

ILLINOIS POLLUTION CONTROL BOARD
May 28, 1987

IN THE MATTER OF:)
)
PERMIT REQUIREMENT FOR OWNERS) R84-17
AND OPERATORS OF CLASS I AND) Docket D
CLASS II LANDFILLS AND FOR)
GENERATORS AND HAULERS OF)
SPECIAL WASTE)

PROPOSED RULES SET FOR HEARING:

ORDER OF THE BOARD (by J. Anderson):

Summary of Today's Action

Consistent with the directives in the Board's Orders of February 19 and March 5, 1987, on May 22 and May 26, 1987, the Board's Scientific/Technical Section (STS) filed its "Recommendations For A Non-Hazardous Waste Disposal Program in Illinois And A Background Report To Accompany Proposed Regulations For Solid Waste Disposal Facilities" (Recommendation).* These proposed regulations would establish standards for the design/development and operation of new facilities for the disposal of non-hazardous waste. For the reasons expressed below, the Board accepts the Recommendations of the STS, and orders that these proposed regulations be presented at hearings to be held on June 29 and 30, 1987. In the interests of distinguishing this proposal from the previously filed proposals in R84-17, the Board opens a new sub-docket, R84-17, Docket D, for consideration of the Board/STS proposal; the records in R84-17, Dockets A,B, and C are incorporated into Docket D.

Finally, no later than June 3, 1987, the STS is directed to prepare and file a revised version of the proposed rules and background document. The revised version of the background document is to contain an executive summary; leave is further given to correct typographical errors and to make those editorial

* At the outset, the Board wishes to commend the STS for the quality of its participation in this proceeding. A special acknowledgment is due to Richard A. DiMambro, both as coordinator of the various consultants and other experts whose testimony has been sponsored by the Board's STS during the course of this proceeding, and as principal author of the STS Recommendations. The Board also acknowledges the contributions made to the STS Recommendations by STS environmental scientist Dr. Harish Rao, Dr. Gilbert Zemansky (during the course of his former employment as STS Chief), and Karen Mystrik, STS librarian.

changes which were discussed by the STS orally at the Board meeting. These revised documents, as well as this Order shall be provided to the persons on the R84-17 notice list.

Procedural History

The Board adopted its "Chapter 7" regulations covering operations of sanitary landfills in 1973. These regulations, since codified as 37 Ill. Adm. Code Part 807, have remained virtually unchanged since that time, save for the addition of regulations concerning financial assurance for closure and post-closure care. In 1976, the Board adopted its "Chapter 9" regulations concerning the hauling of special waste. These regulations, since codified as 35 Ill. Adm. Code Part 809, have also existed virtually without change, except for the addition of regulations concerning hauling and disposal of hazardous hospital waste.

Abortive attempts to modernize these rules commenced in the 1980. Docket R80-20 was initiated by a proposal of the Illinois Environmental Protection Agency (Agency) to update Chapter 7, and Docket R81-31 was initiated by a Board proposal to update Chapter 9. These proposals were consolidated and dismissed by Order of the Board on October 5, 1982, after hearings indicated that extensive revision of the proposals was necessary. In that Order, the Board noted that:

The Agency and the Illinois State Chamber of Commerce [ISCC] indicated that they were working together on a substitute proposal which would replace both Chapters 7 and 9. During [the hearing] process it has become clear first that the subject matters of Chapters 7 and 9 require coordination to insure consistency and, second, that it will be difficult to relate the testimony on the former proposals to the evolving combined proposal. The Board therefore hereby consolidates R80-20 and R81-31, and at the same time dismisses both.

In that same Order, Docket R82-21 was opened to consider the anticipated Agency/ISCC proposal for permits for waste management and hauling, and Docket R82-22 was opened to consider the anticipated proposal for landfill operating criteria. The Agency filed a proposal in the R82-21 docket only, which proposal was the subject of hearings. Both dockets were closed by Order of June 16, 1983, as a result of Agency withdrawal of its R82-21 proposal. The proposal was withdrawn as the Agency believed that the best solution to various problems identified at hearing was submission of an amended and expanded proposal.

This docket, R84-17, was initiated to consider a draft proposal filed by the Agency on May 31, 1984. Two inquiry hearings were held at which participants identified concerns with the proposal and questioned the Agency concerning its intent. At the last hearing the Agency indicated its intention of filing a revised proposal. As the Board noted in its Resolution of December 6, 1984 announcing its intention of committing some of the resources of the STS to this proceeding, no revised proposal had been submitted. Although the Agency has been a very active and helpful participant in subsequent phases of this proceeding, it has not filed a new proposal or presented evidence in support of the existing draft proposal.

On April 4, 1985, the ISSC filed an alternate proposal. By Order of April 18, 1985, the Board established Docket B for consideration of this proposal. Four hearings were held in Docket B concerning this proposal.

On August 15, 1986, Waste Management of Illinois filed another alternate proposal, which the Board designated as R84-17 Docket C. This proposal was the subject of nine hearings.

Concurrently with the hearings held in Dockets B and C, the Board held additional hearings in Docket A. The purpose of these hearings was presentation of testimony by various consultants and other scientific experts whose appearance was arranged by the STS. These consultants and other experts did not critique the various proposals pending before the Board, but instead provided testimony concerning their research and experience concerning subjects integral to analysis and/or development of comprehensive regulations for the management of waste. These consultants and other experts, and the subject of their testimonies, were as follows:

Dr. Richard C. Berg,
Dr. Thomas M. Johnson,
Dr. William R. Roy,
Dr. Robert A. Griffen
Illinois State Geological Survey

Various geological considerations regarding landfill siting and potential for groundwater contamination

Dr. David E. Daniel,
Assistant Professor
University of Texas

Landfill/Liners and other earthen barriers

Dr. Robert K. Ham,
Professor of Civil &
Environmental Engineering
University of Wisconsin

Generation and characteristics of landfill leachate and gas

Dr. Cecil Lue-Hing,
Director of Research
and Development
Metropolitan Sanitary District
of Greater Chicago

A case history of landfill
leachate treatment at a
publicly owned treatment
works (MSGDC Calumet Sewage
Treatment Works)

Roberta L. Jennings,
Certified professional
geological scientist &
consulting hydrologist

Hydrogeology of clay soils
and landfill siting

Dr. Aaron A. Jennings,
Associate Professor of
Civil Engineering
University of Toledo (Ohio)

Groundwater contamination
modeling

By its Order of February 19, 1987, the Board determined that only one additional hearing would be held in Dockets A, B, and C. One basis for this determination was that:

"The record to date in R84-17 is sufficient to enable the Board to determine that, while each proposal has meritorious components, no single proposal pending before it is sufficiently refined or comprehensive to be adopted by the Board as the Board's own proposal for the purposes of first notice publication pursuant to the Illinois Administrative Procedure Act, and resulting additional hearings. It is clear to the Board that the Board itself, with the assistance of its scientific/technical and legal staff, must craft a proposal to address the sum of the various concerns which have been brought to the Board's attention."

The Order went on to establish the form and procedures for the filing of a proposal by the STS.

By Order of March 5, 1987, the Board established that the final hearing in Dockets A, B, and C would be held on April 28, 1987, that the public comment period would close on May 20, and that the Board would commence deliberations in this docket today, May 28.

On May 20, a comment was jointly filed by Citizens for a Better Environment, McHenry County Defenders, Center for Neighborhood Technology, Sierra Club, South Chicago Development Commission and Coalition for Appropriate Waste Disposal. On May 21, comments were filed by BFI of Illinois, Inc. and Waste Management. (The Agency had filed comments on April 24, 1987 in advance of the last hearing).

On May 22, the STS filed its Recommendations, including proposed new Parts 810-812, and a supporting background report. These documents were submitted in "rough draft" form to allow the Board Members to begin their review of them over the Memorial Day weekend. Filing of this "work in progress" was necessitated by the terms of the Board's Order of February 19, 1987; said Order required filing of documents for public inspection contemporaneously with distribution of copies to the Board Members, consistent with ex parte restrictions articulated in the Board's "Protocols of Operation For the Scientific/Technical Section", RES 86-1, January 26, 1986 and the Board's Procedural Rules, 35 Ill. Adm. Code 101.121. A more refined draft version of these documents was filed by the STS on May 26, 1987.

The STS Recommendations

It is the aim of the Board, in the R84-17 docket, to adopt a comprehensive set of regulations which establish standards for the hauling, treatment, storage, disposal and recycling of all non-hazardous and special waste. The facilities to be covered would include both existing and new facilities, regardless of whether the facilities are exempt from permit requirements pursuant to Section 21(d) of the Act. The proposal submitted by the STS covers only a segment of this universe. Generally, the proposal establishes standards for the design/development and operation of new waste disposal facilities.

More specifically, the STS has proposed new parts 810 through 812. Part 810 "General Provisions" consists largely of definitions. The bulk of these define terms not included in the existing regulations.

Part 811.101 "Standards For Waste Disposal Facilities" would apply only to new waste disposal facilities, including those which are exempt from permitting requirements pursuant to Section 21(d) of the Act. These general standards include location requirements, as well as various operating requirements. Additionally, this Section establishes separate standards for the design of facilities which dispose of three newly-established classes of waste: putrescible waste, inert waste and chemical waste. These include standards for the construction of a landfill's foundation; liner; final cover and slopes; systems for drainage, collection, treatment, storage, disposal, recycling and monitoring of leachate; systems for monitoring, managing processing and disposal of landfill gas; and systems for establishing and monitoring groundwater quality before, during and after the period of disposal of waste at the site. This Part also establishes standards for construction quality assurance programs to assure compliance with the standards for a landfill's design.

Part 812 contains a specification of information to be included in permit applications for the design of a facility. This Section does not, however, address issues related to the structuring of the permit system, such as whether the supplemental permit system should be retained; such issues will be addressed in the next installment of the proposal, which the STS anticipates filing in June.

Board Review and Comment

The Board accepts the Recommendations of the STS, and will set hearings to be held on June 29 and June 30, 1987 concerning proposed Parts 810, 811 and 812. There are several factors which contribute to this decision. First, it had been the Board's initial intention to delay further hearings in this docket until after the STS had submitted draft regulations and recommendations covering all of the above-described subject areas, and the Board had adopted a comprehensive proposed set of regulations for first notice publication in the Illinois Register. However, in reviewing its budget for the current and coming fiscal years, the Board has determined that it would be prudent to authorize hearings during this fiscal year on those aspects of a proposal which have been developed by the STS with the assistance of consultants who have previously testified in this proceeding and whose services may not in future be available to the Board: Dr. Robert Ham, Dr. David Daniel and Dr. Aaron Jennings. The Board additionally believes that the participants' ability to evaluate these portions of the proposed rules will be hampered only minimally, if at all, since the Board anticipates addressing the larger permitting issues in advance of hearing.

Second, this proposal appears to draw together the best elements from the proposals by the Agency, ISSC, and Waste Management*, as well as the recommendations provided in testimony by the various experts. Some modification of the proposed regulations will likely seem appropriate after consideration of additional testimony and comments received at and after hearing. However, this proposal appears to chart an appropriate course mid-way between the two unacceptable regulatory approaches: the "cookbook" method of inflexible lists of requirements and the ultimately flexible "trust me" method of requiring compliance with "whatever the Agency in its unfettered discretion thinks best". In those area where it is scientifically or technologic-ally impracticable to set forth specific methodologies or protocols, the proposal appears to establish sufficient criteria for exercise of judgment to comply with the specificity requirements of Illinois administrative law.

* The Board today takes no action concerning any of these proposals. To do so would be premature, as the Board/STS proposal is not as comprehensive as the other three. These proposals remain pending before the Board.

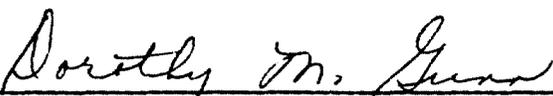
Finally, the Board believes that, with one exception, this proposal responds in large part to the concerns expressed throughout this proceeding by the Agency, the waste generators and disposers, and the environmental community. The single exception is the comment made by the ISSC at the April 28 hearing, which is that the Board should suspend this rulemaking until the USEPA issues its criteria for non-hazardous waste disposal pursuant to Subtitle D of RCRA; such action is anticipated in March of 1988.

The Board does not consider suspension of rulemaking to be an acceptable option. Review of the procedural history of the "Chapters 7 and 9 Update" proceedings has made it clear to the Board that if its rules are ever to be modernized that momentum must be maintained. The instant proposal is fully consistent with existing Subtitle D criteria. Aside from the issue of the USEPA's consideration of the "dry landfill" concept as opposed to the Board's consideration of enhancement of biodegradation, the Board has no reason to believe that the proposal is inconsistent with USEPA's current line of thinking. Indeed, it is not inconceivable that further progress with this proposal will influence USEPA thinking, to the benefit of the State of Illinois.

It is for all of the foregoing reasons that this proposal is set for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of May, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board