereto and identified as Attachment II.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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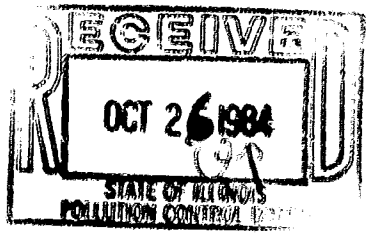
Date: October 25, 1984

Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

217/782-5544

October 25, 1984



PC # 11

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
309 West Washington, Suite 300
Chicago, Illinois 60606

Re: In the Matter of:
Financial Assurance for Closure
and Post-Closure Care of Waste
Disposal Sites
R84-22

Dear Ms. Gunn:

Enclosed please find the original (bound in the black notebook) and thirteen copies of the Agency's COMMENTS for filing in the above-referenced matter. Please note that the copies do not contain the voluminous attachments which are included with the original. If you would like additional copies of the attachments, please let me know.

Sincerely,

Scott O. Phillips

Scott O. Phillips
Attorney
Division of Land Pollution Control

Enclosures
SOP:bkm
cc: Docket Control

Original Do Not Remove

pc #9

Before the
ILLINOIS POLLUTION CONTROL BOARD

In the matter of:	)	
	)	
FINANCIAL ASSURANCE FOR	)	R84-22
CLOSURE AND POST CLOSURE	)	
CARE OF WASTE DISPOSAL SITES	)	

NOTICE OF FILING

TO: Marili McFawn, Esq.
Hearing Officer
Illinois Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Ms. Joan Anderson
Attending Member of the Illinois Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Joint Committee On Administrative Rules
509 South Sixth Street
Room 500
Springfield, Illinois 62701

Morton F. Dorothy, Esq.
Assistant to the Illinois Pollution Control Board
P.O. Box 505
Peru, Illinois 61354

PLEASE TAKE NOTICE that, on behalf of Illinois Power Company, I shall file this 25th day of October, 1984 with the Clerk of the Illinois Pollution Control Board the Written Comments Of Illinois Power Company, a copy of which is attached hereto and hereby is served upon you.

Carolyn A. Lown

SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, Illinois 60606
(312) 876-1000

One of the Attorneys for Participant
ILLINOIS POWER COMPANY

Before the
ILLINOIS POLLUTION CONTROL BOARD

In the matter of:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22

WRITTEN COMMENTS OF ILLINOIS POWER COMPANY

Illinois Power Company ("IPC"), by its attorneys, hereby submits written comments concerning the regulations proposed by the Illinois Pollution Control Board ("Board") for adoption herein. These regulations were made available for public comment by their publication in 8 Ill. Reg. 14145 (August 10, 1984) ("Proposed Regulations") and were the subject of state-wide regulatory hearings.

Certain of the Proposed Regulations are not within the statutory authority upon which they are based. In addition, the notice given of certain of the Proposed Regulations was not sufficient to advise the public adequately of the purpose and effect of these regulations. Unless these infirmities are corrected, these Proposed Regulations will be invalid. To avoid this consequence, IPC urges the Board to consider carefully the comments which follow and to amend the Proposed Regulations as suggested in order to eliminate the deficiencies described.

I.
THERE WAS LACK OF ADEQUATE NOTICE OF THE PURPOSE AND EFFECT OF THE PROPOSED REGULATIONS

IPC has argued, in a motion made on the record of the September 24, 1984 hearing herein and in a Motion For Review By Board Of Hearing Officer's Order (filed Sept. 27, 1984), that it would be improper for the Board to consider in this proceeding two recommendations which would dramatically change the scope and effect of the Proposed Regulations. One of these recommendations is that the Proposed Regulations be modified "to state the result" of the Illinois Appellate Court's decision in Reynolds Metals Co. v. Illinois Pollution Control Board, 108 Ill. App. 3d 156, 438 N.E.2d 1263 (1st Dist. 1982) and Pielet Bros. Trading Inc. v. Pollution Control Board, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982). The other recommendation is that the Proposed Regulations be modified so that the closure and post-closure care standards contained in Subpart E of the Proposed Regulations would be expanded to apply to all sites irrespective of whether or not a site is exempted from having to have a permit by Section 21(d) of the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, §1021(d) ("Section 21(d) of the Act"). [Hereinafter these two recommendations will be referred to as the "Recommendations."]

The Hearing Officer denied IPC's September 24, 1984 motion, and the Board, in an October 12, 1984 Order, affirmed this ruling by denying IPC's Motion For Review By Board of Hearing Officer's Order. In so ruling, however, the Board explicitly reserved a final decision on the issue of adequate public notice until it had the opportunity to consider the Recommendations further: "if the Board decides to modify the rules as presently proposed, it will at that time determine whether the modifications so alter the proposal as to deny the public its full due process rights, and if the Board determines that it has, it will take appropriate action." Order of Board at 3, PCB R84-22 (Oct. 12, 1984). IPC urges the Board to make such a determination now.

Adequate notice has not been given of the purpose and effect of either of these Recommendations. The Proposed Regulations were published in 8 Ill. Reg. 14145 (August 10, 1984) for the stated reason of providing the public with notice of the Board's intended action. Order of the Board and Proposed Rule at 1, First Notice, PCB R84-22 (July 19, 1984) ("The proposal will be published for first notice in the Illinois Register."). See Ill. Rev. Stat. 1983, ch. 120, §1005.01(a) ("The first notice shall include a text of the proposed rule. . .[and] a complete description of the sub-

jects and issues involved."). In this notice, the Board indicated an intention regarding the scope and application of the Proposed Regulations which is almost directly the opposite of that which is now suggested by these Recommendations.

At the time of their publication, the Proposed Regulations stated that no permit would 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." Section 807.202(b) of the Proposed Regulations, 8 Ill. Reg. 14155 (August 10, 1984). This provision is a verbatim quote of Section 21(d); as such, it states that the scope of this exemption is what the statute provides for it to be. In contrast, one of the Recommendations now being made is that the Board attempt to limit the scope of this statutory exemption. The Proposed Regulations when published also provided that the closure and post-closure care requirements contained in Subpart E of the Proposed Regulations, including the requirement that closure and post-closure plans be submitted to the Illinois Environmental Protection Agency ("IEPA"), would apply only to "the owner and operator of a waste management site required to have a permit pursuant to Section 21(d) of the Act or Section

807.202." Section 807.501(a) of the Proposed Regulations, 8 Ill. Reg. 14160 (August 10, 1984). In direct contradiction to this, one of the Recommendations would eliminate this limitation and would make Subpart E applicable to all waste management sites irrespective of the Section 21(d) permit exemption.

While it is true that the Proposed Regulations when published dealt with the same broad categories of requirements that the two Recommendations now do, it can hardly be said that this publication put the public on notice that the opposite of what was being published actually was to be considered. Thus, the publication of the Proposed Regulations did not give adequate notice of the purpose and affect of the two Recommendations. Neither did the act of making the Recommendations, itself, provide sufficient notice. Both Recommendations were made orally at hearing and were stated in such general terms that the public can only guess at what the effect of the Recommendations is to be.

The first Recommendation was that the Proposed Rules be modified "to state the result" of the Reynolds Metals and Pielet Bros. cases; no further explanation was given, however, about how this statement is to be made. Transcript at 57, PCB R84-22. Without some better guidance as to what such a statement is to entail, it is almost impos-

sible to comment in any meaningful way on the Recommendation. Both the Reynolds Metals and Pielet Bros. cases drew conclusions about the applicability of the Section 21(d) permit exemption which were based on the specific facts which existed in those two cases rather than on the basis of any principle or theory of general applicability. As such, whether or not the Reynolds Metals and Pielet Bros. decisions will be applicable to another set of facts which differs from those which exist in each of these cases will have to be decided on a case-by-case basis. As a consequence, how any "statement" of the results of Reynolds Metals and Pielet Bros. attempts to derive an application of these fact-specific cases to other situations will be crucial to understanding this effect. Yet, the public has not been advised of what such a statement is to contain.

A similar deficiency exists with respect to the "notice" which was provided of the second Recommendation, that the closure and post-closure care standards of Subpart E of the Proposed Regulations, including its requirements for closure and post-closure plans be expanded to apply to all sites irrespective of whether or not the site is covered by the Section 21(d)permit exemption. Transcript at 56, 68, PCB R84-22. Again, as with the first Recommendation, no language was suggested as a means of accomplishing this suggestion,

despite the fact that the means actually chosen for the expansion are crucial to understanding its effect. As presently written, Subpart E of the Proposed Regulations will apply only to those sites which have permits. Consequently, its requirements are stated in terms of how closure and post-closure plans are to be prepared and approved as part of the permitting process. This mechanism does not presently contemplate sites which do not have permits.

If some process is added to provide a means of preparing and approving the plans of sites otherwise exempt, a number of consequences could result. For example, the approval process could be stated in such terms that it would be the equivalent of a permitting process, and so would impermissibly contradict the statutory exemption granted by Section 21(d). Of perhaps greater concern, however, is that the sites which do not have permits are those which treat, store, or dispose of waste generated by that site's own activities: in other words, those sites which are industrial facilities rather than commercial waste disposal or treatment operations. These sites which are covered by the Section 21(d) permit exemption, unlike off-site commercial waste operations, generate waste which is treated and stored, at least for short periods, at various points in the production process prior to the point of ultimate treatment or disposal. As

presently drafted, the Proposed Regulations do not contemplate the existence of this situation, nor the chaos which would result from having to develop a closure and post-closure plan to deal with all such intervals of treatment and storage which might occur during production. IEPA has testified that if individual industrial plants were subject to the closure and post-closure plans requirements of the Proposed Regulations then IEPA would not "know where to draw the line." Transcript at 980, PCB R84-22. IEPA suggested that the better approach to this situation would be to require closure and post-closure plans only of those facilities where an evaluation of the risk posed by the waste involved and the treatment or disposal it receives merits it. See Transcript at 986-87 PCB R84-22. Such a risk assessment is not developed in the Recommendation; it is, however, being considered in the Board's R84-17 proceeding.

Accordingly, to understand what the consequences may be of this second Recommendation, it is crucial to understand what process actually is being proposed. Until the public is provided with adequate notice of what is contemplated, it will not be able to comment in any meaningful way of this Recommendation.

Thus, the very general way in which the two Recommendations have been made has prevented the public from being able to provide the Board with the very things which the

Board considered to be compelling reasons for denying IPC's Motion For Review By Board Of Hearing Officer's Order: that any recommendations which become part of the record in the case be "subject to cross-examination, comment, or rebuttal testimony." Order of Board at 3, PCB R84-22 (Oct. 12, 1984).

The Board expressed the concern in its October 12, 1984 Order that if it agreed with IPC's objections concerning the lack of adequate notice given with respect to the two recommendations, the Board might be finding that all possible revisions raised and discussed at hearing be publicly noticed. Order of Board at 2, PCB R84-22 (Oct. 12, 1984). IPC did not and is not arguing for such a broad application of the principal of public notice. IPC acknowledges that the Board is allowed by the Environmental Protection Act, Ill.Rev.Stat. 1983, Ch. 111 1/2, §§1001 et seq. (the "Act"), to revise proposed regulations before adoption in response to suggestions made at the hearing without conducting a further hearing on the revisions. Ill. Rev. Stat. 1983, ch. 111 1/2, §1028. However, IPC contends that such revisions somehow must be limited in scope and degree in order to avoid rendering meaningless the requirement of the Act that substantive regulations may be adopted only after a hearing has been held and a "reasonable opportunity to be heard with respect to the subject of the hearing" has been given. Ill. Rev. Stat. 1983, ch. 111 1/2, §1028. Unless adequate consideration is given during the

public notice and comment period about the matter or matters upon which a later revision is based, the public's due process rights may be eviscerated by the discussion of one regulation at hearing and then the adoption of quite a different one after the public's right to comment has expired. Such a result would be an impermissible circumvention of the Act's due process guarantees. Ill. Rev. Stat. 1983, ch. 111 1/2, §§1026-29.

Thus, whether revisions may be made without further public notice and opportunity for comment is a question of degree: how much change is to be made. In the case of the two Recommendations which have been made herein, the suggested changes are so great the the public effectively has been deprived of its right to comment. IPC requests that the Board make the determination that adequate public notice and opportunity to comment has not been given for these two Recommendations and that these may not be considered further in this proceeding but should be considered, if at all, in another proceeding after adequate public notice and opportunity to comment have been provided.*

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* Indeed, the proponent of these two Recommendations has stated that expansion of the closure and post-closure plans requirement to sites covered by the Section 21(d) permit exemption could be considered in the Board's R84-17 rulemaking. Transcript at 85, PCB R84-22. That proponent also has admitted there is not enough time in this proceeding to develop detailed closure and post-closure plans. Transcript at 97, PCB R84-22.

II.
THE PROPOSED RESOLUTIONS FAIL TO BE WITHIN THE STATUTORY AUTHORITY UPON WHICH THEY ARE BASED

The Proposed Regulations are being promulgated to fulfill the legislative mandate which is expressed in Section 21.1 of the Act, Ill.Ann.Stat., ch. 111 1/2, §1021.1 (Smith-Hurd 1984) ("Section 21.1 of the Act"). Order of the Board at 1, PCB R84-22 (July 19, 1984); 8 Ill. Reg. 14146 (August 10, 1984). Section 21.1 of the Act directs the Board to adopt regulations "to promote the purposes" of the financial assurance requirements of that section, including that any waste disposal operation requiring a permit under Section 21(d) post with IEPA "a performance bond or other security for the purpose of insuring closure of the site and post-closure care."

Three portions of the Proposed Regulations fail to fulfill this legislative mandate of Section 21.1 of the Act: (1) Subpart F, insofar as it omits the so-called "financial test and corporate guarantee" from the mechanisms of financial assurance for closure and post-closure care which it prescribes; (2) the recommended modification of the Proposed Regulations "to state the result" of Reynolds Metals and Pielet Bros.; and (3) the recommended expansion of Subpart E to all sites irrespective of whether or not the site is exempted from having to have a permit pursuant to Section 21(d)

of the Act. In addition, these portions of the Proposed Regulations also fail to comply with the statutory mandate of Section 27(a) of the Environmental Protection Act that "[i]u promulgating regulations under the Act, the Board shall take into account . . . the technical feasibility and economic reasonableness" of the regulations. Ill.Rev.Stat. 1983, ch. 111 1/2, §1027(a) (emphasis added) ("Section 27(a) of the Act"). As a consequence, these three portions of the Proposed Regulations are infirm and must be corrected by the Board.

A.
Sections 21.1(A) and 27
Approve the Use of The Financial Test and Corporate Guarantee

To fulfill the mandate of Section 21.1 of the Act that waste disposal operations which require a permit under Section 21(d) of the Act must provide IEPA with "a performance bond or other security" to insure closure of the site and post-closure care, Subpart F of the Proposed Regulations specifies a number of mechanisms for financial assurance. These mechanisms are patterned, with one glaring exception, on the comprehensive financial responsibility regulations which have been adopted as part of the state and federal hazardous waste regulations to impelement the Resource Conversation and Recovery Act, 42 U.S.C. §6901 et

seq. ("RCRA"). 35 Ill.Adm. Code Part 724, Subpart H and Part 725, Subpart H; 40 C.F.R. Part 264, Subpart H and Part 265, Subpart H (1983). Transcript at 123, PCB R84-22. Indeed, the record developed herein to support the adoption of Subpart F of the Proposed Regulations relies heavily, if not exclusively, upon the United States Environmental Protection Agency's ("USEPA") experience with developing and implementing the federal RCRA regulations on financial responsibility. See Transcript at 123-140, 283-399, 410-525, PCB R84-22.

The Board has declined, however, to include among the financial assurance mechanisms of Subpart F of the Proposed Regulations the mechanism which is used by approximately 80% of those facilities which comply with the financial responsibliity requirements of the federal RCRA regulations. Transcript at 296, 544, PCB R84-22. That mechansim is the so-called "financial test and corporate guarantee" which is contained in 40 C.F.R. §§264.143(f), 265.143(e), 265.145(e) (1983); 35 Ill.Adm. Code §§ 724.243(f), 724.245(f), 725.243(e), 725.245(e). This omission, according to the principal draftsperson of the Proposed Regulations, is due to Section 21.1 of the Act being interpreted as precluding the use of a financial assurance mechanism which does not meet "the description of performance bond, and other

security, as those terms are ordinarily used." Transcript at 157, PCB R84-22. This interpretation of Section 21.1 of the Act is incorrect.

Section 21.1 of the Act uses the same phrase, that of "performance bond or other security" as does Section 36 of the Act, which requires the Board in certain instances to condition the grant of a variance "upon the posting of sufficient performance bond or other security." Ill.Rev.Stat. 1983, ch. 111 1/2, §1036 ("Section 36 of the Act"). This requirement of Section 36 of the Act has long been interpreted by the Board as allowing the recipient of such a variance to make a demonstration of financial net worth rather than having to post a bond. See, e.g., Illinois Power Co. v. Illinois Environmental Protection Agency, PCB 71-197.

The General Assembly is presumed to know the construction and interpretation of a statute when it amends that statute. If the amendment does not change the language which previously has been construed, then the construction given to the original statute is to be followed in interpreting the amendment. See People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75, 78-79 (1935). Accordingly, the same interpretation given to the phrase "performance bond or other security" which appears in Section 36 of the Act should

be given to that phrase as it appears in Section 21.1 of the Act, and a "financial test and corporate guarantee" should be added to the Proposed Regulations.

Such an addition not only will be consistent with the legislative mandate of Section 21.1 of the Act but also it will fulfill the statutory requirements of Section 27(a) of the Act. The Board is directed by Section 27(a) of the Act to consider the "technical feasibility and economic reasonableness" of a regulation at all phases of a rulemaking and not just when considering pursuant to Section 27(b) of the Act, Ill.Rev.Stat. 1983, ch. 111 1/2, §1027(b), whatever economic impact study has been prepared on the effects of the proposed regulations. The record herein indicates that it may not be technically feasible or economically reasonable for the regulated community to comply with the Proposed Regulations unless a "financial test and corporate guarantee," such as that included in 35 Ill.Adm.Code §§724.243(f), 724.245(9f), 725.243(e), 725.245(e), is added to Subpart F.

As has been noted, the record herein relies upon the USEPA's experience with the federal RCRA regulations to establish whether it is feasible or reasonable for facilities to comply with the financial assurance requirements of the Proposed Regulations. See Transcript at 123-140, 283-399,

410, 525, PCB R84-22. Significantly, the mechanism which is used by approximately 80% of the facilities complying with the federal RCRA regulations is the "financial test and corporate guarantee." Transcript at 296, 544, PCB R84-22. Yet it has not been established on the record that the remaining mechanisms which are allowed by the Proposed Regulations actually will be available or will be available at any reasonable cost to the regulated community. See, e.g. Transcript at 344, PCB R84-22 (Mr. Bailey responded to the question of whether or not the insurance mechanism is avilable to smaller companies by stating that "I have not looked at that. I am not aware of anyone who has looked at it. It is a very interesting question."); Transcript at 510, PCB R84-22 (Mr. Bailey admitted to having failed to look at the financial data concerning use and availability of surety bonds); Transcript at 547, PCB R84-22 (Mr. Golz testified that "closure insurance is in fact a rare mechanism.").

In contrast, however, there has been extensive testimony about the technical feasibility and economic reasonableness of the "financial test and corporate guaran-

tee." Transcript at 533-551, PCB R84-22.* Accordingly, the Board should add such a mechanism of financial assurance to Subpart F of the Proposed Regulations.

B.
The Act Does Not Require
That the Scope of Section 21(d)
Be Defined in this Rulemaking

The recommendation has been made during the hearings herein that the Proposed Regulations be modified "to state the result" of the Illinois Appellate Court's decisions in Reynolds Metal and Pielet Bros. Transcript at 57, PCB R84-22. As has been discussed in these Written Comments, this Recommendation may not be acted on by the Board in this proceeding because the public has not been provided with adequate notice of the regulatory action which the Recommendation may contemplate or with any meaningful opportunity to comment. Any implementation of this Recommendation also is beyond the statutory authority of Section 21.1 of the Act.

In Reynolds Metals and Pielet Bros., the Illinois Appellate Court attempted to limit the scope of the permit

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* The major complaint lodged against the "financial test and corporate guarantee" appears to be its use by commercial waste disposal firms because of their specialization and lack of diversification. Transcript at 348-50 PCB R84-22. If that indeed is a legitimate complaint, then it can be handled simply by making that mechanism unavailable to such commercial firms rather than by eliminating it from use by all other members of the regulated community.

exemption granted by Section 21(d) of the Act. Subsequent to these decisions, the General Assembly added a new Section 21.1 to the Act which explicitly recognizes the existence of a permit exemption as prescribed by Section 21(d) of the Act. When amending a statute, a legislature is presumed to know the prior law and prior conditions surrounding the implementation of the statute. See Gaither v. Lager, 2 Ill.2d 293, 301 (1954). Consequently, when an amendment is made, it is presumed to make a change in existing law. See O'Connor v. A & P Enterprises, 81 Ill.2d 260, 271 (1980) ("A material change in a statute made by an amendatory act is presumed to change the original statute.") Thus, it may be concluded that the General Assembly know of the existence of the Reynolds Metals and Pielet Bros. decisions when it enacted Section 21.1 of the Act and that the General Assembly decided, as reflected in its explicit recognition of a Section 21(d) permit exemption, to overrule these two cases.

In addition to being beyond the statutory authority of Section 21.1 of the Act, any adoption of the recommendation concerning the Reynolds Metals and Pielet Bros. decisions would be contrary to the requirements of Section 27(a) of the Act. The Board is required by Section 27(a) of the Act to consider the technical feasibility and economic reasonableness of proposed regulations throughout a rulemaking

proceeding and to base its final decision about adopting the regulations on these considerations. However, no such evaluation of the feasibility and reasonableness of defining the scope of the Section 21(d) permit exemption has been made on the record developed herein.

The definition suggested by Reynolds Metals and Pielet Bros. could make the Proposed Regulations applicable to at least some facilities which presently dispose of waste on-site. Yet, the principal draftsperson of the Proposed Regulations has stated, at least in insofar as the closure and post-closure plans portion of the Proposed Regulations are concerned, that "[t]his rule really contemplates the acceptance of waste from off-site as opposed to the disposal of waste by an on-site facility." Transcript at 86, PCB R84-22. This appraisal was concurred in by Mr. Bailey, one of the witnesses testifying on behalf of the proposed Regulations, who stated that when he reviewed the regulations he did not consider their application to on-site industrial operations. Transcript at 380, PCB R84-22.

Accordingly, the Board should not adopt the recommendation that the Proposed Regulation be modified "to state the result" of the Illinois Appellate Court's decisions in Reynolds Metals and Pielet Bros. as the recommendation is

not within the statutory authority upon which the Proposed Regulations are based.

C.
The Authority For This Rulemaking Does Not Contemplate Expanding Subpart E to All Sites Irrespective of the Section 21(d) Permit Exemption

The recommendation also has been made during hearings herein that the closure and post-closure care standards, including the requirements for preparation of plans, which are included in Subpart E of the Proposed Regulations be extended to apply to all sites irrespective of the Section 21(d) permit exemption. Transcript at 56, 68, PCB R84-22. A significant objection to this exists on the grounds that inadequate notice and opportunity to comment has been provided to the public about this recommendation. This objection has been discussed previously in these Written Comments. An additional grounds for objection exists in that adoption of this recommendation would be beyond the statutory authority of Sections 21.1 and 27 of the Act.

Section 21.1 of the Act mandates the adoption of regulations which will provide the financial assurance mechanisms to be used by waste disposal operations "which require a permit under subsection (d) of Section 21." It

does not require the adoption of regulations prescribing the preparation of closure and post-closure care plans nor does it contemplate, as evidenced by its specific adoption of the Section 21(d) permit exemption, hat such plans should be required for sites which do not need a Section 21(d) permit. The reason advanced on the record herein for requiring such plans is that they will assist in the preparation of a cost estimate for closure and post-closure care and so in the calculation of the amount of financial assurance. Transcript at 72, PCB R84-22. If this is so, then there should be no reason for requiring sites covered by the Section 21(d) permit exemption to prepare such plans, for these sites are not required by Section 21.1 of the Act to provide financial assurance.

Indeed, the principal draftsperson of the Proposed Regulations had admitted this by stating that "modification of permits to establish closure and post-closure care plans for sites which will not have to give financial assurance is not necessary to establish a bond program implementing Section 21.1 of the Act." Transcript at 44-45, PCB R84-22. This has been agreed with by IEPA, whose Manager of the Permit Section of the Division of Land Pollution Control testified that in most cases IEPA does not need to see a closure plan to make a final determination as to whether a

site is a disposal site. Transcript at 942, PCB R84-22. Nevertheless, the principal draftsperson of the Proposed Regulations has argued for expanding Subpart E on the grounds that "standards for closure and post-closure care are clearly authorized by Section 22(a) of the Act." Transcript at 44-45, PCB R84-22. This is not a rulemaking being conducted pursuant to Section 22(a) of the Act, however, but rather is one being undertaken pursuant to Section 21.1 of the Act. As no statutory authority exists in Section 21.1 of the Act for the recommended expansion of Subpart E of the Proposed Regulations, this Recommendation should be rejected by the Board.

It should be rejected for the additional reason that the Recommendation fails to meet the statutory requirements of Section 27(a) of the Act, that a regulation adopted by the Board must take into account the technical feasibility and economic reasonableness of compliance. As has been discussed with respect to the recommendation concerning Reynolds Metals and Piolet Bros., the record developed herein is void of any consideration of the applicability of the closure and post-closure plans requirements to facilities disposing of waste on-site, which are covered by the Section 21(d) permit exemption.

The principal draftsperson of the Proposed Regulations stated quite clearly that "[t]his rule really contemplates the acceptance of waste from off-site as opposed to the disposal of waste by an on-site facility." Transcript at 86, PCB R84-22. Mr. Bailey, in testifying on behalf of the Board in support of the Proposed Regulations, admitted that in reviewing the Proposed Regulations he did not consider their application to on-site industrial operations and agreed that, if the requirements for closure and post-closure plans were extended to on-site industrial operations, then there probably should be another examination of the impact and applicability of such an extension. Transcript at 380-81, PCB R84-22.

Accordingly, the statutory authority upon which the Proposed Regulations are based does not support the adoption of the recommendation that the closure and post-closure care standards, including the requirements for preparation of plans, which are included in Subpart E of the Proposed Regulations be extended to all sites irrespective of the Section 21(d) permit exemption, and this recommendation should be rejected by the Board.

Conclusion

For these reasons, IPC requests that the Board amend the Proposed Regulations as suggested in these Written Comments.

Respectfully submitted,

ILLINOIS POWER COMPANY

By _____

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CERTIFICATE OF SERVICE

I, Carolyn A. Lown, one of the attorneys for Illinois Power Company, certify that on October 25, 1984 I served the foregoing Notice Of Filing and Written Comments Of Illinois Power Company upon Marili McFawn, Joan Anderson, Morton F. Dorothy and the Joint Committee On Administrative Rules at the addresses shown in said Notice by causing copies thereof to be deposited in the United States mail, properly addressed, first class postage prepaid.

Carolyn A. Lown

Original Do Not Remove

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR	)	R84-22
CLOSURE AND POST-CLOSURE	)	
CARE OF WASTE DISPOSAL SITES	)	

PC #7

COMMENTS OF GRANITE CITY STEEL DIVISION
OF NATIONAL STEEL CORPORATION, INTERLAKE INC.,
KEYSTONE STEEL & WIRE COMPANY, LTV STEEL COMPANY,
NORTHWESTERN STEEL AND WIRE COMPANY, AND
UNITED STATES STEEL CORPORATION

Now come Granite City Steel Division of National Steel Corporation, Interlake Inc., Keystone Steel & Wire Company, LTV Steel Company, Northwestern Steel and Wire Company, and United States Steel Corporation (the "steel companies"), by their attorneys, and file their Comments on the proposed regulations for "Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites," pursuant to the Hearing Officer's order. As set forth in statements of counsel during the course of the hearings in this matter and in the testimony of Mr. Dale VanDeVelde of Northwestern Steel and Wire Company at the final hearing on October 9, 1984 (Tr. 1025), the steel companies support adoption of regulations necessary to implement the provisions of Section 21.1(a) of the Illinois Environmental Protection Act (the "Act"), Ill.Rev.Stat. ch. 111-1/2, § 1021.1(a), but oppose any effort to extend this rulemaking beyond what is strictly necessary to carry out the provisions of the Act. In particular, the steel companies oppose imposition of closure and post-closure requirements on "on-site" treatment, storage, and disposal of waste; oppose provisions which would provide a mechanism for requiring permits for the "on-site" storage, treatment, and disposal of waste; oppose extension of these requirements to hazardous-

waste operations governed under the Illinois Pollution Control Board's (the "Board") "RCRA" regulations (Ill.Adm.Code Title 35, Part 700); and oppose the imposition of any more stringent requirements for financial assurance in these regulations than would be imposed under federal and state RCRA financial-assurance requirements.

I. On-Site Exemption

This rulemaking is promulgated to implement the provisions of Section 21.1 of the Act. That provision, by its express terms, mandates the posting of a "performance bond or other security" only by a person conducting a waste-disposal operation "which requires a permit under subsection (d) of Section 21 of the Act" (emphasis added). Section 21(d) of the Act, as amended by P.A. 82-380, unambiguously states that "no permit shall be required" for a waste-disposal operation of waste generated by one's own activities which is disposed within the site where such waste is generated. In pertinent part, the provision reads:

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

The statute on its face, therefore, mandates that no permit for the on-site storage, treatment, or disposal of waste shall be required. Hence, Section 21.1(a) does not require (or authorize the Board to require) "financial assurance" for on-site disposal activities. At the first hearing on this proceeding, Mr. Morton Dorothy, acting as a witness on behalf of the Board as proponent of these regulations, submitted both written and oral testimony to the effect that the Board should consider amending the regulations to require financial assurance from on-site disposers of waste. The mechanism for doing so would be to codify

certain Board rulings, upheld on appeal, which construed Section 21(d) of the Act as it existed prior to the enactment of P.A. 82-380. In Reynolds Metals Co. v. Illinois Pollution Control Board, 43 P.C.B. Op. 161 (PCB 79-881, August 20, 1981), aff'd, 108 Ill.App.3d 156, 438 N.E.2d 1263 (1st Dist. 1982), and Pielet Bros. Trading Inc. v. Pollution Control Board, 44 P.C.B. Op. 219 (PCB 80-185, December 17, 1981), aff'd, 110 Ill.App.3d 752, 442 N.E.2d 1374 (5th Dist. 1982), the Board interpreted then-extant Section 21(d) as allowing on-site operations to be regulated by permit. (See p. 7, Written Testimony of Morton Dorothy.) This recommendation was further propounded in the oral testimony to the effect that failure to make such a provision in the regulations might constitute a Board abjuration of the Reynolds Metals and Pielet Brothers decisions. Subsequent thereto, both Illinois Power Company, by its counsel, and these steel companies, by their counsel, moved the Board to sever the question of defining the scope of the Section 21(d) "on-site exemption" from these proceedings in order to provide adequate notice to interested parties. These motions were denied by the Hearing Officers, and the appeal of Illinois Power Company was denied by the Board. The steel companies strongly oppose any effort to limit the scope of the statutory exemption from Section 21 permitting requirements and the concomitant requirement of financial assurance for closure or post-closure care of on-site operations.

A. Section 21(d) Precludes the Board from Requiring a Permit for "On-Site" Treatment, Storage, and Disposal

Section 21(d) of the Act, as amended from time to time by the legislature, now unconditionally and unambiguously exempts "any person conducting a waste-storage, waste treatment, or waste disposal operation for waste generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated" from permit requirements.

The Board is prohibited from extending the operation of a statute by administrative regulation. In this instance, legislative action subsequent to certain decisional law construing former Section 21(d) cannot be ignored by the Board as those amendments make clear the legislature's intent that on-site storage, treatment, or disposal activities be exempt from permit requirements. Hence, notwithstanding the Board's interpretation of former Section 21(d) in Reynolds Metals and Pielet Bros., the Board cannot seek to codify that interpretation when the legislature has subsequently revised Section 21(d) in a manner to (1) make the legislature's intent unambiguous, and (2) make clear that on-site facilities do not require a permit.

In two Board decision, both of which were affirmed on appeal, the Board construed then-extant Section 21(d) of the Act. That provision read:

> No person shall: (d) Conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency . . . .

The courts reviewing the Board's interpretation noted that then-extant Section 21(d) was ambiguous as to its scope of coverage and therefore found it appropriate to review the statute's purpose and intent. Reynolds Metals, 438 N.E.2d 1263, 1267; Pielet Bros., 442 N.E.2d 1374, 1377. The court in R. E. Joos Excavating v. EPA, 52 Ill.App.3d 309, 374 N.E.2d 486 (1978), previously had occasion to construe then-extant Section 21(d) [designated Section 21(e) at the time] and narrowed its applicability of the exemption only to generator activities occurring on-site.

Subsequent to the Board's interpretation of then-extant Section 21(d) in Reynolds Metals and Pielet Bros. - further narrowing the so-called on-site exemption to require permits for fact-specific, on-site disposal activities - the

General Assembly enacted P.A. 82-380. This Act specifically amended Section 21(d) to more clearly define the legislature's intent. As amended by P.A. 82-380, Section 21(d) read:

> No person shall: (d) Conduct any waste storage, waste treatment, waste disposal, or special waste-transportation operation: (1) Without a permit . . . provided however that no permit shall be required for any person conducting a[n] . . . operation for wastes generated by such person's own activities which are stored, treated, disposed, or transported within the site where such wastes are generated . . . . [Emphasis added.]

In so amending the statute, the legislature accepted and enacted the judicial interpretation of former Section 21(d) posited by R. E. Joos Excavating v. EPA, 58 Ill.App.3d 309, 374 N.E.2d 486 (1978) (limiting the permit exemption to on-site activities) but rejected the Board's interpretation of that same section in Reynolds Metals and Pielet Bros. (which strived to impose permits on persons engaged in on-site disposal activities). Having specifically amended Section 21(d) to make the Section 21(d) exemption expressly applicable to only on-site generator activities, it would be illogical to conclude that the unambiguous statutory language presently existing is a demonstration of acquiescence by the legislature that a permit may be required for such on-site activity. The present language is unambiguous and must be respected by the Board. As amended, Section 21(d) not only excludes "on-site" operations from the statutory requirement for permits, it prohibits the Board from requiring such permits. The Board is not at liberty to read exceptions into a statute which the legislature resolved not to make. See, Estate of Howard, 67 Ill.App.3d 595, 385 N.E.2d 120 (1978); People ex rel Mayfield v. City of Springfield, 16 Ill.2d 609, 158 N.E.2d 582 (1959).

At the same time that it clarified the scope of the Section 21(d) exemption to apply to on-site activities, the legislature clarified the Board's authority to adopt rules of general applicability for all "non-hazardous" waste sites, without regard to regulation by permit, by adding Section 21(d)(2) of the Act. Thus, any necessity the Board may have felt to require permits for certain on-site operations as a means of regulating these activities is removed.

In summary, an administrative agency is prohibited from extending the operation of a statute by administrative regulation. Pielet Bros., 442 N.E.2d at 1378. Rules of construction are useful only where there is doubt as to the meaning of a statute, and a court or an agency may not alter that meaning beyond the clear impact of the language employed therein. Id. at 1377. Accordingly, P.A. 82-380, which amended the very section subject to the administrative interpretation, must be viewed not as legislative acquiescence to the Board's prior interpretation of Section 21(d) but rather as an express repudiation of this Board's attempt to extend by quasi-legislative interpretation the operation of the Act.

B. If the Board Has the Authority to Require Permits for Certain On-Site Operations, It Does Not Have an Adequate Record or Procedural History to do so in This Proceeding

As the previously referred to motions set forth, the regulated community as a whole was totally unaware of the Board's intention to consider defining by regulation in this proceeding the unambiguous scope of the statutory on-site exemption. Moreover, even those parties participating in the proceedings had no notice of the Board's intention to consider these issues until their commencement and still have no notice of the Board's own views as to the nature and scope of permit requirements for on-site activities, much less of any specific regulatory language. In this light, as previously set forth in the motions filed with the

Hearing Officer and with the Board, the Board does not have an adequate procedural basis on which to adopt any regulatory provision limiting the scope of the on-site exemption or in any way affecting it. Both the Illinois Administrative Procedure Act (Ill.Rev.Stat. ch. 127, ¶1005) and Section 28 of the Act (Ill.Rev.Stat. ch. 111-1/2, § 1028) require public hearings on the proposed regulations and require "a complete description of the subject and issues involved." The general subject of financial assurance for closure and post-closure does not give adequate notice to the public of consideration of a limitation of Section 21(d) exemption.

The steel companies do not contend the Board must publish in advance every precise proposal which it may ultimately adopt as a rule. Neither do the steel companies assert that the requirement of submission of a proposed rule for comment automatically generates a new opportunity for comment where the rule promulgated by the Board differs in some respect from the rule it proposed. Indeed, were that a legal requirement, the Board would be either constrained to ignore public comments offering valid reasons for revising a proposal, or it would be caught in an endless cycle of rulemaking proposals. Rather, the steel companies believe proper and adequate notice of the scope of the rules under consideration is necessary not only to alert persons that their interests are at stake but also to ensure informed agency decision making.

> In cases where an administrative agency has failed to give the public advance notice of the scope of its proceedings, courts have invalidated the decisions made. E.g., American Iron & Steel Institute v. EPA, 568 F.2d at 291. (Agency notice identified one variety of steel processing under consideration but regulations covered two varieties thereby affecting a different group of manufacturers); Maryland v. EPA, 530 F.2d 215, 221-22 (4th Cir. 1975), rev'd on other grounds sub nom. EPA v. Brown, 431 U.S. 99, 97 S.Ct. 1635, 52 L.Ed.2d 166 (1977) (Agency adopted regulations proposed in a published notice applicable to a different administrative proceeding); Rodway v. United

> States Department of Agriculture, 514 F.2d 809, 814 (D.C.Cir. 1975) (Notice encompassing rules for the administration of food stamp program did not give sufficient notice of a change in the amount of coupons to be allotted to recipients).

Spartan Radio Co. v. F.C.C., 619 F.2d 314, 321 (D.C.Cir. 1980). The required notice has not been provided in this instance.

Equally important in this case, absolutely no record has been established with respect to the scope or nature of the Section 21(d) exemption or the basis for determining any exception to that exemption. The Board has not received and therefore cannot consider any testimony on the economic reasonableness or technical feasibility of requiring permits for certain on-site operations.

The Board's own witness, Mr. Paul E. Bailey, stated that a full hearing on the specific scope of the exemption would be appropriate in drafting regulatory language. (Tr. 376, 379; September 17, 1984.) At the October 9, 1984, hearing, Mr. Larry Eastep of the Agency agreed that there could be significant difficulty in determining the line between industrial operations and the storage, treatment, or disposal of waste on site. (Tr. 979.)

Therefore, even if the Board did have legal authority to limit the scope of the Section 21(d) exemption, it has an inadequate basis in this record, either procedurally or substantively, to do so. The Board should not, therefore, attempt to adopt any regulation limiting the scope of the Section 21(d) exemption to this regulation.

II. The Steel Companies Oppose a Requirement for Closure and Post-Closure Plans for On-Site or Other Operations Exempted from Permitting Requirements

At the September 7, 1984, hearing Mr. Morton Dorothy, on behalf of the Board, suggested that consideration should be given to requiring closure and

post-closure plans to be developed and kept on site for the treatment, storage, and disposal of waste, which do not require permits under Section 21 of the Act. Mr. Dorothy suggested that a requirement for closure and post-closure plans for on-site or other exempt operations was more consistent with Section 21(d)(2) of the Act, which requires compliance with Board operating standards. He admitted, moreover, that the development of a closure or post-closure plan was not necessary to establish financial assurance for closure and post-closure care, which is the announced subject of this rulemaking. (See p. 10, Written Testimony of Morton Dorothy.) The steel companies strongly oppose the adoption of closure and post-closure care requirements for on-site storage, treatment, and disposal of waste as part of this rulemaking proceeding. They note that more detailed closure and post-closure requirements are being considered in other proceedings under Docket No. R84-17.

The purpose of this rulemaking proceeding is to fulfill the requirements of Section 21.1(a) of the Act, which requires financial assurance for closure and post-closure of permitted facilities to be in effect by March 1, 1985. Inclusion in this proceeding of any other proposal not necessary to effectuate the statutory purpose will impede adoption of necessary rules to implement Section 21.1; will result in inadequate consideration of other subjects of the proposal because of the short time deadline imposed by the Act for Section 21.1(a) for compliance; and will deprive interested parties of adequate notice and opportunity to participate in the Board's decision-making process.

A. There is Inadequate Notice in This Proceeding to Adopt Requirements for Closure and Post-Closure Care for Facilities Which do Not Require Financial Assurance

As set forth above, the Board is required to give notice of the subject of its proposed rulemakings, to conduct public hearings thereon, and to adopt rules based on the record. In this case, one reviewing the notice of the subject of these proceedings would see "financial assurance for closure and post-closure care" and upon review of the regulations, would determine they were being adopted to carry out a statutory provision that applied only to facilities requiring permits under Section 21 of the Act. The interested party would not have had notice that these rules would be extended to cover closure and post-closure of non-permitted facilities. The Board's own rules, the Act, and the Illinois Administrative Procedure Act, as well as good administrative practice, require adequate notice and hearings if closure and post-closure requirements for non-permitted facilities are to be adopted as part of this proceeding.

B. There Is no Basis in the Record to Impose Closure and Post-Closure Requirements on On-Site Activities

The requirement of closure and post-closure plans for on-site activities are not part of the original proposal. Indeed, the Board's chief outside consultant, Mr. Paul E. Bailey, testified on September 17, 1984:

> Q. If these regulations are extended to waste streams within the plants, will they not have a different impact than they would to off-site waste operators?
>
> A. For certain.
>
> Q. When you reviewed these regulations, did you consider their application to on-site industrial operations specifically?
>
> A. I would say no.
>
> Q. . . . If the regulations are extended, the requirement for closure and post-closure plans are extended to on-site industrial operations, including the normal handling of their waste through the plants, would that require another look, an examination of their impact and applicability?
>
> A. Probably.

Tr. 38381, September 17, 1984. At the October 9, 1984, hearing Mr. Eastep also stated that, "you may be saddling yourself with practically the whole plant being subject to this . . . ." (Tr. 979.) (It is noted that the Hearing Officer indicated that certain examination of Mr. Eastep, concerning the difficulties of applying these rules to on-site operations, would not be helpful to the Board at that time.) Mr. Dale VanDeVelde, Northwestern Steel and Wire Company, one of the commentators, testified as to the difficulty he would have in interpreting the rules to apply to his on-site operations. (Tr. 1025.)

Such testimony as has been introduced clearly indicates that there is an inadequate basis for extending these rules to on-site operations. There was absolutely no testimony of the number of on-site operators who would be required to prepare closure and post-closure plans for the treatment, storage, and disposal of material on site. Mr. Morton Dorothy, testifying for the Board at the September 7 hearing, admitted that even dumpsters would be required to have closure plans, although they might be quite simple. (Tr. 113-114.)

The most obvious problem with requiring closure and post-closure plans for on-site operations concerns the question of definition. It is virtually impossible to determine when a material becomes a waste, when it is being stored, or when it is still part of the industrial process. If every point at which a waste momentarily comes to rest within a plant becomes a storage site for which a closure plan is required, requirements will be horrendous. Moreover, a literal application of the rules would seem to suggest that every industrial plant in which any waste may remain in any form or amount at the conclusion of its operation will have to be treated as a disposal site with a post-closure plan. Absent any consideration of their economic reasonableness and technical feasibility, these requirements are clearly without merit.

In light of this background, there is no basis whatsoever in this proceeding to adopt requirements for closure and post-closure plans for on-site operations. If any are to be considered, they should be in a specific rulemaking with adequate notice, opportunity for comment and participation, and a full consideration of economic reasonableness and technical feasibility of such a requirement.

III. The Board Should Not Apply the Requirements of 22-22, "Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites," to Facilities Subject to the Board's RCRA Regulations

Section 21(d) of the Act expressly provides: "This subsection (d) shall not apply to hazardous waste." The Board is well aware of the position of the steel companies and other industry, that there is no authority to impose Section 21(d) requirements on hazardous waste subject to regulation under the Board's RCRA regulations. In particular, the steel companies object to the requirement of obtaining a Section 21(d)(1) permit for RCRA operations. Recognizing that one Illinois Appellate Court has upheld the Board's earlier rules seeking to impose or preserve such a requirement, the steel companies note that the appellate decision is the subject of a Petition for Review to the Illinois Supreme Court which is supported by a cross-section of Illinois industry. The Board should not continue to impose non-RCRA requirements on hazardous waste in Illinois contrary to the express intent of the legislature.

Mr. Morton Dorothy testified on September 7, 1984, to the effect that these requirements will be applicable to all RCRA activities until such time as the state receives the final authorization under RCRA and a Part B permit covers the activity. Mr. Dorothy explained at pages 104-105 of the transcript that these requirements would not apply, in his view, to activities which were exempt under RCRA, such as storage for less than 90 days, once the state receives final authorization. This was not clear in the record, however. Should

the Board, contrary to the steel companies' understanding of the law, apply these financial-assurance and closure and post-closure requirements to facilities subject to RCRA, it should be made clear that facilities which are exempt from permitting under RCRA are exempt from these requirements.

IV. If RCRA Facilities are to be Subject to These Regulations, Compliance with RCRA Requirements Should be Deemed Compliance with the Subject Regulations

The Agency, as well as the Board, has adopted extensive financial closure and post-closure regulations, as well as financial-assurance regulations, for RCRA operations. See, Ill.Adm.Code Part 700, §§ 724.210-724.251, 725.210-725.251. These requirements impose significant closure and post-closure requirements, as well as financial assurance, for all RCRA facilities. As the Board's witness, Mr. Bailey, testified on September 17, these RCRA requirements are in fact rather conservative and do insure adequate financial assurance in most cases. (Tr. 273-274.) Should, for whatever reason, the Board determine to require financial assurance or other requirements under these regulations for RCRA facilities, a simple provision providing that "compliance with the provisions of Parts 700-703, 705, and 720-725 shall be deemed compliance with the provisions of this part" should be added to the rules.

V. The Overall Rules Should be Amended to Simplify and Streamline the Requirements in Accordance with the Recommendations Submitted at the Hearings

Both Mr. Pat Lynch, a witness called by the Board, and Mr. Larry Eastep of the Agency testified that provisions should be adopted by the Board to provide for financial assurance without the necessity of closure and post-closure plans, at least at the initial stages. They both suggested formulas that could be used to set the amount of financial assurance for sanitary landfills. The steel

companies, while not suggesting that the particular formulas or assumed parameters discussed at hearing are necessarily appropriate to all facilities which may come within the purview of these regulations, do strongly support the concepts of Mr. Lynch in this regard and believe the financial-assurance requirements were intended primarily for sanitary landfills requiring permits, that the amount of such assurance can be adequately determined based on the formulas or information already on file, and that the additional requirements proposed by the Board in these regulations are unnecessary and unworkable.

A. No More Stringent Requirements than Set Forth in Federal and State RCRA Regulations Should be Imposed for Financial Assurance for Sanitary Landfills

Testimony of Mr. Bailey and others suggests that financial tests more stringent than required by RCRA could be devised for various waste-treatment, storage, and disposal operations. In particular, the corporate guarantee or financial self-assurance tests allowed under RCRA requirements have been excluded from the Board's regulations. An alternative, more stringent test for providing such assurance has been suggested by Mr. Bailey. The steel companies point out that the RCRA financial-assurance test is, as described by Mr. Bailey, essentially a conservative test designed to cover the most critical hazardous-waste operations in the country. To impose more stringent or rigid requirements on non-RCRA sites, or even RCRA sites, should require a strong showing in the record of necessity. Absolutely none has been made here. Instead, general testimony has been given. Numerous witnesses have testified as to the difficulties, if not impossibility, of obtaining surety bonds, insurance, and other financial guarantees. Mr. VanDeVelde, on behalf of Northwestern Steel and Wire Company, testified as to the substantial cost his company would incur in obtaining a revocable letter of credit for a company that could readily meet the

financial-assurance test. (Tr. 1031.) These commentators urge that no more stringent requirement than RCRA be imposed on whatever facilities are subject to these regulations and that appropriate amelioration of the requirements for non-hazardous-waste operations be considered.

B. Financial Self-Assurance is Valid Under Section 21.1

Section 21.1 requires "a performance bond or other security." It does not require a surety bond or other third-party guarantee. It must be assumed that the legislature knew that not all bonds require an outside surety. Clearly reasonable assurance by one with reasonable ability to pay should be sufficient under the law.

VI. Conclusion

The steel companies recognize the pressure under which the Board must act to fulfill the legislative requirements of Section 21.1(a) of the Act. Nevertheless, they strongly oppose the effort to greatly expand the scope of this rulemaking to define the scope of the Section 21(d) exemption, to require closure and post-closure care on site, to impose elaborate closure and post-closure requirements not necessary for financial assurance, and to impose financial assurance requirements more stringent than applicable under RCRA even to the nation's most critical hazardous-waste sites. The steel companies urge the Board to adopt a simplified regulation providing for formula and related mechanisms to provide financial assurance for sanitary landfills. Consideration of other more elaborate closure and post-closure mechanisms, if appropriate, should be considered as part of R84-17 or another rulemaking proceeding.

Respectfully submitted,

GRANITE CITY STEEL DIVISION OF NATIONAL STEEL CORPORATION, INTERLAKE INC., KEYSTONE STEEL &

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October 24, 1984

PC # 8

Ms. Joan Anderson
Attending Member of the
Illinois Pollution Control Board
Illinois Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Dear Ms. Anderson:

Please find enclosed final comments on the proposed regulations concerning financial assurance for closure and post-closure care of waste disposal sites dealt with in Proceeding R84-22.

Please disregard the first draft copy sent to you on October 18, 1984.

Regards,

William A. Price
Director, Governmental Affairs

enclosure

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE FOR) R84-22
CLOSURE AND POST CLOSURE)
CARE OF WASTE DISPOSAL SITES)

COMMENTARY OF THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY, THE ILLINOIS MANUFACTURERS' ASSOCIATION, AND THE CHEMICAL INDUSTRIES COUNCIL OF ILLINOIS: SUBSTANTIVE AND PROCEDURAL OBJECTIONS TO THE CURRENT FORM OF THE PROPOSED REGULATION, AND TO THE EXTENSION OF REGULATION IN THIS PROCEEDING TO ON-SITE FACILITIES

I. INTRODUCTION

The Chicago Association of Commerce and Industry, the Illinois Manufacturers' Association, and the Chemical Industries Council of Illinois appreciate the opportunity to comment on the regulatory proposals published for first notice in the R84-22 proceeding, as well as on the oral testimony of Board staff concerning the extension of the proposed regulations to include permit requirements for some on-site facilities and to impose the requirement of closure plans for all sites, whether or not permits are required for same.

The Chicago Association of Commerce and Industry is the regional Chamber of Commerce serving the metropolitan area of and surrounding Chicago, Illinois. Its' over 5,200 member companies operate most lines of business, and employ over 1.2 million persons in the six-county area of northeastern Illinois and Lake and Porter counties, Indiana.

The Illinois Manufacturers' Association is the representative of over 5,300 member manufacturers in the state of Illinois. IMA's members are predominantly smaller industrial firms; 76% employ fewer than 100 persons.

The Chemical Industries Council of Illinois represents 30 member companies with over 65% of the market share of chemical production in Illinois.

Most or all of the members of the three associations are potentially affected by the regulations and proposed modifications.

II. BOARD ACTION REQUESTED

The associations making this commentary respectfully request that the Illinois Pollution Control Board:

(1) Reject the suggestions made by Morton Dorothy in oral testimony at the September 7th hearing. Mr. Dorothy suggested that the Board extend the rulemaking to include codification of a definition of what facilities are covered in the Section 21(d) on-site facilities exemption, and to include a requirement that "all sites" submit closure plans of the nature detailed in Subpart E of the proposed regulations.

(2) Revise the proposed regulations to make it clear that they apply only to off-site sanitary landfills.

(3) Revise the proposed regulations to make their regulation of off-site sanitary landfills no more stringent than the requirements imposed under the Federal Resource Conservation and Recovery Act on hazardous waste landfills.

III. THE EFFECTS OF THE PROPOSED CHANGES TO THE PROPOSED REGULATIONS WOULD BE EXTREMELY BROAD

Although it is impossible to fully assess the scope of the regulations proposed without more than oral commentary, it is clear that whatever language is adopted by the Board to extend landfill permit and closure plan requirements to on-site operations will have wide effects. Information provided to the Attorney General's Hazardous Waste Task Force by the Illinois Environmental Protection Agency on numbers of facilities which sent them manifests for special waste permits a conclusion as to the extremely wide range of facilities likely to be affected by the on-site question. Agency staff testified that around 20,000 companies sometimes manifested special waste loads, and around 5,000 regularly submitted special waste manifests to the Agency in one year of data. The regulations, as proposed to be modified, would extend permit and closure plan requirements to all companies which do and whichever have manifested special waste loads. In addition, presumably all RCRA Part A notifying facilities in the state (CF Appendix A: list obtained by CACI through a Freedom of Information Act request to the U.S. Environmental Protection Agency--more current data on interim status facilities could also be consulted.) would also be affected. Under these rules, , any and all off-specification products, construction refuse, or other waste generated by commercial and industrial operations, whether hazardous, special, or ordinary domestic waste, however briefly left on site, and whatever its degree of hazard to the general public, would subject a business to the full range of requirements applicable to sanitary landfills under the proposed regulations. Over time, any business will produce some

waste. Therefore, an extension of the requirements to all "sites", as suggested, is likely to require permits and closure plans for every business in the state of Illinois. These number about 275,000. To put the matter bluntly, the extension to on-site "sites" for "disposal" of special and hazardous waste could mean that full landfill regulations, insurance, and post-closure plans would be extended to every commercial and industrial wastebasket and dumpster in the state.

IV. EXTENSION OF PERMIT REQUIREMENTS TO ON-SITE FACILITIES, AND REQUIREMENT OF POST-CLOSURE PLANS FOR SAME, IN THIS PROCEEDING, WOULD BE WITHOUT ADEQUATE NOTICE TO THE AFFECTED PARTIES AND WOULD DENY THEM SUFFICIENT OPPORTUNITY TO COMMENT ON THE PROPOSAL

The proposed regulations, as originally published in the Illinois Register, did not suggest to either the informed observer or the general public that the subject of regulation was to be on-site disposal or temporary storage activities. Operating industrial facilities are not ordinarily considered "waste disposal sites," "solid waste management sites" or "sanitary landfills", which are the facilities addressed in the regulatory proposal. Changing the definitions of same in midstream to make them such, for the purposes of Illinois regulation, is a major revision to the regulation which could not adequately be addressed in comments directed to the original proposal. Indeed, given the broad range of facilities potentially affected, it is impossible for even those who have attended the public hearings to adequately assess the legal justification for and practical effects of the regulation in question without final wording in hand. Considerably more is needed in definition of what facilities and wastes are to be covered than the oral suggestions of one witness.

The procedure now contemplated in R84-22 means the final opinion of the Board in this proceeding, which will follow this round of written comments unless another hearing is called, will be the final rule. The October 12,1984 Order of the Board in this matter indicates that neither republication nor additional hearings are contemplated. This means that the only opportunity for comment on the final regulatory proposal, and the only notice of same, will be the fifteen days allowed for written comment following the issuance of the final order, which comment is effectively available only to persons already on the mailing list of this proceeding. This does not provide anywhere near enough persons prior notice of the issues in question, or opportunity to prepare commentary which addresses the many practical and legal questions raised by the regulation. To effectively address the modified rules, companies, individuals, and associations need to survey those who are potentially affected, conduct technical analyses of costs and benefits, and prepare commentary for submission to the Board. Two weeks isn't even enough turnaround time for return delivery of questionnaires, much less detailed engineering or economic

analyses. Lawyers need time to prepare comments, as well--though they presumably can work to tighter deadlines. It is precisely because time is needed for dissemination of information to affected publics and organized collection of information from them that the Administrative Procedures Act requires that regulations be published in a generally disseminated state register, that hearings on the subjects in question be held, and that 45 days elapse before final action. A major change in subject matter effectively denies this notice and comment opportunity. No comments drafted in the absence of the actual rules in question can be adequate, and two weeks is far too short a time to effectively comment on same.

The Administrative Procedures Act would not be the only statute violated if the Board proceeds to final rulemaking without additional opportunity for commentary on the final proposal. The merit hearings on proposals are intended to give the public opportunity to inform the Board of the technical feasibility of proposed rules, and the Board must, according to the Environmental Protection Act, Section 27(a), consider same in rulemaking. Without exact knowledge of what would constitute waste disposal and which facilities are affected in the form of a final written rules proposal, no answer to the technical and policy questions raised by the staff suggestion of on-site coverage can be adequately made.

V. ON-SITE REGULATION WAS NOT CONTEMPLATED BY THE LEGISLATURE OR THE DRAFTERS OF THE REGULATORY PROPOSAL, AND THE BOARD SHOULD NOT GO BEYOND ITS STATUTORY MANDATE IN THE LIMITED TIME AVAILABLE FOR THIS PROCEEDING

The General Assembly, in passing Public Act 83-775 intended to address "performance bonds for certain landfills," according to the title of the legislation. It did not change the definition of landfills. The sponsor referred to "sanitary landfills", and to a "regular landfill" in her description of the purpose of the legislation (cf. remarks of Representative Diana Nelson, House Journal, April 14,1983.) Sanitary landfills are clearly defined in both the Environmental Protection Act and Board regulations. Regulatory expansion of the definition of same is neither supported by the legislative language nor appropriate for the implementation of legislative intent.

Even if the Board could find statutory justifications elsewhere to proceed as suggested, extension of the proceeding to in-site facilities would be without consideration of many questions of technical feasibility and economic reasonableness. The capacity of the Agency to process the large numbers of permits in question, the availability of the insurance to be required, and the load on the Board should all be considered before proceeding. The record so far indicates no such consideration.

The proposers of the regulations in question did not address the question of on-site regulation, and the Agency did not consider its ability to process large numbers of on-site permits and closure plans in proposing the regulation. (cf. testimony of Larry Eastep, September 29th hearing on R84-22.) The Board's witness did not address the issue of on-site coverage in his analysis, an important technical feasibility omission from the decision record. The availability of closure insurance for the large number of additional facilities in question, and the general practicability of the insurance and closure requirements, for same are important technical issues which should be considered by the Board if it is to adequately address "technical feasibility and economic reasonableness" in making its decision in this proceeding. (cf. testimony under cross-examination of Mr. James Harrington by the Board's witness Mr. Paul Bailey in the September 17th hearing record in this proceeding.) There may be only two insurance companies doing business in Illinois which offer the type of insurance in question. This coverage may be expensive, and could well be unavailable for many companies. Consideration of technical feasibility and economic reasonableness is specifically required of the Board at all stages of decisionmaking by Section 27(a) of the Environmental Protection Act. At the least, the Board should take testimony on these issues before proceeding.

The proposed expansion of the closure and permit requirements should also impose a substantially greater burden upon the Board itself. None of the witnesses addressed the number of new permit appeals or enforcement cases which may arise from the expanded scope of the regulations. Indeed, it was clear from testimony at the first hearing that adequate mechanisms for reviewing Agency claims that permits were required for specific facilities were not even considered. Mr. Dorothy suggested variance applications as a possible mechanism for clarification as to whether or not permits would be required. Such applications must be considered by the Board, and would assuredly add to its already crowded docket.

The General Assembly addressed a limited subject--bonding for sanitary landfills--in its legislation, and gave the Board a limited time to act on the matter. The Board should not, as a matter of regulatory economy, expand the scope of the proceeding beyond what was intended, or, if it does decide to do so, unnecessarily and unlawfully cut off public comment on the matter. Litigation and other administrative proceedings may complicate the time deadline more than self-imposed cutoffs of commentary would. If it is to do the job the General Assembly intended, the Board would be better advised to deal with the question intended to be addressed, and no other.

VI. THE PROPOSED EXTENSION OF REQUIREMENTS TO ON-SITE OPERATIONS IGNORES DEGREE OF RISK TO THE PUBLIC AND THE PROPER USE OF AGENCY RESOURCES

The facilities addressed by the legislation and the regulatory proposal are supposed to be facilities for the disposal of nonhazardous waste. As proposed, the requirements for sanitary landfills and (if extended to on-site) all commercial and industrial operations would be more stringent than the Resources Conservation and Recovery Act specifies for hazardous waste landfills. For example, sanitary landfill operators could not self-insure, as RCRA allows. To regulate in a more stringent manner nonhazardous sites, and to extend coverage to numbers of new facilities, regardless of the degree of hazard to the public in the specific site or type of site in question, is likely to make considerably more difficult and expensive the siting and operations of sanitary landfills, which are already in short supply in the Chicago area. and nationwide (cf. Appendix B, which shows that the real estate appraisal profession recognizes same as irreplaceable assets.)

The proposed extension to nonhazardous on-site disposal activities would waste Agency and Board enforcement and ajudicatory resources on processing of paper concerning nondangerous facilities, instead of allowing time and energy to deal with sites more likely to present potential hazards to the public. The Reynolds Metals and Pielet Bros. cases turned on facts relevant to specific sites, and were dealt with by the Board and the courts on the basis of current regulations. Future problems can be dealt with under current rules, as well.

VII. THE PROPOSED MODIFICATIONS WILL DISCOURAGE SOURCE REDUCTION OF HAZARDOUS WASTES

If an on-site detoxification process is required to operate like a landfill, obtain insurance like a hazardous waste landfill, and submit detailed closure plans for the area used to handle nontoxic residues produced by the process, additional expenses incurred are likely to eliminate the economic incentive to detoxify in the first place. Such source reduction and resource recovery is an important goal of both federal and state environmental policy and legislation. The Board should consider what will most effectively reduce the amounts of hazardous waste in the environment in this or any similar proceeding before it acts.

VIII. ON-SITE OPERATIONS ARE ALREADY REGULATED ENOUGH TO PROTECT THE PUBLIC HEALTH AND THE ENVIRONMENT. IF THE BOARD CONCLUDES THAT THEY ARE NOT, THERE ARE OTHER WAYS FOR IT TO PROCEED THAT ARE FAIRER THAN THE REVISORY METHOD UNDER CONSIDERATION IN THIS PROCEEDING.

Appendix C details the many different regulatory systems that cover the handling of hazardous wastes and materials. From this, it can be seen that there is comprehensive regulation of process safety, worker

protection, and control of emissions which could affect the public under current regulations.

If the Board intends to go further and regulate on-site operations in additional ways, it should either propose legislation which specifically addresses the question or proceed to use its authority under Section 21(d)(2) in the comprehensive revision to Chapters seven and nine now pending (R84-17) before the Board. It should not take on this type of major policy change in a time-limited proceeding intended to address a limited legislative mandate.

X. THE BOARD SHOULD AVOID UNNECESSARY REGULATORY SHOCKS TO THE ILLINOIS ECONOMY. WE ARE ALREADY IN REASONABLY POOR ECONOMIC SHAPE.

The "rust belt" manufacturing economy, of which Illinois and Chicago are a part, is at a severe competitive disadvantage relative to newer communities and manufacturing companies. The City of Chicago, for instance, lost over 250,000 jobs (and 500,000 population) between 1970 and 1980. The metropolitan area, according to major studies conducted by the Commercial Club of Chicago, lags behind many other major metro areas in growth. The state's economy in general, and its manufacturing economy in particular, is in severe need of reinvestment. Every dollar spent on new insurance and new paperwork processing is likely to be a dollar diverted from wages or investment. Before proceeding to treat every business in Illinois as if it were a waste dump, the Board ought to consider the necessity of its actions. We submit that the additional regulations proposed by Board staff are technically difficult and economically unreasonable.

IX. CONCLUSION

For the reasons above stated, the Associations respectfully request that the Board drop on-site regulation from the proceeding, and treat sanitary landfills in a manner no more stringent than RCRA requires for hazardous waste landfills.

Respectfully submitted,

William A. Price
Director, Governmental Affairs
Chicago Association of Commerce and Industry

Thomas L. Reid
Director of Energy and Environmental Programs
Illinois Manufacturers' Association

Karsten Odland
for the Chemical Industries Council of Illinois

John Sexton
Contractors Co.
1815 South Wolf Road
Hillside, Illinois 60162
312-449-1250

P.C #6

R84-22

October 19, 1984

Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Attn: Marili McFawn

RE: R-84-22, Financial Assurance Mechanisms

Dear Ms. McFawn:

As you requested at the close of my testimony on September 24, 1984, attached you will find our comments on Wisconsin's Waste Management Fee.

Since the tables do not duplicate easily, I have taken the liberty of forwarding copies directly to members of the Board and Mr. Dorothy.

Once again on behalf of John Sexton Contractors Co., I would like to thank you for allowing us this opportunity to further express our opinions on this important issue.

If you require any further information or additional copies, do not hesitate to contact my office.

Sincerely,

CHEMICAL PROCESS DIVISION

Joseph R Benedict Jr

Joseph R. Benedict, Jr.
Director

JB/gm

encls.

cc: J. Dumelle ✓
J. Anderson
B. Forcade
J. Marlin
J. T. Meyer
W. Nega
M. Dorothy

Sexton

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22

ADDENDUM TO
WRITTEN TESTIMONY OF
JOSEPH R. BENEDICT,JR.
OCTOBER 19,1984

INTRODUCTION

As was requested by the hearing officer, Ms. Marili McFawn at the close of my testimony on September 24, 1984, I have reviewed the State of Wisconsin's Waste Management Fee to determine if it coincides with the desires of my company in this rulemaking. A copy of the Wisconsin system was forwarded to me by Ms. McFawn on September 26, 1984.

After reviewing the Wisconsin fee system we have determined it to be an addition to the type of fee system we proposed in my testimony. My testimony was proposing a fee to cover the closure and post-closure care period while the Wisconsin fee system is for long term care of the facility after the closure and post-closure period have been completed. The closure and post-closure periods being funded by other mechanisms, with a fee system not being one of the options.

BACKGROUND

During my testimony, I described several problems all parties involved in waste disposal issues face. One of these problems is the public perception of long term care of a facility. This particular problem has been handled in Wisconsin by the fee system. As identified by Mr. James W. Morgan from Wisconsin, the opinion of the State was that if an operator did what the State told him to do in his permit and experienced no environmental problems, he should not be held liable at some unknown point in the future for an unanticipated failure of the facilty. The only mechanism to provide for this long term care was a fund which was supported by a fee paid for each ton of refuse deposited at all facilities.

If my testimony along with others are taken as a whole several common issues become apparent:

- Closure and post-closure are two separate items
- There are many mechanisms to fund closure and post-closure
- The availability of these mechanisms and their cost will vary from company to company
- There will be some effect on small businesses and on disposal capacity in general in Illinois
- The ability of this rule to be enforced and enforced equitably is in question
- The rule does not solve the long term care issue

The fund system which I proposed was designed to address all but the last issue. Since drafting my original testimony, the issue of long term care has become a major topic of comment during these hearings as well as in the media. This along with the declining availability of non-sudden environmental impairment insurance has resulted in a modification to my original proposal. The mechanism is however still basically the same.

EXISTING MECHANISMS

The State of New Jersey requires funding of closure and post-closure periods for disposal sites. They have also realized that whatever length the post-closure period is, there exists a potential for failure of a facility at some unknown point in the future. The problems of what mechanism and how much dollar value for what period for which facility was also identified and shown to be a regulatory nightmare and very difficult to implement.

In order to alleviate these problems and at the same time implement financial assurance for proper closure and post-closure of disposal facilities, New Jersey implemented a fee system. This fee was placed on all solid wastes destined for disposal but unlike Wisconsin it had two parts.

The first part or basically one third of the fee was to be used for actual "routine" closure and post-closure care of a facility.

No attempt was made to differentiate the costs of actual closure and post-closure care of a particular facility but the fee was set at a level high enough to close any facility at the end of its normal usefull life.

The second part or two thirds of the fee was to be used as a long term care fund for these sites. This can be equated to a State run non-sudden environmental impairment insurance. This second part being used at the State's discretion with no liability being assumed by the former owner/operator of the facility. This is the same as the Wisconsin Waste Management Fee.

One mechanism for funding closure and post-closure which has not been discussed as yet involves the original concept but forward by the Federal Resource Conservation and Recovery Act (RCRA).

The original concept of RCRA was to have it mesh with another Federal Law called the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or "Superfund"). Among the various provisions contained in both Acts is the concept of long term care for facilities beyond the post-closure period. Briefly this concept involved the owner of the facility funding a "normal" closure and post-closure period. If after a given time in the post-closure period there were no environmental problems, the owner was released to CERCLA for long term care.

When the merits of these systems are taken together, a mechanism can be readily developed which eliminates the weaknesses in each system if they were taken separately.

FACILITY CARE FUND

The major difference between the systems is the funding mechanism for "normal" closure and post-closure. This difference was also the area in which our proposed fee was supposed to function. In order to keep the concept of a fee system intact and provide a mechanism for long term care of waste disposal facilities, we have constructed a fund which we have named the "Facility Care Fund (FCF)".

Attached you will find three tables. These tables illustrate the effects implementation of the FCF would have on a hypothetical facility depending on how much capacity remained at the facility. The only difference in the tables is the amount of capacity remaining at the facility.

In order for us to illustrate how the fund would work, it was necessary for us to make several assumptions. These are as follows:

FCF COST PER CUBIC YARD - The cost of $0.10/cy was chosen for convenience only. The value our hypothetical facilty.

COST PER ACRE FOR CLOSURE - The dollar value once again also fit our example. The concept of only having a small portion of the site open at any given time is one we endorse and use. It is thus our opinion that it is only necessary to fund that portion of the site which will have not received final cover.

COST PER ACRE FOR POST-CLOSURE - The dollar value was chosen also to fit our example.

LENGTH OF POST-CLOSURE PERIOD - The actual length of post-closure will most probably be a major point of discussion under R84-17. Since what we are proposing is in addition to current requirements, we merely doubled the existing three year period. The only comment we will make at this time to justify our position is if facilities which have failed are examined they either failed during their active life, shortly after closure, or had a history of environmental problems.

INTEREST/INFLATION - You will note we did not take either of these into account. Since any funds collected will be deposited into a State depository, we reasoned that at a minimum they would cancel one another out and thus it would not be necessary for them to be considered.

The assumptions made above effect only the actual dollar value of the FCF, they do not effect its actual function.

In order for us to address funding for closure and post-closure and funding for long term care it was necessary for us to split the fund into two segments. Each segment is funded by the FCF pay in and functions as follows:

CLOSURE AND POST-CLOSURE CARE (C/PC) - This part or one-half of the FCF is used for "normal" closure and post-closure only. Tables 1 and 2 show that after computing the costs for closure and post-closure and figuring the

amount which would be paid into the C/PC, the owner determined that it was sufficient. Table 3 however illustrates a situation in which it was not sufficient and it became necessary for the owner to choose an additional method of funding. In our example the owner chose a trust fund. In all cases the owner is reimbursed from the fund as expenses are incurred and in the cases illustrated in Tables 1 and 2 he is reimbursed any surpluses at the end of the post-closure period.

LONG TERM CARE FUND (LTC) - The other half of the FCF is used for long term care of the facility. It is only to be used for activities outside of those covered by the C/PC. In our example the owner is released of his long term care responsibilities in year three of the post-closure period. The owner can only be released to LTC at this time if he does not have a documented failure of his facility. This release should be an incentive for the owner to conduct his operations to the highest possible standards since a documented failure at his facility during the first half of post-closure would prevent the owner from being released to LTC.

If after the second half of post-closure care there are no problems with the facility, the funds remaining in the LTC can either be used to continue to maintain the facility or be used to maintain other facilities which have failed and are covered by the LTC. The use of these funds is only for facilities which have paid into the fund and the fund must be administered by the State.

- The LTC is continually being replenished, since whether or not a facility closes, the waste still must go somewhere. In a worst case scenario, new facilities would be funding the LTC for those they replace, and inturn their LTC is funded by those which replace them.

IMPLEMENTATION

Since this fund is intended to be uniformly administered, it will be necessary for legislation to be passed which establishes the depository for the funds. Due to the existing legislative mandate to have financial assurance functioning by March 1, 1985, we

suggest that if the Board believes our proposal has merit the Board should adopt an interim rule. This rule should state that the Board is actively pursuing the establishment of a Statewide Facility Care Fund with the legislature and the interim rule is intended only to meet the current statutory deadline.

CONCLUSION

We believe this modification to our original proposal will enable sufficient funds to be present to assure proper closure and post-closure care of disposal facilities, will be able to be equitably administered and enforced, will encourage proper operation of disposal facilities, and will provide for long term care of waste disposal facilities.

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[illegible]

TABLE 1

FACILITY CARE FUND (FCF)
INCLUDING:
CLOSURE (C), POST-CLOSURE (PC),
AND LONG TERM CARE (LTC)
(NEW OR PARTIALLY FILLED)

SPECIFICS

Facility Acreage = [illegible] A
Remaining Capacity = 10,000,000
Filling Rate = 1,000,000 cy [illegible]

TIME IN YEARS

Open | Closed

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

COMMENTS

Facility Care Fund Pay In Period

10¢/cy = $1,000,000 FCF
(5¢ Closure/ Post-Closure=C/PC = $500,000 C/PC)
(5¢ Long Term Care = LTC = $500,000 LTC)

Owner computes closure and post-closure [illegible]

Determines that C/PC pay in will be sufficient to cover costs, no alternate funding method is needed.

Closure

C/PC Pay Out
(20 Acres X
$[illegible]/Acre +
$[illegible],000)
Net C/PC = $[illegible],000

At end of year 10, owner closes site.

Site is certified as closed and owner is reimbursed costs for closure from C/PC portion of FCF.

Post-Closure

C/PC Pay Out
[illegible] A X $100/A X [illegible] yrs. = $[illegible],000
Net C/PC = $[illegible],000
(Returned to Owner)

Facility is monitored and maintained for 6 years. Owner reimbursed from C/PC during the post-closure period. Remaining funds in C/PC are returned to owner.

Long Term Care

Owner Released
To LTC

LTC Takes Over
$500,000 LTC

LTC portion of fund assumes long term responsibility if no documented failure has occurred in first [illegible] years of post-closure. Site will still be monitored for [illegible] years. (See Text)

After 6 years of post-closure care, FCF assumes the responsibility, funded by L[illegible]

TABLE 2

FACILITY CARE FUND (FCF)
INCLUDING:
CLOSURE (C), POST-CLOSURE (PC),
AND LONG TERM CARE (LTC)
(EXISTING/PARTIALLY FILLED)

SPECIFICS

Facility Acreage = 200 A
Remaining Capacity = 5,000,000 cy
Filling Rate = 1,000,000 cy/yr

TIME IN YEARS

Open (years 1–5) / Closed (years 6–14)	COMMENTS
FCF PAY IN (years 1–5) ([illegible]¢/cy = $500,000 FCF) ([illegible]¢/cy = $250,000 C/PC) ([illegible]¢/cy = $250,000 LTC)	Owner computes closure and post-closure costs. Determines that C/PC pay in will be sufficient to cover costs. No alternate funding method is needed.
C/PC Pay Out (end of year 5) (20 Acres X $4000/acre = $80,000) Net C/PC = $170,000	At end of year 5, owner closes site. Site is certified as closed and owner is reimbursed from C/PC portion of FCF for costs of closure.
C/PC Pay Out (years 5–11) 200 A X $100/A X 6yrs. = $120,000 Net C/PC = $50,000 (Returned to Owner)	Facility is monitored and maintained for 6 years. Owner reimbursed from C/PC during the post-closure period. Remaining funds in C/PC are returned to owner.
Owner Released To LTC (year 8) LTC Takes Over (year 11 →) $250,000 LTC	LTC portion of fund assumes long term responsibility if no documented failure has occurred in first 3 years of post-closure. Site will still be monitored for 3 years. (See Text) After 6 years of post-closure care, FCF assumes the responsibility, funded by LTC.

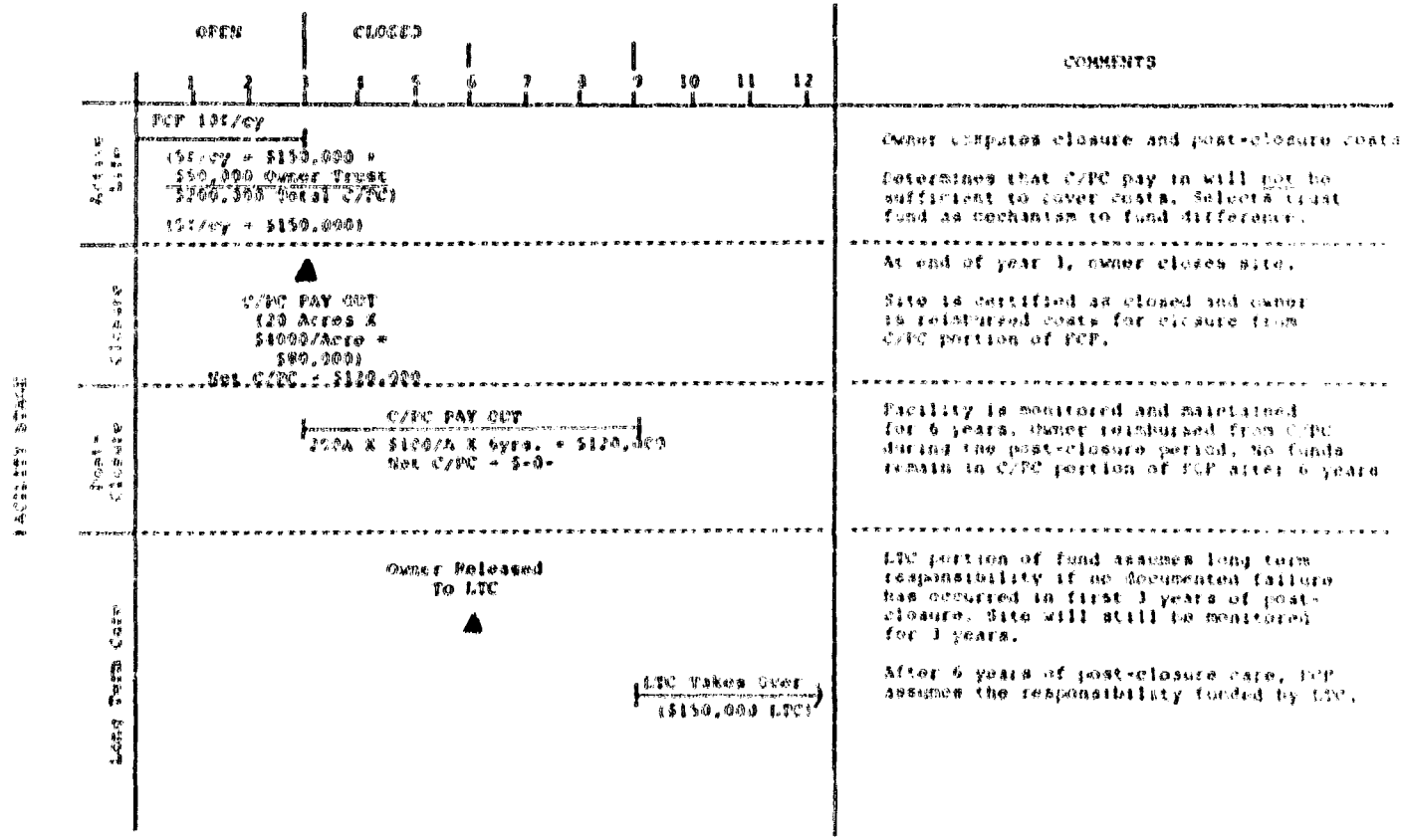
TABLE 3

FACILITY CARE FUND (FCF)
INCLUDING:
CLOSURE (C), POST-CLOSURE (PC),
AND LONG TERM CARE (LTC)
(EXISTING/PARTIALLY FILLED)

SPECIFICS

Facility Acreage = 200 A
Remaining Capacity = 1,000,000 cy
Filling Rate = 1,000,000 cy/yr

TIME IN YEARS



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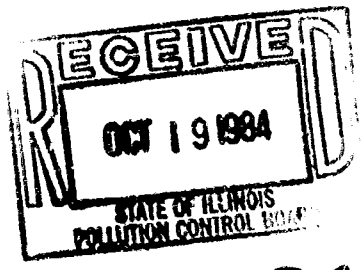
Chicago Association of Commerce and Industry
130 South Michigan Avenue Chicago, Illinois 60603 (312) 786-0111

BY MESSENGER



October 18, 1984

P.C. #5

R84-22

Ms. Joan Anderson
Attending Member of the
Illinois Pollution Control Board
Illinois Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Dear Ms. Anderson:

I enclose commentary on the proposed regulations concerning financial assurance for closure and post-closure care of waste dispoal sites dealt with in Proceeding R84-22.

Regards,

Wm. A. Price

William A. Price
Director Governmental Affairs

enclosure

P.C. #5

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE FOR) R84-22
CLOSURE AND POST CLOSURE)
CARE OF WASTE DISPOSAL SITES)

COMMENTARY OF THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY, THE ILLINOIS MANUFACTURERS ASSOCIATION, AND THE CHEMICAL INDUSTRIES COUNCIL OF THE MIDWEST : SUBSTANTIVE AND PROCEDURAL OBJECTIONS TO THE CURRENT FORM OF THE PROPOSED REGULATION, AND TO THE EXTENSION OF REGULATION IN THIS PROCEEDING TO ON-SITE FACILITIES

I. INTRODUCTION

The Chicago Association of Commerce and Industry, the Illinois Manufacturers Association, and the Chemical Industries Council of the Midwest appreciate the opportunity to comment on the regulatory proposals published in first notice in the R84-22 proceeding, as well as on the oral suggestions of Board staff concerning the extension of

00026 the regulations proposed to definition of permit requirements for
00027 on-site facilities and the requirement of closure plans for all sites.
00028
00029 The Chicago Association of Commerce and Industry is the regional
00030 Chamber of Commerce serving the metropolitan area of and surrounding
00031 Chicago, Illinois. Its' over 5,200 member companies operate most
00032 lines of business, and employ over 1.2 million persons in the
00033 six-county area of northeastern Illinois and Lake and Porter counties,
00034 Indiana.
00035
00036 The Illinois Manufacturer's Association is the representative of over
00037 5,300 member manufacturers in the state of Illinois.
00038
00039 The Chemical Industries Council of the Midwest represents 30 member
00040 companies with over 65% of the market share of chemical production in
00041 the Illinois area.
00042
00043 II. BOARD ACTION REQUESTED
00044
00045 The associations making this commentary respectfully request that the
00046 Illinois Pollution Control Board:
00047
00048 (1) Reject the suggestions made by its' staffer in oral commentary
00049 that it extend the rulemaking to include codification of a definition
00050 of what facilities are covered in the Section 21(d) on-site facilities

00051 exemption, and to include a requirement that "all sites" submit
00052 closure plans of the nature detailed in Subpart E of the proposed
00053 regulations.
00054
00055 (2) Revise the proposed regulations to make their regulation of
00056 | sanitary landfills no more stringent than the requirements imposed
00057 under the Federal Resources Conservation and Recovery Act on hazardous
00058 waste landfills.
00059
00060 III. THE EFFECTS OF THE PROPOSED CHANGES TO THE PROPOSED REGULATIONS
00061 WOULD BE EXTREMELY BROAD
00062
00063 Although it is impossible to fully assess the scope of the regulations
00064 proposed without more than oral commentary on the extension of
00065 landfill requirements and closure plan requirements to on-site
00066 operations, evidence presented to the Committee on Generation of the
00067 Attorney General's Hazardous Waste Task Force by Michael Nechvatal of
00068 | the Illinois Environmental Protection Agency permits a conclusion as to
00069 the extremely wide range of facilities likely to be affected by the
00070 on-site question. Mr. Nechvatal testified that around 20,000
00071 companies sometimes manifested special waste loads, and around 5,000
00072 regularly submitted manifests to the Agency concerning same in the
00073 year of data on which he was reporting to the committee. Though there
00074 is some overlap, to the extent that such facilities are regulated by
00075 state and not separate RCRA requirements, presumably all 4,000 or so

00076 RCRA Part A notifying facilities in the state (CF Appendix A: list
00077 obtained by CACI through a Freedom of Information Act request to the
00078 U.S. Environmental Protection Agency--more current data on interim
00079 status facilities could also be consulted.) would also be affected.
00080 Since closure is in question, presumably any and all companies which
00081 manifest and/or handle any special or hazardous waste from and after
00082 the time of effectiveness of the proposed regulations would have to
00083 obtain permits and submit closure plans. Given the extremely broad
00084 nature of the Illinois special waste definition, any and all
00085 off-specification products, construction refuse, or other waste
00086 generated by commercial and industrial operations, however briefly
00087 left on site, and whatever its degree of hazard to the general public
00088 would subject a business to the full range of requirements applicable
00089 to sanitary landfills under the proposed regulations. Over time, any
00090 business is likely to produce some waste. Therefore, an extension of
00091 the requirements to all "sites", as suggested, is likely to require
00092 permits and closure plans for every business in the state of Illinois.
00093 There number about 275,000. To put the matter bluntly, the extension
00094 to on-site "sites" for "disposal" of special and hazardous waste could
00095 mean that full landfill regulations, insurance, and post-closure plans
00096 could be extended to every commercial and industrial wastebasket and
00097 Dumpster Dumpster in the state.
00098
00099 IV. EXTENSION OF PERMIT REQUIREMENTS TO ON-SITE FACILITIES, AND
00100 REQUIREMENT OF POST-CLOSURE PLANS FOR SAME, IN THIS PROCEEDING, WOULD

BE WITHOUT ADEQUATE NOTICE TO THE AFFECTED PARTIES AND WOULD DENY THEM SUFFICIENT OPPORTUNITY TO COMMENT ON THE PROPOSAL

The proposed regulations did not suggest to either the informed observer or the general public that the subject of regulation was to be on-site disposal or temporary storage activities. Operating industrial facilities are not ordinarily considered "solid waste management sites" or "sanitary landfills", which are the facilities addressed in the regulatory proposal. Changing the definitions of same in midstream to make them such, for the purposes of Illinois regulation, is a major revision to the regulation which could not adequately be addressed in comments directed to the original proposal. Indeed, given the broad range of facilities potentially affected, it is impossible for an interested company or individual to adequately assess the legal justification for and practical effects of the regulation in question without final wording in hand. This means the final opinion of the Board in this proceeding, which will follow this round of written comments unless another hearing is called. The October 12,1984 Order of the Board in this matter indicates that neither republication nor additional hearings are contemplated. This means that the only opportunity for comment on the final regulatory proposal, and the only notice of same, will be the fifteen days allowed for written comment following the issuance of the final order, which comment is effectively available only to persons already on the mailing list of this proceeding. This does not provide anywhere near

00126 enough persons notice of the item in question, or opportunity to
00127 prepare commentary which addresses the many practical and legal issues
00128 raised by the regulation. To effectively address same, associations
00129 need to survey the members who are potentially affected, conduct
00130 technical analyses of costs and benefits, and prepare commentary for
00131 submission to the Board. Two weeks isn't even enough turnaround time
00132 for return delivery of questionnaires, much less detailed engineering
00133 or economic analyses. Lawyers need time to prepare comments, as
00134 well--though they presumably can work to tighter deadlines. It is for
00135 precisely the reason of time needed for dissemination of information
00136 to affected publics and organized collection of information from them
00137 that the Administrative Procedures Act requires that regulations be
00138 published in a generally disseminated state register, that hearings on
00139 the subjects in question be held, and that 45 days elapse before final
00140 action. A major change in subject matter effectively denies this
00141 notice and comment opportunity.
00142
00143 The Administrative Procedure Act would not be the only statute
00144 violated if the Board proceeds to final rulemaking without additional
00145 opportunity for commentary on the final proposal. The merit hearings
00146 on proposals are intended to give the public opportunity to inform the
00147 Board of the technical feasibility of proposed rules, and the Board
00148 must, according to the Environmental Protection Act, Section 27(a),
00149 consider same in rulemaking. Without exact knowledge of what would
00150 constitute waste disposal and which facilities are affected in the

00151 form of a final written rules proposal, no answer to the technical and
00152 policy questions raised by the staff suggestion of on-site coverage
00153 can be adequately made.
00154
00155 V. ON-SITE REGULATION WAS NOT CONTEMPLATED BY THE LEGISLATURE OR THE
00156 DRAFTERS OF THE REGULATORY PROPOSAL, AND THE BOARD SHOULD NOT GO
00157 BEYOND ITS STATUTORY MANDATE IN THE LIMITED TIME AVAILABLE FOR THIS
00158 PROCEEDING
00159
00160 The General Assembly, in passing Public Act 83-775 intended to address
00161 "performance bonds for certain landfills," according to the title of
00162 the legislation. It did not change the definition of landfills. The
00163 sponsor referred to "sanitary landfills", and to a "regular landfill"
00164 in her description of the purpose of the legislation (cf. remarks of
00165 Representative Diana Nelson, House Journal, April 14,1983.) Sanitary
00166 landfills are clearly defined in both the Environmental Protection Act
00167 and Board regulations. A change in the definition of same is neither
00168 appropriate to the legislative purpose nor necessary for the adequate
00169 description of regulatory intent.
00170
00171 The proposers of the regulations in question did not address the
00172 question of on-site regulation, and the Agency did not consider its
00173 ability to process large numbers of on-site permits and closure plans
00174 in proposing the regulation. (cf. testimony of Larry Eastap,
00175 September 29th hearing on R84-22.) The Board's witness did not address

00176 the issue of on-site coverage in his analysis, an important technical
00177 feasibility omission from the decision record, since the availability
00178 of closure insurance for the large number of additional facilities in
00179 question, and the general practicability of the insurance and closure
00180 requirements, for same are important technical issues which should be
00181 considered by the Board if it is to adequately address "technical
00182 feasibility and economic reasonableness' in making its decision in
00183 this proceeding. (cf. testimony under cross-examination of Mr.
00184 James Harrington by the Board's witness Mr. Paul Bailey in the
00185 September 17th hearing record in this proceeding.) Though not
00186 addressed in remarks, presumably the Board staffer who made the
00187 suggestion of on-site coverage considered the large number of permit
00188 appeals and other questions likely to be addressed to the Board if the
00189 on-site coverage suggested is adopted. Whether he did or not, the
00190 Board certainly should before proceeding with this matter.
00191
00192 The General Assembly addressed a limited subject--bonding for sanitary
00193 landfills--in its legislation, and gave the Board a limited time to
00194 act on the matter. The Board should not, as a matter of regulatory
00195 economy, expand the scope of the proceeding beyond what was intended,
00196 or, if it does decide to do so, unnecessarily cut off public comment
00197 on the matter. Litigation and other administrative proceedings may
00198 complicate the time deadline more than self-imposed cutoffs of
00199 commentary would. If it is to do the job the General Assembly

00200 intended, the Board would be better advised to deal with the question
00201 intended to be addressed, and no other.
00202
00203 VI. THE PROPOSED EXTENSION OF REQUIREMENTS TO ON-SITE OPERATIONS
00204 IGNORES DEGREE OF RISK TO THE PUBLIC, APPROPRIATE CONCENTRATION OF
00205 AGENCY EFFORTS, AND ECONOMIC INCENTIVES FOR SOURCE REDUCTION OF
00206 HAZARDOUS WASTE
00207
00208 The facilities addressed by the legislation and the regulatory
00209 proposal are facilities for the disposal of nonhazardous waste. As
00210 proposed, the requirements for sanitary landfills and (if extended to
00211 on-site) all commercial and industrial operations would be more
00212 stringent than the Resources Conservation and Recovery Act specifies
00213 for hazardous waste landfills. To regulate in a more stringent manner
00214 nonhazardous sites, and to extend coverage to numbers of new
00215 facilities, regardless of the degree of hazard to the public in the
00216 specific site or type of site in question, is likely to:
00217
00218 (1) Make considerably more difficult and expensive the siting and
00219 operations of sanitary landfills, which are already in short supply in
00220 the Chicago area.
00221
00222 (2) Waste Agency and Board enforcement and ajudicatory resources on
00223 nondangerous facilities paper processing, instead of allowing time and
00224 energy to deal with truly dangerous sites. The Reynolds Metals and

00225 Pielet Bros. cases were site-specific problems, and were dealt with
00226 by the courts on the basis of current regulations. Future problems
00227 could be dealt with under same, as well.
00228
00229 (3) Discourage source reduction of hazardous wastes. If an on-site
00230 detoxification process is required to operate like a landfill, obtain
00231 insurance like a hazardous waste landfill, and submit detailed closure
00232 plans for the nontoxic residues disposal area it produces, the
00233 additional expenses considerably reduce the economic incentive to
00234 detoxify in the first place. The Board should consider what will most
00235 effectively reduce the amounts of hazardous waste in the environment
00236 in this or any proceeding before it acts.
00237
00238 VII. ON-SITE OPERATIONS ARE ALREADY REGULATED ENOUGH TO PROTECT THE
00239 PUBLIC HEALTH AND THE ENVIRONMENT. IF THE BOARD CONCLUDES THAT THEY
00240 ARE NOT, THERE ARE OTHER WAYS FOR IT TO PROCEED THAT ARE FAIRER THAN
00241 THE REVISORY METHOD UNDER CONSIDERATION IN THIS PROCEEDING.
00242
00243 Chart A details the many different regulatory systems that cover the
00244 handling of hazardous wastes and materials. From this, it can be seen
00245 | that there is regulation of process safety to workers and environmental
00246 emissions which could affect the public under current regulations.
00247
00248 (Insert Karsten's chart)
00249

If the Board intends to go further and regulate on-site operations in additional ways, it should either propose legislation which specifically addresses the question or proceed to use its authority under Section 21(d)(2) in the comprehensive revision to Chapters seven and nine now pending (R84-17) before the Board. It should not take on this type of major policy change in a time-limited proceeding intended to address a limited legislative mandate.

VIII. THE BOARD SHOULD AVOID UNNECESSARY REGULATORY SHOCKS TO THE ILLINOIS ECONOMY. WE ARE ALREADY IN REASONABLY POOR ECONOMIC SHAPE.

The "rust belt" manufacturing economy, of which Illinois and Chicago are a part, is at a severe competitive disadvantage relative to newer communities and manufacturing companies. The City of Chicago, for instance, lost over 250,000 jobs (and 500,000 population) between 1970 and 1980. The metropolitan area, according to major studies conducted by the Commercial Club of Chicago, lags behind many other major metro areas in growth. The state's economy in general, and its manufacturing economy in particular, is in severe need of reinvestment. Every dollar spent on new insurance and new paperwork processing is likely to be a dollar diverted from wages or investment. Before proceeding to treat every business in Illinois as if it were a waste dump, the Board ought to consider the necessity of its actions. We submit that the additional regulations proposed by Board staff are technically difficult and economically ridiculous.

00275

00276 IX. CONCLUSION

00277

00278 For the reasons above stated, the Associations respectfully request
00279 that the Board drop on-site regulation from the proceeding, and treat
00280 sanitary landfills in a manner no more stringent than RCRA requires
00281 for hazardous waste landfills.

00282

00283 Respectfully Submitted

00284

00285

00286

00287

00288 _____

00289 William A. Price

00290 Director, Governmental Affairs

00291 Chicago Association of Commerce and Industry

THE SURETY ASSOCIATION OF ILLINOIS

OFFICE OF THE SECRETARY:
c/o HANOVER INSURANCE CO. / 222 SOUTH RIVERSIDE PLAZA / CHICAGO, IL 60606 / (312) 648-1454

October 18, 1984

PC # 4

Ms. Kathleen Crowley
Illinois Pollution Control Board
309 West Washington Street
Chicago, Illinois 60606

RE: Illinois Pollution Control Board Proposed Regulations Concerning Financial Assurance for Closure and Post-Closure of Non-Hazardous Waste Disposal Site (R84-22).

Dear Ms. Crowley:

The Executive Committee of the Surety's Underwriter Association of Illinois has been asked by the National Solid Waste Management Association (Illinois Chapter) to comment about the availability of Surety bonds for the above captioned.

Based upon our review, we have concluded that it would be difficult for Surety companies to undertake this obligation. Our decision is based upon the long-term nature of the obligation, and the inability to guarantee the future solvency of the principal. Although cancellation provisions have been included in the bond form, this cancellation provision would be of limited value, as failure by the owners or operators to replace the bonds or provide other forms of financial assurance would trigger payment by the Surety.

In closing, we appreciate the opportunity to address this issue, but feel that the Surety bond provisions of the proposed rule will not be a viable tool to meet the financial assurance provisions.

Very truly yours,

John Quigley
V.President

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Law Offices of

CHAPMAN AND CUTLER

a partnership including professional corporations

Theodore S. Chapman
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Henry E. Cutler
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50 South Main Street
Salt Lake City, Utah 84144
Telephone 801 533-0066

Richard A. Makarski
312 845-3707

PC# 3

September 19, 1984

BY MESSENGER

Dorothy M. Gunn, Clerk
Pollution Control Board
309 West Washington Street
Suite 300
Chicago, IL 60606

Re: Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites, R84-22

Dear Ms. Gunn:

We represent the Forest Preserve District of DuPage County, Illinois which has participated in these hearings. Enclosed is the "Written Submission of the Forest Preserve District of DuPage County, Illinois" to be placed in the record. We shall attend the hearing on September 24, 1984 in Chicago to discuss this situation.

Very truly yours,

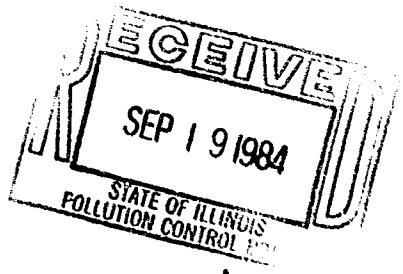
CHAPMAN AND CUTLER

By _____
Richard A. Makarski

RAM/kz
Enclosure
cc: Morton Dorothy, Esq. (w/enc., Federal Express)
Mr. H. C. Johnson
Mr. Richard Utt
Carleton Nadelhoffer, Esq. (w/enc.)

ILLINOIS POLLUTION CONTROL BOARD

September 12, 1984



PC #3

IN THE MATTER OF:	)	
	)	
FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES	)	R84-22

WRITTEN SUBMISSION OF THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY, ILLINOIS

The Forest Preserve District of DuPage County, Illinois (hereinafter referred to as the "District") has authorized by ~~ordinance~~ resolution this submission to the Illinois Pollution Control Board (hereinafter referred to as the "Board") and in it states the District's suggestion that the Board include in any regulations that it adopts with respect to financial assurance for closure and post-closure care of waste disposal sites a provision as to applicability of the regulations to the State of Illinois, its agencies and institutions, or a unit of local government and another person where one owns and the other operates a waste disposal site, or they jointly own or operate a site.

The District is the owner of two landfills in DuPage County, Illinois: Mallard Lake in Bloomingdale Township in the northern portion of the County, and Greene Valley in Lisle Township in the southern portion of the County. In 1974 agreements were entered into with private contractors to operate the two landfills and construct recreational hills, with principal responsibility for operation and compliance with environmental laws being with the private contractors.

Section 21.1 of the Illinois Environmental Protection Act prohibits "every person" other than the State, its agencies and institutions, or a unit of local government from conducting a waste disposal operation after March 1, 1985 unless financial assurance for closure and post-closure care is posted with the Illinois Environmental Protection Agency. The District is a unit of local government and, thus, is exempt from providing financial assurance and should be exempt from all other provisions of the regulations, since these provisions compliment the financial assurance provisions. However, the operators of the two sites are not exempt by the statute and, thus, may have to comply with the regulations. Neither the statute nor the proposed regulations address the situation where an exempt person and a non-exempt person both conduct a waste disposal operation, nor is the phrase "conduct a waste disposal operation" defined. Likewise, in many provisions the term "owner or operator" is used, without elaboration or definition.

Thus, the District suggests that the Board include in the regulations the following provisions:

1. The State of Illinois, its agencies and institutions or a unit of local government is exempt from compliance with these regulations if it is either the owner or operator of a waste disposal operation.
2. If a person other than the State of Illinois, its agencies and institutions or a unit of local government, conducts a waste disposal operation, either as owner or operator, with the State of

Illinois, its agencies and institutions, or a unit of local government, then that person is not exempt from compliance with these regulations.

Respectfully submitted,

FOREST PRESERVE DISTRICT OF
DUPAGE COUNTY, ILLINOIS

By _____
(Don Prindle,
Its President

84/719

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Public Comment #2

IN THE MATTER OF:

FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES

R84 - 22

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEPTEMBER 7, 1984

BY

ERNEST C. NEAL
VICE PRESIDENT
GOVERNMENT AFFAIRS
CECOS INTERNATIONAL

Public Comment
R 84-22
Rec'd 9/7/84

MR. CHAIRMAN, MEMBERS OF THE BOARD, LADIES AND GENTLEMEN, I'M ERNEST NEAL, VICE PRESIDENT OF GOVERNMENTAL AFFAIRS FOR CECOS INTERNATIONAL.

CECOS IS AN INTERNATIONAL HAZARDOUS WASTE TREATMENT AND DISPOSAL FIRM WITH OPERATIONS IN SEVEN STATES AND MOST RECENTLY, HAS ESTABLISHED LOCATIONS IN PUERTO RICO AND WESTERN EUROPE. WE ARE A WHOLLY OWNED SUBSIDIARY OF BROWNING-FERRIS INDUSTRIES WITH OUR CORPORATE OFFICES LOCATED IN BUFFALO, NEW YORK.

I. THE ISSUE OF CLOSURE AND LONG-TERM CARE OF DISPOSAL FACILITIES (WHETHER SOLID WASTE OR HAZARDOUS WASTE) IS A NECESSARY CONCERN. PAST PRACTICES, IN SOME CASES, HAVE RESULTED IN THE CREATION OF A BURDEN FOR REGULATORY AGENCIES WHILE IN OTHER CASES, CREATED UNDESIRABLE ENVIRONMENTAL PROBLEMS THAT MUST BE SOLVED. THE COMMERCIAL WASTE INDUSTRY WILLINGLY SHOULDERS THE RESPONSIBILITIES OF PAST, PRESENT, AND FUTURE OPERATIONS, BUT CONFIDENTLY FEELS THAT CLOSURE AND POST-CLOSURE CARE CAN READILY BE ACCOMPLISHED THROUGH SEVERAL MECHANISMS, SOME OF WHICH ARE NOT INCLUDED IN THE PROPOSED RULE - R84 - 22.

IN REVIEW OF THE PROPOSED RULE, IT IS SOMEWHAT HARD TO DETERMINE EXACTLY WHAT FIRMS MUST RESPOND. SECTION 807.201 (c) INDICATES THAT HAZARDOUS WASTE FACILITY OWNERS, HAVING OBTAINED A FINAL RCRA PERMIT, MUST OBTAIN A PERMIT PURSUANT TO THIS SECTION IF HE ACCEPTS NON-HAZARDOUS WASTE. HOWEVER, ANY FIRM HAVING OBTAINED A FINAL RCRA PERMIT MUST ALREADY HAVE SECURED FINANCIAL ASSURANCE AS REQUIRED UNDER SECTION 264.143 OF THE FEDERAL

REGULATIONS. THIS REQUIREMENT, IF CORRECTLY UNDERSTOOD, APPEARS TO BE REDUNDANT.

II. PROPOSED SECTION 807.201 (B) OF THE BOARD REGULATIONS, APPARENTLY EXEMPTS ON-SITE OPERATIONS OF FIRMS CARRYING OUT TREATMENT, STORAGE, OR DISPOSAL ACTIVITIES AT THE SITE OF GENERATION. IT IS NOT CLEARLY UNDERSTOOD WHY FINANCIAL ASSURANCE IS NOT NEEDED FOR ON-SITE FACILITIES. THOUGH THE DISPOSAL OF WASTE MATERIALS VARIES CONSIDERABLY, I DON'T BELIEVE ANY PARTICULAR METHOD GUARANTEED ZERO ENVIRONMENTAL INFLUENCE. IT IS RECOMMENDED THAT FINANCIAL ASSURANCE BE SECURED FOR ALL FACILITIES IN ORDER THAT THE STATE MAY BE RELIEVED OF ITS POTENTIAL FINANCIAL BURDENS FOR CORRECTIVE ACTIONS, SHOULD THEY BE REQUIRED.

III. AS MENTIONED EARLIER, IT IS IMPORTANT TO OFFER A VARIETY OF METHODS OF FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE. THE OPTIONS MUST INCLUDE ALTERNATIVES TO ASSURE THE STATE OF ILLINOIS THAT RELATIVE ACTIVITIES WILL OCCUR, BUT NOT SO RESTRICTIVE TO ELIMINATE LARGE OR SMALL FIRMS FROM HANDLING WASTE CORRECTLY AND ADEQUATELY.

SECTION 807.640 LISTS THE MECHANISMS FOR FINANCIAL INSURANCE. THEY ARE:

(A) TRUST FUND

(B) SURETY BOND WITH PAYMENT INTO A TRUST FUND

(C) SURETY BOND GUARANTEEING PERFORMANCE

(D) LETTER OF CREDIT

(E) CLOSURE INSURANCE.

ALTHOUGH THESE OPTION VARY CONSIDERABLY, IT IS RECOMMENDED THAT AN ADDITIONAL METHOD BE ADDED. THE FEDERAL CLOSURE AND POST-CLOSURE REGULATIONS PROVIDE THE OPTION OF A FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE. THIS OPTION, AS SPELLED OUT IN THE FEDERAL REGULATIONS, PROVIDES THE REGULATORY AGENCY INFORMATION THAT THE FIRMS FINANCIAL STRENGTH WILL ASSURE COMPLIANCE. PERHAPS THIS WAS THE MECHANISM REVIEWED BY THE BOARD IN DECIDING THE EXEMPTIONS FOR ON-SITE FACILITIES.

THE FINANCIAL TEST OPTION PROVIDES THE SAME ASSURANCES TO THE AGENCY BUT ALSO ALLOWS FIRMS TO CONTINUE DEVELOPMENT AS NECESSARY FOR BUSINESS GROWTH AND FINANCIAL STRENGTH. IN ADDITION, LARGE FIRMS SELECTING THIS OPTION, WOULD RESPOND JUST AS QUICKLY TO THE AGENCIES' REQUIREMENTS SINCE THEY ARE USUALLY PUBLICLY HELD COMPANIES WHICH MUST MAINTAIN THEIR RESPONSIBLE REPUTATIONS AND SUBSEQUENT CONTINUED GROWTH.

IV. SECTION 807.640 LISTS AS ITS FIFTH OPTION, CLOSURE INSURANCE. PRESENTLY, I AM AWARE OF INSURANCE THAT MAY BE OBTAINED FOR ONGOING OPERATIONS, BUT AM NOT AWARE OF INSURANCE COMPANIES OFFERING COVERAGE FOR POST-CLOSURE ASSURANCE. IN ADDITION, SECTION 807.665 (H) RELATES THAT "THE INSURER MAY NOT CANCEL, TERMINATE, OR FAIL TO RENEW THE POLICY EXCEPT FOR FAILURE TO PAY THE PREMIUM." THE IMPORTANT ISSUE HERE IS, ARE SUCH POLICIES AVAILABLE?

V. SECTION 807.504 (AMENDMENT OF CLOSURE PLAN) INDICATE THAT AN OPERATOR MUST AMEND HIS OR HER PLAN IF THERE IS A REDUCTION IN VOLUME OR RATE OF WASTE ACCEPTANCE AT THE SITE. IT IS RECOMMENDED

THAT IF A SITE PROJECTS SIGNIFICANTLY EARLIER OR LATER CLOSURE AS A RESULT OF WASTE ACCEPTANCE, THAT THE PLAN BE AMENDED. PERHAPS A SPECIFIC TIME CHANGE, AS TWO TO FIVE YEARS, COULD BE SPECIFIED.

VI. SECTION 807.524 (IMPLEMENTATION AND COMPLETION OF POST-CLOSURE CARE) RELATES THAT THE AGENCY SHALL TERMINATE THE SITE PERMIT WHEN IT DETERMINES THAT THE PLAN HAS BEEN COMPLETED AND THE SITE WILL NOT CAUSE FUTURE VIOLATIONS. IT IS RECOMMENDED THAT A SPECIFIC TIME PERIOD BE ESTABLISHED AFTER POST-CLOSURE CARE HAS BEEN FULFILLED AND NO APPARENT PROBLEMS ARE OCCURRING.

IN SUMMARY, THERE IS NEED FOR ESTABLISHING CLOSURE AND POST-CLOSURE ASSURANCE FOR ALL HAZARDOUS WASTE FACILITIES. THE FINANCIAL MECHANISMS SHOULD PROVIDE ASSURANCE FOR PROPER CARE AND MAINTENANCE OF FACILITIES BUT BE FLEXIBLE ENOUGH TO ALLOW POTENTIALLY RESPONSIBLE FIRMS TO OPERATE THE NEEDED FACILITIES TO SERVICE THE AMERICAN INDUSTRY.

THANK YOU

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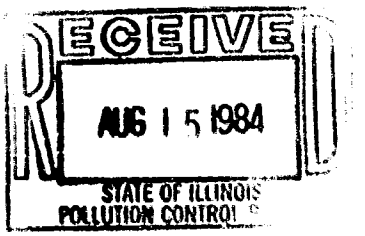
R84-22
PC # 1

STATE OF ILLINOIS
DEPARTMENT OF INSURANCE
SPRINGFIELD, ILLINOIS 62767

August 6, 1984

OFFICE OF THE DEPUTY DIRECTOR
PROPERTY & CASUALTY DIVISION
(217) 785-1791



Mr. Morton F. Dorothy
Hearing Officer
Pollution Control Board
309 West Washington St.
Suite 300
Chicago, Illinois 60606

Re: R84-22 Financial Assurance for Closure and Post-closure Care of Waste Disposal Sites

Dear Mr. Dorothy:

Mrs. Credi, with whom you spoke on July 31, has asked that I review the material attached to your letter of July 27.

I would suggest that Sections 807.662 and 807.663 require that the surety not only be on the Federal Treasury List but also be "authorized to transact surety business in the State of Illinois". There may well be some companies on the Treasury List which are not licensed in Illinois. Should you have difficulties with a company not licensed in Illinois, there would be little we could do for you.

Although Section 807.665 permits "closure insurance" to be issued by either the licensed or surplus lines insurer, I must point out a surplus lines insurer is not a licensed company and is not subject to our direct jurisdiction. By definition, a surplus lines company is one which is not licensed in Illinois. Consequently, the phrase, "eligible to provide as an excess or surplus lines insurer" is a rather meaningless statement in respects Illinois. I suspect this wording was derived for the Federal standard; that would make sense since the U. S. Government could hardly require that an insurer be licensed in all 50 states. But, from your standpoint, I think you should require that the insurer be licensed in the State of Illinois. For the most part, agencies which require insurance require such insurance in licensed companies. The Secretary of State's Motor Vehicle Code, Department of Public Health and Capital Development Board all require insurance in licensed companies.

I should also add that although Section 807.665 calls the insurance "closure insurance", the description of the coverage sounds like a surety bond and I would suggest that the coverage be designed as a surety bond. The Department of Mines and Minerals, for example, requires a not dissimilar bond in respects oil well operations. The bond guarantees that when the oil is depleted the well will be capped and the site returned to its original condition. If you do require a bond, you will not, of course, receive a Certificate of Insurance as required in 807.665(b).

Very truly yours,

Kenneth W. Smith, C.P.C.U.
Deputy Director

KWS:jg

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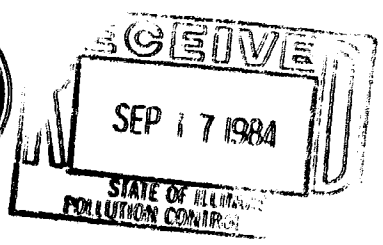
301-585-2898 2899

GRCDA



Association Offices
8401 Dixon Avenue
Suite 4
Silver Spring
Maryland 20910

PC# 12

Morton F. Dorothy
Hearing Officer
Pollution Control Board
309 West Washington St.
Suite 300
Chicago, IL 60606

SEP 7 1984

Dear Mr. Dorothy:

GRCDA appreciates receiving a copy of R84-22 for review and comment. We have referred the document to our Illinois Land of Lincoln Chapter. Whether formal comments will be submitted by the Chapter, rests with their interest and decision. However, whether the Chapter responds as an organization or the members as individuals, you will have an opportunity to get their viewpoints during your promulgation process.

We are supportive of the need for financial resources for closure as well as post closure care. However, we would caution the Pollution Control Board to be sure that the circumstances surrounding ownership should not be a consideration for the determination of payment of fee. All owners should be required to demonstrate adequate financial responsibility for closure and post closure care. In these difficult economic times, it seems wise for any state considering regulations which will assure the availability of resources for closure and post closure care of disposal facilities, to be certain that those resources are there regardless of the ownership or operation of a facility. The financial responsibility regulations for the RCRA hazardous waste facilities have recognized this issue and provide for a variety of ways to assure financial capability. We urge Illinois to do so likewise.

Again, thank you for the consideration.

Very truly yours,

H. Lanier Hickman, Jr.
Executive Director

cc: Richard Eldredge

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525 WEST JEFFERSON STREET
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TEL: 528-2517
AREA CODE 217

P.C. # 13

October 29, 1984

Pollution Control Board
309 West Washington Street
Suite 300
Chicago, IL 60606

Attention: Dorothy M. Gunn, Clerk

Re: R84-22 (Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites)

Dear Ms. Gunn:

Enclosed please find twelve (12) copies of "Supplemental Comment of Illinois Chapter of National Solid Wastes Management Association," together with a Motion for Leave to File Instanter and the supporting Affidavit of Fred Prillaman. Kindly file the enclosed documents in these proceedings. Please note that we are today serving copies of said documents upon all interested parties to this cause by first class mail.

Thank you.

Very truly yours,

MOHAN, ALEWELT & PRILLAMAN

By

FCP:acs
Enc.

P.C. #13

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE OF WASTE DISPOSAL SITES) R84-22

NOTICE OF FILING

TO: Each Person Named on Attached Service List

Please take notice that we are filing this date, October 29, 1984, the "Supplemental Comment of Illinois Chapter of National Solid Wastes Management Association," by submitting twelve (12) copies to the Clerk of the Illinois Pollution Control Board, and by submitting three (3) copies to the Illinois Environmental Protection Agency. A copy of the Supplemental Comment of Illinois Chapter of National Solid Wastes Management Association is attached hereto and hereby is served upon you.

MOHAN, ALEWELT & PRILLAMAN,
Attorneys for THE NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

By _____
Fred C. Prillaman

FRED C. PRILLAMAN
MOHAN, ALEWELT & PRILLAMAN
Attorneys for NSWMA
Suite 400 Jefferson West
525 West Jefferson Street
Springfield, IL 62702
Phone: (217) 528-2517

DATED: This 29th day of October, 1984

ICF INCORPORATED International Square, 1850 K Street Northwest, Washington, D.C. 20006 (202) 862-1100

November 1, 1984

P.C. #14

Ms. Kathleen Crowley
Hearing Officer
Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60605

Re: R84-22 (Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites)

Dear Ms. Crowley:

This letter ties up the loose ends left at my appearance in Chicago, Illinois on September 24, 1984 at the hearing on Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites (R84-22).

A question was raised about the report cited on p. 6 of the written testimony. The April 1984 study of EPA Region VI indicated that a very small percentage of financial responsibility documents had been reviewed; these reviews would have been conducted by the states in EPA Region VI, not the federal EPA, since all of these states had received interim authorization.

A copy of the Marsh & McLennan Survey of State Hazardous Waste Management Regulations is attached as Exhibit 9. This was the primary source of my testimony regarding states which do not allow use of a financial test for assuring closure and post-closure care expenses. I did not use the information uncritically but reviewed all notes and thus rejected Marsh & McLennan's characterization of some states. ICF's own survey of closure/post-closure financial requirements in all 50 states was conducted in 1982 and is thus too dated to serve as a basis for testimony; hence, my reliance on the Marsh & McLennan report. In October, 1984, ICF contacted those states directly by telephone to confirm the availability of the financial test: Delaware does accept the test; Maine accepts the test for closure/post-closure only (not liability coverage); Massachusetts and Michigan do not allow the financial test; Missouri does not allow the test for permitted facilities; North Dakota accepts the test; and Wisconsin allows a different financial test for closure/post-closure (but not liability). The above findings are based on representations by state officials, not on a review of published state regulations.

With respect to the Net Fixed Asset test discussed in the written and oral testimony, a question was raised whether it should be included in Alternative

II as well as Alternative I of a financial test. It is not consistent with the philosophy of Alternative II to require such a test, although most utilities would probably have little difficulty satisfying the Net Fixed Asset requirement. Wisconsin does not incorporate that ratio into its Alternative II. Thus, I recommend that it be incorporated only in Alternative I should Illinois desire a more stringent financial test.

Sincerely,

Paul Bailey

PB:mdb
Attachment
cc: Morton Dorothy

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CHERYL RAGSL STICKEL

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P.C. #15

March 27, 1985

Jacob D. Dumelle, Chairman
Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

John C. Marlin
Pollution Control Board
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Bill S. Forcade
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Walter J. Nega
Pollution Control Board
309 West Washington Street
Suite 300
Chicago, Illinois 60606

Re: Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites (R84-22)

Dear Members of the Pollution Control Board:

As you may recall from our previous work on these and related regulatory hearings, we are the attorneys for the Illinois Chapter of National Solid Wastes Management Association. Recently, we prepared a series of comments and filed them with the Joint Committee on Administrative Rules. Copies of those comments and of our cover letter to JCAR are enclosed.

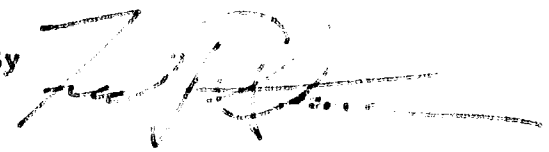
At the March 19, 1985 JCAR hearing, JCAR Staff presented its recommendations, only the first of which was endorsed by JCAR itself. Neither the JCAR Staff recommendations nor the attendant Resolved Issues and Problems adequately addresses the concerns raised by NSWMA in its comments.

The Illinois Chapter of NSWMA sincerely believes that it has set forth valid and significant objections, comments and recommendations, some as to form and some as to substance, which we urge the Pollution Control Board to consider. We are sending each Board Member a copy of these comments well in advance of the date by which the Board must respond to the JCAR objection, with the hope that the NSWMA comments can be addressed at that time.

Thank you.

Very truly yours,

MOHAN, ALEWELT & PRILLAMAN

By 

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Enc.

cc: Dorothy M Gunn, Clerk
Morton Dorothy

MOHAN, ALEWELT & PRILLAMAN
LAWYERS
[illegible]
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JAMES F MOHAN
EDWARD J ALEWELT
FRED C PRILLAMAN
PAUL E ADAMS
ROGER W HOLMES
CHERYL RAGLE STREET

TEL 217 [illegible]
AREA CODE 217

February 28, 1985

The Illinois General Assembly Joint
Committee on Administrative Rules
509 South Sixth Street
Springfield, IL 62705

Re: In the Matter of Financial Assurance for Closure and Post-Closure Care of Waste Disposal Sites (Temporary Rules), Pollution Control Board Docket R84-22B

Dear Members of the Joint Committee:

The following comments are submitted by the Illinois Chapter of the National Solid Wastes Management Association (NSWMA). The NSWMA presently consists of 168 members, many of whom are owners and operators of landfills in Illinois, including both large and small sanitary landfills. NSWMA attended, through its attorney and through employees and members, each of the five (5) merit hearings in this regulatory proceeding, and participated in the proceeding by presenting witnesses and other evidence and by questioning Board witnesses.

Under Section 7.06a of the Administrative Procedure Act, this Joint Committee is to determine whether the adoption and effectiveness of a proposed rule by an agency would be objectionable under any of the standards appearing in Sections 7.04 through 7.08, inclusive, of the Act. Among those standards are standards relating to the propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy (Section 7.04), the reduction of the number and bulk of rules and the removal of redundancies, unnecessary repetitions and inconsistencies (Section 7.05), and the merger, modification, establishment or abolition of regulations and the elimination or phasing out of updated, overlapping or conflicting regulatory requirements of general applicability (Section 7.08).

It is with these standards in mind that NSWMA submits the following comments. For convenience, we have organized

these comments into a "problem and solution" format, in which we state the nature of the problem that concerns the regulated industry and a suggested solution to the problem, followed by NSWMA's reasons for the suggested solution.

The most objectionable aspect of the Board's proposal is the subject of our first comment. The Board's closure and post-closure care standards are presently undergoing change in a companion proceeding (In the Matter of: Permit Requirements and Operating Standards for Owners and Operators of Class I and Class II Landfills, and for Generators and Haulers of Special Waste, PCB R84-17) and thus constitute a "moving target." NSWMA believes that the Board is seeking to impose an unnecessary burden on landfill operators in R84-22B by requiring them to prepare what will effectively turn out to be at least two (2) complete sets of plans and permit applications for closure and post-closure care, the first of which will be based on current requirements and the second of which will be based on the requirements of R84-17. The Legislature did not mandate this in Public Act 83-775, and nothing brought out in the hearings justifies it. NSWMA requests the Joint Committee to rule that the R84-22B regulations should not become final until such time as the R84-17 regulations, containing these standards, become final. The logical solution is to consolidate the R84-22B proceedings with the R84-17 proceedings for further hearings on the merits of proposed standards for landfills, including proposed closure and post-closure care standards. Alternatively, the Board should be required to hold additional merit hearings on R84-22 in conjunction with the economic impact hearings it will be required to hold when the Department of Energy and Natural Resources completes its economic impact study.

The remaining eleven (11) comments deal more specifically with problems of illogic, inconsistency, and confusion. Since the members of NSWMA are directly impacted by these proposed regulations, it is imperative that such problems be solved at the earliest possible time. We have respectfully suggested what those solutions should be.

In keeping with the Pollution Control Board's own format of underlining proposed new language and striking out proposed deletions to Part 807, Illinois Administrative Code, Title 35, where language is underlined once but then crossed out, it signifies that the Board had proposed the language but

NSWMA proposes to delete it. We have chosen to use double underlining for our proposed new amendments.

We thank you for the opportunity to submit these Comments, and we appreciate JCAR's consideration of them.

Very truly yours,

MOHAN, ALEWELT & PRILLAMAN

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Enc.

COMMENT NO. 1

SINCE THE PRESENT PROPOSAL (R84-22) EMBRACES SUBJECTS FAR BEYOND THOSE NEEDED TO SATISFY THE NARROW REQUIREMENTS OF PUBLIC ACT 83-775, AND SINCE SUBSTANTIVE REGULATORY CHANGES TO CLOSURE AND POST-CLOSURE CARE ARE CURRENTLY THE SUBJECT OF A COMPANION DOCKET (R84-17), THE PRESENT DOCKET SHOULD BE CONSOLIDATED WITH AND BECOME FINAL ONLY UPON THE ADOPTION OF FINAL REGULATIONS IN R84-17.

BACKGROUND:

In 1973, the Pollution Control Board adopted regulations which included, in part, requirements for the proper closure and post-closure care of landfills. In the matter of: Chapter 7: Solid Waste Rules and Regulations, R72-5 (July 31, 1973). These regulations, which still exist today, appear at 35 Ill. Adm. Code Part 807, 7 Ill. Reg. 13636 et seq. At the merit hearings in the present case (R84-22), the Board's own witness, Patrick E. Lynch, P.E., testified that these existing regulations governing closure and post-closure care effectively constitute a "closure plan":

> "The existing Part 807 addresses closure and post-closure care only with regard to sanitary landfills. It does it generally in Sections 807.312, 807.313 and 807.315 in that air pollution and water pollution are prohibited and the waters of the state are to be protected. It does it specifically in Section 807.305(c) by requiring two feet of final cover within 60 days, Section 807.314(e) by requiring adequate measures to monitor and control leachate, and a number of the provisions in Section 807.316 which requires that the permit application include information sufficient to show that closure can be accomplished and exactly how it will be accomplished. For instance, Section 807.316(a)(5) requires information on the earth materials at the site to assure reliability of the site design. Section 807.316(a)(9) requires a

schedule of construction. Section 807.316(10) requires a topographic map indicating final contours and landscaping and a statement of the proposed final use. Section 807.316(a)(13) requires a schedule of filling and methods of compaction. Section 807.316(a)(14) requires a showing of the types and sources of final cover material. Section 807.316(a)(15)(a) requires monitoring wells and gas monitoring points. Section 807.316(a)(15)(k) requires a showing of borrow areas. Section 807.316(a)(15)(p) requires provisions for concealing the site from public view. Section 807.318 requires that any gas, water or settling problems appearing in the three year period after closure be abated. Although there is no requirement in the existing Part 807 for a closure plan itself, the above mentioned requirements are effectively a closure plan." Ex. 17, written testimony of Patrick E. Lynch, P.E., filed on September 28, 1984 in R84-22 (page 2) (emphasis added).

In 1984, the Environmental Protection Agency proposed comprehensive amendments to these regulations, including proposed amendments to closure and post-closure care requirements for landfills. In the matter of: Permit Requirements and Operating Standards for Owners and Operators of Class I and Class II Landfills, and for Generators and Haulers of Special Waste, R84-17 (May 30, 1984). The Illinois Chamber of Commerce is presently proposing to file its own alternative set of regulations to the Agency's proposal in R84-17, which proposal will also include proposed amendments to the closure and post-closure care rules. Without question, the Board will be holding merit hearings on R84-17 in 1985.

PROBLEM:

The regulated landfill industry is being asked to

hit a "moving target," and unnecessarily so. These proposed regulations (R84-22) would require landfill operators to prepare plans and permit applications, and seemingly endless "revisions" thereto, regarding proper closure and post-closure care, when the substantive regulations governing such matters are currently undergoing change, not in this docket but in another docket (R84-17). The problem is that compliance with the permit requirements of R84-22 depend on what substantive regulations are in place; thus, preparation of plans and permit applications (and revisions, etc.) under R84-22 will simply have to be redone once R84-17 becomes law.

SOLUTION:

NSWMA believes that R84-17 and not R84-22 is the docket in which the Board should consider changes in closure and post-closure requirements and the need to prepare plans and permits and revisions thereto. There are two (2) good reasons for this: first, Public Act 83-775 is narrow in scope and does not require the promulgation of broad-ranging regulations to achieve its purpose; and, second, substantive regulations governing landfill design, operation, closure and post-closure are so closely interrelated that they should be considered in a single (or consolidated) docket, not in piecemeal fashion.

Many of the remaining comments simply highlight the need to delay final adoption of these regulations either

until R84-17 becomes final or, alternatively, until further merit hearings can be conducted.

COMMENT NO. 2

EXCEPT FOR THOSE WHO PROPOSE TO DEVELOP NEW REGIONAL POLLUTION CONTROL FACILITIES, LANDFILL OPERATORS SHOULD NOT BE REQUIRED TO SUBMIT DETAILED CLOSURE AND POST-CLOSURE CARE PLANS AND RELATED FILINGS, AS PART OF ANY PERMIT APPLICATION, UNTIL MARCH 1, 1988 OR BY THE EFFECTIVE DATE OF R84-17, WHICHEVER IS SOONER.

PROBLEM:

The Board has provided for a 3-year "transition" or "phase-in" period, during which time, theoretically, no existing landfill would be required to file detailed closure and post-closure plans, in permit application form. On March 1, 1988, all landfill operators who have not already obtained permits containing the plans (such as operators of "new regional pollution control facilities" as defined in Section 3(x) of the Act) will be required to file such plans for approval by the Agency. Section 807.624(a). There is good reason for this rule: the substantive rules on what a closure plan should look like, and what a post-closure care plan should look like, are presently the subject of a companion set of regulations, docketed as R84-17. See Comment No. 1. There have already been inquiry hearings on those regulations, and it is assumed that merit hearings will continue throughout 1985, and possibly into 1986. Thus, it will not be until sometime in 1986 or 1987 that landfill operators will know what substantive standards will have to be met in their closure and post-closure care plans. Until

that time, they will be entitled to rely on the interim formula appearing at Section 807.624.

The 3-year delay in filing such detailed plans is also in response to the evidence at the hearings, which demonstrated overwhelmingly that the Agency is not staffed to handle a deluge of such plans and permit applications at this time.

Yet, the Board contradicts these rules and the logic behind them by providing at Section 807.205(l) that a landfill operator who applies for any permit after March 1, 1985 must include, as part of that permit application, a detailed closure plan, a detailed post-closure care plan, and several related items. See also Section 807.503(d), which restates Section 807.205(l), and Section 807.624(a), which states that no permit application filed after March 1, 1985 may utilize the formula appearing at Section 807.624.

This is contrary to the Board's own recognition of the need for a formula until such time as the "moving target" of substantive closure and post-closure care standards comes to a stop and landfill operators can know with some degree of certainty what they are expected to do.

SOLUTION:

Amend Sections 807.205(l), 807.206(c), and 807.624(a), as follows:

Section 807.205 Applications for Permit

* * *

1) All applications for permits to develop new regional pollution control facilities filed after March 1, 1985, shall include a closure plan, a post-closure care plan, a closure cost estimate and a post-closure care cost estimate showing how the operator will close each unit and provide post-closure care in accordance with all applicable regulations.

Section 807.206 Permit Conditions

* * *

c) All permits issued in response to applications to develop new regional pollution control facilities filed after March 1, 1985 shall include the following conditions:

* * *

Section 807.624 Interim Formula for Cost Estimate

a) An operator may temporarily utilize the formula of this Section for preparing a cost estimate instead of preparing a cost estimate based on closure and post-closure care plans. No permit application to develop a new regional pollution control facility filed after March 1, 1985 may utilize this formula. Each operator must file an application to ~~modify~~ revise the site permit to include closure and post-closure care plans and cost estimates by March 1, 1988.

* * *

DISCUSSION:

Nothing in Section 21.1 of the Act requires operators of landfills to prepare or file any "closure plan" or "post-closure care plan," and certainly nothing requires landfill operators to file such plans in the form of a permit application. NSWMA agrees with the Board that the plans should, ultimately, be included in the site permits, and further agrees that there should be an outside time limit --

such as March 1, 1988 -- for this to happen. Having participated in all of the hearings and reading the proposed regulations as a whole, NSWMA believes the Board intended to require such plans to be submitted, in permit form, only at such time that a new site or a major site modification of an existing site, such as an expansion, was sought to be approved. See the definition of "new regional pollution control facility" at Section 3(x) of the Act. Yet, Section 807.205(l) indicates that all permit applications filed after March 1, 1985 include such plans. Left unamended, the Board's references to "all applications" in Section 807.205(l) and to "all permits" in Section 807.206(c) could be applied to such documents knows as "special waste permits" or applications therefor. The Agency receives literally hundreds of one-page permit requests each month from licensed landfills in Illinois, requesting permission to dispose of "special wastes." Technically speaking, these one-page special waste disposal requests are permit applications and, literally applied, Sections 807.205(l) and 807.206(c) could require an applicant to include, as part of these routine requests, a detailed closure plan under the first-cited section, and require the Agency to include the closure plan as a condition to the permit under the second-cited section. The Board did not intend such a result, and the Agency is not prepared to handle this result.

The amendment to Section 807.206(c) is also needed

to avoid creating a "gap" between the date of filing a permit application, and the date of permit issuance. The Board probably intended Sections 807.205(l) and 807.206(c) to refer to the same document, namely, a permit issued in response to an application filed after March 1, 1985. Otherwise, permit applications filed prior to March 1, 1985 and still being considered by the Agency after that date, would have to be rejected automatically and re-submitted with the necessary closure and post-closure plans. The Board clearly did not intend for the regulations to have retroactive effect.

COMMENT NO. 3

A PERMIT CONTAINING A CLOSURE PLAN AND A POST-CLOSURE PLAN AS CONDITIONS SHOULD NOT CONTAIN, AS FURTHER CONDITIONS, REQUIREMENTS THAT APPEAR VERBATIM IN THE REGULATIONS.

PROBLEM:

Section 807.206(c) proposes to add conditions to permits that repeat verbatim certain regulatory requirements, as follows:

Condition/Section	Requirement/Section
807.206(c)(3)	807.505(a)
(4)	506(a)
(5)	505(b)
(6)	601
(7)	623

There is no apparent need for such duplication, and none is cited by the Board in its Opinion. Further, Section 807.206(c)(5) is contradicted by Section 807.209(b). Finally, a bond or other security cannot be required as a condition for the issuance of any permit. Section 39(a) of the Act. Thus, Section 807.206(c)(6), in addition to being unnecessarily duplicative, is unauthorized, and should be stricken.

SOLUTION:

Amend Section 807.206(c) as follows:

Section 807.206 Permit Conditions

* * *

c) All permits issued in response to applications

to develop new regional pollution control facilities filed after March 1, 1985 shall include the following conditions:

1) A closure plan; and

2) A post-closure care plan if required~~;~~.

~~3) A requirement that the operator notify the Ageney within 30 days after receiving the final volume of waste;~~

~~4) A requirement that the operator initiate implementation of the closure plan within 30 days after the site receives its final volume of waste;~~

~~5) A requirement that the operator not file any application to modify a closure plan less than 180 days prior to receipt of the final volume of waste;~~

~~6) A requirement that the operator provide financial assurance in accordance with Subpart F, in an amount equal to the current cost estimate for closure and post closure care;~~

~~7) A requirement that the operator file revised cost estimates for closure and post closure care at least every two years in accordance with Subpart F;~~

COMMENT NO. 4

THE RULES PERTAINING TO "REVISION" OF CLOSURE PLANS, COST ESTIMATES, PERMITS, AND FINANCIAL INSTRUMENTS, AND THE FREQUENCY WITH WHICH SUCH "REVISIONS" MUST BE MADE [SECTIONS 807.206(c)(7), 807.209(b), 807.214, 807.504, 807.603, 807.621, 807.623 AND 807.624(a)] MUST BE CLARIFIED AND MADE CONSISTENT.

PROBLEM:

A. Beginning with Section 807.206(c), the Board has created some confusion in terminology by alternatively using the terms "revise," "modify," "change" and "amend" to refer to plans, estimates, financial documents and permits, as follows:

Section	Terminology
807.206(c)(5)	"modify a closure plan"
807.206(c)(7)	"revised cost estimates"
807.209(a)	"revise any permit"
807.209(b)	"modification of a permit"
807.214(c)	"A revised cost estimate is a permit modification application."
807.504	"Amendment of Closure Plan" "revised closure plan"
807.504(a)	"Modification of operating plans"

The confusing terminology becomes a problem when one attempts to determine whether any revision modification/amendment to any plan/estimate necessarily requires a revision/modification/amendment to one's permit. For example,

the Board requires cost estimates to be based on plans [Section 807.621(a)], and presumably would require revised cost estimates to be based on revised plans [Section 807.621(b)]. Yet, Section 807.214(a) provides that a revised cost estimate is any cost estimate other than one which results from modification of a closure or post-closure care plan. So when does a landfill operator need to revise his cost estimate and/or his permits? It depends on what new Section you read:

Section	Requirement
807.206(c)(7)	File revised cost estimates every 2 years, regardless of changes or amendments to plans
807.214(c)	The above requirement [Section 807.206(c)(7)] is filed in the form of a permit modification application
807.504(a) and (b)	File permit application which includes a revised (amended?) closure plan upon certain modifications
807.621(b)	Revise cost estimate whenever a change (?) in closure plan increases estimate
807.623(c)	Prepare new cost estimates; must file revised estimates even though no price changes
807.624(a)	File application to modify permit and include cost estimates.

B. Even if the terminology is clarified (see Solution), Section 807.504 remains confusing and, as it is written, contrary to what the Board probably intended, in

that it literally would apply to any slight change in operating procedures. Closure plans, once approved, should not have to be subjected to further permit reviews each time minor modifications, having only de minimis effects on closure, are made to site design and/or operations.

Once closure and post-closure care plans have been made part of a site permit (this will be true of all new regional pollution control facilities applying for permit after March 1, 1985, and will be true of all landfills within 90 days after March 1, 1988), those plans should not have to be amended unless there are:

- material modifications in site design which substantially affect closure; or
- material modifications to site operations which substantially affect closure.

The Board has proposed at Section 807.504 that any such modification, even if it were to produce a de minimis effect on closure must result in yet another permit application containing a "revised" closure plan. This is not justified, either from a logical, environmental or economic standpoint. Consider, for example, Sections 807.504(b)(1) and (2). If an operator of a landfill were to lose a customer to a competitor (or because of a work stoppage) and thereby experience a "temporary suspension" and/or a "reduction in the rate" of waste acceptance at the site, which could have a small impact on closure (e.g., delaying closure

date a month or two), he would be required to go through an entire permit application procedure for no apparent purpose.

The Board certainly did not intend for landfill operators to file permit applications with the Agency and to seek changes to closure plans every time there is a slight change or modification in site operations, yet that is precisely what Section 807.504 says. The regulations should include a standard for the Board to use to determine whether it will require permit applications to be filed. In order to remain consistent, we believe the terms "material" and "substantial," since they are the standards appearing in 35 Ill. Adm. Code Sec. 702.184, should be used here as well.

SOLUTION:

Amend Sections 807.209(b), 807.214(a), 807.214(c), 807.504, 807.505(b), 807.600(b), 807.605(b), 807.621(b), 807.622(b), 807.623 and 807.624(a) as follows:

Section 807.209 Permit Revision

* * *

b) The permittee may request ~~modification~~ revision of a permit at any time by filing pursuant to Section 807.205 an application reflecting the ~~modification~~ revision requested. An application for permit revision shall reopen only that portion of the permit, or condition thereto, sought to be revised.

Section 807.214 Revised Cost Estimates

~~a) A revised cost estimate is any cost estimate other than one which results from modification of a closure or post closure care plan.~~

~~b)~~ a) * * *

~~c)~~ b) For Agency review purposes, A a revised cost

estimate ~~is~~ shall be processed as a permit ~~modification~~ revision application. The revised cost estimate shall be deemed incorporated into the permit unless the Agency takes final action on the revised cost estimate within 90 days after its receipt as provided by Section 39(a) of the Act.

Section 807.504 ~~Amendment~~ Revision of Closure Plan

An operator of a waste management site shall file a permit application including a revised closure plan upon:

a) ~~Modification~~ Material revision of operating plans or material modification of site design substantially affecting the closure; ~~other than modifications authorized in the permit;~~ or

* * *

Section 807.505 Notice of Closure and Final Amendment to Plan

* * *

b) Except for good cause demonstrated to the Agency, ~~T~~the operator of a waste management site shall not file an application to ~~modify~~ revise the closure plan less than 180 days before receipt of the final volume of waste. Failure to timely file shall not constitute a bar to consideration of such an application, but may be alleged in an enforcement action pursuant to Title VIII of the Act.

Section 807.600 Purpose, Scope and Applicability

* * *

b) Each operator must file a closure plan as part of a permit application, as required in Section 807.205(e). The operator of a disposal site or indefinite storage unit must also file a post-closure care plan (Sections 807.205, 807.503 and 807.523). The operator of a diposal site or indefinite storage unit must prepare a cost estimate of closure and post-closure care, and provide financial as-

surance in this amount (Sections 807.601 and 807.620). Financial assurance may be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or performance, letter of credit, insurance or self-insurance (Section 807.640). The cost estimate and amount of financial assurance is to be ~~updated~~ revised at least on a biennial basis (Section 807.623).

* * *

Section 807.605 Application of Proceeds and Appeal

* * *

b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order ~~modifications~~ revisions in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. The Board may also order a closure or post-closure care plan ~~modified~~ revised, and order proceeds from financial assurance applied to execution of a closure or post-closure care plan.

* * *

Section 807.621 Cost Estimate for Closure

* * *

b) The operator must revise the closure cost estimate whenever a ~~change in~~ material revision of the closure plan substantially increases the closure cost estimate.

* * *

Section 807.622 Cost Estimate for Post-Closure Care

* * *

b) Until the Agency has issued a certificate of closure for the site, the operator must revise the post-closure care cost estimate whenever a ~~change in~~ material revision of the post-closure care plan substantially increases the cost estimate.

* * *

Section 807.623 Biennial Revision of Cost Estimates

a) The operator must revise the current cost estimate at least once every two years. The revised current cost estimate must be filed on or before the second anniversary of the date of Agency approval of the filing or last revision of the current cost estimate.

b) The operator must review the closure and post-closure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with current operations and regulations. The operator must either certify that the plans are substantially consistent, or must file an application reflecting new revised plans.

c) The operator must prepare new revised closure and post-closure cost estimates reflecting current prices for the items included in the estimates. ~~The operator must file revised estimates even if~~ If the operator determines that there are no changes in the prices, the operator shall so certify.

Section 807.624 Interim Formula for Cost Estimate

a) An operator may temporarily utilize the formula of this Section for preparing a cost estimate instead of preparing a cost estimate based on closure and post-closure care plans. No permit application to develop a new regional pollution control facility filed after March 1, 1985 may utilize this formula. Each operator must file an application to ~~modify~~ revise the site permit to include closure and post-closure care plans and cost estimates by March 1, 1988.

* * *

DISCUSSION:

In every instance where the words "revise," "modify" and "amend" appear, the proper word should be used in keeping with the Agency's own definitions. "Modification" is defined by the Agency as "any physical change, or change

in method of operation;" therefore, the word "modify" should only be used if referring to such changes. In instances where the information in documents is required to be amended or updated, the term "revise" should be used consistently throughout the regulations. In addition, we believe proposed Section 807.214(a) must be stricken, inasmuch as the definition of "Revised Cost Estimates" merely creates confusion.

Even if permit revisions are required only when material modifications to operations are requested, there still must be some limit on the Agency's permit review power. The permit revision application in such a case should not reopen other, unrelated, portions of the permit. Thus, the new sentence in Section 807.209(b) must be added. This is consistent with Section 702.183, which imposes the same restriction relative to hazardous waste sites.

As proposed, Section 807.505(b) would subject an operator to possible fines and penalties simply for filing an application to revise a closure plan! Certainly the Board would agree that good cause could be demonstrated to the Agency, in most cases, to justify the filing of such a permit request less than 180 days before receipt of final volume of waste. NSWMA believes this section must be amended to provide such an opportunity to demonstrate good cause.

COMMENT NO. 5

SECTION 807.603 PERTAINING TO INCREASING FINANCIAL ASSURANCE LACKS STANDARDS AS MANDATED BY SECTION 4.02 OF THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT.

PROBLEM:

Strict compliance with Section 807.603 as written would require an operator to become a financial analyst, constantly monitoring costs, stock markets and his own financial condition. Is an operator required to make daily analyses of these factors and increase the total amount of financial assurance by the slightest increment?

SOLUTION:

Amend Section 807.603 as follows:

Section 807.603 Upgrading Financial Assurance

a) The operator must maintain financial assurance equal to or greater than the current cost estimate ~~at all times except~~ as provided in this Section.

b) The operator must increase the total amount of financial assurance so as to equal the current cost estimate within 90 days after notification by the Agency that any of the following materially affects the financial assurance required hereunder:

1) ~~An~~ A substantial increase in the current cost estimate as shown by a revised cost estimate prepared pursuant to Subparts E and F; or

2) A substantial decrease in the value of a trust fund as disclosed in the trustee's annual evaluation required under Section 807.661(e).

~~3) A determination by the Agency that an operator no longer meets the gross revenue for financial test; or~~

~~4) Notification by the operator that the operator intends to substitute alternate financial assurance instead of self-insurance.~~

c) The operator must substitute financial assurance for self-insurance within 90 days after either of the following:

1) Notification by the Agency that the operator's updated information pursuant to Section 807.666(f)(1) demonstrates that an operator no longer meets the gross revenue or financial test and is incapable of meeting said test within 30 days; or

2) Notification by the operator that he intends to substitute alternate financial assurance for self-insurance.

DISCUSSION:

The operator should not have to increase financial assurance unless there is a material adverse effect on the total amount of assurance, taking into consideration all relevant factors. The term "material" is one which is commonly used in connection with financial statements and one which the operator can readily recognize or, alternatively, can agree upon with the Agency. See also Comment 4.

We have also recommended that the factors enumerated be geared to specific reports already required to be filed under the regulations or customarily available to operators. For example, in subparagraph (b)(1), both the operator and the Agency can easily determine if the operator

needs to increase his financial assurance when he has finished preparing a revised cost estimate and it shows a substantial increase. Likewise, in subparagraph (b)(2), both the operator and the Agency can determine whether additional financial assurance is required when the annual trustee's report demonstrates a substantial decrease in value.

The gross revenue or financial test should be geared to the company's tax return as it is in Section 807.666 and the company should be given the opportunity to meet the test before substitute financial assurance is required, since fluctuations in financial data may not reflect the true course of an operator's business.

The time for increasing or substituting financial assurance should be triggered by notice from the Agency, except in the case of subparagraph (c)(2).

Subparagraph (b)(4), as written, presumes that substitution of alternate financial assurance in lieu of self-insurance will automatically require an increase in financial assurance. Such presumption is invalid inasmuch as all methods of financial assurance should give the Agency equal protection. An increase should only be required if, after a review of all factors, such is warranted. What the Board means here is that an operator must come up with an alternate (not necessarily an increased) financial assurance mechanism in this situation, and that is what subparagraph (c)(2) now says.

COMMENT NO. 6

THE TIME FOR COMMENCEMENT OF INTERMEDIATE OR FINAL COVER OR OTHER CLOSURE ACTIVITIES, AND THE DISTINCTION BETWEEN "ABANDONMENT" UNDER SECTION 807.104 AND "TEMPORARY SHUTDOWN" UNDER SECTIONS 807.503(c)(3) AND 807.506(c), MUST BE CLARIFIED AND MADE CONSISTENT.

PROBLEM:

Under current rules, a landfill operator achieves "closure" of a site by placing 2 feet of suitable cover (usually compacted earth) over the entire surface of each portion of the landfill which has received all of the waste it is permitted to receive. The final elevation is referred to as the "final lift" in Section 807.305. The final cover is to be applied not later than 60 days following the placement of refuse in the final lift. Section 807.305(c). In areas other than the final lift, that is, where the elevation is far below the final permitted elevation and landfilling is expected to continue for some time into the future, the only cover required is daily cover under Section 807.305(a), unless no additional refuse will be deposited within 60 days, in which case the operator must apply 1 foot of intermediate cover to that area. Section 807.305(b).

The Board does not propose to change these rules in R84-22 (although the IEPA has proposed to change them in R84-17). What the Board has proposed in R84-22 is a series of rules for "closure" which appear to contradict the existing timetables for applying intermediate and final cover.

Specifically, Sections 807.662(e)(2)(A), 807.663 (e)(2)(A), 807.664(e)(2)(A) and 807.665(e)(1) authorize the Agency to draw upon the financial assurance document whenever the site is "abandoned," which Section 807.104 defines as the failure to initiate closure within 30 days after receipt of the final volume of waste. What about the 60-day provision in Section 807.305? The operator may not know, on the 30th day, whether the next load of waste is due in on the 31st or 35th or some subsequent date. Yet, the Board would require him to initiate "closure" (the term is not defined -- does this include placement of intermediate or final cover?) within 30 days after the final volume of waste is received. Section 807.506(a)(1). There is great confusion here as to whether the operator is in a "temporary shutdown" phase or an "abandonment" phase or an "intermediate" phase.

SOLUTION:

Delete the Section 807.104 definition of "abandonment," amend the Section 807.104 definition of "final volume of waste," and amend Sections 807.505(a), 807.506(a)(1), 807.503(c)(3), as follows:

Section 807.104 Definitions

~~"Abandonment" means the failure to initiate closure within 30 days after receipt of the "final volume of waste."~~

* * *

"Final volume of waste" means ~~the last~~ that quantity of waste received by the operator at the site requiring the application of final cover pursuant to Section 807.305(c). A quantity of waste is ~~assumed~~ presumed to be the final volume of waste (1) 30 days after its deposit at the final lift; or (2) 60 days after its deposit at a lift other than the final lift if the operator receives no additional waste within ~~30 days after receiving that quantity,~~ that time unless the operator demonstrates that ~~the operator~~ he expects additional waste. Waste arriving at the site for disposal in a manner which is not controlled by the operator does not affect the determination of when the final volume of waste was received by the operator.

* * *

Section 807.503 Closure Plan

* * *

c)3) Steps necessary to prevent damage to the environment during temporary shutdowns, including the application of intermediate cover as required in Section 807.305(b), if the operator wants a permit which would allow temporary shutdowns of the site without initiating final closure;

* * *

Section 807.505 Notice of Closure and Final Amendment to Plan

a) An operator of a waste management site shall send to the Agency a notice of closure within 30 days after the operator is presumed to have received his ~~date the~~ "final volume of waste" ~~is received at a waste management site for treatment, storage or disposal,~~, as that term is defined in Section 807.104;

* * *

Section 807.506 Initiation of Closure

* * *

a)1) Within 30 days after ~~receipt of~~ giving the required notice to the Agency under Section 807.505 that the operator has received the final volume of waste; and

* * *

DISCUSSION:

The definition of "abandonment" should be deleted for four (4) reasons. First, this is a new provision, which did not appear in the First Notice and, therefore, was not discussed at the hearings.

Secondly, the definition is contrary to its dictionary meaning. Instead of the term meaning non-use coupled with the intent to desert, it is defined as a failure to act within 30 days.

Thirdly, the term as used in the regulations needs no definition, and may actually force the Agency into waiting 30 days to claim a site "abandoned," when from the facts, it may appear to be abandoned much sooner.

Finally, with the exception of Section 807.665(e)(1), the sections in which the term "abandon" appears (Section 807.662(e)(2)(A), 807.663(e)(2)(A), 807.664(e)(2)(A)) each contain a separate subsection providing for "failure to initiate closure" as a means to invoke liability on the financial assurer. Consequently, the definition of abandonment results in a redundancy in the sections noted.

The recommended definition of "final volume of waste" is more compatible with the long-standing use of "final lift" as appears in Section 807.305(c). The defi-

nition should be clear when reading from a present point of view rather than by hindsight. Based upon this definition, the regulations specify time periods within which certain presumptions arise and certain acts are required by an operator. As proposed by the Board, it is impossible for an operator to know whether he is in compliance with the regulations. For example, if an operator receives waste on Day 1 and places it on either the final lift or on an intermediate lift and receives no waste for 30 days thereafter, the following provisions come into play on Day 30:

1. Section 807.104 - Waste received Day 1 is presumed to be the operator's "final volume of waste"

2. Section 807.104 - If he hasn't initiated closure, the operator is presumed to have abandoned the site and the Agency is authorized to draw upon the financial assurance mechanism provided by the operator. (Sections 807.662(e)(2)(A), 807.663(e)(2)(A), 807.664(e)(2)(A), 807.665(e)(1))

3. Section 807.505(a) - Operator is required to notify Agency that he has received his final volume of waste.

4. Section 807.506(c) - Operator required to notify Agency of temporary shutdown.

5. Section 807.506(a)(1) - Operator must initiate the closure plan.

DAY 60

Section 807.305(c) - Operator required to complete final cover if final lift.

If our solution is adopted, the scenario is as follows: Day 1 an operator receives waste. 30 days pass and no waste is received. If the waste received on Day 1

was placed on the final lift, such waste is presumed to be the "Final volume of waste" on Day 30, and on that day the operator would so notify the Agency. Section 807.505(a). On Day 60, if not already done, the operator would commence closure activities under Section 807.506(a)(1). But if the waste received on Day 1 is not placed on the final lift, at Day 30 no presumption would arise, no notices would be given and no closure activities would commence, although an intermediate cover would be required under Section 807.305(b) if no additional waste is expected before Day 60. It would not be until Day 60 under this latter situation (intermediate lift, intermediate cover, no waste receipts for 60 days, no expected additional receipts) that a presumption of finality arises, and on that day the operator would so notify the Agency. Section 807.505(a).

COMMENT NO. 7

THE TIME FOR POST-CLOSURE CARE (PRESENTLY 3 YEARS UNDER SECTION 807.318) SHOULD NOT BE EXTENDED TO 30 YEARS FOR A SITE WHICH CONTAINS A RCRA UNIT, AS SECTION 807.507(c) NOW IMPLIES.

PROBLEM:

Section 807.507(c) refers to an "entire" site, which may contain a RCRA (hazardous waste) unit. Sections 725.217(a) (Part A, or "interim status," sites) and 724.217 (a) (Part B permitted sites) require post-closure care to continue for 30 years after closure of hazardous waste units. Presently, a non-hazardous waste unit need be monitored for only 3 years after closure. Section 807.318.

SOLUTION:

Amend Section 807.507(c), as follows:

Section 807.507 Partial Closure

* * *

c) Post-closure care of areas formed by dividing a site as provided in paragraph (a) shall continue until post-closure care of the last such area ~~entire site~~ is completed, in accordance with Section 807.318.

COMMENT NO. 8

SECTION 807.606 PERTAINING TO "RELEASING" OPERATORS FROM ALL FURTHER CLOSURE AND POST-CLOSURE RESPONSIBILITIES SHOULD BE MERGED INTO SECTIONS 807.508 AND 807.524, TO PARALLEL LANGUAGE PRESENTLY EXISTING IN SECTION 807.604 "RELEASING" FINANCIAL INSTITUTIONS AND TO REQUIRE THE AGENCY TO MAKE THESE DETERMINATIONS WITHIN 60 DAYS.

PROBLEM:

Section 807.508 requires the Agency, upon submission to it of certain proof, to "certify" that a site has been properly closed. However, nothing in Section 807.508 requires the Agency to act within any certain time, and nothing requires it to "release" the operator. On the other hand, Section 807.606(a) requires the Agency, upon submission to it of the exact same proof, to "release" the operator from further closure requirements, and to do so within 60 days.

The same problem is presented with Section 807.524 (Agency "certifies" that post-closure care plan has been properly completed, but is under no deadline to do so) and Section 807.606(b) (Agency "releases" operator from further post-closure requirements, within 60 days of receipt of Section 807.524 proof).

SOLUTION:

Amend Sections 807.508(b), 807.524(a), 807.524(c), 807.604 and 807.606 as follows:

Section 807.508 Certification of Closure and Release of Operator

* * *

b) Within 60 days after receipt of said plan sheets and affidavit, ~~if~~ the Agency finds that the site has been closed in accordance with the specifications of the closure plan, and the closure requirements of this Part, the Agency shall:

1) Issue a certificate of closure for the site;

2) Notify the operator in writing that it is released from the closure plan and the closure requirements of this Part and is no longer required to maintain financial assurance for closure of the site;

~~2)~~ 3) Notify the operator in writing that any applicable post-closure period has begun; and

~~3)~~ 4) Provide the date the post-closure care period begins.

Section 807.524 Implementation and Completion of Post-Closure Care Plan and Release of Operator

a) The operator of a waste disposal site shall begin implementation of the post-closure care plan commencing within 30 days of receipt of a certification of closure pursuant to Section 807.508.

* * *

~~c) The Agency shall certify that the post-closure care period has ended when it determines:~~

~~1) That the post-closure care plan has been completed; and~~

~~2) That the site will not cause future violations of the Act or this Part.~~

c) Within 60 days after receiving affidavits from the operator and a professional engineer that post-closure care has been completed in accordance with the post-closure care plan and the requirements of this Part, the Agency will certify that the post-closure care period has ended and notify the operator in writing that he is released from the post-closure care plan and the post-closure care requirements of this Part and is no longer required to maintain financial assurance for post-closure care of the site.

Section 807.604 Release of Financial Institution

The Agency ~~will agree to~~ shall release a trustee, surety, insurer or other financial institution ~~when~~ within 60 days after:

* * *

Section 807.606 Release of the Operator

~~a) Within 60 days after receiving affidavits from the operator and a professional engineer that closure has been accomplished in accordance with the closure plan, the Agency will notify the operator in writing that it is no longer required by this Subpart to maintain financial assurance for closure of the particular site, unless the Agency has reason to believe that closure has not been in accordance with the closure plan.~~

~~b) Within 60 days after receiving affidavits from the operator and a professional engineer that post-closure care has been completed in accordance with the post-closure care plan and the requirements this Part, the Agency will notify the operator in writing that it is no longer required to maintain financial assurance for post-closure care of the site, unless the Agency has reason to believe that continued post-closure care is required pursuant to the post-closure care plan and this Part.~~

DISCUSSION:

A merger of the release provisions of 807.606 upon certification of closure completes the cycle under Certification of Closure (807.508) and Certification of Post-Closure Care (807.524) and avoids having to repeat language regarding proof to release, which is the same proof required to certify. It also brings the release provisions under the same 60-day time limit.

Section 807.524(c) as proposed by the Board gives the Agency unbridled authority to forever withhold a release as to post-closure care with the open-ended standard proposed in 807.524(c)(2), to-wit, "Agency shall certify . . . care period . . . ended when it determines that the site will not cause future violations." Such lack of standards is prohibited under the Administrative Procedure Act.

COMMENT NO. 9

SECTION 807.661(g) (TRUST FUND - REIMBURSEMENT FOR EXPENSES) SHOULD BE AMENDED (1) TO REDUCE FROM 60 TO 10 DAYS THE TIME THE AGENCY HAS TO DETERMINE WHETHER TO RELEASE FUNDS, AND (2) TO ELIMINATE THE POWER OF THE AGENCY TO UNILATERALLY (AND WITHOUT STANDARDS) WITHHOLD SUCH REIMBURSEMENTS ALTOGETHER.

PROBLEM:

Section 807.661 establishes the trust fund mechanism for providing financial assurance. The money deposited in the trust by the operator is to be paid to the operator (or to his subcontractors) upon completion of certain closure and post-closure work, much the same as a contractor on any public or private job is paid periodically upon submitting a pay request to the owner showing what work has been done by him and/or his subcontractors, and the value of that work. The procedure typically takes only a few days to complete. Yet, the Board proposes to give the Agency 60 days just to determine whether the work in question was done. The Board gives no explanation for this unusually long time period, and no justification for it was presented at the hearings.

Moreover, the Board contradicts the requirements of Section 807.603 by providing in Section 807.661(g)(3) that the Agency may refuse to reimburse altogether for reasons possibly unrelated to the standards appearing in Section 807.603. See Comment 5.

SOLUTION:

Amend Section 807.661(g)(2) and (3) as follows:

Section 807.661 Trust Fund

* * *

g) Reimbursement for closure and post-closure care expenses:

* * *

2) Within ~~60~~ 10 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure or post-closure care plan or are otherwise justified, and if so, it will instruct the trustee in writing, within the same 10-day period, to make reimbursement in such amounts. ~~as the Agency specifies in writing.~~

~~3) If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance for closure and post-closure care.~~

3) If the operator is required to increase the total amount of financial assurance pursuant to Section 807.603, the Agency may withhold reimbursement of such amounts as it deems prudent until the operator complies with Section 807.603.

COMMENT NO. 10

SECTIONS 807.662 AND 807.663 (SURETY BONDS - 4 YEAR NONCANCELABLE TERM) SHOULD BE AMENDED TO REFLECT WHAT KIND OF BONDS THE SURETY INDUSTRY WILL, IN FACT, UNDERWRITE.

PROBLEM:

The Surety Bond Guaranteeing Payment (Section 807.662) and the Surety Bond Guaranteeing Performance (Section 807.663) both require the bond to be issued for a term of at least 4 years, and shall not be cancelable during that term. In addition, the operator may simply elect not to obtain substitute financial assurance prior to expiration of either bond, in which event the term of the bond is automatically extended for another year.

There is a serious question in the minds of the members of NSWMA who have attempted to obtain such bonds whether the surety bond industry will underwrite bonds on these terms. The Board believes that these bonds will be available to operators (Opinion, page 34) but the Surety Association of Illinois, in its October 18, 1984 comment filed with the Board in these proceedings (Opinion, page 3), did not say that bonds containing such provisions would be available.

SOLUTION:

Since the members of NSWMA should have available to them a reasonable number of options for complying with

these regulations, and since the problem posed in this comment goes to the economic hardship posed by the unavailability of bonds as viable options, Sections 807.662 and 807.663 should not become final until additional merit hearings, possibly consolidated with the economic impact hearings or with R84-17 hearings, have been held.

COMMENT NO. 11

THE LETTER OF CREDIT FORM (APPENDIX A, ILLUSTRATION E) CONTAINS NO REQUIREMENT THAT THE AGENCY CERTIFY THAT THE DEFAULT GIVING RISE TO THE DRAW HAS OCCURRED.

PROBLEM:

The form requires the Agency to present to the bank a statement certifying only that the amount of the sight draft is payable "pursuant to" certain laws, not as a result of the default of the operator. Similarly, the automatic extension clause contains no standard for drawing upon the instrument during the extension period.

SOLUTION:

Amend the signed statement to be presented by the Agency with the sight draft to draw on the letter of credit, to read as follows:

> "I certify that the amount of the draft is payable as a result of the failure of _____ to comply with ~~pursuant to~~ regulations issued under authority of the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001 et seq. and 35 Ill. Adm. Code 807.664(e)."

DISCUSSION:

As with Comment No. 10, there is some question in the minds of members of NSWMA whether the banking industry will issue letters of credit in this form. There does not appear to have been sufficient testimony from the banking industry at the merit hearings to justify the language ap-

pearing in this form. Of particular significance is the automatic extension clause, which deviates substantially from the standard automatic extension clause appearing in other letters of credit. The Board's form provides that the instrument can expire by its own terms on a given date, only to be "revived" 30 days later upon delivery of a notice to the bank stating that the operator failed, 30 days earlier, to furnish alternate financial assurance to the Agency. The bank is given no discretion in the matter. Compare the form required under RCRA for hazardous waste facilities, 40 CFR Section 264.151(d), wherein it is the bank that has the right to notify the Agency if it decides not to extend the letter of credit beyond the current expiration date.

At the very least, the Board should solicit testimony from the banking industry on the question of whether such radical departure from standard language will make these instruments difficult to obtain.

COMMENT NO. 12

SECTION 807.666 (SELF-INSURANCE, OR "FINANCIAL TEST") SHOULD BE AMENDED TO CONFORM TO THE RCRA FINANCIAL TEST FOR HAZARDOUS WASTE SITES.

PROBLEM:

The USEPA, when it adopted the RCRA financial test, did not limit its availability to a certain select group of businesses. Instead, the federal government considered only the financial strength of the company wishing to comply by means of the financial test, which such financial strength could be demonstrated through compliance with the tangible net worth requirements and ratios or bond ratings appearing in 40 CFR Section 264.143(e). The nature of the company's business was, and is, irrelevant, at least insofar as hazardous waste sites are concerned.

The Board states that it has derived its self-insurance option from the RCRA financial test (Opinion, page 37). However, even though these regulations apply only to non-hazardous waste sites, the Board has decided to make its self-insurance requirements more restrictive than the RCRA financial test by including a "gross revenue test" at Section 807.666(d). It makes little sense to allow companies deriving less than one-half of their gross revenues from waste disposal operations to use the RCRA financial test for hazardous waste sites, yet deny the availability of that option to them in Illinois relative to non-hazardous waste

sites. If anything, it should be the other way around; the requirements for hazardous waste sites should be stricter than those for non-hazardous waste sites.

SOLUTION:

Delete Section 807.666(d), as follows:

Section 807.666 Self-insurance for Non-commercial Sites

* * *

~~d) Gross-revenue-test.---The-operator-must-demonstrate-that-less-than-one-half-of-its-gross revenues-are-derived-from-waste-disposal-operations.~~

Original Do Not Remove

Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

(217)782-5544

June 24, 1985

P.C. #1

Kathleen Crowley
Hearing Officer
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Re: R84-22 Docket D

Dear Kathleen:

Enclosed is a letter IEPA received from the City of Champaign suggesting clarification or elimination of Section 14 of the trust form agreement contained in Appendix A, Illustration A to the financial assurance requirements contained in Part 807, Subpart F. I recommend that this suggestion be addressed as part of the new Docket D.

Sincerely,

Gary P. King

Gary P. King
Senior Attorney
Enforcement Programs
Division of Land Pollution Control

GPK/lm
Enclosure

cc: Frederick C. Stavins

CITY OF CHAMPAIGN

102 NORTH NEIL STREET CHAMPAIGN, ILLINOIS 61820 (217) 351-4471

LEGAL DEPARTMENT

FREDERICK C. STAVINS
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KATHRYN L. SAMUELSON
- ASSISTANT CITY ATTORNEY

CARL N. ISERMANN
- ASSISTANT CITY ATTORNEY

June 17, 1985

Mr. Joe Svoboda, General Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62707

Re: Section 4 and Section 14 of Trust Agreement

Dear Mr. Svoboda:

Recently the Board promulgated rules with respect to financial assurance for closure and post-closure care of waste disposal sites. Attached to the rules are various forms, among them a form of Trust Agreement. It appears to me that there is a conflict between Section 4 of the Trust Agreement and Section 14. Section 4 indicates that payments from the fund can only be made by order of the I.E.P.A. director. Section 14 indicates that the grantor (operator) can give orders, requests and instructions to the Trustee and that the Trustee can act on these orders, directions and instructions. Section 14 would seem to allow the operator to request the funds. I suggest that Section 14 be clarified or eliminated from the Trust form. If there is a different interpretation of these Sections that I have referred to, or a revision, I would appreciate hearing from you at your earliest opportunity.

Sincerely yours,

Fred

Frederick C. Stavins
City Attorney

FCS:ajw