

ILLINOIS POLLUTION CONTROL BOARD
November 7, 1991

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL.ADM.CODE) R90-24
101.103(d) TO REQUIRE USE OF) (Rulemaking)
RECYCLED PAPER FOR ALL DOCUMENTS)
FILED WITH THE BOARD)

ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a rulemaking proposal filed by Business and Professional People for the Public Interest (BPI) on November 21, 1990. BPI asks that the Board amend Section 101.103 (35 Ill.Adm.Code 101.103) of its procedural rules to require the use of recycled paper for all documents filed by attorneys with the Board. The Board accepted the proposal on December 4, 1990, and established a comment period on December 20, 1990. The comment period expired on February 12, 1991. Pursuant to Section 26 of the Environmental Protection Act (Act) (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1026), the Board need not hold a hearing on procedural rulemakings, except as required by the Illinois Administrative Procedure Act (APA) (Ill.Rev.Stat. 1989, ch. 127, par. 1001 et seq.). No hearing has been held. On June 6, 1991, the Board proposed the rule for first notice. The rule was published in the Illinois Register on July 5, 1991, at 15 Ill.Reg. 9822, and the 45 day comment period expired on August 19, 1991. The Board then made minor changes to the proposed rule, and proposed the rule for second notice on September 12, 1991. The Joint Committee on Administrative Rules (JCAR) considered the rule at its October 22, 1991, meeting, and issued its certification of no objection that same day. Today the Board proceeds to final adoption of the rule.¹

Proposal and Public Comments

BPI is a public interest law organization which provides legal representation to civic, consumer, environmental, and neighborhood organizations on a broad range of issues. BPI has a particular interest in the development and implementation of state laws, regulations, policies, and programs to encourage recycling and to improve solid waste management. BPI has appeared before the Board in several proceedings involving hazardous waste management and

¹ The Board wishes to acknowledge the contributions of attorney assistant Elizabeth Schroer Harvey to this rulemaking.

groundwater protection issues.

In its original proposal, BPI proposed that the Board amend its procedural rules to require that all documents filed with the Board by attorneys be submitted on recycled paper. In response to an inquiry from the Board, BPI subsequently proposed that the scope of the proposal be expanded to include organized environmental and trade groups appearing before the Board, whether or not those groups are represented by attorneys. BPI argued that requiring the use of recycled paper is consistent with state and federal public policies to increase the use of recycled paper (thus stimulating markets for recycled paper), increase recycling of waste material, and reduce the solid waste stream. BPI further contended that increased use of recycled paper is both feasible and cost-effective.²

The Board received a number of public comments on the proposal, both prior to and after first notice. The comments were divided between those who supported the required use of recycled paper, and those who believe that the use of recycled paper should be encouraged by the Board, but not required. For further discussion of those comments, and the Board's specific responses to the comments, see the Board's June 6, 1991 first notice opinion, and its September 12, 1991 second notice opinion.

Adopted Rule

The rule, as adopted today by the Board, is identical to the rule proposed for second notice on September 12, 1991. Quite simply, the rule requires that all documents, excluding exhibits, filed with the Board by attorneys and organized environmental and trade groups be submitted on recycled paper. For purposes of the Board rule (found at 35 Ill. Adm. Code 101.103(d)), "recycled paper" means paper which contains at least 40% postconsumer material. The definition of "postconsumer material" is set forth in Section 3(f) of the Illinois Solid Waste Management Act. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 7053(f).) Please note that the rule refers to Section 3(f) of the Illinois Solid Waste Management Act only for the definition of "postconsumer material", and not for any definition of "recycled material", etc. The rule itself specifically defines "recycled paper" as paper which contains at least 40% postconsumer material. As stated in our second notice opinion, the Board finds that the Section 3(f) definition of "postconsumer material" addresses the issues raised by commenters.

In addition to the exemption for exhibits, the rule excludes stationery, such as letterhead, from the recycled paper requirement when the stationery is used for cover letters or similar purposes.

² For further discussion of BPI's support for its proposal, see the Board's June 6, 1991 first notice opinion.

Either the certificate or proof of service or the notice of filing accompanying all documents filed by attorneys or organized environmental or trade groups shall state "THIS FILING IS SUBMITTED ON RECYCLED PAPER". This statement shall be made at the bottom of the first page of the certificate or proof of service, or the notice of filing. Finally, the adopted rule states that the Board encourages all participants to double-side copies of the documents filed with the Board. The Board recognizes that not all participants have access to photocopiers which easily produce double-sided copies, but encourages those who do to utilize that feature. Double-sided copying can be a significant step in waste reduction.

The adopted rule will go into effect on January 1, 1992. This short delay between the final adoption of the rule and the effective date will allow for a short phase-in period, during which participants can exhaust their existing paper stocks. The Board notes that participants have been aware that the Board was considering a recycled paper requirement since December 1990, and that the Board had proposed the requirement since June 1991.

The comments contained a fair amount of discussion on the question of what sanctions should be imposed for a failure to comply with the mandatory recycled paper rule. Some commenters believed that the Clerk should refuse to accept filings which are not on recycled paper, which other commenters believed that this sanction is too harsh. However, the Board will not establish special sanctions for violation of this rule. The Board finds that violation of the recycled paper requirement is subject to sanctions under Section 101.280, just as any other violation of the Board's procedural rules. Sanctions can be imposed on the Board's own motion or on the motion of another party.

As we stated in our first and second notice opinions, the Board recognizes that the recycled paper requirement will cause some inconvenience to those practicing before the Board, especially in the beginning. However, the Board believes that the large majority of those covered by this rule (attorneys and organized environmental and trade groups) will be able to obtain recycled paper with little extra effort.³ The Board finds that the important public policy goals, as articulated by the Illinois General Assembly and the United States Congress, of encouraging recycling and stimulating markets outweigh any inconvenience.

³ The Board notes that Section 101.103(e) specifically provides that the Board may waive any of the requirements for form of documents upon motion demonstrating that the particular requirement would impose an undue burden. Thus any participant covered by the rule who truly could not comply with the recycled paper requirement could move for a waiver.

ORDER

The Board hereby adopts, as final, the following amendment to be filed with the Secretary of State.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE A: GENERAL PROVISIONS
 CHAPTER I: POLLUTION CONTROL BOARD

PART 101
 GENERAL RULES

Section 101.103 Form of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation", "Complaint", "Petition for Variance", "Petition for Review", "Motion", or "Public Comment".
- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or subpoena need be filed with the Clerk.
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.
- d) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy and double-spaced on ~~un glazed,~~ uncoated white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch. As of January 1, 1992, all documents, excluding exhibits, filed with the Board by attorneys or by organized environmental and trade groups shall be submitted on recycled paper. For purposes of this Section, "recycled paper" means paper which contains at least 40% postconsumer material. The definition of "postconsumer material" is set forth in Section 3(f) of the Illinois Solid Waste Management

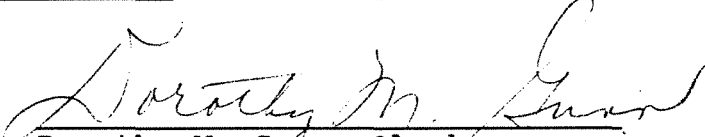
Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 7053(f)). Either the certificate or proof of service or the notice of filing accompanying all documents filed by attorneys or by organized environmental or trade groups shall state "THIS FILING IS SUBMITTED ON RECYCLED PAPER". This statement shall be made at the bottom of the first page of the certificate or proof of service, or the notice of filing. This recycled paper requirement does not apply to stationery, such as letterhead, when used for cover letters or similar purposes. Additionally, the Board encourages all participants to double-side copies of documents filed with the Board.

- e) The requirements of subsections (b), (c), and (d) may be waived by the Board upon written request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d). However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.
- h) Except as otherwise provided by Sections 1 through 4 of "AN ACT in relation to the reproduction of public records on film and the destruction of records so reproduced" (Ill.Rev.Stat. 1987, ch. 116, pars. 35-38, or by leave of the Board, documents on microfiche are not acceptable for filing.

(Source: Amended at 15 Ill.Reg. _____, effective _____)

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 7th day of November, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board