ILLINOIS POLLUTION CONTROL BOARD September 8, 1988

IN THE MATTER OF:)	
)	
HAZARDOUS WASTE PROHIBITIONS)	R86-9, DOCKET B
)	

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon an August 4, 1988 Motion For Adoption of First Notice filed by the Illinois Environmental Regulatory Group (IERG). On August 16, 1988 Citizens for a Better Environment (CBE) filed a response, which was corrected on August 29, 1988. On September 6, 1988, Waste Management, Inc. (WMI) filed comments regarding IERG's motion, under a motion to file instanter. The motion to file instanter is hereby granted.

In addition to requesting that the Board proceed to First notice, IERG's motion states, among other things, that the Illinois Department of Energy and Natural Resources (DENR) is in the process of preparing an Economic Impact Statement (EcIS) on IERG's proposal and other features of the record in this docket. IERG states that DENR anticipates selecting a contractor and having a contract for the EcIS executed by the end of August, 1988, and that DENR intends to submit a completed EcIS to the Board within six months of contract execution, which would be the end of February, 1989.

In light of this information, the Board declines to proceed to First Notice at this time. The Board notes that the Illinois Administrative Procedure Act (APA) requires that a rulemaking be completed within one calendar year from the date of First Notice publication. If a rulemaking were to be completed after the one year date, the APA would preclude the rules from becoming effective: the entire rulemaking process would have to be repeated. Because the EcIS is not expected to be submitted until approximately the end of February 1989, and because public hearings on the EcIS will have to be scheduled and held, it is likely that the rulemaking could not be completed within the one year period beginning with a First Notice proposal submitted now.

Moreover, WMI's comments note that any regulations adopted pursuant to Section 39(h) of the Environmental Protection Act (Act) must be consistent with, and at least as stringent as, the federal land disposal restrictions enacted pursuant to Section 3004 of RCRA (42 U.S.C. Section 6924). WMI points out that on August 17, 1988, USEPA published "Land Disposal Restrictions for First Third Scheduled Wastes; Final Rule" (53 Fed. Reg. 31138,

effective August 8, 1988). WMI states that "[t]hese new federal requirements simply are far too comprehensive and complex to allow either the Board or interested parties to evaluate in a two-week period their effect on these rulemaking proceedings." WMI requests that the Board defer adoption of any First Notice proposal for a sufficient period of time to allow proper consideration, and comment, if necessary, regarding the effect of the federal land disposal restrictions on this proceeding.

The Board agrees with WMI that proper consideration need be given to the federal land disposal restrictions as they relate to this proceeding. In light of the Board declining to proceed today to First Notice until DENR is further along in its ECIS preparation, the Board believes that the interim period can best be utilized by establishing a review and comment period with regard to the federal land disposal restrictions recently published by USEPA. The Board would like to have the record on this issue supplemented before proceeding to First Notice. Therefore, the Board directs the Hearing Officer to establish a comment period to allow for the submission of comment with respect to this issue.

Finally, the Board wishes to note that Morton Dorothy, of the Board's Scientific and Technical Section, having been a substantive witness earlier in this proceeding, has been and will continue to be exterior to the Board in this proceeding consistent with the language and intent of Res 86-1, Protocols of Operation for the Scientific/Technical Section.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the day of Stenler, 1988 by a vote of ...

Dorothy M. Junn, Clerk

Illinois Pollution Control Board