

previous Board proposals. There are, however, some significant changes which are proposed. First, IERG's proposal deletes the term "land disposal unit" and replaces it with "hazardous waste site." There are both advantages and disadvantages to such change. Second, IERG's proposal would not allow the Agency to require treatment of the wastes which would render the wastes less hazardous but not non-hazardous. The Board's vacated rules would have allowed the Agency that power. This change has substantial significance. Third, IERG's proposal would not impose restrictions upon land treatment facilities, surface impoundments or waste piles, except for those land treatment facilities at which the wastes would remain after closure. Under the vacated rules, such facilities would be subject to Section 39(h) unless the owner or operator demonstrates that all wastes and waste residues will either be degraded, immobilized or removed prior to closure. Again, this is a significant change.

Presently, there are three basic proposals to consider. First is the Board's original June 11, 1986 proposal which was intended, as much as possible, to be comprehensive, and which included a ratio test for determining economic reasonableness. Second is the Board's October 23, 1986 Emergency Rule Order, which represents a refinement of the original proposal, but which was also less inclusive. As stated in the Board's adopting opinion at page four:

Obviously, in proposing these emergency rules, the Agency, the public, the regulated community and the Board would all be best served if a complete set of rules could be adopted which the Board could be reasonably confident were in a form which would likely be adopted as final rules. Unfortunately, that is not possible at this time. The implementation of Section 39(h) is complex and the present record does not contain sufficient information to support a comprehensive regulation. Thus, the Board will simply propose those rules which it believes are adequately supported and which it believes are likely to remain in substantially the same form in final rules.

Third is IERG's proposal which was described above.

Even the three proposals together leave several issues unresolved. Foremost is the question of the proper standards to determine economic reasonableness. Is a ratio test, as proposed in the June 11, 1986 Order, appropriate, and, if so, what should that ratio be? Is there sufficient information available to establish technical standards for certain classes of waste which constitute either significant amounts of waste or a large number

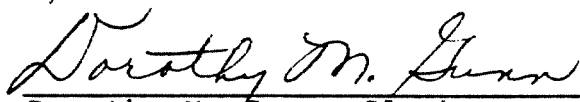
of wastestream authorizations? If so, what should those standards be? Such standards are allowed for under both the June 11 and IERG's proposal, but specific standards are not set forth in either.

The Board also notes that the backdrop of the rules has changed since the emergency rules were adopted. The Agency now has presumably issued a large number of authorizations and it would be useful for the Board to be apprised of how the Agency has made its decisions and how well the process has been working. Further, when the Board adopted the emergency rules, the Board was constrained to limit the scope of the rules to the implementation of Section 39(h) in that there was certainly no emergency with respect to the adoption of rules which go beyond the mandate of that section. In adopting permanent rules, however, there is no such constraint. The Board could, for example, adopt rules which would bring classes of facilities within the wastestream authorization program which are not contemplated by Section 39(h). However, if the Board were to do so, such action would almost certainly require the preparation of an economic impact study (EcIS) which may well not be necessary if the rules simply construe Section 39(h). Due to the significant delay which can result from the preparation of an EcIS and the economic impact hearings which follow its preparation, it may be preferable to proceed on the implementation of Section 39(h) and to wait for another proceeding to consider the expansion of the rules beyond that section if it later seems advisable. However, the Board is interested in comment on this issue.

Given the amount of new information which is available but which is not in the present record and the number of unresolved issues which remain in this proceeding, the Board has determined that it will not proceed to first notice at this time. Instead, additional hearings are authorized to consider IERG's proposal as well as any other issues which have been raised in this or prior Board opinions and orders in this matter. The Board notes that the four hearings which have already been held are part of this docket and that the information contained in docket A should not be repeated in this docket.

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 28th day of May, 1987 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board