

ILLINOIS POLLUTION CONTROL BOARD
October 15, 1987

IN THE MATTER OF:)
)
HAZARDOUS WASTE PROHIBITIONS) R86-9(B)

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon an October 2, 1987, joint motion for scheduling of an additional regulatory hearing for purposes of presentation of legal argument filed by Citizen for a Better Environment (CBE), the Illinois Environmental Protection Agency (Agency) and the Illinois Attorney General's Office. Responses were filed on October 9, 1987 by Waste Management, Inc. and on October 14, 1987 by the Illinois Environmental Regulatory Group (ERG).

The joint movants requested the additional hearing for purposes of (1) the presentation of legal argument by the parties, and (2) an opportunity for Board Members and the Hearing Officer to ask questions on legal matters. The joint movants asserted that "[a] number of the important subjects to be addressed by the Board in these proceedings principally involve legal issues of statutory construction," and then posed six issues for consideration. The joint movants argued that the public interest would be served by a "fuller elucidation" of the important legal issues in these proceedings through the presentation of oral argument by the parties and an opportunity for Board Members and the Hearing Officer to direct questions on these issues to the parties.

Waste Managements response requested that the Board consider (1) whether oral argument would be cumulative of matters already in the record, (2) whether oral argument is necessary in light of the Hearing Officer order allowing public comment on any issue, (3) whether a hearing for oral argument would constitute judicious and economical use of limited Board funds, and (4) whether the joint motion satisfies the procedural requirements of public notice and an opportunity for public participation in any additional public hearing(s) scheduled in this matter. Waste Management indicated that if an additional hearing is scheduled, it may request to be heard to clarify some issues related to its proposal for technical standards to allow the continued land disposal of residuals from certain treatment processes.

ERG responded that it would not object to additional hearings on the merits of its proposal. However, ERG objected to the format proposed by the joint movants. ERG noted Section 102.101 of the Board's procedural rules which states that


"[h]earings ... shall be deemed in the nature of legislative hearings." ERG argued that legislative hearing allows legal argument -- but does not limit the hearing to such argument. ERG suggested, in the interest of conserving the Board's limited resources, that such a hearing be consolidated with the economic impact hearings.

The Board agrees that " fuller elucidation" of the legal issues would serve the public interest. However, the Board is not inclined to rule on the motion at this time. The Hearing Officer granted the participants until October 30, 1987, to file written comment on any issue. The Board believes that because of the numerous and complex issues involved in this proceeding, written briefs should precede any oral argument. Therefore, the Board directs the Hearing Officer to set up a briefing schedule which establishes a date for the submission of comments (briefs), a date for the submission of responses, and a date for the submission of replies. After a review of the briefs, the Board will determine whether any questions remain and if so, will consider whether those questions can be adequately addressed at the economic impact hearing.

The Board believes that this approach will alleviate the concerns of all participants, will utilize the Board's resources most economically and will result in a more clear, concise record.

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 15th day of October, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board