

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1991

IN THE MATTER OF:)
)
CENSUS OF SOLID WASTE MANAGEMENT) R88-8
FACILITIES EXEMPT FROM THE PERMIT) (Rulemaking)
REQUIREMENT AS PROVIDED IN)
SECTION 21 (d) OF THE ACT)

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

On March 29, 1991, the Illinois Environmental Regulatory Group (IERG) filed a motion requesting that the Board dismiss this proceeding. Responses filed in support of the motion were filed by: The Illinois Environmental Protection Agency (Agency) on April 9, 1991; and, as requested by the Board in an Order of May 9, 1991, the Department of Energy and Natural Resources (DENR), including its Hazardous Waste Research and Information Center on June 3, 1991. A response in opposition to the motion was filed by Waste Management of Illinois, Inc. (WMI). On June 28, 1991, IERG filed a reply to WMI's response, and on July 3, 1991, WMI filed supplemental comments in response to IERG's June 28, 1991 reply.

IERG essentially makes two assertions.

First, IERG notes that a September 12, 1988 amendment to the Environmental Protection Act (Act), Section 21(d)(3) is self-implementing, and that it requires that information be given to the Agency that is "identical to that which was considered by the Board in this proceeding". (IERG Motion, p. 2). Therefore IERG believes that a census of storage, treatment and disposal operations that are exempt from the requirement to have a permit is unnecessary.

Second, IERG asserts that the Board's nonhazardous waste landfill regulations require information from onsite landfills by March 18, 1991 that go beyond what is required in the census. IERG attached the Agency notification form and asserted that it "should have been filled out by all affected entities and returned" by the March 18, 1991 deadline. (IERG motion, p. 3).

The Agency asserts that it has already received the information sought under the proposed regulatory proceeding pursuant to the Section 21(d)(3) and the Board's landfill regulations at 35 Ill. Adm. Code 814.103.

DENR, in its response, particularly encourages the Agency and all permit-exempt waste facilities to make every effort to ensure that the reporting requirements are honored. DENR emphasized this need especially with regard to getting as much reporting and recording detail as is practicable of the quantities and types of waste stored.

WMI, in its response, focused on the desirability of collecting "permit-exempt" data on waste disposal practices generally and on landfills in particular. It asserts that the Board has a number of regulatory proposals related to waste disposal practices for which the census data would be particularly helpful. WMI also asserts that the data collected should alleviate the need to rely on the Agency's particular investigatory scheme, its schedule, or the format used to collect the data, which might not meet the needs of the Board's own regulatory program. WMI points out that the Board would never have opened this R88-8 Docket on the same day that it proposed for First Notice its R88-7 landfill regulations, if R88-7 answered the Board's need for certain data.

In its reply to WMI, IERG asserted that WMI's approach would be counter-productive in that it would have the Agency, DENR and the Board separately collecting data, rather than having the effort be a cooperative one as envisioned by the Act.* IERG also pointed out the resources that must be utilized by all concerned in the coming years to comply with the Clean Air Act Amendments of 1991.

In WMI's reply to IERG, WMI states that it recognizes, but so does the census proposal, the Agency's difficulties in allocating resources to competing dictates, including the Clean Air Act Amendments of 1990. It noted that, often for this reason, it is sometimes necessary for the Board to initiate proposals in response to environmental needs. WMI asserts that, rather than being a sign that the Board and IEPA are acting at cross-purposes, it demonstrates their complimentary roles. *

The reasons put forth by the commentators appear to reflect some misunderstanding of the Board's census effort. The Board was quite aware that the new landfill regulations would, for the first time, establish an enforceable program for the reporting by onsite landfill facilities, eventually in a detail rivaling that

* There were some sharp comments made regarding "playing one agency off against another" which are not detailed here. We do note, however, that, in proposing the census, the Board specifically focused on the potential for a cooperative effort, and specifically raised the question of Agency resources--an item that the commentators appears to have overlooked. (See Proposed Rule, First Notice Opinion and Order, R88-8, p. 3,4).

required of permitted facilities. The attachment to IERG's motion of the Agency's notice form for implementing the March 18, 1991 "first cut" deadline in the Board's regulations asks for considerably more information from the unpermitted onsite facilities as opposed to the permitted facilities. Having said this, we note that a comparison of the EcIS study and testimony at the November 17 and 27, 1989 EcIS hearings in R88-7 (after the Agency had received information pursuant to Section 21(d)(3)), showed significant disparities between information received by the Agency and that gathered by the EcIS contractors regarding even the location and number of onsite landfills.

In any event, the census effort was not primarily focused on landfills per se. As the Board stated in its First Notice Opinion in this docket:

The Board intends to next focus on detailed regulations for the storage and treatment of waste. However, without basic data as to their whereabouts (including hydrogeological) and what they do, the environmental protection standards being developed in any regulatory program risk being based on false assumptions, to the detriment of the environment and the regulated community alike. (R88-8, May 5, 1988, p. 3.).

We note that on the census form we ask the operator to make a reasonable decision as to whether its operation constitutes treatment, storage, or disposal. (First Notice Order, p.9, Section 808.112). This is not an easy determination. If the Board is to, say, better regulate storage sites, some of which most certainly constitute a considerable potential for environmental harm, it needs to first distinguish among facility activities, and then determine whether these activities need to be regulated differently.

One of the most basic problems, for example, is in distinguishing between storage and disposal, and distinguishing both of those from such activities as recycling. For example, the Act doesn't even define nonhazardous waste storage, and the definition for hazardous waste storage states it is "the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal ..." This is a circular definition indeed.

As the participants know, we had great difficulty in coping with the storage issue in R88-7. "Blocking out" what is a landfill, particularly what is a waste pile landfill, was an essential effort if the regulations were to be enforceable. The landfill regulations only indirectly put a one-year time limit on storage, and then only in the definition of waste pile. "...a waste pile is a landfill, unless the operator can demonstrate that such wastes are not accumulated over time for disposal. At

a minimum, such demonstration shall include [evidence], maintained on a yearly basis, that show that within the preceding year the waste has been removed for utilization or disposed elsewhere." (35 Ill. Admin. Code 810.103).

There were a number of other regulatory problems that the Board faced that we felt would not be cured by the information to be gathered by the landfill regulations or the information to be gathered by Section 21(d)(3) of the Act. Examples include injection wells, solid waste tanks and containers (the census excluded dumpsters) in and above ground, surface impoundments (pits, ponds and lagoons -- those without NPDES permits), junkyards, including auto junkyards, as well as storage and treatment facilities in general.

Overall, the data accumulated by the Agency under Section 21(d)(3) may be both overinclusive and underinclusive, for the Board's regulatory purposes. We also note, for example, that the statutory language places waste piles in a category other than a landfill, uses the words "stored over one year", and limits the reporting requirements to piles whose volume is over 100 cubic yards, all incompatible with Board regulation.

Board Decision.

The Board will dismiss this proceeding, effective October 15, 1991--over 45 days from now, but not generally for the reasons put forth by the commentators.

We are particularly swayed by the Agency's response, the first in this proceeding, asserting that it has received the information the Board needs pursuant to Section 21(d)(3). We also note that IERG made the same assertion (although when IERG first responded in this proceeding, on June 17, 1988, it asserted that what is now Section 21(d)(3) is "not consistent, especially in terms of activities to be covered and information to be reported"). (PC#1, p. 3). While we do not see how the scope of the facilities from which information is required in Section 21(d)(3) will sufficiently serve the Board's regulatory needs as expressed in this proceeding, it nevertheless may serve a significant part of those needs.

However, any conclusion at this juncture is necessarily speculative; we do not know what information is being referred to, since none was submitted. For this reason above all we feel it would be prudent to pause and take some time to review available data and analyses of that data, as is more fully explained below. Meanwhile, it makes sense to leave this record open only long enough to receive the information. Then, after taking time for review, we can then decide what would be the appropriate course of regulatory action.

Without limiting the participation of others, we particularly request the Agency's assistance in this regard. We request the Agency to file no later than October 15, 1991, i. e. while the record is open, its notification form pursuant to Section 21(d)(3) and any data, or analyses it has already prepared, that would respond to the Board's proposed census form. We also make the same informational request of DENR. DENR, including its HWRIC, was of great assistance in R88-7 in providing information, and has undertaken prior data gathering and analyses in this area, though with a particular focus on hazardous waste. Finally, it is our understanding that the USEPA may have relevant data; we would appreciate, and hereby request, the USEPA to send us copies of any data or analyses by October 15, 1991, while this record is still open.

In any event, the Board most certainly encourages, and in past regulatory proceedings has initiated, cooperative efforts in research and data gathering efforts in developing regulations. It is for this reason that we are dismissing this proceeding. It is a poor use of resources for all concerned to have overlapping, datagathering efforts if it can possibly be avoided. We will spend the time during the "pause" to evaluate the Agency's and others' information and then evaluate whether a census--or a modified census--effort does or does not need to be again initiated.

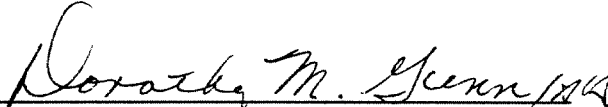
This Opinion accompanies the Order below.

ORDER

Consistent with the above Opinion, the record in this proceeding will be held open for public comment through October 15, 1991, at which point this proceeding is dismissed and this Docket is closed.

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 26th day of August, 1991, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board