

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1985

IN THE MATTER OF:	)	
	)	
NON-HAZARDOUS SPECIAL WASTE	)	R84-43
MANIFESTS	)	
	)	
IDENR SPECIAL WASTE	)	R85-27
CATEGORIZATION STUDY	)	(Consolidated)

PROPOSED RULE. FIRST NOTICE.

CONSOLIDATION OF REGULATORY PROCEEDINGS.

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

R84-43 was established in December 1985 to comply with the statutory mandate in Section 22.01 of the Environmental Protection Act (Act), which states:

By January 1, 1986, the Board shall review and consider the repeal of any existing rule or regulation that requires manifests for the shipment of non-hazardous special wastes. However, the Board shall adopt regulations that require that facilities accepting non-hazardous special wastes file a report with the Agency, on an annual basis, specifying the quantities and disposition of non-hazardous special wastes accepted for treatment, storage or disposal.

Inquiry hearings were held in this matter on March 4, 1985 and March 29, 1985. The record in this proceeding consists of the transcripts of these two hearings, 11 exhibits [including proposed language from both the Illinois Environmental Protection Agency (IEPA) and the Illinois State Chamber of Commerce (ISCC)], and 6 public comments.

In summary, having considered this question, the Board finds that it would be imprudent to repeal the manifest requirement at this time, and that further deliberation should proceed under a consolidated R84-43/R85-27 Docket.

The language of Section 22.01 requires that the Board "review and consider" the repeal of Board regulations requiring manifests for the shipment of non-hazardous special wastes. It is clear that the General Assembly did not mandate repeal of the manifest requirement, but rather intended that the Board review the "pros" and "cons" of such a repeal. The Board utilized the inquiry hearing process to provide interested parties with an opportunity to present their views on the record, and to enable

the Board to consider the relationship of such a repeal to other aspects of the regulatory program for special wastes.

The great bulk of the testimony received by the Board on this question argues against wholesale repeal of the manifest requirement and in favor of a more limited amendment of the manifest requirement in light of the broader question of what should constitute a special waste. Witnesses representing the full spectrum of waste generators, waste haulers, waste disposal operations, and environmental public interest groups all agreed that at least some sort of individual load tracking system is necessary for at least some of the non-RCRA special wastes. (See R. pp. 12-26, 106-114, 149-151, 223-232, 131.) IEPA, which is the enforcement agency and the agency handling the computerized manifest match-up systems, also agreed that an individual load tracking system is essential for enforcement, although it believes the IEPA itself need not receive copies of the manifests. (See R. pp. 48-50, 99).

Other reasons cited for maintaining an individual load tracking document included: 1) the fact that it provides information necessary to prepare the annual or quarterly report, 2) it enables disposal facility operators to ensure compliance with their supplemental permits, 3) it provides a record of the "chain of custody" of the wastes which may protect the parties involved from subsequent liability for mishandled wastes, 4) it acts as a "label" or "warning" that these wastes require special handling, 5) some parties believe that many of the wastes that presently are not considered hazardous under RCRA either should be or are likely to be so considered in the future, and thus require tracking as cautiously as RCRA hazardous wastes.

The Board is persuaded by the statements made by several witnesses that if a waste is considered a special waste and therefore requires special handling, e.g. disposal only pursuant to a supplemental permit, the waste should be accompanied by a manifest or tracking document.

The special waste issue is currently being reviewed under another docket, R85-27, consistent with another legislative mandate in Section 22.9 of the Act and in the context of a recently submitted Department of Energy and Natural Resources (DENR) study entitled "Special Waste Categorization Study". The special waste issue is also an important component of the ongoing R84-17 "Chapters 7 and 9 Update" proceeding.

Given these circumstances, the Board believes it would be putting "the-cart-before-the-horse" to attempt to repeal or otherwise modify the manifest requirement at this time. Such modification would run the risk of being either over or under inclusive in terms of the wastes subject to the new requirements. At best, any such modification would have to be considered to be an interim measure, subject to further review at the very least in the R85-27 proceeding. Lastly, the Board is

not persuaded that the hardship involved in continuing to comply with the existing regulations for a period of time needed to more fully consider related issues, particularly those in R85-27, outweighs the cost and potential confusion that would be incurred by requiring compliance with new, interim measures.

The legislative mandate in Section 22.01 states that the Board shall adopt regulations requiring that facilities accepting non-hazardous special wastes file an annual report on these wastes with the IEPA. The Board construes this language as a non-discretionary mandate, i.e., that the Board shall require annual reporting for special wastes whether or not manifests are required. However, the Board recognizes that it is preferable to deal with the specifics of the annual report question in conjunction with the related manifest/special waste categorization issues. Therefore, in a good faith effort to comply with the mandate of Section 22.01 in light of the mandate of Section 22.9, the Board proposes to adopt the statutory language. The proposed date for compliance will be July 1, 1987, to allow for reasoned consideration of all issues.

Finally, for purposes of future consideration of the manifest requirement for non-hazardous special waste, as well as the proposed adoption of the Annual Report requirement, this docket is hereby consolidated with R85-27.

ORDER

The Clerk is directed to cause First Notice publication in the Illinois Register of the following proposed rule:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 809  
SPECIAL WASTE HAULING

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section 809.501 Annual Reports

Facilities accepting non-hazardous special wastes shall file a report with the Agency, on an annual basis, specifying the quantities and disposition of non-hazardous special wastes accepted for treatment, storage or disposal. This requirement shall become effective July 1, 1987.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20<sup>th</sup> day of December, 1985, by a vote of 7-0.

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