

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1988

IN THE MATTER OF:)
)
CENSUS OF SOLID WASTE) R88-8
MANAGEMENT FACILITIES EXEMPT)
FROM THE PERMIT REQUIREMENT)
AS PROVIDED IN SECTION 21(d))
OF THE ACT, 35 ILL. ADM. CODE)
808)

PROPOSED RULE FIRST NOTICE.

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

This Opinion accompanies the Board's First Notice proposed regulations. The proposal provides for a census of what are often referred to as the permit-exempt on-site storage, treatment or disposal operations. The census as presently proposed encompasses, for waste-treatment and waste-storage operations, the two types of non-hazardous special waste, i.e. industrial process and pollution control waste, as defined in the Environmental Protection Act (Act).^{*} For waste-disposal operations, the proposal encompasses all wastes except residential wastes. The operations referred to are encompassed in Title V: Land Pollution and Refusal Disposal, at Section 21(d) of the Act. The Section reads as follows:

Section 21

No person shall:

- d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however,

^{*} By confining the census to such special wastes, the Board is not inferring that it is hereby delineating or construing the scope of Section 21(d). The Board notes that Section 21(d) uses the terms "conduct"... "operation". Neither of these terms are defined in the Act.

that no permit shall 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; or,

2. In violation of any regulations or standards adopted by the Board under this Act.

This subsection (d) shall not apply to hazardous waste.
(emphasis added)

At the outset, the Board specifically requests comments as to whether confining the scope of the census is appropriate.

The special waste category for waste-treatment and waste-storage is proposed because it is this category, with certain exceptions, that is of sufficient environmental concern to be manifested, if generated off-site (see 35 Ill. Adm Code 808), and which requires separate consideration in a permit setting. It also appeared to be the category of on-site waste of primary concern in the R84-17 proceedings. This approach also has the benefit of potentially keeping the census to manageable proportions. Regarding waste-disposal, the Board is proposing to encompass all non-residential waste because of its concern that certain operations might be disposing only wastes that arguably fall outside the special waste category; wastes from an industrial laboratory are an example of this concern. The census as presently proposed would identify the location of the treatment or storage operation for other kinds of wastes only if such waste is commingled with special waste; the Notification Form could be amended in paragraph IV to identify (as well as locate) such commingled waste. Also, please note that the Board's proposed landfill disposal regulations contain extensive reporting requirements for all on-site facilities. The fundamental question is, what is a workable and desirable cut-off point for the census?

Unpermitted, on-site operations raise legitimate environmental concerns. The limited data that does exist suggests that they are significant both in their numbers and in their potential to pollute.

While the on-site operators might perceive the census negatively, if only because of the possibility of greater Agency oversight, there are positive benefits as well, if not necessarily readily perceived.

Even though unpermitted, on-site operations are required to be in compliance with the Act and Board regulations. The Board has already proposed comprehensive and detailed regulations affecting the location, design and operations of all landfill disposal, including waste piles. 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. The Board has already noted the concerns about the lack of data about on-site operations. (See the R88-7 Opinion, and the R88-8 Order opening this instant docket, both adopted on February 25, 1988.

The intent of the census is to:

- a) Gather data directly from the operators.
- b) Accumulate data sufficient to identify and categorize the operators and the operations, the nature of the operation from the operator's perspective, and the nature of the industry or governments generating the waste.
- c) Keep the form so simple to fill out that failure to comply cannot be based on expense, difficulty, or down-time.
- d) Have the results come in a timely fashion while still allowing start-up time to implement a strategy for disseminating the census form to the operators.
- e) Accept over-reporting; the scope of the census relies on statutory definitions which themselves invite interpretation. It is failure to report that constitutes a violation, so "when in doubt" the operators should report.

The dilemma, of course, is how to reach a category of persons whose very whereabouts are not tracked by the Agency, and to get responses. Estimates of their numbers run into the thousands. The manner in which such wastes are handled include landfills, land treatment, piles, surface impoundments (e.g. pits, ponds, lagoons), injection wells, tanks in or below the ground, etc.

The Board requests comments as to whether this "basic information census" approach is an effective strategy for approaching a problem that the Board feels needs to be addressed. The Board particularly welcomes comment from the Agency as to how it perceives its "contact" role, if any. For

example, would the Agency consider initiating a mass mailing? The Board welcomes general comment as to whether such sources for guidance or assistance as the Standard Industrial Classification (SIC), a manufacturers directory, various associations or the Statewide Inventory* might be useful for guidance or assistance?

Obviously, the usefulness of the census is highly dependent on the magnitude of the census response. As stated earlier, the Board intends these rules to place the responsibility on the operator to notify, and if in doubt as to the regulations' applicability, to notify anyway. The exposure to enforcement comes from failure to notify. The greater the notification effort and tracking of replies, the less is the mitigation for failure to report.

Assuming that a concerted effort can be made to contact the on-site operations, are there mechanisms available to encourage voluntary response?

Comment on the proposal itself, which is generally self explanatory are welcome. The sections specifically noted below are particularly highlighted for comment:

Section 808.103. The capitalized definitions denote quotes or paraphrases of language in the Act. The Board invites comment as to whether more terms, e.g. "Agency", "Board", should be defined; the intent is to have the rules sent out along with the form as a "package", and be as self-explanatory as possible.

Section 808.111(c)(2) and (3). Should these requirements be included or should the census be strictly limited to a one-time "snapshot" notification on or before July 1, 1989, as required in subsection (c)(1)?

Section 808.112(b). This language is intended to assure the operators that, if reasonable judgment is exercised, they are in compliance. It is also intended to forestall a deluge of calls to the Agency for answers to

* By "Statewide Inventory", the Board is referring to Ex. 2AF in R84-17(D), "The Development of the Statewide Inventory of Land-Based Disposal Sites," prepared by the State Geological Survey under the auspices of the Department of Energy and Natural Resources by the Hazardous Waste Research and Information Center (HWRIC), a division of the Illinois State Water Survey, June 1986. It is part of HWRIC's efforts to inventory the past and present disposal of waste through burial, surface impoundment or land application. HWRIC's focus is on the development of a comprehensive hazardous waste strategy for Illinois.

legal-type questions as to whether a particular operation constitutes waste-storage, waste-treatment or waste-disposal or any combination thereof.*

Section 808.121. This 90 day provision is intended to exclude such things as storage in dumpsters. In a general sense, the 90 days were chosen by reference to 35 Ill. Adm. Code 722.134; in so proposing the Board is not suggesting any relationship with the permit requirements of that section. Should there be other exclusions?

ORDER

The Board hereby directs that First Notice of the following proposed amendments be submitted for publication in the Illinois Register.

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

PART 808
NOTIFICATION OF WASTE ACTIVITIES BY
OPERATIONS EXEMPT FROM PERMIT REQUIREMENTS

SUBPART A: GENERAL PROVISIONS

Section
808.101 Purpose, Scope and Applicability
808.102 Severability
808.103 Definitions

SUBPART B: NOTIFICATION

Section
808.111 Notification
808.112 Effect of Notification

SUBPART C: EXCLUSIONS

Section
808.121 Storage Prior to Off-site Disposal

* The HWRIC study, noted earlier, observed that a 1980 assessment of surface impoundments by the Agency indicated that the owners were apparently reluctant to classify their facilities as disposal impoundments; less than one percent of the 5000 facilities identified were so classified. (Id., p.2)

APPENDIX A: Census Form

AUTHORITY: Implementing Sections 4(b) and 21(d) and authorized by Section 5(b) and Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1004(b), 1005(b), 1021(d) and 1027).

SOURCE: Adopted in R88-8 at 12 Ill. Reg. _____, effective _____.

NOTE: Capitalization is used to indicate that the language quotes or paraphrases a statute.

SUBPART A: GENERAL PROVISIONS

Section 808.101 Purpose, Scope and Applicability

- a) This Part requires persons to report to the Illinois Environmental Protection Agency basic information concerning the identity, location and nature of the activities of certain operations exempt from the permit requirements of Section 21(d) of the Act. The information required is included on a census form contained in these regulations. This part applies to any person who conducts any operation that includes the disposal of any non-residential non-hazardous waste, or the storage or treatment of non-hazardous special waste within the site where the person generates such wastes.
- b) The intent is to collect information that will assist in carrying out the purposes of the Act.

Section 808.102 Severability

If any provision of these rules or regulations is adjudged invalid, or if the application thereof to any person or in any circumstance is adjudged invalid, such invalidity shall not affect the validity of this Part as a whole or of any Subpart, Section, Subsection, Sentence or Clause thereof not adjudged invalid.

Section 808.103 Definitions

Except as hereinafter stated, and unless a different meaning of a word or term is clear from its context, the definitions of words or terms as are used in this Part shall be the same as those used in the Environmental Protection Act, except that this Part does not apply to hazardous waste.

"DISPOSAL" MEANS THE DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILLING, LEAKING OR PLACING OF ANY WASTE INTO OR ON ANY LAND OR WATER OR INTO ANY WELL SO THAT SUCH WASTE OR ANY CONSTITUENT THEREOF MAY ENTER THE ENVIRONMENT OR BE EMITTED INTO THE AIR OR DISCHARGED INTO ANY WATERS, INCLUDING GROUNDWATER.

"HAZARDOUS WASTE" MEANS A WASTE, OR COMBINATION OF WASTES, WHICH BECAUSE OF ITS QUANTITY, CONCENTRATION, OR PHYSICAL, CHEMICAL, OR INFECTIOUS CHARACTERISTICS MAY CAUSE OR SIGNIFICANTLY CONTRIBUTE TO AN INCREASE IN MORTALITY OR AN INCREASE IN SERIOUS, IRREVERSIBLE, OR INCAPACITATING REVERSIBLE, ILLNESS; OR POSE A SUBSTANTIAL PRESENT OR POTENTIAL HAZARD TO HUMAN HEALTH OR THE ENVIRONMENT WHEN IMPROPERLY TREATED, STORED, TRANSPORTED, OR DISPOSED OF, OR OTHERWISE MANAGED, AND WHICH HAS BEEN IDENTIFIED, BY CHARACTERISTICS OR LISTING, AS HAZARDOUS PURSUANT TO SECTION 3001 OF THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, P.L. 94-580, OR PURSUANT TO BOARD REGULATIONS. Board regulations define hazardous waste at 35 Ill. Adm. Code 721.103.

"INDUSTRIAL PROCESS WASTE" MEANS ANY LIQUID, SOLID, SEMI-SOLID, OR GASEOUS WASTE GENERATED AS A DIRECT OR INDIRECT RESULT OF THE MANUFACTURE OF A PRODUCT OR THE PERFORMANCE OF A SERVICE. ANY SUCH WASTE WHICH WOULD POSE A PRESENT OR POTENTIAL THREAT TO HUMAN HEALTH OR TO THE ENVIRONMENT OR WITH INHERENT PROPERTIES WHICH MAKE THE DISPOSAL OF SUCH WASTE IN A LANDFILL DIFFICULT TO MANAGE BY NORMAL MEANS IS AN INDUSTRIAL PROCESS WASTE. "INDUSTRIAL PROCESS WASTE" INCLUDES BUT IS NOT LIMITED TO SPENT PICKLING LIQUORS, CUTTING OILS, CHEMICAL CATALYSTS, DISTILLATION BOTTOMS, ETCHING ACIDS, EQUIPMENT CLEANINGS, PAINT SLUDGES, INCINERATOR ASHES, CORE SANDS, METALLIC DUST SWEEPINGS, ASBESTOS DUST, HOSPITAL PATHOLOGICAL WASTES AND OFF-SPECIFICATION, CONTAMINATED OR RECALLED WHOLESALE OR RETAIL PRODUCTS. SPECIFICALLY EXCLUDED ARE UNCONTAMINATED PACKAGING MATERIALS, UNCONTAMINATED MACHINERY COMPONENTS, GENERAL HOUSEHOLD WASTE, LANDSCAPE WASTE AND CONSTRUCTION OR DEMOLITION DEBRIS.

"Operation" means the disposal of any non-hazardous waste or the storage or treatment of non-hazardous special waste within the site where such wastes are generated.

"Operator" MEANS A PERSON WHO CONDUCTS 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.

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person conducts a waste treatment, waste storage or waste disposal operation. The "owner" is the "operator" if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation.

"POLLUTION CONTROL WASTE" MEANS ANY LIQUID, SOLID, SEMI-SOLID OR GASEOUS WASTE GENERATED AS A DIRECT OR INDIRECT RESULT OF THE REMOVAL OF CONTAMINANTS FROM THE AIR, WATER OR LAND, AND WHICH POSE A PRESENT OR POTENTIAL THREAT TO HUMAN HEALTH OR TO THE ENVIRONMENT OR WITH INHERENT PROPERTIES WHICH MAKE THE DISPOSAL OF SUCH WASTE IN A LANDFILL DIFFICULT TO MANAGE BY NORMAL MEANS. "POLLUTION CONTROL WASTE" INCLUDES BUT IS NOT LIMITED TO WATER OR WASTEWATER TREATMENT PLANT SLUDGES, BAGHOUSE DUSTS, SCRUBBER SLUDGES AND CHEMICAL SPILL CLEANINGS.

"SPECIAL WASTE" MEANS ANY INDUSTRIAL PROCESS WASTE OR POLLUTION CONTROL WASTE.

"STORAGE" MEANS THE CONTAINMENT OF WASTE, EITHER ON A TEMPORARY BASIS OR FOR A PERIOD OF YEARS, IN SUCH A MANNER AS NOT TO CONSTITUTE DISPOSAL OF SUCH WASTE.

"Storage time" means the time that is measured either by the actual time identifiable items or quantities are placed into and removed from storage, or by calculating on an annual basis the average time the waste will be stored.

"TREATMENT" MEANS ANY METHOD, TECHNIQUE OR PROCESS DESIGNED TO CHANGE THE PHYSICAL, CHEMICAL OR BIOLOGICAL CHARACTER OR COMPOSITION OF ANY WASTE SO AS TO NEUTRALIZE SUCH WASTE OR SO AS TO RENDER SUCH WASTE SAFER FOR TRANSPORT, AMENABLE FOR STORAGE OR REDUCED IN VOLUME.

"WASTE" MEANS ANY GARBAGE, SLUDGE FROM A WASTE TREATMENT PLANT, WATER SUPPLY TREATMENT PLANT, OR AIR POLLUTION CONTROL FACILITY OR OTHER DISCARDED MATERIAL, INCLUDING SOLID, LIQUID, SEMI-SOLID, OR CONTAINED GASEOUS MATERIAL RESULTING FROM INDUSTRIAL, COMMERCIAL, MINING AND AGRICULTURAL OPERATIONS, AND FROM COMMUNITY ACTIVITIES, BUT DOES NOT INCLUDE SOLID OR DISSOLVED MATERIAL IN DOMESTIC SEWAGE, OR SOLID OR DISSOLVED MATERIALS IN IRRIGATION RETURN FLOWS OR INDUSTRIAL DISCHARGES WHICH ARE POINT SOURCES SUBJECT TO PERMITS UNDER SECTION 402 OF THE CLEAN WATER ACT OR SOURCE, SPECIAL NUCLEAR, OR BY-PRODUCT MATERIALS AS DEFINED BY THE ATOMIC ENERGY ACT OF 1954, AS AMENDED (68 STAT. 921) OR ANY SOLID OR DISSOLVED MATERIAL FROM ANY FACILITY SUBJECT TO THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87) OR THE RULES AND REGULATIONS THEREUNDER OR ANY

LAW OR RULE OR REGULATION ADOPTED BY THE STATE OF ILLINOIS
PURSUANT THERETO.

SUBPART B: NOTIFICATION

Section 808.111 Notification

- a) The operator conducting any operation as defined in this Part shall submit a notification to the Agency, unless the operation is excluded under Subpart C.
- b) The notification must provide the information required by, and in the form specified in, Appendix A.
- c) Timing of notification.
 - 1) The operator of an existing operation shall submit the notification to the Agency on or before July 1, 1989.
 - 2) After July 1, 1989, a new operator shall submit notification to the Agency within 60 days after assuming control of the operation.
 - 3) An operator shall notify the Agency of any operation or change in an existing operation commencing after July 1, 1989 within 60 days after such commencement. A change means that an earlier notification that identified the operation as waste-treatment and/or waste-storage and/or waste-disposal is no longer correct.

Section 808.112 Effect of Notification

- a) Notification under this part shall not constitute a defense to a violation of the Act or Board regulation, except for failure to submit such notification.
- b) A reasonable decision by the operator as to whether the operation constitutes waste treatment and/or waste-storage and/or waste-disposal is sufficient to comply with that aspect of the information required by this Part.

SUBPART C: EXCLUSION

Section 808.121 Storage Prior to Off-site Disposal

The notification requirements of this Part shall not apply to an operator who is conducting only a waste-storage operation within the site where such wastes are generated if the storage time before the wastes leave such site is 90 days or less. If waste-treatment or waste-disposal also occurs, then notification is required also for such storage, regardless of the storage time.

APPENDIX A: ILLUSTRATION
OPERATOR NOTIFICATION FORM

(Type)

I. Name of Operator _____

Postal Address _____

II. Postal Address of Operation _____

Township _____ County _____

If no street address, then also reference any well known landmark, road or intersection.

III General description of the nature of the business or government whose wastes are stored, treated, or disposed at the operation.

IV. Description of waste. List specific examples used in the definitions of "INDUSTRIAL PROCESS WASTE" and "POLLUTION CONTROL WASTE" if applicable.

V. Identify whether the operation is a waste-storage and/or waste-treatment and/or waste-disposal operation (See Section 808.111(b)).

VI. What is the period of time the operation has been conducted?

VII. Identify any permits issued by the Agency related to the conduct of the operation by type (for example, Air, NPDES, etc.) and permit number.

Type of Permit _____ Permit No. _____

VIII. Attest: _____

Signature of Operator or individual authorized by the operator

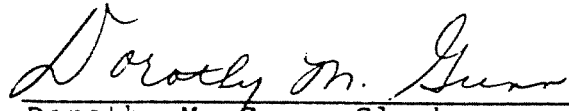
Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

Mail to: Illinois Environmental Protection Agency
Division of Land Pollution Control
P. O. Box 19276
Springfield, IL 62794-9276

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 5th day of May, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board