

ILLINOIS POLLUTION CONTROL BOARD

June 14, 1984

IN THE MATTER OF: )  
 )  
WASTE DISPOSAL SITE ) R81-18  
CHIEF OPERATOR PRIOR )  
CONDUCT CERTIFICATION: )  
35 ILL. ADM. CODE 745 )

PROPOSED RULE.    FIRST NOTICE.

PROPOSED OPINION OF THE BOARD (by J. Anderson):

HISTORY TO DATE

The rules adopted for first notice today are the third draft of rules originally proposed by the Board June 10, 1981. The docket was originally initiated by the Board to partially implement Section 22(b) as amended by P.A. 81-1484, providing that the Board may establish

"Standards for the certification of personnel to operate refuse disposal facilities or sites. Such standards shall provide for, but shall not be limited to, an evaluation of the prospective operator's prior experience in waste management operations. The Board may provide for denial of certification if the prospective operator or any employee or officer of the prospective operator has a history of:

1. Repeated violations of federal, State or local laws, regulations, standards, or ordinances in the operation of refuse disposal facilities or sites; or
2. Conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court; or
3. Proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposal of any hazardous waste."

This rulemaking was initiated by the Board's own June 10, 1981 proposal to add a new Part IV to Chapter 7: Solid Waste. First notice of this proposal was published in 5 Illinois

Register 7939, August 7, 1981. Hearings were held in this matter in Chicago on August 21 and September 25, 1981 and in Springfield on August 26, 1981, and six public comments were received.

On May 13, 1982, the Board adopted a revised set of rules in codified form for first notice. This proposal was published in 6 Illinois Register 6523, June 4, 1982. Hearings were held in Chicago on July 8, 1982 and in Springfield, on July 28, 1982, and seven public comments were received. On December 21, 1982 the Department of Energy and Natural Resources filed a pre-print of its study of the "Economic Impact of Proposed Regulation R81-18: Certification of Waste Disposal Site Owners and Operators," Doc. No. 83/04, January, 1983 (hereinafter "EcIS). As hearing participants and commenters had suggested major revisions in the proposal, economic hearings have been delayed until a new draft incorporating necessary changes could be developed.

P.A. 83-0425, effective September 7, 1983, amended the enabling legislation on which this rulemaking was based. Section 22(b) was deleted, and a new Section 22.1 was added. The difference between old Section 22(b) and new Section 22.1 is that the new section makes rulemaking mandatory, rather than permissive, providing that "By July 1, 1984, the Board shall adopt standards..." (emphasis added).

As the Board noted in its May 13, 1982 Proposed Opinion, p. 2, in this matter, since its inception progress in this proceeding has been retarded by the desire of both the Agency and industry that this certification proceeding not set up limited-life definitions and procedures which would need to be dismantled in the course of the modernization of the Board's Chapter 7 and 9 solid and special waste regulations, since codified as 35 Ill. Adm. Code 807 and 809 (See e.g. Order of October 22, 1981). More specifically, the Board stated:

"Some confusion has arisen concerning the scope of this rulemaking. It is the Board's intent in this proceeding only to prescribe standards for what is essentially a certification that an applicant's prior criminal and administrative history of violations do not disqualify the applicant from operating a refuse disposal site or facility. In short, these rules prescribe procedures for acting upon an applicant's negative qualities. The Illinois Environmental Protection Agency (Agency) and other commenters have suggested that this rulemaking should also establish standards for defining positive qualities such as technical education, training, and years of work experience, much as is the case for wastewater treatment plant operators. The Board has not done so for a very practical reason: the state of uncertainty and flux existing concerning Illinois waste disposal regulations.

In its September 23, 1981 comments, the Agency included an incomplete "draft" set of technical certification rules, which

was not "officially submitted for consideration..., but included for informational purposes". The draft was admittedly incomplete in part because education and experience requirements were to be based on landfill classifications which were part of the originally proposed Chapter 7 revisions. However, R80-20 has been in abeyance while waiting for a revised proposal."

The R80-20 docket was dismissed in October, 1982 as no revised proposal was filed. Successor dockets R82-21, 22 were dismissed June 16, 1983 on the Agency's withdrawal of its December 30, 1982 proposal concerning permitting procedures. At that time, the Agency had anticipated its submission of an amended and expanded proposal to the Board by January 1, 1984. That proposal was received by the Board on May 31, 1984 and docketed as R84-17, In the Matter of: Permit Requirements and Operating Standards for Owners and Operators of Class I and Class II Landfills, and for Generators and Haulers of Special Waste.

Given the difficulties in development of a proposal for permits and operating standards, the Board cannot fully implement P.A. 83-0425 by the July 1, 1984 deadline. In partial implementation thereof, however, the Board will proceed with this "prior conduct" certification of what the Board will denote as a site's "chief operator". The Board will not expand the scope of "good conduct" certification to all personnel of a waste disposal operation at this time. To do so would invalidate the existing EcIS by bringing countless additional individuals into the purview of this regulation, thus preventing its adoption pending performance of a new EcIS. Technical training and "good conduct" certification for these other personnel will be addressed in a Board proposal in docket R84-3.

As, once again, the Board has made substantial changes in this proposal, the Board will initiate a new first notice proposal, and will conduct consolidated merit and economic hearings.

#### APA INITIAL REGULATORY FLEXIBILITY ANALYSIS

While the existing hearing record contains no information on this point, it believes that some companies subject to these rules may be small businesses within the meaning of Section 5.01 of the APA. The rules themselves contain a clear statement of compliance procedures. No professional skills other than clerical capabilities are required for compliance.

If there are such small businesses which feel they would be impacted by this proposal, the Board requests that they comment and identify themselves as small businesses.

THE PROPOSED RULES

The Board will address only major changes between the current and former proposal.

Subpart A:                   General Provisions  
Section 745.101            Scope and Applicability

One major change which has been made is to delete the proposal that owners become certified. Industry objected to the rules as drafted because of their complexity as applied to the multitudinous shareholders in major corporations. The EcIS identified this provision as imposing a great cost burden, and questioned the benefits. The Board has therefore eliminated the requirement at this time.

Section 745.103            Compliance Dates

The Agency as well as industry criticized the prior proposal as being unnecessarily complex and confusing, so it has been simplified. See also section 745.124.

Section 745.110            Definitions

Throughout this proceeding, the Agency and other participants have stressed the need for uniformity between the definitions in this Part and the remainder of Subtitle G. The Board has incorporated several definitions contained in the R84-17 proposal, namely those for "chief operator", "owner", "waste" and "waste disposal site". (These will be addressed early on in the R84-17 proceeding, as well, in order to flush out any areas of basic disagreement.)

In defining "chief operator", the Board has adopted a variant of Agency's definition of "operator". The distinguishing word "chief" has been added in anticipation of the R84-3 certification of other waste disposal personnel. In researching the area, the Board has noted that industry and the regulatory agencies of other states refer to such personnel as "operators", in the same way that personnel working in sewage treatment plants are referred to as "operators," even if they do not have overall supervisory responsibilities.

Subpart B:                   Prohibitions  
Section 745.121            Prohibition

In the previous proposal, given the requirement that owners be certified, the certification was site-specific. Any chief operator ("manager" in the previous proposal) would have been required to be re-certified when he changed employment. Since

certification was site-specific, it would have been an implicit part of the Agency's decision whether a person was qualified by background to handle only non-hazardous waste, or hazardous waste as well. As certification has now become "generic," going with a person rather than a site, it was necessary to make consideration of hazardous waste disposal capability explicit. The Board has not required separate certification to handle special waste, because this category is not dealt with in the R84-17 proposal, and also because legislative proposals are pending to abolish the special waste class in whole or in part.

Section 745.123            Revocation of Waste Disposal Permit

Section 745.124            Defense

These new sections a) articulate a cause of action and b) provide a "grace period" to allow for replacement of a certified chief operator.

Subpart C:            Applications for Certifications

Several simplifying changes were made in this Subpart once the determination was made to delete owner certification.

Section 745.141            Applications

The applicant is additionally asked to state any intent to dispose of hazardous waste as this could affect a certification decision. Subsection (e) [formerly (d)] has been clarified to ensure that an applicant has an opportunity to report pending appeals of convictions, as well as pending actions against him.

Subpart D:            Agency Action

A section which formerly required notification of the same government officials who receive notice of hazardous waste permit applications pursuant to Section 39.3 has been deleted. This section no longer makes sense, given the shift from site specific to generic certification.

Section 745.163            Time Limits

In response to an Agency request, the Board has limited the life of a "default" certification, adopting the one year limit of a Section 38 "default" variance. Section 745.183 "Duration and Transferability" back-references this provision.

Board Members J. Marlin and J.Theodore Meyer abstain.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 14<sup>th</sup> day of June, 1984 by a vote of 4-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board