

ILLINOIS POLLUTION CONTROL BOARD
June 25, 1987

IN THE MATTER OF:)
)
PRIOR CONDUCT CERTIFICATION) R81-18
FOR WASTE DISPOSAL SITE PERSONNEL:)
35 ILL. ADM CODE 745.)

PROPOSED RULE SECOND NOTICE

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

On March 19, 1987, the Board proposed for first notice regulations intended to implement Section 22.5 of the Environmental Protection Act ("Act"). The proposed regulations were published in the Illinois Register on April 24, 1987, at 11 Ill. Reg. 7523.

The regulations would establish a program of prior conduct certification for waste disposal site personnel. Additionally, they would provide for certain prohibitions in circumstances where prior conduct certification has not been obtained, has been denied, or has been cancelled or revoked.

The Board has discussed the various provisions of the regulations in the Proposed Opinion which accompanied the March 19 first notice Order. The Board will not repeat that discussion here, but rather will focus on the public comments received in response to first notice.

The Board will today adopt the rule for second notice, with modifications as noted below.

FIRST NOTICE PUBLIC COMMENTS

The Board received three public comments during the first notice period. The first was filed on April 30, 1987, by Waste Management of Illinois, Inc. ("WMI") as Public Comment #17. The second was filed on May 20, 1987, by the Illinois Steel Group ("Steel Group") as Public Comment #19¹. The third was filed on June 8, 1987, by the National Solid Wastes Management Association

¹ The Steel Group comment was initially filed on May 7, 1987, and docketed as Public Comment #18. The same comment was refiled on May 20 with an Affidavit of Service and separately docketed as Public Comment #19.

("NSWMA") as Public Comment #20. Each of the three comments expresses general support for the regulations as proposed, but requests modification of particular provisions.

Section 745.102: Definitions

NSWMA opines in item 3 of its comment that the definition of "waste storage" used in the proposed rule "needs to be clarified". Unfortunately, NSWMA offers no guidance to the Board as to the nature of the needed clarification or suggestion as to how the clarification might be brought about.

The Board does note that the rule proposed here does not actually contain a definition of waste storage, but rather incorporates the definition as found elsewhere within the Board's waste disposal regulations, pursuant to proposed Section 745.102(a). This has been done to impart conformity of definitions to all of the Board's waste disposal regulations. The Board further notes that the entirety of the Board's waste disposal regulations, including the definition of waste storage, are currently under review in a separate Board proceeding, R84-17. Any alteration to the current definition of waste storage which might come about there would carry over into the instant matter. Accordingly, the Board believes that it would be inappropriate to propose an alternative definition here, particularly given that it is uninformed of the desired direction of the alternative definition.

Section 745.122: Application Information

Items 2, 3, and 4 of the WMI comment address certain information required to be submitted as part of an application, pursuant to proposed Section 745.122.

Section 745.122(b) would require submission of information regarding the location and nature of all waste disposal sites owned or operated by the applicant or at which the applicant has served as chief operator. In Item 2 of its comment WMI contends that inclusion of this provision is contrary to the Board's expressed intention of not having the regulations address positive qualities associated with waste disposal site operators (First Notice Opinion and Order at 3, March 19, 1987).

The Board does not believe that the application information of necessity reflects on any qualities associated with waste disposal operators, either positively or negatively. Rather, the intent of requiring the specified data is purely informational. The Illinois Environmental Protection Agency ("Agency"), as the body responsible for certifying, would need to be apprised of the applicant's background, so as to be able to make the most enlightened decision. It seems reasonable to the Board that this background should include identification of the waste disposal sites with which the applicant has had prior association.

For these reasons, the Board will not modify the content of proposed Section 745.122(b). However, the Board has noticed in its review of this section that the rule as proposed is clumsily constructed. Accordingly, the Board will make the following modifications relative to the first notice proposal:

- b) 1) The name and address identification of each waste disposal site at any time owned or operated by the applicant, or at which the applicant served as chief operator, including:
 - 1) The name and address of each site, and
 - 2) A description of the nature of the each site and the type of waste disposed of there (e.g., hazardous waste, municipal waste); and
 - 3) A description of the length of and nature of involvement with each site;

The 3rd and 4th items in WMI's comment address aspects of administrative or judicial determinations which would be required as application information pursuant to Section 745.122(c) and (d). As regards 745.122(c), WMI points out that only final determinations are relevant to the matter of whether certification is granted or denied. This point is well taken, and as a matter of clarification the Board will accordingly make the following modification to 745.122(c) relative to the proposed first notice language:

- c) A copy of any final administrative or judicial determination.....

WMI also requests that Section 745.122(d) be deleted. Section 745.122(d) would require applicants to submit information concerning certain pending administrative or judicial determinations. WMI contends that, since only final determinations are relevant in the decision to grant or deny certification, they also constitute the only relevant inquiry.

The Board disagrees. Pending administrative or judicial determinations serve to identify the applicant to the Agency, much as does the applicant's prior association with waste disposal sites. While it is clear, pursuant to Subpart C of the proposed regulations, that the Agency is not to consider pending administrative or judicial actions as grounds for denying an application, this does constitute grounds sufficient for withholding information on pending actions.

Section 745.124: Updating of Application Information

Proposed Section 745.124 would allow the Agency to request up to three times a year that those holding certification provide the Agency with information identifying changes in any information required for certification. In Item 5 of the WMI comment it is requested that the phrase "for good reason shown" be inserted into this provision as a limit to the Agency's authority. WMI argues that such a limitation seems a fair allocation of burden between the Agency and those holding certifications of the time and effort involved.

WMI's point here is well taken. The Board will accordingly accept the modification in concept. However, the Board believes that the alternative phrase "for cause shown" is more likely to be viewed as acceptable under review, and accordingly believes this to be a more appropriate choice. Section 745.124(a) in pertinent part is altered thusly:

A person who holds prior conduct certification shall additionally, upon Agency request and for cause shown, provide a supplemental information report.....

Section 745.125: Application Form Development

Proposed Section 745.125 would have the Agency prescribe the form in which all application information is to be provided. NSWMA in item 1 of its comments requests that the Board require that the Agency follow the Illinois Administrative Procedures Act ("APA") in developing this application form.

Earlier drafts of the proposal in this matter did contain a requirement such as NSWMA here requests. However, the Board deleted that provision in the current version of the proposal. All administrative agencies within the State, the Board included, are required to conform to the APA. Moreover, the Board is not specifically authorized by the Act or other statute to require conformity to the APA. Therefore, as the Board noted in its first notice opinion, it is outside the authority of the Board to order a fellow agency to conform to the APA (First Notice Opinion and Order at 8, March 19, 1987). For these reasons the Board will retain Section 745.125 as proposed at first notice.

Section 745.126: Incomplete Applications

The second item in NSWMA's comment requests that a new section be added here stating that the Agency must act within 90 days of receipt of a complete application or the application is deemed approved. The Board notes that the provision requested by NSWMA does exist at proposed Section 745.143, and there would be no reason to repeat it.

The Board in its own review of this Section notes one matter which it believes warrants discussion. That is, Section 745.126 provides that when an application is determined to be incomplete, the applicant may deem the Agency's action as a denial of prior conduct certification for purpose of administrative review. This deemed denied is meant to be only for purposes of administrative review, which thus allows the applicant to appeal the Agency's determination of incompleteness. A deemed-denied application is not intended to be denial of certification in the context of the prohibitions of Section 745.201. To clarify this matter, the Board will append the following sentence to the end of Section 745.126: "A prior conduction certification which has been deemed to be denied pursuant to this Section shall not constitute denial of certification for the purposes of Section 745.201".

Section 745.143: Duration of Certification when Deemed-Granted

Proposed Section 745.143 would cause a prior conduct certification to be deemed granted for a period of one year should the Agency fail to take final action within ninety days of filing of an application. WMI contends that the one-year duration is not associated with any default provision identified in Section 39(a) of the Act, and therefore is not justified.

The Board disagrees that there is no justification in placing a limitation on the duration of a deemed-granted certification. The whole purpose of having a deemed-granted provision is to provide protection against failure of a permitting or certifying agency to act timely on an application. Its purpose is not to provide an avenue by which review might be long or permanently circumvented.

The Board also finds support for a limited duration of the deemed-granted certification in the Act, contrary to WMI's belief elsewhere. Section 39.1(e) provides that failure of the Agency to timely act on a permit allows that "the applicant may deem the application approved as applied for" (emphasis added). All permits have a specified duration for which the permit is to be applicable. None are permanent licenses. Thus 39.1(e) implicitly requires that the permit be deemed issued for only that specified duration.

The Board continues to believe that one year is a suitable duration for a deem-granted certification. In this context, the Board notes that proposed Section 745.124(a) requires an annual supplement of the application information, an aspect of the proposed regulations to which WMI has not filed an exception. Annual supplements would therefore be required even of an application which has been deemed granted. It would thus seem fully reasonable to have the required review of the deemed-granted application within one year (plus ninety days pursuant to 745.143) of the original application filing.

Section 745.201: Prohibition Against Continued Involvement in Waste Disposal Activities

Items 1 and 2 of the WMI comment, item 4 of the NSWMA comment, and the Steel Group comment go to matters related to prohibitions. As proposed, the regulations prohibit, among other matters, individuals who have had prior conduct certification denied, cancelled, or revoked from owning or operating a waste disposal site or from serving as an employee, officer, or director of the owner or operator of a waste disposal site.

WMI requests that both Sections 745.101(c) and 745.201(c), where this prohibition is found, be modified by deleting reference to "owning" and "owner". WMI contends that these deletions would be consistent with the view expressed in the Board's proposed opinion on first notice that certifications should not be required for owners of sites (See March 19 Proposed Opinion, p. 13).

WMI is correct in its understanding that the Board does not intend that owners be required to obtain prior conduct certification. The Board reached this proposed determination based on arguments related to the costs and difficulties associated with certifying both large numbers of owners and owners who are other than individuals, and the view that the intent of Section 22.5 seemingly excludes having certification apply to other than on-site operators (Id.).

In fact, the regulations as proposed do not require that owners be certified. Rather, the specific reference to owners in Section 745.101(c) and 745.201(c) goes to an entirely different aspect of owner involvement. That aspect is the prohibition against individuals continuing to participate in the waste disposal business after they have been denied prior conduct certification or while they have had prior conduct certification revoked or cancelled. The Board believes that this provision is consistent with the intent of Section 22.5 of having individuals who have demonstratively poor conduct records from actively engaging in waste management operations. Accordingly, to the extent that individuals who have failed the prior conduct "test" may subsequently seek to become owners of waste disposal sites, they would be denied that ability pursuant to the regulation as proposed.

This whole matter may be succinctly put by noting that owners are not required to take the prior conduct test. However, having taken the test and been found deficient, an individual may not continue involvement with waste disposal activities, including ownership of waste disposal sites.

For these reasons the Board will make no modifications of this portion of the proposed rule.

NSWMA specifically requests that all of Section 745.201(d) be deleted based on the view that it is too restrictive. Section 745.201(d) prohibits individuals who have had prior conduct certification denied, cancelled, or revoked from continuing to participate in waste disposal activities. The Board does not believe that this prohibition is too restrictive. As the Board noted in its first notice Opinion, it believes that the spirit, as well as perhaps the letter, of Section 22.5 of the Act would be violated if the types of prohibitions set forth in Section 745.201(d) were absent (First Notice Opinion and Order at 14, March 19, 1987). NSWMA has presented no argument to the contrary. The Board accordingly declines to delete Section 745.201(d).

The one change requested by the Steel Group goes to a related matter. The Steel Group notes that it has over the years attempted to employ "the disadvantaged, released convicts, probationers, or others who might not qualify for waste site certification". The Steel Group opines that they, or other large industries, might therefore hire or have in their employ in a position unrelated to its waste operations "persons who either were denied or would not qualify for waste disposal site chief operator certificate".

With the sole exception that the individual may not be employed as a waste disposal site chief operator, the Board does not see how employing a individual who "would not qualify for waste disposal site chief operator certificate" presents any difficulty pursuant to the regulations as proposed. Such an individual would not be exposed to the prior conduct test even were he employed at the company's waste disposal site in other than chief operator capacity. Similarly, he would not be exposed to the prior conduct test if employed elsewhere within a company.

Moreover, there is nothing within this rule which inherently precludes a "released convict or probationer" from obtaining prior conduct certification. Felony history is a criterion upon which the Agency may deny certification, rather than a condition upon which the Agency must deny certification. The Board can readily envision situations where a convicted felon who has paid his societal debt might not be barred from obtaining prior conduct certification.

The second part of the Steel Group's concern does raise a question of apparent import. That is, should an individual who has taken and failed the prior conduct test be denied employment in facets of a company's activities unrelated to its waste disposal operations?

The Board believes that the answer is no. The denial should be constrained to just the waste disposal activities, and any other reading would be contrary to the Board's intent.

Therefore, the Board will modify the first notice language to conform it to the intent. The Board believes this can be done most straightforwardly by deleting the reference to "employee" in Section 745.201(d) and adding a new Section 745.201(e) which identifies the prohibition peculiar to being a employee. These changes, relative to the first notice proposal, are as follows:

- d) No person shall serve as an ~~employee~~, officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

- e) No person shall serve as an employee at a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

These changes also require a conforming modification to Section 745.101(c), which has been made in the Order.

ORDER

The Board directs that second notice of the following proposed rule be submitted to the Joint Committee on Administrative Rules:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER g: CERTIFICATIONS

PART 745
PRIOR CONDUCT CERTIFICATION

SUBPART A: GENERAL PROVISIONS

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745.101 Scope and Applicability
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SUBPART B: APPLICATION FOR CERTIFICATION

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745.142 Final Action
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745.144 Waiver of Time Limits

SUBPART D: APPEAL, REVOCATION AND TRANSFERABILITY

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745.161 Appeal of Certification Denial
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SUBPART E: PROHIBITIONS

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745.180 Applicability of the Subpart
745.181 Chief Operator Requirements
745.201 Prohibitions
745.202 Agency Denial of Waste Disposal Permit
745.203 Revocation of Waste Disposal Permit
745.204 Defense
745.205 Effective Date

AUTHORITY: Implementing Sections 22.4(b) and 22.5 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985 ch. 111^{1/2} pars. 1022.4(b), 1022.5 and 1027).

SOURCE: Adopted at 11 Ill. Reg. , effective

SUBPART A: GENERAL PROVISIONS

Section 745.101 Scope and Applicability

- a) This Part establishes procedures for prior conduct certification for personnel of waste disposal sites.
- b) This Part requires the chief operator of certain waste disposal sites, pursuant to Subpart E, to obtain prior conduct certification. Otherwise, permits for operation of the site may be denied or revoked, and the owners or other named permittees, as well as the chief operator, are subject to an enforcement action for continued operation without a certified operator, pursuant to Subpart E.

- c) This Part also prohibits any person who has had prior conduct certification denied, cancelled or revoked, unless the person has a current valid prior conduct certification, from owning or operating a waste disposal site or serving as an officer or director of the owner or operator of a waste disposal site, or serving as an employee at a waste disposal site, pursuant to Subpart E.

Section 745.102 Definitions

- a) Unless otherwise stated or unless the context clearly indicates a different meaning, the definitions of terms used in this Part are the same as those found in the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111^{1/2}, pars. 1001 et seq.) and at 35 Ill. Adm. Code 807.104.

- b) Notwithstanding subsection (a), the following terms are defined for purposes of this Part:

"Act" means the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111^{1/2}, pars. 1001 et seq., as amended;

"Agency" means the Illinois Environmental Protection Agency;

"Board" means the Illinois Pollution Control Board;

"Chief Operator" means the one natural person in responsible charge of the day to day, overall operation of a waste disposal site on a 24-hour basis. "Chief Operator" also means any person who may from time to time and in the regular course of business be designated by a waste disposal site's chief operator to assume the functions of chief operator during periods of vacation, accident, illness or the like;

"Owner" means the person who owns a waste disposal site or part of a waste disposal site, or who owns the land on which the site is located.

- c) As used in this Subpart, "waste disposal site" means a site for which a waste disposal permit is required by 35 Ill. Adm. Code: Subtitle G, including but not necessarily limited to:
 - 1) RCRA disposal permit required by 35 Ill. Adm. Code 703;

- 2) UIC permit required by 35 Ill. Adm. Code 704; or
- 3) Waste disposal permit required by 35 Ill. Adm. Code 807.

SUBPART B: APPLICATION FOR CERTIFICATION

Section 745.121 Persons Who May Apply

Any natural person may apply for prior conduct certification pursuant to this Part.

Section 745.122 Application

An application for prior conduct certification shall include:

- a) The name and address of the applicant;
- b) Identification of each waste disposal site at any time owned or operated by the applicant, or at which the applicant served as chief operator, including:
 - 1) The name and address of each site; and
 - 2) A description of the nature of each site and the type of waste disposed of there (e.g., hazardous waste, municipal waste); and
 - 3) A description of the length of and nature of involvement with each site;
- c) A copy of any final administrative or judicial determination, made after opportunity for an adversarial proceeding, that the applicant has:
 - 1) Violated federal, state or local laws, regulations or ordinances governing the operation of any waste disposal site;
 - 2) Been convicted in Illinois or another state of any crime which is a felony under Illinois law, or been convicted of a felony in a federal court;
 - 3) Shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any hazardous waste in any state;
- d) A description, including the name of the agency or court, title, docket number and status of administrative or judicial proceeding, which is still pending, which:

- 1) Could result in a determination against the application of the type described in subsection (c); or
 - 2) Could result in a reversal of any administrative or judicial determination provided by the applicant in response to subsection (c);
- e) An affidavit attesting to the truth and completeness of the facts asserted in the application.

Section 745.123 Duty to Supplement Pending Application

The applicant shall supplement any pending application for prior conduct certification within 30 days after any change of circumstances which renders in any respect the original application for prior conduct certification inaccurate or incomplete.

Section 745.124 Duty to Provide Supplemental Information

- a) Any person who holds prior conduct certification shall provide on an annual basis a supplemental information report to the Agency which identifies change in any of the information required by Section 745.122. A person who holds prior conduct certification shall additionally, upon Agency request and for cause shown, provide a supplemental information report which identifies change in any of the information required by Section 745.122 prior to the first anniversary of the submission of the previous report, so long as the person has not been required to submit more than three such reports during the previous one year period.
- b) The Agency shall provide written notice via registered or certified mail, return receipt requested, to any individual certified pursuant to this Part who has failed to comply with the provisions of subsection (a). Such notice shall be mailed no less than 45 days after the due date of the annual report, or no less than 45 days after the written request for supplemental information has been mailed.
- c) If a person certified pursuant to this Part fails to comply with the provisions of subsection (a) within 45 days after receipt of the notice of subsection (b), the Agency shall notify the person by registered or certified mail, return receipt requested, that prior conduct certification is cancelled effective upon receipt of the notice.

- d) Any person whose prior conduct certification has been cancelled pursuant to subsection (c) may reapply for certification at any time upon filing of an application pursuant to this Part.

Section 745.125 Application Form

The Agency shall prescribe the form in which all information required under this Subpart shall be submitted and may adopt such procedures as are necessary for carrying out its duties under this Part.

Section 745.126 Incomplete Applications

An application for prior conduct certification shall not be deemed filed until the Agency has received, at the designated address, all information and documents, in the form and with the content required by this Part and related Agency procedures. If the Agency fails to notify the applicant within 45 days after the receipt of an application that the application is incomplete, and of the reasons the application is considered to be incomplete, the application shall be deemed complete and deemed filed on the date received by the Agency. An applicant may deem the Agency's notification that the application is incomplete as a denial of prior conduct certification for purposes of review pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105. A prior conduction certification which has been deemed to be denied pursuant to this Section shall not constitute denial of certification for the purposes of Section 745.201.

Section 745.127 Registered or Certified Mail

All prior conduct certification applications shall be mailed or delivered to the appropriate address designated by the Agency, and, if mailed, shall be sent by registered or certified mail, return receipt requested. Applications which are hand-delivered shall be delivered to and receipted for by a person designated by the Agency.

SUBPART C: AGENCY ACTION

Section 745.141 Standards for Denial

- a) The Agency may deny prior conduct certification to any person who has:
 - 1) Been repeatedly found, after opportunity for an adversarial proceeding before any judicial or administrative body, to be in violation of any federal, state or local laws, regulations or ordinances governing the operation of waste disposal sites in any state;

- 2) Been convicted in any state of a crime which would be a felony under Illinois law, or been convicted of a felony in federal court;
 - 3) Been judicially or administratively determined, after opportunity for an adversarial proceeding, to have shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any waste in any state;
 - 4) Practiced any fraud or deceit in obtaining or attempting to obtain prior conduct certification; or
 - 5) Failed to timely file a supplemental application pursuant to Section 745.123.
- b) In making a determination to grant or deny prior conduct certification, the Agency shall consider:
- 1) The severity of the misconduct;
 - 2) How recently the misconduct took place;
 - 3) The degree of control exerted over waste disposal operations at a site by the applicant at the time misconduct described in subsection (a)(3) was committed.
- c) A person requesting certification has the burden of demonstrating that the person is entitled to the certification.

Section 745.142 Final Action

- a) If the Agency denies any prior conduct certification under Section 745.141, it shall transmit to the applicant, within the time limits specified in this Part, a specific, detailed written statement as to the reasons why the prior conduct certification application was denied.
- b) The Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action shall take place on the date that such notice is mailed.

Section 745.143 Time Limits

If the Agency fails to take final action on the application for prior conduct certification within 90 days after its filing, the applicant may deem the prior conduct certification granted for

one year beginning on the 91st day after the application was filed.

Section 745.144 Waiver of Time Limits

Any applicant for prior conduct certification may waive the requirement of the time within which the Agency must take final action on the application.

SUBPART D: APPEAL, REVOCATION AND TRANSFERABILITY

Section 745.161 Appeal of Certification Denial

If the Agency denies prior conduct certification under this Part, the applicant may appeal that action to the Board pursuant to Section 40 of the Act and 35 Ill. Adm. Code 105.

Section 745.162 Revocation

- a) Any person may file a complaint with the Board, pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103, seeking revocation of a prior conduct certification which has been granted by the Agency, or which was issued by reason of Agency failure to comply with the time limits of Section 745.143. Such action may be based upon grounds stated in Section 745.141(a).
- b) In making its determination in such action, the Board will consider the factors listed in Section 745.141(b).

Section 745.163 Duration and Transferability

- a) Except as otherwise provided in Section 745.124 or Section 745.143, a prior conduct certification made pursuant to this Part remains valid until revoked pursuant to Section 745.162.
- b) A prior conduct certification is not transferable.

SUBPART E: PROHIBITIONS

Section 745.180 Applicability of the Subpart

This Subpart does not apply to sites used solely for waste treatment or waste storage.

Section 745.181 Chief Operator Requirements

- a) The individual who is chief operator of a waste disposal site, as defined pursuant to Section 745.102(c), shall have prior conduct certification.

- b) The owner or other named permittee shall designate one or more chief operators for each waste disposal site.
 - 1) One certified chief operator may serve in that capacity for multiple waste disposal units located at one waste disposal site.
 - 2) One certified chief operator shall not serve in that capacity for units located at two or more waste disposal sites.
 - 3) A certified waste operator need not be present during all hours a site is operating, provided that the chief operator retains responsibility for site operations during the period of absence, and can be contacted by waste disposal site personnel during the absence.

Section 745.201 Prohibitions

- a) No person shall operate a waste disposal site, unless the site chief operator has prior conduct certification.
- b) No site owner or other named permittee shall cause or allow operation of a waste disposal site, unless the site chief operator has prior conduct certification.
- c) No person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.
- d) No person shall serve as an officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.
- e) No person shall serve as an employee at a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

Section 745.202 Agency Denial of Waste Disposal Permit

The Agency shall deny any waste disposal permit to any owner or other named permit applicant, unless the applicant demonstrates that the applicant will not violate Section 745.201.

Section 745.203 Revocation of Waste Disposal Permit

Any person may seek revocation of any waste disposal permit on the grounds that the waste disposal site is in violation of Section 745.201. Such action shall be initiated by filing a complaint with the Board pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103.

Section 745.204 Defense

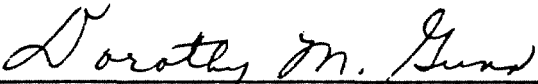
It shall be a complete defense to an action brought pursuant to Section 745.203 that a replacement certified chief operator has been employed within 90 days after the date of termination of employment of a certified chief operator, or cancellation or revocation of the chief operator's prior conduct certification.

Section 745.205 Effective Date

The prohibitions of this Subpart shall become effective July 1, 1988.

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 25th day of June, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board