

ILLINOIS POLLUTION CONTROL BOARD
June 13, 1985

IN THE MATTER OF:)
RCRA AND UIC UPDATE) R84-9

FINAL ORDER ADOPTED RULES

OPINION OF THE BOARD (by J. Anderson):

The Board opened this docket on March 21, 1984, for the purpose of updating the RCRA and UIC rules (35 Ill. Adm. Code 702, 703, 704, 705, 720, 721, 722, 723, 724, 725 and 730) to conform with recent amendments to the corresponding federal rules pursuant to Sections 13(c) and 22.4(a) of the Environmental Protection Act (Act). On December 26, 1984 the Illinois Environmental Protection Agency (Agency) filed a proposal to update the rules to correspond with federal amendments through April 24, 1984.

On January 10, 1985 the Board sent the Agency's proposal to first notice in the form proposed. The proposal appeared at 9 Ill. Reg. 2018, February 15, 1985. On April 4, 1985, the comment period was extended. The Board received three public comments, as follows:

March 29, 1985	United States Environmental Protection Agency (USEPA)
April 17, 1985	Illinois Power Company
May 2, 1985	Illinois Power Company

On May 2, 1985, Illinois Power Company filed a motion for leave to file supplementary comments instanter. The motion is granted.

On March 28, 1985 the Board received codification comments from the Administrative Code Unit.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA hazardous waste program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance to federal regulations". Section 22.4(b) allows adoption of regulations which are "not inconsistent with and are at least as stringent" as federal regulations. Sections 22.4(c) and (d) provide for identification and listing of additional hazardous wastes.

This docket is restricted to adoption of amendments which are "identical in substance" with recent federal amendments. It

is therefore pursuant to Section 22.4(a), which provides an abbreviated procedure for adoption: neither Title VII of the Act nor Section 5 of the Administrative Procedure Act apply to rules adopted under Section 22.4(a). However, the Board published the proposal in the Illinois Register and solicited public comment pursuant to 35 Ill. Adm. Code 102.123. (R84-10, Order of December 20, 1984.)

Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to review by the Joint Committee on Administrative Rules (JCAR). Nonetheless, on March 13, 1985, JCAR requested an economic and budgetary analysis. The Board declined to respond, noting the provisions of Section 22.4(a). On April 29, 1985 JCAR provided the Board with a set of review questions concerning the proposal.

The federal RCRA regulations are found at 40 CFR 260 through 265. Permitting procedures have been moved from 40 CFR 122 et seq. to 40 CFR 270 et seq.

This rulemaking updates Illinois' RCRA and UIC rules to correspond with federal amendments adopted between November 1, 1982 and April 24, 1984. It does not include the federal RCRA amendments pursuant to the RCRA reauthorization bill passed by Congress late in 1984. This rulemaking does involve the following federal amendments:

48 Fed Reg 2508, January 19, 1983 (Ex A)
48 Fed Reg 2530, January 19, 1983 (EX N)
48 Fed Reg 3977, January 28, 1983 (Ex H)
48 Fed Reg 13027, March 29, 1983 (Ex R)
48 Fed Reg 14293, April 1, 1983 (Ex M)
48 Fed Reg 15256, April 8, 1983 (Ex Q)
48 Fed Reg 30113, June 30, 1983 (Ex D)
48 Fed Reg 39611, September 1, 1983 (Ex C)
48 Fed Reg 52718, November 22, 1983 (Ex V)
49 Fed Reg 5308, February 10, 1984 (Ex P)
49 Fed Reg 10490, March 20, 1984 (Ex Mc)
49 Fed Reg 17716, April 24, 1984 (Ex I)

Copies of each of these items are attached to the Agency's proposal as exhibits with the letter indicated.

The Illinois RCRA and UIC rules, together more stringent rules particularly applicable to hazardous waste, include the following:

702 RCRA and UIC Permit Programs
703 RCRA Permit Program
704 UIC Permit Program
705 Procedures for Permit Issuance
709 Wastestream Authorizations
720 General
721 Identification and Listing

722 Generator Standards
723 Transporter Standards
724 Final TSD Standards
725 Interim Status TSD Standards
729 Landfills: Prohibited Wastes
730 UIC Operating Requirements

Adoption of these rules has proceeded in several stages. The Phase I RCRA rules were adopted and amended as follows:

R81-22, 45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828, April 23, 1982.

R82-18, 51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

Illinois received Phase I interim authorization on May 17, 1982 (47 Fed Reg 21043).

The UIC rules were adopted as follows:

R81-32, 47 PCB 93, 6 Ill. Reg 12479.

The UIC rules were amended in R82-18, which is referenced above. Illinois received UIC authorization on February 1, 1984.

The Phase II RCRA rules included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II rules have been adopted and amended, but authorization has not been received:

R82-19, 53 PCB 31, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.

R83-24, 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984.

On September 6, 1984 the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison et al. v. IPCB.)

The Board has added to the federal listings of hazardous waste by listing dioxins pursuant to Section 22.4(d) of the Act:

R84-34, November 21, 1984,

The Board has adopted procedures to be followed in cases before it involving the RCRA rules:

R84-10, December 20, 1984 and January 10, 1985,

The Board has also adopted requirements limiting and restricting the landfilling of liquid hazardous waste and hazardous wastes containing halogenated compounds:

R81-25, October 25, 1984, 8 Ill. Reg. 24124, December 4, 1984.

R83-28, December 20, 1984 and January 10, 1985, 9 Ill. Reg. 730.

The amendments involved in R84-9 are, for the most part, straightforward amendments pursuant to federal amendments. The text is contained in a separate Order. The following discussion is limited to the proposed provisions where the Board has received comment, or which the Board perceives as raising questions concerning how the program should be translated into the Illinois context.

Manifest

The Agency has proposed that it promulgate standardized manifest forms which would have to be used for certain shipments (Sections 720.110, "manifest", 722.120, 722.121 and 722.150.) A generator would be obliged to use the Agency form for waste movements within or into Illinois. (Section 722.120.) An Illinois generator transporting waste outside Illinois would be required to use the manifest required by the consignment state. (Section 722.121.) An Illinois HWM operator importing waste from outside the United States would be required to use the Agency form.

The use of state-promulgated forms such as the Agency proposes was contemplated by USEPA in its amendments at 49 Fed Reg 10490, March 20, 1984. The text of the proposal has been edited from the federal text to reflect the Agency's choice of this option.

The Board has adopted the amendments in substantially the form proposed. The Board has dropped the proposed changes in the definition of "manifest." As adopted the definition references the Part 722 rules which detail whether the Agency's form must be used.

The Board has also modified the proposed language in Section 722.121(b) in response to comments received from USEPA. The adopted language recognizes the possibility that other states might choose not to promulgate forms.

Annual Reports

USEPA amended its rules to require a biennial, rather than an annual report at 48 Fed Reg 3977, January 28, 1983. The Agency proposed to continue to require annual reports from all generators shipping off-site and all HWM operators, and to require the report on a form to be supplied by the Agency. (Sections 722.141, 724.175 and 725.175.)

The use of a certain form appears to be consistent with the federal regulations. However, the proposed continuation of the annual report is more frequent than the federal reporting requirement.

The Agency quotes Section 20.1 of the Act as support for the continuation of the annual report requirement. This requires the Agency to itself prepare an annual report to the public identifying the types and quantities of hazardous waste generated, treated, stored or disposed of within the State. Adoption of the biennial report would frustrate the legislative intent that the Agency rely on annual reports which have been required up to now. The Board has therefore declined to amend the existing annual report provisions.

Financial Assurance Forms

In adopting Sections 724.251 and 725.251 the Board allowed the Agency to promulgate standardized forms for the financial assurance instruments instead of specifying the contents in the rules and requiring each operator to prepare the instruments individually. The Agency proposes to make the use of the forms mandatory so that it will be spared the tedious task of comparing each instrument submitted with the regulations. This appears to be allowable under the federal program and has not been objected to. The Board will therefore adopt the Agency's proposal.

Date Changes

In Section 702.110 the Board has inserted February 1, 1984 as the "date of approval" of the UIC program.

In Section 720.110 the Board has inserted May 19, 1980, the effective date of 40 CFR 261, into the definition of "active portion."

In Section 724.247(b)(4) the Board has corrected dates for requiring liability insurance for operators. The dates previously adopted were not consistent with the federal program. The apparent retroactive date changes do not prejudice anyone because Part 724 will not become fully effective until final authorization is received.

In Section 725.190(d)(1) and (2) the Board has inserted two dates which were omitted from the rules when they were adopted. At that time the federal dates for submission of the plan had already passed at a time when the Agency lacked authority to receive the plans. The Board has modified the rule to reflect the correct history.

Trial Burn Plans

The Agency requests that 703.223(b)(8) be amended by deleting the last sentence, asserting that this would make the

subparagraph identical in substance with 40 CFR 270.62(b)(2)(viii) by eliminating the limitation on the manner in which the Agency can request certain types of information. This aspect of the proposal does not result from amendments to the federal program, but represents a proposal by the Agency that the Board modify the rules adopted in R82-19. There is no indication that these changes are necessary for final authorization of the Illinois program or will jeopardize final authorization.

Section 703.223 was drawn from rules now at 40 CFR 270.62(b)(2)(viii). In adopting it, the Board specified that the Agency follow the procedure of Part 705.123 in requesting additional information concerning a trial burn. The federal rule contains no specification that USEPA follow the comparable procedures of 40 CFR 124.3. In fact, 705.123 is not a completeness procedure itself, but rather a procedure for disposing of incomplete applications. It does not belong at 703.223(b)(8). The Board, therefore, deleted the final sentence of Section 703.223(b)(8).

Completeness

The Agency requests that the word "shall" be replaced with "should" in 705.122(b)(1) and (2).

Section 705.122 was drawn from 40 CFR 124.3 which provides that USEPA "should" review applications for completeness within certain time limitations. The Board used the word "shall" in adopting Section 705.122. In adopting R82-19, the Board used the word "shall," in the absence of a standard for discretionary review of completeness, consistent with Illinois administrative law.

Interim Status Standards

The Board interprets the interim status standards of Part 725 as applying to all persons who treat, store or dispose of hazardous waste until final action is taken on their RCRA permit application, regardless of whether they filed a Part A application.

Dioxins

The Board has reviewed the proposal to assure that it is consistent with the rules adopted in R84-34 at about the same time as the proposal was filed. This poses difficulties in comparing Part 721 with 40 CFR 261, in that the Illinois listings are no longer identical.

The adopted rules do not address the USEPA dioxin rules which were adopted after the April 24, 1984 cutoff date for the Agency proposal. The Board will address these in another rulemaking.

Liquid Hazardous Waste

Sections 724.414, 724.416, 725.414 and 725.416 have been largely superseded by the Illinois liquid hazardous waste rules adopted in R83-28. The Agency proposed to amend Section 725.416 to add a sentence which was inadvertently omitted when the Board adopted that Section. Amendment without mentioning R83-28 could be construed as superseding R83-28. Accordingly, the Board has amended all four liquid hazardous waste Sections to reference the Part 729 requirements.

USEPA has recently amended its liquid hazardous waste requirements. The adopted rules do not reflect these amendments, which will be dealt with in another docket.

Trade Secrets

The Board has added to Section 720.120 a reference to the confidentiality rules recently adopted in Part 120.

Summary Discussion

The following summarizes changes, other than "housekeeping" changes such as typographical errors or codification details, which have been made in the rules to reflect changes in the federal rules.

Pursuant to the Secretary of State's codification rules, the Board has included docket numbers and Opinion volume page numbers with the Illinois Register citations in the main source notes.

The USEPA RCRA permit rules have been moved from 40 CFR 122 to 40 CFR 270. The references in the rules and notes have been changed to reflect this.

In Section 702.110, "Date of approval...", February 1, 1984 has been inserted as the actual date of approval of the Illinois UIC program.

In Section 702.102, "Phase II" has been corrected to reflect the final version of Section 700.106 and Part 724 as adopted in R82-19. Part 724 is currently "effective" as defined in the Secretary of State's rules, although permits cannot be issued until authorization has been received from USEPA.

In Section 702.110,, "Spill" has been deleted from the corresponding federal definition (48 Fed. Reg. 2512, January 19, 1983).

Section 702.123 amendments require the operator to include in the application a map extending one mile beyond the facility boundary. Also, the Board has referenced the RCRA and UIC permit requirements found in Parts 703 and 704.

Section 702.126 and 702.144 have been amended to reflect changes in the federal rules at 48 Fed. Reg. 39621, September 1, 1983.

Section 702.150 has been amended to reflect changes in the federal rules at 48 Fed. Reg. 30114, June 30, 1983.

Section 702.152 has been amended to add federal requirements found at 40 CFR 270.30(1).

Section 702.184 has been amended to reflect amendments adopted at 48 Fed. Reg. 30114, June 30, 1983.

Section 703.110 has been amended to reflect changes in the federal rule (47 Fed. Reg. 41563, September 21, 1982).

Section 703.122 has been amended to conform with 40 CFR 270.1(c)(1)(ii). The exact wording was changed in R82-19 to reflect the Illinois NPDES permit program. As changed, it could appear to create too large an exemption from the RCRA permit requirement. The Board has therefore narrowed the language to more closely follow the federal.

Section 703.124 has been amended to reflect changes in the federal program at 48 Fed. Reg. 2512, January 19, 1983.

Section 703.141 has been amended to reflect changes in the federal programs at 48 Fed. Reg. 3983, January 28, 1983.

Section 703.150 has been amended to require a Part A application by an existing facility subject to new rules within six months after adoption of the equivalent Illinois rule rather than the federal Part 265 standard.

Section 703.152 has been amended to more closely follow the federal rules at 40 CFR 270.10(g)(1)(ii), which require immediate filing of a Part A application by an operator managing a newly-listed waste. The Board has deleted the six-month grace period added in R82-19. However, there will be a lag between the federal and State listing, giving operators time to comply.

Section 703.153 has been amended to follow changes in the federal program at 49 Fed. Reg. 17718, April 24, 1984.

Section 703.183 has been amended to conform with changes in the federal program found at 48 Fed. Reg. 30114, June 30, 1983. Also, a sentence has been added to the note to paragraph (g) alerting the reader that Section 724.355 is a reserved Section number.

Section 703.221 has been amended to reflect changes in the federal program adopted at 48 Fed. Reg. 30114, June 30, 1983.

As is discussed above, the Board has deleted the final sentence of Section 703.223(b)(8).

The Agency proposed that the Board make the completeness review procedure of Section 705.122 discretionary. The Board declines to do so for the reasons given above. Because no changes are needed, this Section has been dropped from the proposal.

Section 705.143 has been amended to add provisions found in 40 CFR 124.8.

Section 720.110 has been amended to reference the new Board rules governing confidentiality.

In Section 720.110, "Active portion" has been amended to insert May 19, 1980, the actual effective date for 40 CFR 261. As adopted in R81-22, this definition referenced the effective date for Part 721 instead of the equivalent federal rule. Since Part 721 had a later effective date, the Illinois program was not identical in substance to the federal.

In Section 720.110, "Existing facility", the definition has been amended to make its past character more understandable.

In Section 720.110, "Manifest", the Agency proposed that the Board define "manifest" as a document supplied by the Agency. This has been dropped as discussed above, since it would appear to exclude forms supplied by other states from the definition even though they would function as manifests under Parts 722-725. The amendments at 49 Fed. Reg. 10500, March 20, 1984 are not necessary in the Illinois context.

In Section 720.110, "Manifest document number" has been amended to reflect changes in the federal program at 49 Fed. Reg. 10500, March 20, 1984.

In Section 720.110, the definition of "spill" was dropped at 48 Fed. Reg. 2511, January 19, 1983.

Appendix A to Part 720 has been reincorporated by reference to include amendments to the federal Appendix at 48 Fed. Reg. 14293, April 1, 1983.

Section 721.101 has been amended to correct cross-references to reflect adoption of the Illinois RCRA permit procedures in R82-19.

Section 721.104 has been amended to correct cross-references. Also, titanium dioxide has been spelled out to avoid the use of subscripts in the text.

Section 721.105 has been amended to reflect federal renumbering at 48 Fed. Reg. 14294, April 1, 1983. Also, it has

been amended to correct cross-references reflecting adoption of the Illinois RCRA permit program in R82-19.

Section 721.106 has been amended at 48 Fed. Reg. 2532, January 20, 1983, and 48 Fed. Reg. 14294, April 1, 1983. Also, it has been amended to reflect Illinois renumbering.

Section 721.107 has been amended to reflect changes in the federal definition of "empty" at 47 Fed. Reg. 36097, August 18, 1982. Also, it has been amended to reflect Illinois renumbering.

Section 721.130 has been amended to correct cross-references. Also, the word "None" has been inserted at the end of paragraph (d). 40 CFR 261.30 reserves space for a table of generic hazardous wastes which are acute hazardous wastes. Illinois codification requirements prevent reservation of such space. In the absence of the reservation, paragraph (d) appears to identify all of the generic hazardous waste in the following sections as acute hazardous waste, which would not be identical in substance.

Section 721.131 has been amended to add generic waste F024 which was listed at 49 Fed. Reg. 5312, February 10, 1984.

Appendix G to Part 721 has been amended to reflect the listing of F024 referenced above.

Appendix H to Part 721 has been amended to reflect the listing of chlorobutadiene and chloropropene at 49 Fed. Reg. 5312, February 10, 1984.

The Board corrected a number of typographic errors in the federal listings when it adopted Appendix H. A few of these cause major problems in comparing the Illinois and federal texts. The federal rules list propylthiouracil and N,N'-bis(2-chlorobenzyl)undecamethylenediamine dihydrochloride as alternative names for the same compound, which they clearly are not. (Possibly there was a deletion at some point in the federal list, resulting in juxtaposition of unrelated compounds.) The Board has corrected this by giving an acceptable second name to propylthiouracil, and moving the other compound to its proper place in the alphabetical list.

Section 722.120 and 722.121 have been amended to reflect changes in the federal program at 49 Fed. Reg. 10500, March 20, 1984. The amendments to the manifest rules are discussed at length above.

For the reasons discussed above, the Board declined to amend Section 722.141 to require biennial reports required by the federal program at 48 Fed. Reg. 3981, January 28, 1983.

Section 722.150 has been amended to reflect changes in the federal program at 48 Fed. Reg. 13027, March 29, 1983, 48 Fed.

Reg. 14294, April 1, 1983 and 49 Fed. Reg. 10500, March 20, 1984. The amendments to the manifest rules are discussed at length above. Also, the Board has deleted a note following paragraph (b)(1)(C). The note seems inappropriate in a State rule.

Appendix A to Part 722 has been repealed to reflect the repeal of the federal Appendix at 48 Fed. Reg. 3982, January 28, 1983.

Section 723.112 has been amended to correct cross-references reflecting Illinois' RCRA permit rules.

Section 724.101 has been amended to reflect changes in the federal program at 48 Fed. Reg. 2511, January 19, 1983. Also, a sentence defining "RCRA permit" with reference to Section 21(f) of the Act and Part 703 has been added at the request of the Administrative Code Unit.

Section 724.118 has been amended to reflect changes in the federal program at 48 Fed. Reg. 30115, June 30, 1983.

Section 724.175 has been amended to reflect changes in the federal program at 48 Fed. Reg. 3982, January 28, 1983. The biennial report requirement is discussed at length above.

Section 724.176 has been amended to reflect changes in the federal program at 48 Fed. Reg. 3982, January 28, 1983.

Section 724.177 has been amended to reflect changes in the federal program at 47 Fed. Reg. 32350, July 26, 1982. As is discussed above, the Board declined to amend Section 724.177 to require biennial reports required by the federal program at 48 Fed. Reg. 3982, January 28, 1983.

Section 724.220 has been amended to recognize the possibility of notation in an instrument other than the property deed. This is consistent with 40 CFR 264.120.

Section 724.247 has been amended to correct dates incorrectly adopted in R82-19. This is discussed above. A significant typographical error has been corrected in paragraph (f)(3)(C)(i).

Section 724.251 has been amended to require the use of certain forms for financial assurance. This is discussed above.

Section 724.414 and 724.416 have been amended to reference the liquid hazardous waste restrictions in Part 729. This is discussed above.

Appendix B of Part 724 has been repealed pursuant to 48 Fed. Reg. 3982, January 28, 1983.

Section 725.101 has been amended pursuant to changes in the federal rules at 48 Fed. Reg. 2511, January 19, 1983, 48 Fed. Reg. 14295, April 1, 1983 and 48 Fed. Reg. 52720, November 22, 1983. Also, cross-references reflect adoption of the Illinois RCRA and UIC permit programs.

Section 725.112 has been amended to reflect adoption of Illinois' RCRA permit program.

As is discussed above the Board declined to amend Section 725.175 and 725.176 to require a biennial report required at 48 Fed. Reg. 3982, January 28, 1983.

Section 725.190 has been amended to state the correct history behind paragraph (d). This is discussed at length above.

Section 725.193 has been edited to remove surplus verbiage.

Section 725.245 has been amended to update the incorporation by reference of financial assurance documents to include the following amendments: 47 Fed. Reg. 30447, July 13, 1982; 48 Fed. Reg. 14295, April 1, 1983; 48 Fed. Reg. 30115, June 30, 1983.

Section 725.251 has been amended to require the use of certain forms for financial assurance. This is discussed at length above.

Section 725.376 has been amended to reflect changes in the federal program at 47 Fed. Reg. 32368, July 26, 1982. Also, references have been changed to reflect adoption of the Illinois RCRA permit rules in R82-19.

Section 725.414 and 725.416 have been amended to reflect adoption of the liquid hazardous waste rules in Part 729 in R83-28. This is discussed at length above. Also, a sentence which was omitted has been added to Section 725.416. This is taken from 40 CFR 265.316.

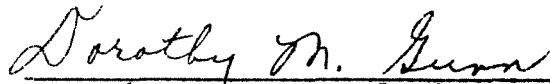
Section 725.530 has been amended to reflect adoption of the Illinois UIC permit program in Part 704.

Appendix B to Part 725 has been repealed pursuant to 48 Fed. Reg. 3982, January 28, 1983.

This Opinion supports the Board's Order of this same date.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion was adopted on the 13th day of June, 1985 by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board