

ILLINOIS POLLUTION CONTROL BOARD
May 13, 1982

IN THE MATTER OF:)
)
WASTE DISPOSAL SITE OWNER/OPERATOR AND) R81-18
MANAGER PRIOR CONDUCT CERTIFICATION:)
ILL. ADM. CODE TITLE 35, SUBTITLE G,)
CHAPTER I, SUBCHAPTER g.)

PROPOSED RULE. FIRST NOTICE.

OPINION OF THE BOARD (by J. Anderson):

HISTORY TO DATE

Section 22(b) of the Environmental Protection Act provides 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."

Section 39(h) provides that prior to issuance of an RCRA permit or permit "for the conduct of any waste-transportation", that the Agency evaluate "the prospective operator's prior experience in waste management operations". The Agency is given authority to deny the permit if the prospective operator, or one of its employee or officers, has a history of misconduct identical to that in Section 22(g).

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 and in Environmental Register #242, July 31, 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. Various motions to stay this proceeding and to consolidate it with the R80-20 Chapter 7 "clean-up" proceeding were denied by the Board in its Order of October 22, 1981.

Based on the comments made at hearing and on the written comments received, the Board has revised its initial proposal. As the revisions are significant, hearings will be held on the revised proposal, first notice of which shall be published in the Illinois Register. Before addressing the individual rules, some general remarks are in order.

The original proposal was for addition of a new Part IV to existing Chapter 7. This revision has been drafted in codified form as Subchapter g to Ill. Adm. Code Title 35, Subtitle G, Chapter I. This has been done in anticipation of the codification of Chapters 7 and 9 in the course of the R80-22 proceeding.

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.

Too, the Board's R81-22 adoption of RCRA rules may pose additional considerations which should be taken into account in any technical certification program.

It is the Board's belief that this proceeding, which basically involves a "criminal record check" can and should go forward. It is not intended to preclude later adoption of technical certification standards, when and as appropriate technical classifications and standards are developed. In anticipation of such rulemakings, the Board has created the "Certification" Subchapter g in its codification scheme, in which such rules can eventually be placed.

THE PROPOSED RULES

Subpart A: General Provisions

Section 745.101 Scope and Applicability

Section 745.102 Relationship to Other Rules

These new sections are self-explanatory.

Section 745.103 Compliance Dates

The original draft was silent as to compliance dates. Concern was expressed at hearing about the lack of a "phase-in" period for existing, permitted sites. Subsection (c) was added to require compliance no later than 180 days after the effective date of the rules. Subsections (a-b) were added in anticipation of an earlier "phase-in" of the rules. 745.103(a) establishes that once certification is granted, the 745.121 Prohibition and the 745.125 Duty to Provide Supplemental Information are immediately applicable.

745.103(b) requires compliance 35 days after mailing of an Agency certification denial. Essentially, where certification is denied, a "temporary stay by rule" of the 745.121 Prohibitions is provided pending, a) any appeal of the Agency action to the Board, or b) the filing of a variance petition.

Section 745.110 Definitions Incorporated by Reference

Section 745.111 Definitions

These sections have been added in part because of the lack of inclusion of definitions in the original proposal. The existing Chapter 7: Solid Waste definitions of particular pertinence to this proceeding are those of "facility", Rule 104(f), "operator", Rule 104(l), and "site", Rule 104(r). The Act's section 3 definitions of "person", "RCRA permit", "refuse", "site", "waste", and "waste disposal site" are also of particular importance.

Section 22(b) of the Act, as originally adopted by P.A. 76-2429, effective July 1, 1970 provided simply that the Board might adopt "[s]tandards for the certification of personnel to operate refuse disposal sites or facilities." No definition of the word "operate" was included in the Act.

The Chapter 7 definition of "operator" includes any person who "owns, leases, or manages a solid waste management facility". This definition has remained unchanged since its adoption by the Board in 1973 (R72-5, 8 PCB 577, 578, July 19, 1973).

The one-sentence Section 22(b) of P.A. 76-2429 was supplemented by P.A. 81-1484, effective September 18, 1980, to read as quoted on p.1 in its entirety. No definition of the word "operate" was added to the Act, leaving the term still undefined.

The Board interprets this legislative silence as acquiescence to the long-established Chapter 7 definition of "operator". The Board therefore construes Section 22(b) as amended by P.A. 81-1484 as charging it to certify site owners and managers. "Lessees" in the ordinary course would fall into one of the two categories.

Section 745.111 accordingly adds a new definition of "manager". It specifies that a "manager" is a natural person, as opposed to a corporate entity or partnership. "Owner" is also newly defined, and includes individuals and legal entities as listed in Section 3 of the Act. In response to comments made at hearing regarding "common practice" in the waste disposal industry, the definition of owner for purposes of Subchapter g has been drafted to include contract or option purchasers, but to exclude, for instance, a bank holding "bare" legal title as trustee for a waste management company (R.120, 128-130).

Subpart B: Prohibitions

Section 745.121 Prohibition

In response to comment on the original draft, this section makes it clear that while certification is not a permit, the certification requirement is tied to permit requirements. If a permit is required by the Board's RCRA or Chapter 7 rules for a site or facility, then certification is required for its owner and manager. However, where UIC permits are required, certification is not required. UIC permits are required by the Act pursuant to Title III: Water Pollution; the Board's certification authority is contained in Title V: Land Pollution and Refuse Disposal, in which UIC permits are not mentioned. The Board therefore believes that to include UIC permit holders in this rulemaking would exceed its statutory authority, although the Board recognizes that certification of such individuals would provide the same sort of protection to the public as will certification of RCRA and Chapter 7 permittees.

Section 745.122 Permit Denial

This is largely a restatement of the Agency's denial authority as set forth in Section 39(b) of the Act.

Section 745.143 Duty to Apply

This section is self-explanatory.

Section 745.124 Duty to Supplement Pending Application

Section 745.125 Duty to Provide Supplemental Information

The duty to supplement has been modified in response to comments to reduce the paperwork burden after certification has been issued. Supplements are now required semi-annually, rather than every 30 days, unless a specific request for such supplement is made by the Agency. The duration of the duty has also been made clear. Supplementation of a pending application continues to be required within 30 days, however, in order to allow the Agency to make a fully informed decision.

Subpart C: Applications For Certification

Section 745.141 Owner/Operator Applications

Section 745.142 Manager Applications

The intent of the owner disclosure requirements is to reach hidden and constructive ownership interests which would influence the Agency's decision to certify a natural person or a corporate entity. The Board has modified the original draft to require that owners and stockholders of the applicant's parent business be identified, but has not required disclosure and resulting supplementation of administrative and judicial actions concerning them (i-j). However, such disclosure continues to be required of owners and stockholders of the applicant business. Subsection (k) has been amended to correct the inadvertent omission of language providing that copies of administrative or judicial determinations are necessary if the determinations were "made after opportunity for an adversarial hearing".

The manager application has been dealt with in a separate rule containing only those provisions listed in 745.143 which relate to natural persons.

Section 745.143 Application Form

Section 745.144 Incomplete Application

Section 745.145 Registered or Certified Mail

These provisions are unchanged.

Subpart D: Agency Action

Section 745.161 Notification of Governmental Officials

This unchanged section provides for the giving of notice to the same officials required by Section 37 and 39 of the Act to receive notifications of permit applications. A township official commented that townships should be added to this notice list, but the Board has chosen not to increase the Agency's administrative burden to this extent.

Section 745.162 Standards for Denial

This section has not been modified. As explained at hearing, the language concerning opportunity for adversarial proceeding is not found in the Act, but has been added to provide more explicit and definite standards for exercise of Agency discretion.

Section 745.163 Final Action

This section now provides that the Agency provide reasons for any denial of certification, a provision inadvertently omitted from the prior draft.

Section 745.164 Time Limits

The Board has reversed the position taken in the previous draft, which had provided that a certification be deemed denied if the Agency failed to take timely action. Nearly every hearing participant objected to this provision. Upon reflection, the Board agrees that where the Agency fails to timely act, certification should be deemed granted. However, the Board does not believe that if a "bad" operator receives certification due to an administrative error, that there should be no forum for consideration of the public's right to protection from such individuals. Section 745.182 thus explicitly allows for an action to suspend or revoke such certifications.

Section 745.165 Waiver of Time Limits

This section is self-explanatory.

Subpart E: Appeal, Suspension, Revocation, and
Transferability

Section 745.181 Appeal of Certification Denial

This section provides that Agency certification decisions follow the usual appeal track to the Board, as is presently the practice concerning Agency wastewater treatment plant operator certification decisions, rather than to the Circuit Court. While Section 40 speaks exclusively of "permits", and the Board has stated that it does not believe that a certification is a permit, the certification system as outlined in these rules is inextricably intertwined with the permitting system. For example, Agency denial of certification in many cases will result in permit denial.

Section 745.182 Suspension or Revocation

In the original draft, suspension or revocation would have been an Agency decision appealable to the Board. As pointed out at hearing, such a procedure, might be found to run counter to Section 16 of the Administrative Procedures Act (APA). To avoid any potential problems in this area, this section now provides for suspension and revocation actions before the Board.

Section 745.183 Duration and Transferability

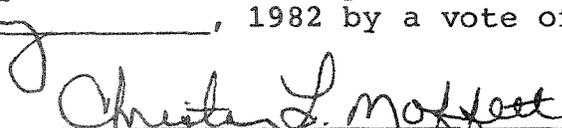
This section addresses two areas in which the previous rules were silent.

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.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion was adopted on the 13th day of May, 1982 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board