

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1978

IN THE MATTER OF:)
)
PROPOSED TOXIC SUBSTANCE) PCB R74-7
REGULATIONS)

ORDER OF THE BOARD (by Mr. Young):

On July 19, 1974, the Illinois Environmental Protection Agency submitted a proposal for the adoption of regulations to require the identification and registration of all facilities in Illinois using, manufacturing, storing, shipping, transporting, importing, or exporting substances in a quantity which, in the judgment of the Agency, were likely to pose a threat to public health if accidentally or unlawfully discharged into the environment. The thrust of the proposal was aimed toward mitigation of the harmful effects of emissions released as a result of rail and highway accidents or accidental release of toxic substances from fixed facilities.

Seven hearings were held on the proposed regulations during the period from September 20, 1974, through December 12, 1974. In response to a Motion at the December 12, 1974, hearing, further Board action on the proposal was continued pending the preparation and publication of an Illinois Regulated Toxic Substance List by the Agency. Such list was published in July, 1975, by the Illinois Institute for Environmental Quality as Document No. 75-15, IIEQ Project No. 10.041, entitled Proposed Illinois Regulated Chemicals List. The list, contained in IIEQ Document No. 75-15, was developed under contract to Dr. Leonard J. Goldwater, M.D., a distinguished expert in the field of environmental toxicology. 750 copies of the IIEQ document were mailed to those affected or concerned persons within the State and, thereafter, the Agency held public informational meetings in three locations to familiarize all interested persons with the proposed list. Four Board hearings were then held during the period January 7, 1976, to March 23, 1976, during which testimony was received on the Proposed Regulated Chemicals List and the proposed regulations.

On Motion of the Agency, the Board entered an Order, April 8, 1976, to proceed with the regulation as applied to fixed sites only, and ordered a stay of the transportation-related aspects of the proposal. The Institute for Environmental Quality, pursuant to Section 6(b) of the Environmental Protection Act, subsequently prepared an economic impact study on the proposed fixed-site regulations which was forwarded to the Board on

January 13, 1977. After notification and the statutory period for public inspection, economic impact hearings as required by Section 27(b) of the Act were held on April 29 and May 4, 1977.

The Agency filed a Petition to Withdraw R74-7 on June 9, 1978, citing as reason therefor the subsequent adoption of State and Federal legislation, the provisions of which substantially reduced the anticipated benefits of the proposed regulations.

The Illinois General Assembly enacted legislation (PA 79-1442) effective August 26, 1976, requiring labeling of equipment and facilities for the use, transportation, storage and manufacture of hazardous materials and to provide for a uniform response system to hazardous materials emergencies. PA 79-1442 created a Hazardous Materials Advisory Board and placed primary responsibility for implementation in the Illinois Emergency Services and Disaster Agency and the Illinois Department of Transportation. PA 80-351, the Illinois Hazardous Materials Transportation Act, became effective August 26, 1977, and provides authority for the Illinois Department of Transportation to adopt regulations to control the threat to life and property occasioned by the transportation of hazardous materials over highways. Additionally, House Bill 3980, Public Act 79-1444 effective August 26, 1976, directed the Illinois Commerce Commission to undertake a study and recommend necessary legislative action to the 80th General Assembly. As a result, House Bill 3350, the Illinois Hazardous Materials Railroad Transportation Act, was passed by the Illinois Senate on June 24, 1978, and is awaiting action by the Governor.

Public Act 79-1084 effective October 1, 1975, cited as the Illinois Emergency Services and Disaster Agency Act of 1975, while basically a re-codification of the earlier Civil Defense Act of 1951, was broadened by addition of a definition of disaster to include the occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from man-made causes including air and water contamination. Also added was authority and responsibility for the preparation of comprehensive plans and programs for disaster preparedness, response and recovery, together with authority to adopt necessary regulations.

Additionally, there are a number of existing Illinois statutes which specifically govern the storage, transportation and use of hazardous or toxic materials in Illinois which could result in public hazard if accidentally released or improperly handled. Some of these laws include:

Ill. Rev. Stat. ch. 5, §55.1 - The Fertilizer Act of 1961, and specifically regulations relating to the handling, containers and storage of anhydrous ammonia and low pressure nitrogen solutions issued by the Department of Agriculture;

Ill. Rev. Stat. ch. 5, §85a.1 - An Act in relation to the use and application of 2, 4-D and related herbicides;

Ill. Rev. Stat. ch. 5, §87c.1 - The Economic Poison Law;

Ill. Rev. Stat. ch. 5, §87d.1 - An Act relating to custom or public application of pesticides, to license and regulate such activity;

Ill. Rev. Stat. ch. 5, §256 - Pesticides Control Law;

Ill. Rev. Stat. ch. 5, §271 - An Act to create an inter-agency committee on pesticides to study, advise and recommend any needed legislation concerning pesticides, and to approve all proposed rules and regulations pertaining to the labeling, sale, use or application of pesticides;

Ill. Rev. Stat. ch. 96 1/2, §4801 - An Act regulating the manufacture, possession, storage, transportation, use, sale or gift of explosives;

Ill. Rev. Stat. ch. 96 1/2, §5601 - An Act to regulate the storage, transportation, sale and use of liquified petroleum gases;

Ill. Rev. Stat. ch. 111 1/2, §211 - The Radiation Protection Act;

Ill. Rev. Stat. ch. 111 1/2, §251 - The Uniform Hazardous Substances Act of Illinois;

Ill. Rev. Stat. ch. 111 2/3, §1 - An Act concerning public utilities, especially §61 concerning authority of the Illinois Commerce Commission to require safe maintenance and operation;

Ill. Rev. Stat. ch. 111 2/3, §551 - An Act relating to the establishment and enforcement of safety standards for the transportation in Illinois of natural and other gas by pipeline; and,

Ill. Rev. Stat. ch. 127 1/2, §153 - An Act
to regulate the storage, transportation,
sale and use of gasoline and volatile oils.

Since the introduction of this proceeding, significant Federal legislation has been enacted to control or minimize the threat from the accidental or unlawful release of toxic substances into the environment from transportation or fixed locations.

The Toxic Substances Control Act, Public Law 94-469 (90 Stat. 2003; 15 U.S.C. 2601 et seq.), adopted October 11, 1976, includes provisions to prohibit or limit the amount of any substance or mixture, which presents or will present an unreasonable risk of injury to health or to the environment, from manufacture, processing, distribution, use or disposal. This Act, which is administered by the USEPA, also requires the submission of reports by persons manufacturing or processing toxic substances including formulation data, uses, quantities manufactured or processed, and all existing data concerning the environmental and health effects of such substances.

The Transportation Safety Act of 1974, Public Law 93-633 (88 Stat. 2156; U.S.C. 1801 et seq.), adopted January 3, 1975, included Title I, the Hazardous Materials Transportation Act (49 U.S.C. 1801); Title II, the Rail Safety Improvement Act of 1974 (45 U.S.C. 440); and Title III, the Independent Safety Board Act of 1974 (49 U.S.C. 1901). This legislation has been implemented by regulations promulgated by USDOT, all of which are designed to reduce the possibility of transportation-related accidents involving hazardous material and to provide rapid and effective response to any hazard created by such accidents.

The Federal Water Pollution Control Act, (33 U.S.C. 466 et seq.) was amended by Public Law 95-217 on December 28, 1977 (91 Stat. 1566) and strengthens the authority of the USEPA in the control of spills of hazardous materials; establishes strict liability and sets substantial penalties for spills; and requires the USEPA to develop a list of hazardous materials. Regulations under the FWPCA require formal spill control and counter-measure plans from owners or operators of non-transportation related facilities which can be expected, in the event of accident or malfunction, to discharge hazardous substances to the waters of the United States.

Amendments (Public Law 95-95) to the Clean Air Act (42 U.S.C. 1857 et seq.), August 7, 1977, added authority for the USEPA to promulgate design, equipment, work practice or operational standards to protect the public health with ample margin of safety from the emission of hazardous air pollutants which might reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

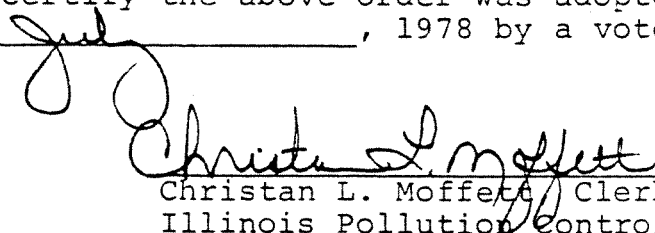
The Resource Conservation and Recovery Act of 1976, Public Law 94-580 (90 Stat. 2795; 42 U.S.C. 3251 et seq.), adopted October 21, 1976, establishes a Federal system for the management of hazardous waste. The Act includes provisions requiring the registration of all generators of hazardous waste; chemical composition and quantities produced; labeling; a permit system for generators, transporters and disposal sites; a manifest system and records to assure treatment, storage or disposal at a permitted site; and, contingency plans for effective action to minimize unanticipated damage from the treatment, storage and disposal of hazardous wastes.

Implementation of the Occupational Safety and Health Act, Public Law 91-596 (84 Stat. 1593; 29 U.S.C. 655 et seq.) by 29 CFR Subtitle B - Chapter XVII, Part 1910, Occupational Safety and Health Standards and the Federal Environmental Pesticide Control Act of 1972, Public Law 92-516 (86 Stat. 973; 7 U.S.C. 135 et seq.), have imposed many limitations to reduce the probability of accidents which result in the release of toxic materials.

From the foregoing, the Board concludes that those portions of the proposed regulations which remain subject to the statutory authority of the Board have been significantly narrowed by specific State and Federal legislation to the point that additional regulations enacted by the Board at this time based upon the record herein could not be justified under the criteria of Section 27 of the Environmental Protection Act. The Board will allow the petition of the Agency to withdraw regulatory proposal R74-7 and will dismiss the proceeding.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 20th day of July, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board