

ILLINOIS POLLUTION CONTROL BOARD
September 12, 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)

PROPOSED RULE. SECOND NOTICE.

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. The 45 day comment period expired on August 19, 1991. Today the Board proceeds to second notice.

Proposal

The proposed rule, as published for first notice, requires that all documents filed with the Board by attorneys or organized environmental or trade groups shall be submitted on recycled paper. The proposal states that "recycled paper" means paper which contains at least 40% postconsumer material, with "postconsumer material" defined in Section 3(f) of the Illinois Solid Waste Management Act. (Ill.Rev.Stat. 1989, ch., 111 1/2, par. 7053(f).) For further discussion of the proposal, and for a review of public comments on the proposal, see the Board's June 6, 1991 first notice opinion.

Public Comments

The Board received several public comments during the first notice comment period. Comments were received from the Illinois

Department of Energy and Natural Resources (ENR) (P.C.# 11)¹, the Illinois Environmental Regulatory Group (IERG), the Illinois State Chamber of Commerce, the Illinois Farm Bureau, and the Illinois Municipal League (collectively, IERG) (P.C.# 12), Fine Arts Engraving Company (P.C.# 13), the law firm of Coffield Ungaretti Harris & Slavin (Coffield Ungaretti) (P.C.# 15), and BPI (P.C.# 16). The Board has reviewed and considered all of these comments.

Both IERG and Coffield Ungaretti have expressed continuing opposition to the proposed rule, based mainly upon questions about the price and availability of recycled paper. IERG submitted an office supply catalog from Quill Company, which lists a ream of non-recycled copy paper at \$2.96 and a ream of recycled copy paper at \$3.98. IERG also expresses its concern that mandating the use of recycled paper would place recycling above the issue of waste reduction. IERG suggests that the proposed rule be amended to encourage, rather than require, the use of recycled paper, and that the Board encourage double-sided copying of documents filed with the Board. (P.C.# 12.) Coffield Ungaretti states that its paper supplier indicates that recycled paper is between 8% and 10% more expensive than non-recycled paper, and contends that because the price issue remains unresolved, the Board should encourage rather than require recycled paper. Coffield Ungaretti also speculates that the availability of recycled paper may decrease at some future time, producing "further economic hardship". Coffield Ungaretti further maintains that many exhibits submitted to the Board are not available on recycled paper, and that the added expense and inconvenience of petitioning the Board to waive the recycled paper requirement itself imposes an undue burden on persons practicing before the Board. Finally, Coffield Ungaretti contends that the definition of "recycled material" in the Illinois Solid Waste Management Act is vague and should be modified in the Board's rules. (P.C.# 15.)

Fine Arts Engraving Company's comment also addresses the issue of the definition of "recycled paper". Fine Arts suggests that the Board include a definition of the 40% postconsumer requirement within the text of the rule. Fine Arts believes that the definition in the Illinois Solid Waste Management Act is too vague, Fine Arts suggests that the definition within the rule be modified to provide that: 1) a minimum of 10% postconsumer once-sold, used and then de-inked material must be included; 2) the paper may or may not include a percentage of cotton fiber material derived from the secondary or postconsumer market, such as cotton lintens (a by-product of linseed oil) and/or reclaimed rags; and 3) the paper

¹ The Board notes that ENR's comment includes ENR's most recent list of vendors and manufacturers of recycled paper. The document, entitled Sources of Recycled Paper, June 1991, is available from ENR's Office of Solid Waste and Renewable Resources at 217/524-5454.

may include material which has been finished sold but not used for various reasons, such as overruns, rejections, cancelled orders and trimmings (such as from envelope conversions). Fine Arts states that a combination of these three items should compromise 40% of the material by weight. Additionally, Fine Arts states that the Board should clearly state that the 40% postconsumer material requirement is only for the purpose of documents filed with the Board, and is not an attempt to require that law firms change their "image", i.e. letterhead. Fine Arts states that although stationery paper does not currently meet the 40% definition, these papers are recyclable and are necessary in the chain of recycling. Fine Arts states that these papers can and will become tomorrow's minimum 10% postconsumer once-sold, used, and de-inked material. Fine Arts also contends that stationery paper is a very small percentage of the paper generated by law firms. (P.C.# 13.)

In its comments, BPI states that it recommends final adoption of the rule in its present form, but wishes to respond to the comments filed by IERG, Coffield Ungaretti, and Fine Arts. BPI contends that IERG and Coffield Ungaretti's claim that there is a significant price differential between recycled and non-recycled paper is refuted by ENR's study (P.C.# 3) and BPI's price figures (Ex. F to proposal) which find only a minimal price differential. BPI maintains that the answer to the price concern is not to amend the rule to merely encourage the use of recycled paper, but to consider switching to a new supplier. As to Fine Arts' suggestions about the definition of "recycled paper", BPI states that although it generally agrees with the view that recycled paper should include a minimum of 10% postconsumer once-sold, used, and de-inked material, the standards in the Illinois Solid Waste Management Act do not specifically require the minimum percentage. Thus, BPI contends that the Board must decide, as a matter of policy, whether it prefers to adopt the existing statutory definition of "recycled paper" or specify that at least 10% of the paper content be once-sold, used, and de-inked waste paper. BPI does not believe that law firm stationery be excluded from the recycled paper requirement, because it would be unwise to set a precedent for categorical exemptions. Finally, BPI reiterates that there is widespread support among attorneys for the required use of recycled paper. BPI points to support for several recycled paper initiatives from the Chicago Bar Association's Environmental Committee and the Chicago Council of Lawyers, and to Gardner, Carton & Douglas' comment in support of this proposal (P.C.# 10).

Board Conclusions

After careful consideration of all comments on this proposal, the Board proposes, for second notice, to amend its procedural rules to require all documents filed with the Board by attorneys and organized trade and environmental groups to be on recycled paper. The Board recognizes the continuing concerns of IERG and Coffield Ungaretti as to the cost of recycled paper. However, the

Board finds that the record contains sufficient information to justify a conclusion that the price differential is minimal. If some suppliers do not offer recycled paper at competitive prices, perhaps paper customers should look elsewhere for their paper needs. As we stated at first notice, the Board believes that the large majority of those covered by this rule will be able to obtain recycled paper with little extra effort. There is nothing in the record to support a speculation that the availability of recycled paper might decline in the future. Any participant covered by the proposed rule who truly cannot comply with the recycled paper requirement can move the Board for a waiver, pursuant to Section 101.103(e). As to Coffield Ungaretti's contention that many exhibits are not available on recycled paper, the Board believes that a careful reading of Section 101.103(d) reveals that the subsection applies only to "documents, excluding exhibits..." However, so that the rule is perfectly clear, we will amend the proposed rule to specifically exclude exhibits from the recycled paper requirement.

The Board has considered the issue of the definition of "recycled paper" and "postconsumer material" very carefully. First, as to Coffield Ungaretti's fear that the definition of "recycled material" in the Illinois Solid Waste Management Act is vague, the Board points out that this proposed rule specifically states that "recycled paper" means paper which contains at least 40% postconsumer material. The proposed rule refers to Section 3(f) of the Illinois Solid Waste Management Act only for the definition of "post-consumer material", not for any definition of "recycled material." After reviewing the definition of "postconsumer material" in Section 3(f), the Board believes that the definition is sufficiently specific. The Board has compared the Section 3(f) definition to the suggestions made by Fine Arts, and we believe that the Section 3(f) definition contains most of the points raised by Fine Arts. For example, Section 3(f)(2) and (6) specifically allow for material resulting from printing, cutting, forming, and other converting operations, and for overstock or obsolete inventories. These provisions correspond with Fine Arts' suggestion that the definition of 40% postconsumer material include material that has been finished sold, but not used for reasons such as overruns, rejections, cancelled orders and trimmings. The only substantive difference we see between the Section 3(f) definition and Fine Arts' suggestions is that the Section 3(f) definition does not require a minimum of 10% of once-sold, used, and de-inked material. The Board will not modify the definitions in the proposed rule, but believes that the existing definitions address the concerns raised by commenters. In sum, the rule provides that "recycled paper", for purposes of practice before the Board, must consist of at least 40% postconsumer material. Section 3(f) of the Illinois Solid Waster Management Act is used only for the definition of "postconsumer material", and not for any definition of "recycled material", etc.

In addition to the clarification that the recycled paper requirement does not apply to exhibits, the Board will make three other modifications to the proposed rule. First, stationery, such as letterhead, will be exempt from the recycled paper requirement, as long as that paper is submitted to the Board merely as a cover letter or for other similar purposes. Second, the Board will add a phrase encouraging the use of double-sided copying of documents filed with the Board. The Board agrees with IERG that waste reduction is also a necessary step in dealing with the solid waste problem,, and that double-sided copying of documents would be a significant step in waste reduction. Third, we will delay the effective date of the rule one month, from December 1, 1991 to January 1, 1992. This very short delay will allow for the completion of the rulemaking process and a short "phase-in period" after final adoption of the rule.

As we stated in our first notice opinion, 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 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.

ORDER

The Board hereby proposes the following amendment for second notice. The amendment is to be filed with the Joint Committee on Administrative Rules.

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 ~~unglazed~~, 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

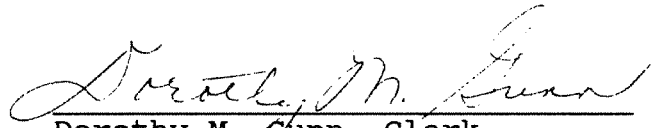
appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.

- 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 13th day of September, 1991, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board