

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1983

In the matter of:)
)
TECHNICAL CORRECTIONS) R83-24
TO PHASE II RCRA RULES)

FINAL ORDER. ADOPTED RULE

OPINION OF THE BOARD (by D. Anderson):

On November 3, 1983 the Board opened this docket for the purpose of reviewing technical errors in the Phase II RCRA rules adopted in R82-19 on July 26, 1983, and filed October 12, 1983 (7 Ill. Reg. 14015). These problems had been raised by way of a motion for reconsideration filed by Illinois Power Company in R82-19. That participant has appealed the Board's decision, complaining in part of the technical errors to be addressed in this docket.

The Board set November 30 as the final date for comments on the suggestions made by Illinois Power and the additional problems noted in the Board's Order. The Board received comments from Illinois Power and from the Illinois Environmental Protection Agency (Agency).

Effective Date of Part 703

Illinois Power's main objection concerned the delayed effective date for portions of Part 703. In particular, the delayed effective date of Section 703.181 left the rules with no specification of the information which would have to be provided to the Agency to qualify for interim status. Thus it could be argued that a facility which changed its process so as to come into the RCRA program for the first time would be unable to acquire interim status.

The Board notes that, in addition to Illinois Power's problems with Section 703.181, the concept of a contingent delayed effective date of the rules seems to conflict with the concept of "effective date" as used by the Secretary of State's office. It would be better to say that the rules are "effective" immediately, but they will be inoperative until the Agency gets the authority to issue RCRA, and UIC, permits. Accordingly, Section 700.106 has been amended to state that the provisions concerning Parts 702, 704 and 705 with delayed effective dates will be effective as of the date of the amendment, but with provisos limiting issuance of permits.

The main source note to Part 703 indicated that it was effective immediately, in conflict with the provisions of Section 700.106. This will be left, and Section 700.106 will be modified to state that Part 703 became effective on October 12, 1983. The main source note of Part 724 and Section 700.106 both indicated that it was effective immediately. Parts 724 and 730 will apply only to facilities with permits, so that they will also be inoperative until the authorizations are issued.

Federally Issued Permits

Section 703.127 was added pursuant to comments received from the United States Environmental Protection Agency (USEPA). This provided that RCRA permits issued by USEPA would constitute RCRA permits within the meaning of Section 21(f) of the Environmental Protection Act (Act). Since this was added pursuant to comments, there was no opportunity for others to comment on its addition. The Agency has pointed out that this would create a loophole in the local siting approval process of Section 39(c) and 39.2 of the Act.

It might be asked at the outset whether local government approval is required for RCRA facilities. Section 39(c) requires approval for a "new regional pollution control facility". Section 3 of the Act defines "regional pollution control facility" as including a "waste disposal site", with no special reference to hazardous waste, or to the specific permit requirements in Sections 21(d) or 21(f). However, "new regional pollution control facility" includes a site permitted to receive hazardous waste for the first time. It thus appears that local government approval is required for hazardous waste facilities. Since Section 21(d) does not apply to hazardous waste, this infers that Section 21(f) RCRA permits require local government approval.

The Board has repealed Section 703.127. Sites with federally issued RCRA permits will have to obtain RCRA permits from the Agency also.

Dual Permits

Section 700.501(b), as amended in R82-19, provided that owners and operators with actual RCRA permits need to obtain "Chapter 7" permits (Sections 807.201 and 807.202) only for units which accept nonhazardous waste. The Agency objects to this on several grounds. It should be noted that this provision was in the proposal, but drew no comment from the Agency. It was adopted with changes only to make it clear that the on-site disposal exceptions for the general waste permits were to be continued.

Part of the Agency's objections stem from the interaction with Section 703.127, which could serve to create a loophole

in the local government siting approval. The Board has modified Section 703.127 to remove this difficulty.

Another part of the Agency's objections is that the Board cannot repeal the existing Section 807.201 permit requirement for hazardous waste facilities without conducting a full rulemaking pursuant to Section 22.4(b) of the Act. However, the legislature has directed the Board to do so in the same legislation which adopted Section 22.4. This legislation provided that the general waste permit requirement did not apply to hazardous waste. Section 22.4(a) contains implied authority for the Board to modify its existing requirements to make them correctly state their relationship with the RCRA program.

It is true that, under the Phase I RCRA rules, the Board continued the general waste permit requirement under Section 700.501 during interim authorization. However, this was in recognition of the fact that actual RCRA permits could not have been issued, with the result that the state's existing hazardous waste programs would have been dismantled before the RCRA program was in place, which was obviously contrary to the legislative intent. However, with full RCRA authority, the dual permit system will not be necessary, and contrary to the legislative intent.

As adopted, Section 700.501 was to be effective as provided in Section 700.106. However, there is no provision for a delayed effective date in that Section. It was intended that the change should become effective with the final authorization. Accordingly, the Board will amend Section 700.501 to restore as paragraph (b)(2) the language adopted in R81-22, up to the final authorization. The language adopted in R82-19 will be paragraph (b)(1) and come into play after final authorization.

Section 703.153

In its comments Illinois Power pointed out an incorrect cross reference in Section 703.152(b). This has been corrected.

Conclusion

The Board will adopt the amendments discussed above in a separate Order. The text of the amendments will be attached to the Order and will appear in the Opinion volumes. The Board will adopt these amendments pursuant to Section 22.4(a) of the Act. Hearings and full procedures under the Administrative Procedure Act will not be required.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 15th day of December, 1983 by a vote of 7-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board