

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1984

IN THE MATTER OF:)
PROPOSED CONTINGENT PENALTY)
PROCEDURAL RULE, 35 ILL. ADM.) R83-37
CODE 103.181-103.186)

INTERIM ORDER OF THE BOARD (by J. Anderson):

In reviewing this Agency proposal, and supporting statement of reasons, the Board has identified several concerns which should be addressed prior to a Board ruling on the merits of this proposal. The Board believes that, although a hearing on proposed procedural rule changes is not required or desirable in every case, the most efficient mechanism in this instance for receiving additional information would be through the hearing process. Therefore, the Hearing Officer is directed to schedule and hold a hearing at which the below listed questions are addressed. The Board would also particularly request participation at hearing by the Office of the Attorney General, inasmuch as the petition on its face does not indicate that this is a joint petition.


Without precluding hearing participants from addressing other issues, the Board wishes to receive testimony concerning the following:

1. The Statement of Reasons, at p. 1-2, asserts in general terms various difficulties in collecting unpaid penalties via civil suit in the circuit court pursuant to Section 42(d) of the Act. The Board would appreciate data in support of these assertions. Based on this data, what would be the anticipated increase in the Board's caseload if the proposed procedure is adopted?
2. The proposal provides for contingent penalties only in stipulated cases. Is there a policy reason for excluding the possibility of contingent penalties in contested cases? If so, what is it?
3. The Board, in various cases, has expressed dissatisfaction with its lack of information concerning how stipulated penalty amounts are reached. What standards would be used in determining whether a contingent penalty would be proposed in a particular case? Could they or should they be included in the rule? What use would be made of contingent penalties as a negotiating tool? As a practical matter, does the contingent penalty structure achieve the same end as the suspended penalty structure?

4. For various reasons expressed in the Statement at p. 4, the proposal sets up a mechanism whereby the burden of proving compliance rests with the Respondent. Is this consistent with Section 31(c) of the Act, providing that the burden of proving violation is on the complainant?
5. The Statement at p. 4 suggests that in a non-compliance "permit appeal" type proceeding that the amount of a contingent penalty could not be relitigated. How is this consistent with Section 33(c) of the Act, particularly as the procedure envisions a new docket for each contingent penalty imposed with the decision to be based exclusively on the record in that docket?
6. Would appeal pursuant to Section 41 imposition of a contingent penalty, as a practical matter, allow the Respondent an opportunity to relitigate the underlying enforcement action?
7. In the R84-10 RCRA and UIC Procedural Rules proceeding the Board proposed various rules on June 14, 1984, including rules for RCRA and UIC settlements. What is the perceived inter-relationship between this proposal and R84-10? Would adoption of this proposal adversely affect, enhance, or have no effect on Illinois authorization to handle the RCRA program?

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 19th day of July, 1984 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board