

ILLINOIS POLLUTION CONTROL BOARD
June 17, 1993

IN THE MATTER OF:)
)
AMENDMENTS TO LANDFILL) R92-19
REGULATIONS: DELETION OF) (Rulemaking)
35 ILL. ADM. CODE 811.310(d)(1)(F))
AND 813.106(b) PURSUANT TO)
WASTE MANAGEMENT of ILL. v. IPCB)
(1st Dist. 1992).)

Adopted Rule. Final Order.

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

On June 11, 1992, the appellate court affirmed in part and reversed in part portions of the Board's landfill regulations (R88-7) appealed by Waste Management of Illinois, Inc. (Waste Management). Waste Management of Illinois, Inc. v. IPCB (1st Dist. 1992), 231 Ill.App.3d 278, 595 N.E.2d 1171. The appellate court's mandate was issued on August 13, 1992.

In all respects but two, the appellate court rejected the challenges to the Board's landfill regulations. (See Ex. 1.) The two provisions that the appellate court found invalid and which the Board proposes to delete are as follows:

35 Ill. Adm. Code 811.310(d)(1)(F)

d) Parameters to be monitored

- (1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:

....[delete the following]

- (F) Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.

35 Ill. Adm. Code 813.106(b)

....[delete the following]

- (b) Any Agency action to deny a permit or to grant a permit with conditions will not be deemed final for the purposes of appeal if the applicant has requested Agency reconsideration of that action prior to the filing of a petition pursuant to this Section.

Regarding 35 Ill. Adm. Code 811.310(d)(1)(F), the appellate court first noted that Section 9.5(c) of the Environmental Protection Act (Act), 415 ILCS 5/9.5(c) (1992), specifically provides that the public hearing and comment provisions of Section 27(b) of the Act, the Economic Impact Study (EcIS) requirements, shall not apply to the air toxics contaminants list rulemaking. The court concluded that the Board, by incorporating in its landfill regulations the not yet promulgated air toxics list, failed to meet the procedural requirements of Section 27(b) of the Act. Waste Management, 595 N.E.2d at 1177-1178. We note that this holding will have little, if any, precedential effect, in that P.A. 87-860, signed by the Governor on July 1, 1992, deletes the Section 27(b) EcIS requirements from the Act.

Regarding 35 Ill. Adm. Code 813.106(b), the appellate court, citing prior case law, stated that the Agency has no authority under the Act to reconsider its decisions, and thus the Board did not have statutory authority to purport to delay the finality of an Agency decision by rule. Section 40 of the Act gives an applicant for a permit 35 days to appeal an Agency decision. Waste Management, 595 N.E.2d at 1183-515. We are particularly concerned that an applicant would delay an appeal beyond the 35 days in false reliance on an invalid Board rule.

PROCEDURAL HISTORY

On October 1, 1992, the Board issued a First Notice opinion and order for the purpose of deleting the two provisions that the court found invalid and for accepting comment as to whether a third provision, 35 Ill. Adm. Code 811.310(c)(5) should also be deleted because it references 35 Ill. Adm. Code 811.310(d)(1)(F).

First Notice was published in the Illinois Register on November 6, 1992. 16 Ill. Reg. 16920 and 16962. Subsequent to the publication of first notice, the Board received five comments. Hearings were held in this matter on February 26, 1993, and on March 16, 1993, in Chicago and Springfield, Illinois, respectively. At the first hearing, Ms. Jennifer Muss, Assistant Corporation Counsel for the City of Chicago, and Ms. Ann Straw of Waste Management of Illinois, Inc. were present. Mr. Mark Gurnik of the Illinois Environmental Protection Agency (Agency) appeared at the second hearing. There were no members of the public present at either hearing. No testimony or exhibits were presented at either hearing. No comments were filed with the Board during the 14-day comment period following the March 16, 1993 hearing.

On April 22, 1993, the Board issued a Second Notice opinion and order. The Joint Committee on Administrative Rules considered and issued a certificate of no objection to the proposed rulemaking at its May 11, 1993 meeting.

DISCUSSION

As previously stated, the Board received several comments in response to First Notice publication. On November 12, 1992, the Illinois Department of Commerce and Community Affairs commented that it had determined that the proposed amendments would not significantly impact small businesses. (P.C. #1.)

On November 16, 1992, Browning-Ferris Industries (BFI) filed comments urging the Board to take the opportunity presented in the rulemaking to ensure that the solid waste landfill regulations pertaining to gas monitoring are consistent with any New Source Performance Standard (NSPS) that may be issued by the United States Environmental Protection Agency (USEPA). (P.C. #2.) Accordingly, BFI proposed language, to be placed in a new subsection (e) of 35 Ill. Adm. Code 811.310, that would ensure that facilities subject to the NSPS would comply with the applicable Clean Air Act requirements in case of inconsistency with the solid waste landfill regulations.

On November 20, 1992, the Agency filed comments stating that it does not object to the deletion 35 Ill. Adm. Code 811.310(d)(1)(F) and 813.106(b) because the court found the subsections to be invalid. (P.C. #3.) With regard to 35 Ill. Adm. code 811.310(d)(1)(F), the Agency noted that the court opinion seems to suggest that once the Board has properly adopted the list of air toxic contaminants pursuant to Section 27 of the Act, 35 Ill. Adm. Code 811.310(d)(1) could be amended to reference the list once again. Accordingly, the Agency suggested that the Board readopt the provision if and when it adopts the list of air toxic contaminants.

The Agency also noted that 35 Ill. Adm. Code 811.310(c)(5) should be deleted because it is so closely tied to subsection (d)(1)(F). The Agency also noted that if a list of air toxic contaminants is promulgated in the future, subsection(c)(5) should be readopted simultaneously with the readoption of subsection (d)(1)(F).

Finally, on December 23, 1992, Waste Management of Illinois filed comments supporting the deletion of 35 Ill. Adm. Code 811.310(d)(1)(F) and 813.106(b). (P.C. #5.)

Based on the appellate court opinion, and after considering the comments filed with the Board, the Board, in its Second Notice opinion and order, proposed to delete 35 Ill. Adm. Code 811.310(c)(5) and (d)(1)(F), and 35 Ill. Adm. Code 813.106(b). The Board also has made several nonsubstantive changes in response to comments from the Administrative Code Unit of the Secretary of State's Office. (P.C. #4.) These changes were reflected in Board's second notice order. We declined, however, to accept BFI's proposal to add a new subsection (e) to 35 Ill.

Adm. Code 811.310. The Board initiated this rulemaking solely for the purpose of deleting 35 Ill. Adm. Code 811.310(d)(1)(F) and 813.106(b) and for accepting comment regarding the deletion of 35 Ill. Adm. Code 811.310(c)(5). The Board, however, informed BFI that it is free to initiate a separate proposal if it wishes to pursue its concerns.

ORDER

The Board hereby adopts for final Notice the following amendments to 35 Ill. Adm. Code 811 and 813. The Board hereby directs the Clerk of the Board to cause the publication of these amendments in the Illinois Register and to cause the filing of the following amendments with the Administrative Code Unit of the Secretary of State's Office:

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 811
 STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section

811.101 Scope and Applicability
 811.102 Location Standards
 811.103 Surface Water Drainage
 811.104 Survey Controls
 811.105 Compaction
 811.106 Daily Cover
 811.107 Operating Standards
 811.108 Salvaging
 811.109 Boundary Control
 811.110 Closure and Written Closure Plan
 811.111 Postclosure Maintenance

SUBPART B: INERT WASTE LANDFILLS

Section

811.201 Scope and Applicability
 811.202 Determination of Contaminated Leachate
 811.203 Design Period
 811.204 Final Cover
 811.205 Final Slope and Stabilization
 811.206 Leachate Sampling
 811.207 Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

0143-0366

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal Systems
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management Systems
811.312	Landfill Gas Processing and Disposal Systems
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment
811.318	Design, Construction, and Operation of Groundwater Monitoring Systems
811.319	Groundwater Monitoring Programs
811.320	Groundwater Quality Standards
811.321	Waste Placement
811.322	Final Slope and Stabilization
811.323	Load Checking Program

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section	
811.401	Scope and Applicability
811.402	Notice to Generators and Transporters
811.403	Special Waste Manifests
811.404	Identification Record
811.405	Recordkeeping Requirements
811.406	Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section	
811.501	Scope and Applicability
811.502	Duties and Qualifications of Key Personnel
811.503	Inspection Activities
811.504	Sampling Requirements
811.505	Documentation
811.506	Foundations and Subbases
811.507	Compacted Earth Liners
811.508	Geomembranes
811.509	Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

0143-0367

811.700	Scope, Applicability and Definitions
811.701	Upgrading Financial Assurance
811.702	Release of Financial Institution
811.703	Application of Proceeds and Appeals
811.704	Closure and Postclosure Care Cost Estimates
811.705	Revision of Cost Estimate
811.706	Mechanisms for Financial Assurance
811.707	Use of Multiple Financial Mechanisms
811.708	Use of a Financial Mechanism for Multiple Sites
811.709	Trust Fund for Unrelated Sites
811.710	Trust Fund
811.711	Surety Bond Guaranteeing Payment
811.712	Surety Bond Guaranteeing Performance
811.713	Letter of Credit
811.714	Closure Insurance
811.715	Self-Insurance for Non-commercial Sites

811.Appendix A	Financial Assurance Forms
Illustration A	Trust Agreement
Illustration B	Certificate of Acknowledgment
Illustration C	Forfeiture Bond
Illustration D	Performance Bond
Illustration E	Irrevocable Standby Letter of Credit
Illustration F	Certificate of Insurance for Closure and/or Postclosure Care
Illustration G	Operator's Bond Without Surety
Illustration H	Operator's Bond With Parent Surety
Illustration I	Letter from Chief Financial Officer

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027) [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1~~7~~ and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. _____, effective _____.

NOTE: Capitalization indicates statutory language.

Section 811.310 Landfill Gas Monitoring

- a) This Section applies to all units that dispose putrescible wastes.
- b) Location and Design of Monitoring Wells
 - 1) Gas monitoring devices shall be placed at intervals and elevations within the waste to provide a representative sampling of the

composition and buildup of gases within the unit.

- 2) Gas monitoring devices shall be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the liner system or the top elevation of the groundwater, whichever is higher.
- 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
- 4) Gas monitoring devices shall be constructed from materials that will not react with or be corroded by the landfill gas.
- 5) Gas monitoring devices shall be designed and constructed to measure pressure and allow collection of a representative sample of gas.
- 6) Gas monitoring devices shall be constructed and maintained to minimize gas leakage.
- 7) The gas monitoring system shall not interfere with the operation of the liner, leachate collection system or delay the construction of the final cover system.
- 8) At least three ambient air monitoring locations shall be chosen and samples shall be taken no higher than 0.025 meter (1 inch) above the ground and 30.49m (100 feet) downwind from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency

- 1) All gas monitoring devices, including the ambient air monitors shall be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
- 2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
- 3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to

withdraw gas.

- 4) After a minimum of five years or, in the case of landfills, other than those used exclusively for disposing of wastes generated at the site, a minimum of fifteen years after closure, monitoring shall be discontinued if the following conditions have been met for at least one year:
 - A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and
 - B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1).

~~5) The operator shall include in the permit, a list of air toxics to be monitored in accordance with subsection (d). The Agency shall determine the monitoring frequency of the listed compounds based upon their emission rates and ambient levels in the atmosphere.~~

d) Parameters to be Monitored

- 1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:
 - A) Methane;
 - B) Pressure;
 - C) Nitrogen;
 - D) Oxygen;
 - E) Carbon dioxide; and
 - ~~F) Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.~~
- 2) Ambient air monitors shall be sampled for methane namely when the average wind velocity is less than 8 kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet)

from the edge of the unit or the property boundary, whichever is closer to the unit.

- 3) All buildings within a facility shall be monitored for methane by utilizing continuous detection devices located at points where methane might enter the building.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 813
 PROCEDURAL REQUIREMENTS FOR PERMITTED LANDFILLS

SUBPART A: GENERAL PROCEDURES

- Section
- 813.101 Scope and Applicability
 - 813.102 Delivery of Permit Application
 - 813.103 Agency Decision Deadlines
 - 813.104 Standards for Issuance of a Permit
 - 813.105 Standards for Denial of a Permit
 - 813.106 Permit Appeals
 - 813.107 Permit No Defense
 - 813.108 Term of Permit
 - 813.109 Transfer of Permits
 - 813.110 Adjusted Standards to Engage in Experimental Practices
 - 813.111 Agency Review of Contaminant Transport Models

SUBPART B: ADDITIONAL PROCEDURES FOR MODIFICATION AND SIGNIFICANT MODIFICATION OF PERMITS

- Section
- 813.201 Initiation of a Modification or Significant Modification
 - 813.202 Information Required For a Significant Modification of an Approved Permit
 - 813.203 Specific Information Required For a Significant Modification To Obtain Operating Authorization
 - 813.204 Procedures For A Significant Modification of an Approved Permit

SUBPART C: ADDITIONAL PROCEDURES FOR THE RENEWAL OF PERMITS

Section

- 813.301 Time of Filing
- 813.302 Effect of Timely Filing
- 813.303 Information Required For a Permit Renewal
- 813.304 Updated Groundwater Impact Assessment
- 813.305 Procedures for Permit Renewal

SUBPART D: ADDITIONAL PROCEDURES FOR INITIATION AND TERMINATION
OF TEMPORARY AND PERMANENT CLOSURE AND POSTCLOSURE
CARE

Section

- 813.401 Agency Notification Requirements
- 813.402 Certification of Closure
- 813.403 Termination of the Permit

SUBPART E: REPORTS TO BE FILED WITH THE AGENCY

Section

- 813.501 Annual Reports
- 813.502 Quarterly Groundwater Reports
- 813.503 Information to be Retained at or near the Waste
Disposal Facility

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1, and authorized by Section 27 of the Environmental Protection Act 1027 and 1028.1 (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027) [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1~~7~~ and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15814, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. _____, effective _____)

NOTE: Capitalization indicates statutory language.

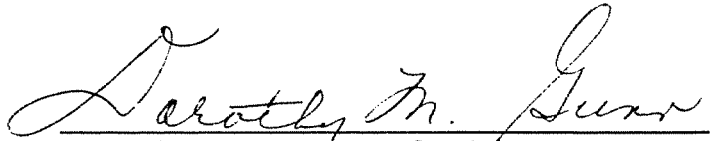
Section 813.106 Permit Appeals

- a) If THE AGENCY REFUSES TO GRANT OR GRANTS WITH CONDITIONS A PERMIT THE APPLICANT MAY, WITHIN 35 DAYS, PETITION FOR A HEARING BEFORE THE BOARD TO CONTEST THE DECISION OF THE AGENCY. (Section 40(a)(1) of the Act) The petition shall be filed, and the proceeding conducted, pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105.
- ~~b) Any Agency action to deny a permit or to grant a permit with conditions will not be deemed final for the purposes of appeal if the applicant has requested Agency reconsideration of that action prior to the filing of a petition pursuant to this Section.~~

(Source: Amended at 17 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 17th day of June, 1993 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board