



- e. "DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

That language would certainly seem to cover underground injection into a well within the definition of hazardous waste disposal. Second, the Act in Section 22.8(f) defines hazardous waste disposal site:

- f. For purposes of this Section, a hazardous waste disposal site consists of one or more of the following operation units:
  - 1. A landfill receiving hazardous waste for disposal;
  - 2. A waste pile or surface impoundment, receiving hazardous waste, in which residues which exhibit any of the characteristics of hazardous waste pursuant to Board regulations are reasonably expected to remain after closure;
  - 3. A land treatment facility receiving hazardous waste; or
  - 4. A well injecting hazardous waste.

Again, the Act seems to have rather specifically included underground injection into a well within the definition of hazardous waste disposal site. In fact, the three specific examples in Section 709.110 are virtually identical to three of the four specific examples in Section 22.8(f). The fourth specific inclusion in Section 22.8(f) of the Act, injection wells, is specifically EXCLUDED from the definition of disposal site in the regulations at Section 709.110.

Additionally, in Section 22.2(b)(2)(C), the Act employs the term hazardous waste disposal site:

- C. If the hazardous waste disposal site is an underground injection well, \$2,000 per year if not more than 10,000,000 gallons per year are injected, \$5,000 per year if more than 10,000,000 gallons but not more

than 50,000,000 gallons per year are injected, and \$9,000 per year if more than 50,000,000 gallons per year are injected.

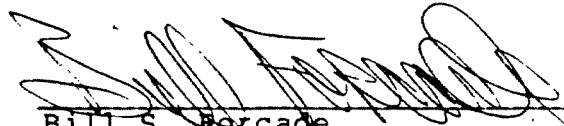
Again, according to the language of the Act, an underground injection well is a hazardous waste disposal site. The majority attempts to confuse the issue by defining the sites, in the regulations, as "Land Disposal Units" and then claims confusion with the landfill provisions of Section 22.6 of the Act. However, the word "land" or "landfill" never occurs in Section 39(h). I perceive this as a supreme case of "smoke and mirrors," which attempts to accomplish a goal which the majority concludes is environmentally acceptable and reflects what the General Assembly "really" intended.

I do not have the majority's gift to devine what the General Assembly "really" intended in Section 39(h). Unfortunately, I am restricted to reading the language they actually enacted. It leads to a different conclusion.


My third issue of concern is the "cease to exist" language of Sections 709.100 (Wastestream) and 729.103 (Wastestream). These sections attempt to define who must prepare, sign and submit the request for wastestream authorization and are an attempt to minimize paperwork burdens. I support that concept. However restricting paperwork by having wastestreams "cease to exist" is a profoundly idiotic idea the implications of which are totally unknown. Can an original generator of hazardous waste send it to a legally authorized treatment facility, "Joe's Garage," and be absolved of CERCLA liability for ultimate improper disposal because the waste "ceased to exist?" That seems a Draconian consequence for paperwork reduction, but is not totally contrary to these regulations. These concerns could have been remedied by simply deleting the offending language, or replacement language focusing on who signs application. I am concerned with the majority's reluctance to even consider these changes at this early stage of the proceeding.

My last concern is more general in nature and I do not have replacement language to provide. I believe the regulations have lost sight of the command of Section 39(h) to minimize "disposal" of waste, and instead the Board's proposal is focused on ensuring that "good waste management decisions" are made. While that is a laudable goal, it is not the command of Section 39(h). Were this my only concern, I would not have dissented from today's action. Instead, I would have invited better approaches to the implementation of Section 39(h).

As a last matter, the role of citizens in today's proceeding is left totally undefined by the majority. Yet, few issues engender as much citizen interest as hazardous waste disposal. I would certainly appreciate comments on the mechanisms and opportunities for citizen participation as well as specific language to implement the concept.

  
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Bill S. Percade  
Member of the Board

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 13<sup>th</sup> day of June, 1986.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board