

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1991

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL.ADM.CODE) R90-24
101.103(d) TO REQUIRE USE OF) (Rulemaking)
RECYCLED PAPER FOR ALL DOCUMENTS)
FILED WITH THE BOARD)

PROPOSED RULE. FIRST NOTICE.

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

This matter is before the Board on a rulemaking proposal filed by Business and Professional People for the Public Interest (BPI) on November 21, 1990. BPI asks that the Board amend Section 101.103 (35 Ill.Adm.Code 101.103) of its procedural rules to require the use of recycled paper for all documents filed by attorneys with the Board. The Board accepted the proposal on December 4, 1990, and established a comment period on December 20, 1990. The comment period expired on February 12, 1991. Pursuant to Section 26 of the Environmental Protection Act (Act) (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1026), the Board need not hold a hearing on procedural rulemakings, except as required by the Illinois Administrative Procedure Act (APA) (Ill.Rev.Stat. 1989, ch. 127, par. 1001 et seq.). No hearing has been held.

Proposal

BPI is a public interest law organization which provides legal representation to civic, consumer, environmental, and neighborhood organizations on a broad range of issues. BPI has a particular interest in the development and implementation of state laws, regulations, policies, and programs to encourage recycling and to improve solid waste management. BPI has appeared before the Board in several proceedings involving hazardous waste management and groundwater protection issues.

BPI proposes that the Board amend its procedural rules to require that all documents filed with the Board by attorneys be submitted on recycled paper. In the alternative, BPI asks that the Board amend its rules to encourage the use of recycled paper. BPI contends that requiring the use of recycled paper is consistent with state and federal public policies to increase the use of recycled paper, increase recycling of waste material and reduce the solid waste stream. BPI notes that the Illinois General Assembly has enacted legislation to promote recycling and stimulate recycling markets, minimize the volume of solid waste streams, encourage state governmental agencies to develop solid waste

management programs, and maximize state government's purchase of recycled paper products. (Ill.Rev.Stat. 1989, ch. 85, pars. 5954(a), 5956; Ill.Rev.Stat.1989, ch. 111 1/2, pars. 7052(b), 7053(c-e).) The United States Congress has enacted similar provisions. (42 U.S.C. §§ 6901, 6941, 6962.) BPI maintains that requiring the use of recycled paper would have a significant direct impact in helping to advance these state and federal policies. BPI notes that attorneys use massive amounts of office paper. BPI argues that the proposed amendment would stimulate recycling markets, reduce the state's solid waste stream, and preserve natural resources that are consumed in producing new paper.

BPI also contends that increased use of recycled paper is both feasible and cost-effective. BPI states that recycled paper is of comparable quality to non-recycled paper, and is widely distributed and used in Illinois. BPI maintains that the supply of recycled paper is already adequate and dependable, and can expand to meet rising demand from the legal profession. Additionally, BPI notes that it uses recycled paper for all its legal work, and that recycled paper is used for all photocopying purposes. BPI submits that it does not know of any difficulties which result from using recycled paper in photocopiers. BPI also states that recycled paper is available at prices that are generally competitive with prices of non-recycled paper. BPI has submitted several affidavits in support of these statements, and lists of suppliers and price quotes for recycled paper. (Ex. C, E, and F to proposal.) Based upon the current supply and costs, BPI submits that a rule requiring the use of recycled paper would not impose any significant inconvenience or financial burden. BPI notes that the Supreme Court of Illinois has amended its Rules of Practice to encourage all attorneys to use recycled paper for documents filed in the Illinois courts.

BPI argues that the Board has authority, pursuant to Sections 5(b) and 26 of the Act and Sections 4 and 5.01 of the APA, to require that recycled paper be used for all documents filed with the Board. BPI notes that the Board's procedural rules already regulate the paper quality required for documents filed with the Board, as well as paper and margin sizes. (35 Ill.Adm.Code 101.103(d).) BPI contends that requiring the use of recycled paper would accomplish the purposes of the Act by "encouraging the recycling and reuse of materials such as paper and paperboard." (Section 20(c) of the Act.)

As to the more practical aspects of the proposal, BPI proposes that for purposes of the proposed rules, "recycled paper" should mean paper at least 40% of which is composed of material that has served or is unsuitable for its original or intended use and that has been discarded for recycling or disposal. BPI states that this definition is derived from the Illinois Solid Waste Management Act, Ill.Rev.Stat.1989, ch. 111 1/2, par. 7053(f), which sets forth the 40% standard and gives a technical description of "recycled

material". BPI alleges that paper suppliers are familiar with the technical definition, and that attorneys should be able to simply ask their suppliers to provide "recycled paper" that meets the state standards. BPI also contends that its proposed language for the rule provides a way for the Board to monitor compliance with the recycled paper requirement, since attorneys would be instructed to include a statement in their notice of filing or certificate of service stating whether the filing is on recycled paper. BPI maintains that documents which do not comply with the proposed rule should not be accepted by the Clerk for filing. BPI states that unless the sanction for noncompliance is the refusal of the document, the effectiveness of the rule would be greatly undermined. Finally, in response to a question from the Board, BPI proposes that the scope of the proposal be expanded to include organized environmental and trade groups appearing before the Board, whether or not those groups are represented by attorneys.

Public Comments

The Board received a number of public comments on this proposal. The comments are divided between those who support BPI's proposal that attorneys and organized environmental and trade groups be required to use recycled paper for Board filings, and those who believe that the use of recycled paper should be encouraged by the Board, but not required.

The Illinois Environmental Regulatory Group (IERG) (P.C. 1), and the law firms of Chapman and Cutler (P.C. 6) and McDermott, Will, and Emery (P.C. 7) urge the Board not to adopt a mandatory recycled paper rule, but to encourage the use of recycled paper. The concerns articulated by these commenters range from the cost differential of recycled versus non-recycled paper¹, to the availability of a consistent supply of high-quality recycled paper which works in all copy machines, to the practicability of a mandatory requirement. Additionally, IERG raises questions about a lack of full public access to the Board if a mandatory requirement is imposed. IERG contends that recycled paper is not universally available, so that some participants may be barred from filing documents with the Board. Chapman and Cutler asserts that a large law office would have to purchase, store, and maintain two separate stocks of paper, recycled and non-recycled, so that filings with the Board would be on recycled paper while other court filings would be submitted on non-recycled paper. These three commenters also question what sanctions would be feasible if the Board were to adopt a mandatory requirement. In sum, these commenters ask that the Board follow the lead of the Supreme Court of Illinois and amend its rules to encourage, but not require, the

¹ IERG states that recycled paper suitable for use in its photocopier would cost 20 to 47% more than non-recycled paper, while Chapman and Cutler estimate a 5 to 10% cost increase.

use of recycled paper.

On the other hand, the Sierra Club (P.C. 2), the Department of Energy and Natural Resources (ENR) (P.C. 3), the Illinois Environmental Protection Agency (Agency) (P.C. 4), the McHenry County Defenders (P.C. 5), Citizens for a Better Environment (P.C. 8), and the law firm of Gardner, Carton, and Douglas (P.C. 10) recommend that the Board adopt a rule requiring the use of recycled paper in Board filings by attorneys and organized environmental and trade groups. Several of the commenters state that they already use recycled paper in their work, and that there are sufficient quantities of high-quality recycled paper available at a reasonable cost. The McHenry County Defenders state that the lack of strong markets for recycled paper has made it difficult for the Defenders to cover the costs of their recycling programs, and maintain that efforts to stimulate the recycled paper market should improve the viability of recycling efforts. Gardner, Carton, and Douglas contends that neither the cost of recycled paper nor the quality of the paper would impose an unreasonable burden, and that any increased cost would be offset by the "laudable" goals of encouraging recycling and promoting conservation.² ENR states that although the price of recycled paper varies, recycled xerographic paper may be priced from 2 to 10% higher than non-recycled paper. ENR states that the price difference between non-recycled and recycled xerographic and bond paper purchased by the state is only 2%. ENR also maintains that the quality of recycled paper is comparable to non-recycled paper. In support of this statement, ENR included the results of a test conducted by 51 local governments using recycled xerographic paper, and material indicating that recycled paper producers meet the same technical specifications as producers of non-recycled paper. (Attachments III and IV to P.C. 2.) The Agency states that it strongly supports the mandatory use of recycled paper in Board filings, to help reduce the amount of paper waste generated and to aid in the expansion of markets for recycled paper.

Additionally, BPI filed comments expanding upon the issues raised by its proposal (P.C. 9). First, BPI argues that although IERG and McDermott, Will, and Emery suggest that recycled paper is significantly more costly, the 20-47% price differential quoted is not credible. BPI points to ENR's comments, concluding that the price differential is about 2%. Second, BPI contends that there is widespread support among attorneys for the required use of recycled paper, and points to previous support of the Chicago Bar Association and the Chicago Council of Lawyers for mandatory use of recycled paper.

Board Conclusions

² Gardner estimates that recycled photocopy paper costs approximately 4% more than non-recycled photocopy paper.

After careful consideration of BPI's rulemaking proposal and the public comments received, the Board proposes, for first notice, amending its procedural rules to require all documents filed with the Board by attorneys and organized environmental and trade groups to be on recycled paper. The record of this proceeding contains conflicting statements as to the availability and cost of recycled paper. However, the only actual figures provided (by BPI and ENR) support the conclusion that the increased cost of recycled paper is minimal. The information provided by BPI and ENR also supports the conclusion that recycled paper is available. The Board disagrees with IERG's assertion that a recycled paper requirement could lead to a situation where some participants are unable to file documents with the Board. The Board believes that the large majority of those covered by this rule (attorneys and organized environmental and trade groups) will be able to obtain recycled paper with little extra effort. The Board also notes that Section 101.103(e) specifically provides that the Board may waive any of the requirements for form of documents upon motion demonstrating that the particular requirement would impose an undue burden. Thus, any participant covered by the proposed rule who truly could not comply with the recycled paper requirement could move for a waiver. The Board finds that this proposed rule will not restrict public access to the Board.

The Board recognizes that the recycled paper requirement will cause some inconvenience to those practicing before the Board, especially in the beginning.³ However, the Board believes that the important goals of encouraging recycling and stimulating markets outweigh any inconvenience. The Illinois General Assembly and the United States Congress have stated, through legislation, that the promotion of recycling and the stimulation of markets for recycled products are public policy goals. The Board finds that requiring attorneys and organized trade and environmental groups to use recycled paper will make a contribution towards achieving those goals.

The comments contained a fair amount of discussion on the question of what sanctions should be imposed for a failure to comply with a mandatory recycled paper rule. BPI and some commenters state that the Clerk should refuse to accept filings which are not on recycled paper, while other commenters believe that this sanction is too harsh. However, the Board will not

³ The Board is puzzled by Chapman and Cutler's assertion that a recycled paper requirement would require law offices to purchase, store, and use two separate stocks of paper. (P.C. 6 at 2-3.) Recycled paper is encouraged in the courts, and no commenter has alleged that recycled paper is unacceptable in transactional work. Therefore, the Board believes that the logical step is a full transition to recycled paper.

establish special sanctions for violation of this proposed rule. The Board believes that a violation of this proposed rule is subject to sanctions under Section 101.280, just as any other violation of the Board's procedural rules. Sanctions can be imposed on the Board's own motion or on motion of another party.

BPI proposed that this rule become effective on March 1, 1991, while another commenter suggested a June 1, 1991 date, in order to give participants an opportunity to use their current stocks of paper. Neither of these suggested dates allow for the notice and comment periods required for rulemakings (such as this) conducted under the APA. Therefore, the Board will propose an effective date of December 1, 1991. This date will allow the Board to complete the rulemaking process required by the APA, and will give participants several months after final adoption of the rule to exhaust paper stocks. The Board believes that giving participants almost six months' notice before the recycled paper requirement becomes effective will result in fewer problems in the implementation of the rule.

Finally, the Board notes that ENR stated in its comments that an updated list of suppliers of recycled paper would probably be available in February. The Board asks ENR to submit that supplier list during the first notice comment period.

ORDER

The Board hereby directs the Clerk of the Board to cause first notice publication in the Illinois Register of the following amendment to the Board's procedural rules.

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

PART 101
GENERAL RULES

Section 101.103 Form of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation", "Complaint", "Petition for Variance", "Petition for Review", "Motion", or "Public Comment".
- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or

subpoena need be filed with the Clerk.

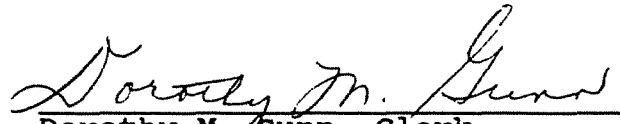
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.
- d) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy and double-spaced on ~~unglazed~~, uncoated white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch. As of December 1, 1991, all documents filed with the Board by attorneys or by organized environmental and trade groups shall be submitted on recycled paper. For purposes of this Section, "recycled paper" means paper which contains at least 40% postconsumer material. The definition of "postconsumer material" is set forth in Section 3(f) of the Illinois Solid Waste Management Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 7053(f). Either the certificate or proof of service or the notice of filing accompanying all documents filed by attorneys or by organized environmental or trade groups shall state "THIS FILING IS SUBMITTED ON RECYCLED PAPER". This statement shall be made at the bottom of the first page of the certificate or proof of service, or the notice of filing.
- e) The requirements of subsections (b), (c), and (d) may be waived by the Board upon written request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d). However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.

- h) Except as otherwise provided by Sections 1 through 4 of "AN ACT in relation to the reproduction of public records on film and the destruction of records so reproduced" (Ill.Rev.Stat. 1987, ch. 116, pars. 35-38; or by leave of the Board, documents on microfiche are not acceptable for filing.

(Source: Amended at 15 Ill.Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of June, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board