

ILLINOIS POLLUTION CONTROL BOARD
December 19, 1991

IN THE MATTER OF:)
)
REPEAL OF 35 ILL. ADM. CODE) R91-18
809.SUBPART I: HAZARDOUS) (Rulemaking)
(INFECTIOUS) HOSPITAL WASTE)

ADOPTED RULE. FINAL ORDER.

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

The Board opened this docket on our own Motion by an Opinion and Order dated August 22, 1991. Public Act 87-752 (House Bill 2491), 1991 Ill. Legis. Serv. 3521-33 (West), signed by the Governor on September 26, 1991, prompted that action. Effective January 1, 1991, P.A. 87-752 amends various provisions of the Environmental Protection Act as they relate to potentially infectious medical wastes. New Title XV: Potentially Infectious Medical Waste includes several new legislative mandates for Board rulemaking. One such mandate is new Section 56.2(d), which requires that the Board repeal 35 Ill. Adm. Code 809.Subpart I: Hazardous (Infectious) Hospital Waste by January 1, 1992.

New Section 56.2(d), 1991 Ill. Legis. Serv. 3531 (West), requires the Board to use the rulemaking procedures of Title VII of the Act for this repeal--i.e., the Board must use the First Notice-Second Notice-Adopted Rule sequence, including public hearings. Because this mode of rulemaking would require over three months to complete, the Board initiated this repeal process before the Governor signed the bill into law.

The Notice of Proposed Repealer appeared in the Illinois Register at volume 15, page 13017, on September 6, 1991. Public hearings occurred September 18, 1991, in Chicago, and September 19, 1991, in DeKalb. Members of the public attended and participated in the Chicago hearing. The public comment period ended on October 21, 1991. The Board proposed this matter for Second Notice by its Opinion and Order of October 24, 1991. The Joint Committee on Administrative Rules adopted its Certificate of No Objection on December 13, 1991. Therefore, the Board this day adopts the repeal of 35 Ill. Adm. Code 809.Subpart I, effective January 1, 1992, pursuant to the mandate of new Section 56.2(d) of the Act.

PUBLIC COMMENTS AND PUBLIC HEARING TESTIMONY

At hearing, Henry Henderson, an attorney with the City of Chicago, stated the City's concern that no repeal occur until after the Governor signed H.B. 2491 (now P.A. 87-752). He testified that the operative effect of the City's medical waste regulations is at least partly dependent on the state-level laws. He further stated that the City intended to regulate those areas

not covered by state law. He concluded that the City lacks the resources to police operations falling out of the state regulatory system before the operative provisions of H.B. 2491 become effective (Tr. at 5-9 & 13-14).

Francis J. O'Brien, manager of BFI Medical Waste, similarly stated that the repeal of 35 Ill. Adm. Code 809.Subpart I should occur concurrently with the effective date of H.B. 2491. He cited about six municipal and county ordinances that regulate wastes not covered under state laws, like that of the City of Chicago ordinance. Mr. O'Brien stated that the enforcement defense of Section 809.906 should appear in any future body of rules governing potentially infectious medical wastes. That provision allows reasonable reliance on a generator's representations as to the character and identity of its wastes. In his opinion, the operative interim provisions of Sections 56.1, 56.2(b), 56.3, and 56.4 do not include this defense until the Board adopts regulations pursuant to Sections 56.2(a) and (c) (Tr. 15-25).

The Board received three public comments on the proposed repeal:

- PC #1 Department of Energy and Natural Resources (DENR), by Stanley Yonkauski, General Counsel (received September 10, 1991); and
- PC #2 Office of the Secretary of State, Administrative Code Division (Code Unit), by John Kenworth, Rules/Research Analyst (received October 10, 1991).
- PC #3 Illinois Department of Commerce and Community Affairs, Office of Regulatory Flexibility and Legislative Research, by Linda M. Brand, Acting Manager (received October 28, 1991).

By PC #1, DENR stated that consideration of the economic impact of regulating potentially infectious medical wastes will be an essential part of the companion dockets: R91-20 and R91-21. DENR opined that an economic impact study was not appropriate as to the repeal of 35 Ill. Adm. Code 809.Subpart I. By PC #2, the Code Unit stated that the proposed repeal meets the codification requirements. By PC # 3, DCCA found that the repeal of 35 Ill. Adm. Code 809.Subpart I would have no significant economic impact.

FINAL ADOPTION ACTION

The effective date of P.A. 87-752 is January 1, 1992. Section 56.2(d) requires that the Board repeal Subpart I of Part 809 by January 1, 1992. In light of the concerns expressed at

hearing over a disparity between the effective date of the statutory amendments and the effective date of this repeal, the Board will ultimately file this repeal in a manner that renders it effective January 1, 1992.

The Board adopts the repeal of Subpart I of Part 809 in the same terms as it proposed the repeal for First Notice, by the Opinion and Order of August 22, 1991, and for Second Notice, by the Opinion and Order of October 24, 1991. Nothing in the record of hearing or the public comments seeks or warrants revision of the text of the repeal, besides recitation of the January 1, 1992 effective date in the source notes. The text of the adopted repeal follows.

However, the Board effects one procedural change from the published "Notice of Proposed Repealer" that appeared at 15 Ill. Reg. 13017, September 6, 1991. That notice should have appeared as a "Notice of Proposed Amendments" because the repeal does not affect Part 809 in its entirety. See 1 Ill. Adm. Code 100.220(c) (Administrative Code publication rule). Therefore, the Illinois Register notice in this matter shall appear as a "Notice of Adopted Amendments," pursuant to 1 Ill. Adm. Code 100.220(c)(2).

ORDER

The Board hereby adopts the repeal of 35 Ill. Adm. Code 809. Subpart I and directs that the Clerk of the Board prepare and submit a package to the Office of the Secretary of State for filing and publication of a Notice of Adopted Amendments in the Illinois Register.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 809
SPECIAL WASTE HAULING

SUBPART A: GENERAL PROVISIONS

Section
809.101 Authority, Policy and Purposes
809.102 Severability
809.103 Definitions

SUBPART B: SPECIAL WASTE HAULING PERMITS

Section
809.201 Special Waste Hauling Permits - General
809.202 Applications for Special Waste Hauling Permit--Contents
809.203 Applications for Special Waste Hauling Permit--
Signatures and Authorization
809.204 Applications for Special Waste Hauling Permit--Filing

- and Final Action by the Agency
- 809.205 Special Waste Hauling Permit Conditions
 - 809.206 Special Waste Hauling Permit Revision
 - 809.207 Transfer of Special Waste Hauling Permits
 - 809.208 Special Waste Hauling Permit Revocation
 - 809.209 Permit No Defense
 - 809.210 General Exemption from Special Waste Hauling Permit Requirements
 - 809.211 Exemptions for Special Waste Haulers

SUBPART C: DELIVERY AND ACCEPTANCE

- Section
- 809.301 Requirements for Delivery of Special Waste to Haulers
 - 809.302 Requirements for Acceptance of Special Waste from Haulers

SUBPART D: VEHICLE NUMBERS AND SYMBOLS

- Section
- 809.401 Vehicle Numbers
 - 809.402 Special Waste Symbols

SUBPART E: MANIFESTS, RECORDS AND REPORTING

- Section
- 809.501 Manifests, Records, Access to Records, Reporting Requirements and Forms

SUBPART F: DURATION OF PERMITS AND TANK NUMBERS

- Section
- 809.601 Duration of Special Waste Hauler Permits and Tank Numbers

SUBPART G: EMERGENCY CONTINGENCIES FOR SPILLS

- Section
- 809.701 General Provision

SUBPART H: EFFECTIVE DATES

- Section
- 809.801 Compliance Date
 - 809.802 Exceptions

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

- Section
- 809.901 Definitions (Repealed)
 - 809.902 Disposal Methods (Repealed)
 - 809.903 Rendering Innocuous by Sterilization (Repealed)
 - 809.904 Rendering Innocuous by Incineration (Repealed)
 - 809.905 Recordkeeping Requirements for Generators (Repealed)
 - 809.906 Defense to Enforcement Action (Repealed)

Appendix A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 10, 13 and 22 and authorized

by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, pars. 1005, 1010, 1013, 1022, 1027, and 1056.2).

SOURCE: Adopted in R76-10, 33 PCB 131, at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment in R76-10, 39 PCB 175, at 4 Ill. Reg. 34, p. 214, effective August 7, 1980, for a maximum of 150 days; emergency amendment in R80-19, 40 PCB 159, at 5 Ill. Reg. 270, effective January 1, 1981, for a maximum of 150 days; amended in R77-12(B), 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R80-19, 41 PCB 459, at 5 Ill. Reg. 6378, effective May 31, 1981; codified in R81-9, 53 PCB 269, at 7 Ill. Reg. 13640; recodified in R84-5, 58 PCB 267, from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at 14 Ill. Reg. 14076, effective August 15, 1990; amended in R91-18 at Ill. Reg. , effective January 1, 1992.

Capitalization denotes statutory language.

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

Section 809.901 Definitions (Repealed)

~~For the purposes of this Subpart only:~~

~~"Hazardous (infectious) Hospital Waste" means waste which has been generated by a hospital in connection with patient care that is contaminated with or may be contaminated with an infectious agent that has the potential of inducing an infection and which has not been rendered innocuous by sterilization or incineration. More specifically, "Hazardous (infectious) Hospital Waste" means:~~

~~medical and patient care items contaminated by, and human excreta produced by, persons who have been placed in strict or enteric isolation for the control and treatment of an infectious disease by the hospital's Infection Control Committee pursuant to the infection control policies and procedures required of it by Section D of Part IX of the Rules of the Illinois Department of Public Health, 5 Ill. Reg. 553 et seq. (1981), as from time to time amended, and~~

~~medical and patient care items that are contaminated by or have been in contact with, either the wound or skin of patients who have been placed in wound or skin isolation or strict isolation, or the mucous or other respiratory fluids of patients who have been placed in~~

~~respiratory isolation or strict isolation by the hospital's Infection Control Committee pursuant to the infection control policies and procedures required of it by Section D of Part IX of the Rules of the Illinois Department of Public Health, 5 Ill. Reg. 553 et seq. (1981), as from time to time amended, and~~

~~medical and patient care items contaminated during surgery when the case is infectious, and~~

~~tissues (human or animal), pathological waste, and items that are contaminated by an infectious agent, and~~

~~bacteriological cultures and blood or other excreta that are products from bacteriological testing, and~~

~~any other waste which, because of its infectious nature, is ordered to receive special handling and disposal by the hospital's Infection Control Committee pursuant to the infection control policies and procedures required of it by Section D "Infectious Control" of Part IX of the Rules of the Illinois Department of Public Health, 5 Ill. Reg. 553 et seq. (1981), as from time to time amended.~~

~~"Hospital" means any institution, place, building, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity.~~

~~"Hospital" includes general and specialized hospitals, tuberculosis sanitarium, mental or psychiatric hospitals and sanitarium, maternity homes, lying in homes, and homes for unwed mothers in which care is given during delivery. "Hospital" does not include, for example, nursing homes, offices of human or animal health care providers, out-patient clinics, or veterinary hospitals.~~

~~"Incineration" means the complete reduction of a substance to ashes by means of combustion.~~

~~"Innocuous Hospital Waste" is not a special waste, but for the purposes of this Subpart means any hazardous hospital waste which has been properly sterilized or~~

~~incinerated so as to render it incapable of causing infection.~~

~~"Normal Hospital Waste" is not a special waste, but for the purposes of this Subpart includes, but is not limited to, garbage, refuse, such as packaging materials removed before a product reaches patient care areas; disposable medical and patient care items such as basins and water pitchers which have not come in contact with a patient in isolation; and facial tissue and other patient contact items which have not been generated by a patient in isolation.~~

~~"Sterilization" means the complete destruction of microorganisms by moist or dry heat or by bactericidal chemical compounds.~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

Section 809.902 Disposal Methods (Repealed)

- ~~a) No person shall cause or allow hazardous (infectious) hospital waste to be deposited in any landfill.~~
- ~~b) Hazardous (infectious) hospital waste shall be rendered innocuous pursuant to Sections 809.903 and 809.904, or may be disposed of, where lawful, by deposit into a municipal or private sewerage system.~~
- ~~c) Innocuous hospital waste and normal hospital waste may be disposed of by any lawful means, including incineration in any incinerator appropriate for such waste and for which the Agency has issued a permit, by deposit in any sanitary landfill or by deposit into a municipal or private sewerage system.~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

Section 809.903 Rendering Innocuous by Sterilization (Repealed)

~~Any hazardous (infectious) hospital waste may be rendered an innocuous hospital waste by:~~

- ~~a) Sterilization of the waste in an autoclave, provided that the unit is operated in accordance with the manufacturer's recommendations and the autoclave's effectiveness is verified at least weekly with a biological spore assay containing B. stearothermophilus, or~~

- ~~b) Sterilization of the waste in a commercial ethylene oxide unit that provides controlled temperature and humidity conditions, provided that the unit is operated in accordance with the manufacturer's recommendations and the unit's effectiveness is verified during each use with a biological spore assay containing *B. subtilis*.~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

Section 809.904 Rendering Innocuous by Incineration
(Repealed)

- ~~a) Any hazardous (infectious) hospital waste may be rendered an innocuous hospital waste by incineration provided that:~~
- ~~1) The combustion apparatus is an incinerator designed to destroy the type or class of waste introduced into it, and is operated according to the manufacturer's instructions, and~~
 - ~~2) All permits required by 35 Ill. Adm. Code, Subtitle B, Chapter 1 (prior to codification, Chapter 2: Air Pollution) have been obtained from the Agency, and the conditions of those permits have been met.~~
- ~~b) The ash produced by the incineration of hazardous (infectious) hospital waste shall be disposed of as required by this Part and 35 Ill. Adm. Code 807 for disposal of any other incinerator ash.~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

Section 809.905 Recordkeeping Requirements for Generators
(Repealed)

- ~~a) Generators of hazardous (infectious) hospital waste who render such waste into innocuous hospital waste shall keep and make reasonably available for Agency inspection:~~
- ~~1) Records of any required biological spore assay tests.~~
 - ~~2) Records describing the approximate amount of waste sterilized or incinerated.~~

~~3) Records which demonstrate proper operation of the sterilization or incineration equipment (such as time and temperature maintenance for each load).~~

~~b) The requirements of Subsection (a) may be satisfied by maintenance of the records in the form required to be kept by any hospital licensing or accreditation body, provided that such records include information sufficient to comply with Subsection (a).~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

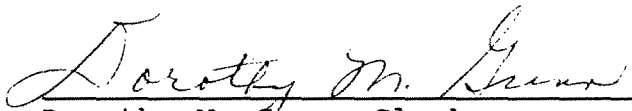
Section 809.906 Defense to Enforcement Action (Repealed)

~~Reasonable reliance on a waste generator's identification of waste as innocuous or normal hospital waste shall be a complete defense to an enforcement action against a person other than the waste generator for violation of Section 809.202(a).~~

(Source: Repealed at Ill. Reg. , effective January 1, 1992)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion and Order was adopted on the 19th day of December, 1991, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board