

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2008

IN THE MATTER OF:)
RCRA SUBTITLE C UPDATE, USEPA) R09-3
AMENDMENTS (January 1, 2008 through) (Identical-in-Substance
June 30, 2008)) Rulemaking - Public Water Supply)

Proposed Rule. Proposal for Public Comment.

OPINION OF THE BOARD (by G.T. Girard):

SUMMARY OF TODAY'S ACTION

This identical-in-substance rulemaking would update the Illinois hazardous waste regulations to incorporate revisions to the federal regulations. The United States Environmental Protection Agency (USEPA) adopted the federal hazardous waste amendments that prompted this action during the time periods of January 1, 2008 through June 30, 2008. This proceeding proposes amendments to 35 Ill. Adm. Code 721, 721, 724, 725, 726, and 728. Also included in this proceeding are amendments to respond to comments submitted by USEPA after the conclusion of the prior update docket, RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated). Those comments, docketed in this present docket at PC 2, suggested corrections to the rules. This proposal for public comment would also make a series of substantive and non-substantive corrections and stylistic revisions to segments of the text that are not otherwise affected by the covered federal amendments.

This opinion and the related order propose for public comment identical-in-substance amendments in the hazardous waste program area. Sections 7.2 and 22.4(a) of the Act (415 ILCS 5/7.2 and 22.4(a) (2006)) require the Board to adopt regulations that are “identical in substance” to hazardous waste regulations adopted by the USEPA. These USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2006)). The federal RCRA Subtitle C hazardous waste management (HWM) regulations are found at 40 C.F.R. 260 through 268, 270 through 273, and 279.

Section 22.4(a) also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (5 ILCS 100/5-35 and 5-40 (2006)) do not apply to the Board’s adoption of identical-in-substance regulations.

This opinion supports an order that the Board also adopts today. The Board will cause the proposed amendments to be published in the *Illinois Register* and will hold the docket open to receive public comments for 45 days after the date of publication. The Board presently intends to adopt final amendments based on this proposal on or before November 20, 2008, as is explained beginning on page 6 of this opinion.

As a special note, the Board particularly requests that USEPA and the Agency comment on the Board's proposal relating to certain of the June 4, 2008 exception from the F019 hazardous waste listing. The Board has significantly altered the USEPA language of the exception, in order to tailor it to Illinois-specific regulation of non-hazardous waste landfills. The issues raised by those segments of the corrections and the Board departures from the federal text are discussed at pages 11-20 of this opinion.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

The following listing briefly summarizes the federal actions considered in this RCRA Subtitle C update rulemaking:

Docket R09-3: January 1, 2008 through June 30, 2008 Amendments

USEPA amended the federal hazardous waste regulations three times during the period January 1, 2008 through June 30, 2008, as is summarized below:

January 2, 2008 (at 73 Fed. Reg. 57)

Description of the USEPA action: USEPA broadened an existing exclusion from the definition of solid waste for oil-bearing secondary materials that are reinserted into the refining process. The exclusion now embraces the gasification of oil-bearing secondary materials when they are processed in a gasification system at a refinery for production of synthesis gas.

Necessary Board action in response: The Board must incorporate these limited federal amendments into the Illinois rules. This requires adding a new definition of "gasification" to 40 C.F.R. 720.110 and amending the existing exclusion from the definition of solid waste in 35 Ill. Adm. Code 721.104.

April 8, 2008 (at 73 Fed. Reg. 18970)

Description of the USEPA action: USEPA amended the October 12, 2005 (70 Fed. Reg. 59402) Hazardous Waste Combustor Rule. The body of the hazardous waste combustor rule is codified as an air rule, at subpart EEE of 40 C.F.R. 63, and the major portion of the April 8, 2008 amendments involved subpart EEE. The HWM facility standards of 40 C.F.R. 264 through 266 include limited segments that describe the interplay between the hazardous waste combustor rule and the HWM facility standards. The April 8, 2008 amendments included limited amendments to the HWM facility standards.

Necessary Board action in response: The Board must incorporate the federal hazardous waste combustor rule amendments into the Illinois rules. This requires updating the incorporation of subpart EEE of 40 C.F.R. 63 by reference in 35 Ill.

Adm. Code 720.111 to include the amendments. It will also require amendment of 35 Ill. Adm. Code 724.440 and 726.200.

June 4, 2008 (at 73 Fed. Reg. 31756)

Description of the USEPA action: USEPA amended the F019 hazardous waste listing to exempt wastewater treatment sludges from zinc phosphating when generated by a motor vehicle manufacturing process, subject to limitations. F019 waste is wastewater treatment sludge from the chemical conversion coating of aluminum.

Necessary Board action in response: The Board must amend the F019 waste listing in 35 Ill. Adm. Code 721.131 to correspond with the federal amendments. The amendments involve reliance on non-hazardous waste landfill requirements.

Correction of an Error in the Hazardous Waste Manifest Requirements

The Board must correct the text of the rules. An inadvertent error made in the prior update docket has resulted in the existence of two versions of 35 Ill. Adm. Code 725.176(a). The Board has used this opportunity to make the correction, as Part 725 is open for current federal amendments.

On March 4, 2005 (at 70 Fed. Reg. 10776), USEPA amended the federal hazardous waste manifest requirements. The Board adopted the corresponding amendments to the Illinois rules in consolidated update docket UIC Corrections, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-5, RCRA Subtitle D Update, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-6, RCRA Subtitle C Update (January 1, 2005 through June 30, 2005), R06-7 (Jan. 5, 2006) (consolidated). The amendments required the Board to restructure the rules to accommodate two versions of many provisions: one version applicable until September 5, 2006 and the other applicable after that date.

The Board attempted to revert to a structure that more closely parallels the corresponding USEPA rules in prior consolidated update docket RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated). Although the Board opinion listed the deletion of the then-existing version of Section 725.176(a) and renumbering of then-existing subsection (b) to subsection (a) (*see id.*, opinion at p. 69, and order at pp. 444-445), the renumbering in the order occurred without the corresponding deletion. The result was two subsections numbered “a” in Section 725.176.

Rules Text Corrections Suggested by USEPA

USEPA has pointed out a small number of discrepancies in the existing text of the rules, including the error in Section 725.176 discussed immediately above. *See* PC 2. The Board must correct the text of the rules to remove them to minimize any confusion to the regulated community or to the general public.

USEPA suggested changes based on its review of the text of the amendments adopted in RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated). The Board has used this opportunity to make the changes suggested by USEPA, since one or more of the errors could constitute substantive deficiencies in the rules. Making these changes has required the Board to add Parts 725 and 728 to this proceeding.

**No Later RCRA Subtitle C (Hazardous Waste)
Amendments of Interest**

The Board engages in ongoing monitoring of federal actions. As of the date of this opinion and accompanying order, the Board has identified no USEPA actions since June 30, 2008, that further affect the RCRA Subtitle C hazardous waste rules in a way that requires immediate Board attention.

When the Board observes an action outside the nominal timeframe of a docket that requires expedited consideration, the Board will expedite consideration of those amendments in the pending docket. Federal actions that could warrant expedited consideration include those that directly affect the amendments involved in this docket, those for which compelling reasons would warrant consideration as soon as possible, and those for which the Board has received a request for expedited consideration.

If the Board identifies any federal actions that fulfill these criteria prior to final action on the present amendments, the Board may include those amendments in the present docket, R09-3.

**Summary Listing of the Federal Actions Forming
the Basis of the Board's Actions in This Docket**

Based on the foregoing, the three federal actions that form the basis for Board action in this update docket are the following, listed in chronological order:

January 2, 2008 (at 73 Fed. Reg. 57)	Broadened exclusion from the definition of solid waste for oil-bearing secondary materials that are reinserted into the refining process to include the gasification of oil-bearing secondary materials when they are processed in a gasification system at a refinery for production of synthesis gas.
April 8, 2008 (at 73 Fed. Reg. 18970)	Amendments to the Hazardous Waste Combustor Rule.
June 4, 2008 (at 73 Fed. Reg. 31756)	Exclusion of wastewater treatment sludges from zinc phosphating from the F019 hazardous waste listing when generated by a motor vehicle manufacturing process.

**Other Federal Actions Having a Direct Impact
on the Illinois RCRA Subtitle C Regulations**

In addition to the amendments to the federal RCRA Subtitle C regulations, amendments to certain other federal regulations occasionally have an effect on the Illinois hazardous waste rules. Most notably, 35 Ill. Adm. Code 720.111 includes several incorporations of federal regulations by reference. The incorporated regulations include segments of various USEPA environmental regulations, Nuclear Regulatory Commission (NRC) rules, and United States Department of Transportation (USDOT) hazardous materials transportation regulations that USEPA has incorporated into the federal hazardous waste rules.

The latest available version of the *Code of Federal Regulations* is now the 2007 edition for Titles 40 and 49 and the 2008 edition for Titles 10, 33, 40, and 49. Each of these is incorporated by reference in Section 720.111 of the hazardous waste regulations. The Board will amend the incorporations of these federal regulations by reference to include those editions of the *Code*. This will assure that all NRC (10 C.F.R.) regulations through December 31, 2007, all Coast Guard (33 C.F.R.) through June 30, 2008, all USEPA (40 C.F.R.) amendments through June 30, 2007, and all USDOT (49 C.F.R.) amendments through September 30, 2007, will be included in the incorporations of the pertinent regulations by reference.

As of the date of this proposal for public comment, the Board has found only minor sets of amendments to the incorporated materials in Section 720.111 past the date of the 2007 or 2008 edition, as applicable, of the *Code of Federal Regulations*. These amendments update incorporated segments of the *Code of Federal Regulations*, but it is unlikely that those amendments affect the implementation of the federal hazardous waste requirements. Nevertheless, the Board proposes to update the incorporations to include the later federal amendments. The *Federal Register* citations to the later amendments that are added to the incorporations by reference are listed in Table 1, which begins on page 21 of this opinion.

PUBLIC COMMENTS

The Board will receive public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*. After that time, the Board will immediately consider adoption of the amendments, making any necessary changes made after consideration of the public comments. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow additional time for USEPA to review the adopted amendments before they are filed and become effective.

Prior to development of the proposal for public comment in this docket, Board staff received two e-mails relating to the hazardous waste rules. The Board has regarded the e-mails received as public comments, and has entered them into this docket.

The first e-mail, received on June 9, 2008, was from Susan Rokosz, Ford Motor Company, Environmental Quality Office. That comment requested expedited action on the federal amendments of June 4, 2008.

Gary Westefer, USEPA Region 5, submitted the second e-mail on July 30, 2008. That e-mail listed a small number of necessary corrections to the text of the rules as amended in the prior update docket, RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated). The Board docketed that second e-mail as PC 9 in that prior docket, then introduced them into the present docket as PC 2, in order to address the suggested changes described by USEPA in the e-mail. The Board has attached the Board staff response to the USEPA e-mail as part of PC 2.

In summary, the public comments received prior to this proposal for public comments are described as follows:

- PC 1 June 9, 2008 e-mail from Susan Rokosz, Ford Motor Company, Environmental Quality Office. Attached to this e-mail as a public comment is the June 12, 2008 response from Michael J. McCambridge, Board hearing officer.
- PC 2 July 30, 2008 e-mail from Gary Westefer, USEPA Region 5. Attached to this e-mail as a public comment is the June 12, 2008 response from Michael J. McCambridge, Board hearing officer.

The Board is responding to PC 1 by development of, and action on, this proposal for public comment as rapidly and expeditiously as available resources have allowed. The Board has opened various segments of the rules to incorporate changes based on the USEPA comments in PC 2. The Board has listed the corrections made in response to PC 2 in Table 3, which begins on page 26 of this opinion. None of the revisions warrant specific discussion in this opinion, but the segment of this opinion that begins on page 9 includes a brief discussion of the need to include segments of the rules that are not otherwise involved in this docket for amendment in response to PC 2.

**TIMETABLE FOR COMPLETION OF THIS RULEMAKING
AND EXTENSION OF THE DUE DATE**

Under Section 7.2 of the Act (415 ILCS 5/7.2(b) (2006)), the Board must complete this rulemaking within one year of the date of the earliest set of federal amendments considered in this docket. USEPA adopted the earliest federal amendments that required Board attention on January 2, 2008, so that the deadline for Board adoption of these amendments is January 2, 2009.

The Board has projected the times required by which to complete various activities towards ultimate adoption of these amendments before the due date. Meeting a January 2, 2009 deadline for final adoption of the amendments will require the Board to adhere to the following schedule of intermediate occurrences:

Due date:	January 2, 2009
Date of Board vote to propose amendments:	September 4, 2008
Submission for <i>Illinois Register</i> publication:	September 15, 2008
Probable <i>Illinois Register</i> publication dates:	September 26, 2008

Probable End of 45-day public comment period:	November 10, 2008
Date of Board vote to adopt amendments:	November 20, 2008
End of 30-day hold period for USEPA review:	December 22, 2008
Probable filing and effective date:	December 29, 2008
Probable <i>Illinois Register</i> publication date:	January 9, 2009

DISCUSSION

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by substantive discussions topically arranged of the substantive amendments and actions involved in this proceeding. The first substantive discussion addresses the need to respond to the USEPA comments in PC 2 by including segments of the rules that are not otherwise affected by USEPA amendments in this docket. A series of three substantive discussions of the federally derived amendments involved in this docket follows that discussion of PC 2. This series is organized by federal subject matter, appearing in chronological order of the relevant *Federal Register* notices involved.

General Revisions and Deviations from the Federal Text

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors found in the text in the course of these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the *Illinois Administrative Code*.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. The federal Government Printing Office releases several updated titles of the *Code of Federal Regulations* every calendar quarter. This occurs in a cycle that assures a new edition of each title of the *Code* every year. The most recent versions of the *Code of Federal Regulations* available are the January 1, 2008 edition for NRC regulations (Title 10), the July 1, 2008 edition for Coast Guard regulations (Title 33), the July 1, 2007 edition for USEPA regulations (Title 40), and the October 1, 2007 edition for USDOT regulations (Title 49). Thus, the Board has updated all citations to Titles 10 and 33 to the 2008 edition of the *Code of Federal Regulations* and citations to Title 40 and 49 to the 2007 edition. The Board has added the *Federal Register* citation, where necessary, for amendments that occurred after the *Code of Federal Regulations* edition date but before June 3, 2008, the cutoff date for amendments

included in this docket. Table 1, which begins on page 21 of this opinion, lists the *Federal Register* citation for each set of later federal amendments included in this docket.

The Board substituted “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, spelling, and cross-reference format throughout the opened text. We changed “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred was not necessarily a natural person, or to “he or she,” where a natural person was evident; changed “which” to “that” for restrictive relative clauses; substituted “must” for “shall”; capitalized the section headings and corrected their format where necessary; and corrected punctuation within sentences.

In addition, the federal rules have been edited to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may,” “must” is used when an action is required by the rule, without regard to whether the action is required of the subject of the sentence or not. “Shall” is no longer used, since it is not used in everyday language. Thus, where a federal rule uses “shall,” the Board substitutes “must.” This is a break from our former practice where “shall” was used when the subject of a sentence has a duty to do something. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either . . . or” denotes “one but not both.” “And” denotes “both.”

The Joint Committee on Administrative Rules has requested that the Board refer to the United States Environmental Protection Agency in the same manner throughout all of our bodies of regulations—*i.e.*, air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board has decided to refer to the United States Environmental Protection Agency as “USEPA.” The Board will continue this conversion in future rulemakings as additional sections become open to amendment. The Board will further convert “EPA” used in federal text to “USEPA,” where USEPA is clearly intended.

The Board has assembled tables to aid in the location of these alterations and to briefly outline their intended purpose. Table 2 sets forth the miscellaneous deviations from the federal text, and Table 3 itemizes the corrections to the pre-amended base text of the rules in detail. Table 2 begins on page 24 of this opinion, and Table 3 begins on page 26. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

The Need to Include Segments of the Existing Regulations in This Docket in Response to Corrections Suggested by USEPA in PC 2

Gary Westefer, USEPA Region 5, submitted the e-mail docketed as PC 2 on July 30, 2008. That e-mail listed a small number of necessary corrections to the text of the rules as amended in the prior update docket, RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consol.). The Board

docketed that second e-mail as PC 9 in that prior docket, then introduced it into the present docket as PC 2, in order to address the suggested changes described by USEPA in the e-mail.

On June 5, 2008, the Board voted to adopt the amendments involved in the prior consolidated update docket, [UIC Update, USEPA Amendments \(March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006\)](#), R07-5, [RCRA Subtitle C Update \(July 1, 2006 through December 31, 2006\)](#), R07-14 (June 5, 2008) (consol.). The Board filed those amendments with the Office of the Secretary of State on July 14, 2008. On July 30, 2008, USEPA Region 5 submitted a list of corrections necessary to the base text of the rules as amended in R07-5/R07-14. The Board entered that list of corrections as PC 9 in that docket, although no corrections are possible to the amendments in that docket after their July 14, 2008 filing. Thus, the Board has entered the list of corrections into this docket, R09-3, as PC 1, to give consideration to the corrections listed.

After review of the listed corrections, the Board has concluded that limited revisions are necessary to the rules. USEPA found three errors in the Section 721.133 listing of discarded commercial chemical products that are hazardous waste. USEPA found a segment of text in Section 725.176 that the Board inadvertently neglected to remove in the prior update docket, R07-5/R07-14. USEPA also found an erroneous cross-reference to the underground injection control-related land disposal restrictions in Section 728.102. Table 3, which begins on page 26 of this opinion, lists the corrections made in response to PC 2.

The Board has decided to include the corrections to each of Sections 721.133, 725.176, and 728.102 in this docket. The Board believes that the errors are significant enough to warrant inclusion of these three Sections in this docket for immediate attention, to minimize any confusion to the regulated community and general public. No amendments to these three provisions other than the corrections listed by USEPA in PC 2 are included in this docket.

The Board requests comment on the revisions made to the existing rules based on the July 30, 2008 USEPA listing of corrections (PC 2).

Discussion of the Particular Federal Actions Involved in This Docket

Amended Exclusion from the Definition of Solid Waste for Recycled Oil-Bearing Secondary Materials—Sections 720.110 and 721.104

On January 2, 2008 (73 Fed. Reg. 57), USEPA amended an existing exclusion of secondary oil-bearing materials from the definition of solid waste. Under 40 C.F.R. 261.4(a)(12)(i) (corresponding with 35 Ill. Adm. Code 720.104(a)(12)(A)), oil-bearing secondary materials generated by the petroleum industry are not solid waste when they are inserted into a petroleum refining process, such as distillation, catalytic cracking, fractionation, or thermal cracking. The amendment includes “gasification” as a petroleum refining process, so that the introduction of the secondary material into a gasification process qualifies the material as excluded from the definition of solid waste. USEPA added a definition of “gasification” to 40 C.F.R. 260.10 (corresponding with 35 Ill. Adm. Code 720.110).

The Board does not review the substance and merits of the underlying federal action in an identical-in-substance proceeding, except to the extent that it may be necessary to do so in order to incorporate the federal provisions into the Illinois regulations. Persons interested in the details of the federal amendments should consult the January 2, 2008 *Federal Register* notice.

The Board incorporated the January 2, 2008 federal amendments without substantive deviation from the corresponding federal text. The deviations from the text of the federal amendments are restricted to those structural and stylistic changes needed to make the text comport with the *Illinois Register* format and the Board's preferred style and to add clarity and ease of use for the regulated community. Table 2, which begins on page 24 of this opinion, itemizes the various revisions made in the federal text in adapting it into the State regulations.

The Board requests public comment on the incorporation of the January 2, 2008 federal exclusion of secondary oil-bearing materials introduced into gasification from the definition of solid waste.

Amendments to the Hazardous Waste Combustor Rule—Sections 720.111, 724.440, and 726.200

On April 8, 2008 (73 Fed. Reg. 18970), USEPA amended the October 12, 2005 (70 Fed. Reg. 59402) Hazardous Waste Combustor Rule. USEPA stated that the amendments clarify several compliance and monitoring provisions and correct errors and omissions in the Rule. The main body of the Hazardous Waste Combustor Rule is codified as an air rule at subpart EEE of 40 C.F.R. 63. Segments that appear in the body of the hazardous waste rules, in the HWM facility standards of 40 C.F.R. 264 through 266, outline the interplay and applicability of the Hazardous Waste Combustor Rule and the hazardous waste facility standards. The principal April 8, 2008 federal amendments involved changes in subpart EEE of 40 C.F.R. 63. USEPA included minor amendments to 40 C.F.R. 264 and 266.

The Board does not review the substance and merits of the underlying federal action in an identical-in-substance proceeding, except to the extent that it may be necessary to do so in order to incorporate the federal provisions into the Illinois regulations. Persons interested in the details of the federal amendments should consult the April 8, 2008 *Federal Register* notice.

The Board incorporated the HWM segments of the April 8, 2008 federal amendments without substantive deviation from the corresponding federal text. The Board updated the version of subpart EEE of 40 C.F.R. 63 incorporated by reference in Section 720.110(b) for the purposes of numerous permitting and HWM facility standards provisions.¹ The Board amended Sections 724.440 to correspond with USEPA's amendments to 40 C.F.R. 264.340. No amendment was necessary to 726.200 to correspond with USEPA's amendment to 40 C.F.R. 266.100, since the only federal correction to that provision was to a subsection number that the

¹ They are referenced in Appendix A to 35 Ill. Adm. Code 703 and in 35 Ill. Adm. Code 703.155, 703.205, 703.208, 703.221, 703.232, 703.320, 703.280, 724.440, 724.701, 724.950, 725.440, and 726.200.

Board had already corrected when adopting Section 726.200(b)(3)(C).² Table 2, which begins on page 24 of this opinion, itemizes the various revisions made in the federal text in adapting it into the State regulations.

The Board requests public comment on the incorporation of the April 8, 2008 federal amendments to the Hazardous Waste Combustor Rule into the Illinois regulations.

Exemption from the F019 Hazardous Waste Listing for Wastewater Treatment Sludges from the Motor Vehicle Manufacturing Process—Section 721.131

On June 4, 2008 (73 Fed. Reg. 31756), USEPA amended the F019 hazardous waste listing (wastewater treatment sludges from the chemical conversion coating of aluminum) to exclude sludges from the manufacture of motor vehicles, so long as the wastes are not placed on the land before disposal and the ultimate disposal is in a Subtitle D municipal solid waste landfill (MSWLF) or an industrial landfill that has a single clay liner that meets the requirements of specific MSWLF or HWM facility standards.

The Board has expedited consideration of these amendments at this first opportunity that resources have allowed. This is in response to PC 1, which the Board has read as a request for expedited consideration. An earlier commencement was precluded until now by the burden of completing the massive prior HWM amendments in RCRA Subtitle C Update, USEPA Amendments (March 5, 2005, September 8, 2005, January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consol.) and the need to assemble a significant proposal for public comment in the wastewater pretreatment/primary drinking water regulations update in Wastewater Pretreatment Update, USEPA Amendments (January 1, 2007 through June 30, 2007), R08-5, SDWA Update, USEPA Amendments (January 1, 2007 through June 30, 2007 and June 3, 2008), R08-7, SDWA Update, USEPA Amendments (July 1, 2007 through December 31, 2007), R08-13 (Aug. 7, 2008) (consol.) (proposal for public comment).

The Board does not review the substance and merits of the underlying federal action in an identical-in-substance proceeding, except to the extent that it may be necessary to do so in order to incorporate the federal provisions into the Illinois regulations. Persons interested in the details of the federal amendments should consult the June 4, 2008 *Federal Register* notice.

The Board incorporated the federal June 4, 2008 exemption from the F019 hazardous waste listing without substantive deviation from the corresponding federal text. The deviations that the Board did undertake from the text of the federal amendments are limited. The deviations include those changes needed to fit the federal requirements into the context of the Illinois

² See UIC Update, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-16, RCRA Subtitle D Update, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-17, RCRA Subtitle C Update (January 1, 2005 through June 30, 2005 and March 23, 2006), R06-18 (Nov. 16, 2006) (consol.), opinion at p. 111, order at p. 542 (corrected without specific mention).

regulatory scheme, to enhance clarity, and for ease of use by the regulated community. They include structural and stylistic changes needed to make the text comport with the *Illinois Register* format and the Board's preferred style. Table 2, which begins on page 24 of this opinion, itemizes the various revisions made in the federal text in adapting it into the State regulations.

But, to incorporate the new federal exclusion from the F019 hazardous waste listing has required the Board to translate the federal limitations on the exclusion into language based on Illinois regulations and the Illinois regulatory scheme. The Board has found it necessary to depart from the language of the federal regulations in only two significant ways. The first deviation is in selection of citations to Illinois regulations and language that correspond with the citations to federal provisions made by USEPA. The second deviation relates to alteration of the structure of the exclusion to enhance its clarity.

The USEPA exclusion of the subject F019 wastes imposes limitations on the disposal of the waste excluded from the F019 hazardous waste listing, allowing them to be disposed of in a landfill if the landfill fulfills specified requirements:

Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. 40 C.F.R. 261.31(a) (F019 listing) (2006), as amended at 73 Fed. Reg. 31756, 31768 (June 4, 2008).

This sets forth two options for landfill disposal of the waste: (1) "Subtitle D municipal or industrial landfill unit[s]" that are "equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state"; and (2) "landfill unit[s] subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301." Each of the two options includes various types of landfills.

Examination of the *Federal Register* discussion of the types of disposal sites acceptable for the excluded waste indicates that USEPA intended three things in its choice of language: (1) that any landfill receiving this waste have a liner; (2) that there are two options for landfill disposal; and (3) that the two options are distinguished based on the thickness and type of liner that the landfill facilities in each group has:

The proposed exemption was conditioned on the disposal of the waste in a landfill meeting certain liner design requirements. The proposal presented two options for the landfill liner design. Under option one, the landfill unit would have a liner system that meets, or is subject to, the design requirements for an MSWLF (§ 258.40) or a Subtitle C waste landfill (§§ 264.301 and 265.301). Option two would also allow the generator the option of disposing the waste in a

state permitted/authorized Subtitle D landfill (municipal or industrial) that is equipped with a single clay liner. * * *

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[USEPA] has decided to adopt the second landfill liner option in the final rule. That is, the regulations will specify that the waste is exempt, provided the wastes are either disposed in a permitted Subtitle D (municipal or industrial) landfill unit that is equipped with at least a single clay liner, or in a unit that is subject to, or otherwise meets, the liner requirements for MSWLFs (§ 258.40) or hazardous waste landfills (§ 264.301 or § 265.301). * * *

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The final rule will require the generator to document that the wastewater treatment sludge went to a permitted landfill that was equipped with at least a single clay liner. As discussed in the proposed rule, the generators may obtain information on the landfill units in question from the state permitting authorities (or the receiving landfill, if the facility has adequate documents, such as a permit to operate). It is the responsibility of the generator to document the adequacy of the receiving landfill's design and to keep records that demonstrate that the landfill condition for disposal was met. 73 Fed. Reg. at 31760.

This discussion also makes it clear that USEPA inverted the presentation of the two options in the rule from how USEPA considered them. The first option considered acceptable by USEPA is that of a RCRA Subtitle C hazardous waste landfill or a permitted RCRA Subtitle D MSWLF facility. The second option is that of a Subtitle D landfill that has a clay liner. The Board will review each option separately to determine exactly what types of landfills USEPA intended.

The first option relates to the two bodies of regulations that have the most stringent landfill liner requirements: the RCRA Subtitle C hazardous waste regulations and RCRA Subtitle D MSWLF regulations. A facility that is "subject to" either body of regulations is required to have a composite liner consisting of a bottom layer of compacted soil and an upper layer of durable, impermeable engineered material, such as plastic sheeting.³ Further, a facility that is "subject to" these regulations is required to have a permit, *see* 40 C.F.R. 256.21(c); 270.1 (2007), which would satisfy the documentation of the liner design that USEPA desires. Thus, disposal in a facility that is "subject to" these requirements clearly fulfills USEPA's intent.

³ The MSWLF facility standards require a composite liner with a bottom layer of compacted soil two feet thick that has a hydraulic conductivity less than 1×10^{-7} cm/sec. 40 C.F.R. 258.40(b). The RCRA Subtitle C hazardous waste facility standards require a composite liner with a bottom layer of compacted soil three feet thick that has a hydraulic conductivity less than 1×10^{-7} cm/sec. 40 C.F.R. 264.301(c)(1)(i)(B) and 265.301(a) (2007). USEPA may approve alternative liner designs, so long as they perform at least to the level of the standard required liner. *See* 40 C.F.R. 258.40(e) and 264.301(d), (e), and (f) (2007).

A question arises, however, as to what facilities USEPA intended as “otherwise meeting” the RCRA Subtitle C hazardous waste or RCRA Subtitle D MSWLF requirements. The Board does not believe that USEPA intended to include a landfill facility that does not document its liner system in records submitted to the State for review and approval. Instead, the Board believes that USEPA intended a facility that is subject to a body of state regulations that is the counterpart of the RCRA Subtitle C hazardous waste or RCRA Subtitle D MSWLF regulations. Such a facility would have a permit issued by the state, and its liner would fulfill the minimum federal standards of 40 C.F.R. 258.40, 264.301, or 265.301. *See* 42 U.S.C. §§ 6926(a), 6929, 6943(a), 6947 (2007).

The second landfill option provided by USEPA allows disposal in a “Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state.” This second option does not directly identify specific regulations. The segment of text that reads, “Subtitle D municipal or industrial landfill unit,” could be read as including landfills regulated under the MSWLF regulations of 40 C.F.R. 258.⁴ That would be redundant of the first landfill option, which already includes landfills subject to the requirements of 40 C.F.R. 258.40.⁵ The Board believes that USEPA intended Subtitle D landfill units that were not included in the first disposal option. A Subtitle D landfill facility that does not receive municipal solid waste is not a MSWLF. Such a facility is regulated under the requirements of 40 C.F.R. 257.⁶ The Board believes that the second disposal option is aimed at facilities regulated under 40 C.F.R. 257.

The Board also believes that USEPA did not intend to exclude any Subtitle D non-MSWLF landfill facilities by this clause, since any landfill that is not a MSWLF receiving

⁴ A landfill unit that receives “household waste” is defined under the regulations as a MSWLF unit. A MSWLF unit may also receive commercial solid waste, industrial solid waste, and other non-hazardous solid waste. A MSWLF unit is regulated under 40 C.F.R. 258. *See* 40 C.F.R. 258.2 (definition of “municipal solid waste landfill”), 258.10(c)(2), and 258.20 (2007).

⁵ It would be possible that USEPA intended to include an existing MSWLF in this second option, but the Board does not believe so. The composite liner requirements apply to a “new MSWLF,” 40 C.F.R. 258.40(a) (2007); *see* 40 C.F.R. 258.2 (definition of “new MSWLF”) (2007), but all landfill facilities were required to either comply with the part 258 design standards or close before one of various dates now long past. *See* 40 C.F.R. 258.1(c) through (e). Thus, even an existing MSWLF unit would now comply with the part 258 design standards. It is possible that clause this would include very small MSWLF units that are exempt from the design requirements of 40 C.F.R. 258, *see* 40 C.F.R. 258.1(f) (2007), but the Board is not aware that any such facility now operates in Illinois.

⁶ Units regulated under 40 C.F.R. 257 are those that receive commercial solid waste, industrial solid waste, conditionally exempt small quantity generator waste, construction and demolition debris, sludge, sewage sludge, and residential lead-based paint waste and which are not excluded from coverage because they are subject to various other federal laws. *See* 40 C.F.R. 257.1 and 257.2 (2007).

industrial waste is defined as an industrial solid waste landfill, even if it receives other types of waste. *See* 40 C.F.R. 258.2 (definitions of “construction and demolition landfill” and “municipal solid waste landfill”) and 258.2 (definitions of “commercial solid waste,” “construction and demolition landfill,” “industrial solid waste,” and “municipal solid waste landfill”) (2007). The landfill facilities intended by USEPA by the words “Subtitle D municipal or industrial landfill” would include all landfills regulated under RCRA Subtitle D,⁷ but not those subject to the design standard of 40 C.F.R. 258.40, which are already included in the first option.

The qualification that the landfill must have a permit or other authorization issued by the state is subsumed by the RCRA Subtitle D requirements. The RCRA Subtitle D regulations require that a state program must include a permit program adequate to ensure that no new open dumps come into existence. 40 C.F.R. 256.21(c) (2007); *see* 40 C.F.R. 256.22(d) (recommendations for state programs). Thus, substitution of the words “Subtitle D municipal or industrial landfill unit that . . . is permitted, licensed or otherwise authorized by the state” would mean the same as “any other landfill that is regulated under Subtitle D.” Since any landfill that can accept the waste excluded from the F019 hazardous waste listing is regulated under RCRA Subtitle D, it may still be possible to shorten this to “any landfill that receives the excluded waste.”

The point of this second disposal option is to assure that any landfill which receives the waste has at least a single clay liner. The references to Subtitle D and a permit, license, or other authorization by the state are intended to assure that there is adequate documentation of the existence of the needed liner. Even though the Subtitle D requirements of 40 C.F.R. 257 would not require a single clay liner, the landfill design would have to provide against contamination of groundwater. *See* 40 C.F.R. 257.3-4 (2007). The permit or state authorization procedure would assure the development of documentation of the liner if such is designed into the landfill. *See* 40 C.F.R. 256.21(a) and (c) (2007); *see also* 40 C.F.R. 256.63 (2007) (requiring public hearings on permits). Thus, under this second disposal option, USEPA intended to allow disposal of the

⁷ The principal function of the RCRA Subtitle D regulations is to prohibit open dumping and to distinguish a “sanitary landfill” from a prohibited open dump. *See* 42 U.S.C. § 6944(a) (2007); 40 C.F.R. 257.1(a) and 257.2 (definitions of “open dump” and “sanitary landfill”) (2007). The RCRA Subtitle D regulations have acquired the second function of prescribing minimum federal standards for MSWLF facilities. *See* 42 U.S.C. § 6949a(c)(1) (2007); 40 C.F.R. 258.1 (2007). The important aspect is that the landfill is one subject to RCRA Subtitle D regulation, not that that it received either municipal solid waste or industrial solid waste. Further, if the facility did not previously receive municipal or industrial solid waste, the waste excluded from the F019 hazardous waste listing is industrial solid waste.

The wastes and land disposal practices excluded from Subtitle D requirements are those subject to the MSWLF standards, those subject to the RCRA Subtitle C hazardous waste regulations, and those managed under other laws, such as the Clean Water Act (33 U.S.C. §§ 1251 *et seq.* (2007)) the Safe Drinking Water Act (42 U.S.C. §§ 300f *et seq.* (2007)), or the Atomic Energy Act of 1954 (42 U.S.C. § 2011 (2007)). *See* 40 C.F.R. 257.1 (2007).

excluded waste in a regulated landfill that has a single clay liner and which has obtained formal state authorization that assures adequate documentation of the landfill design and the liner.

In combination, then, the limitations on disposal of F019-excluded waste would actually embrace three disposal options. The first option set forth by USEPA would divide into two options: (1) disposal in a RCRA Subtitle C hazardous waste landfill; or (2) disposal in a RCRA Subtitle D MSWLF. The three types of facilities that could receive the excluded waste are the following:

1. RCRA Subtitle C hazardous waste landfill facilities that have a permit issued by USEPA or a state (and which have a composite liner as required by the regulations);
2. RCRA Subtitle D MSWLF facilities that have a permit issued by a state (and which have a composite liner as required by the regulations); and
3. Subtitle D, non-MSWLF landfill facilities that have a permit or have submitted written documentation to the state for review and authorization that document the facilities' liner designs (demonstrating that the landfill has, at a minimum, a single clay liner).

What remains is to translate these federal requirements into terms that have meaning in the context of the Illinois regulations. The Illinois hazardous waste rules are structured to closely follow their federal counterparts. The Illinois RCRA Subtitle C hazardous waste landfill standards are codified as 35 Ill. Adm. Code 724 and 725. The segments that correspond with the provisions cited in the exclusion by USEPA, 40 C.F.R. 264.301 and 265.301, are 35 Ill. Adm. Code 724.401 and 725.401.

The structure of the Illinois landfill regulations, however, is different from that of the federal regulations. The MSWLF requirements are a segment of the general landfill requirements. All landfills that are not subject to the RCRA Subtitle C hazardous waste standards are subject to the general landfill standards of 35 Ill. Adm. Code 811,⁸ with very few exceptions.⁹ See 35 Ill. Adm. Code 811.101 (2006). The Illinois RCRA Subtitle D MSWLF

⁸ Many existing landfills are regulated under 35 Ill. Adm. Code 814, but Section 814.302(a)(4) subjects those landfills accepting putrescible or chemical waste to the liner and leachate collection requirements of Subpart C of 35 Ill. Adm. Code 811. For this reason, the Board refers to the Subpart C requirements in the language added to the exclusion from the F019 waste listing.

⁹ Exceptions would be subject to other, specialized landfill requirements, such as 35 Ill. Adm. Code 816, which applies to monofills that receive only flue gas desulfurization waste and coal combustion waste from a coal combustion power generating facility, and 35 Ill. Adm. Code 817, which apply to monofills that receive only waste from the iron and steelmaking and iron and steel foundry industries. See 35 Ill. Adm. Code 816.101 and 817.101 (2006). Another set of specialized regulations applies to clean construction or demolition fills. See 35 Ill. Adm. Code

rules are integrated into the general landfill regulations in 35 Ill. Adm. Code 810 and 811. The segments of the Illinois rules that correspond with the provision cited in the exclusion by USEPA, 40 C.F.R. 258.40, are segments of Subpart C of 35 Ill. Adm. Code 811. The same segments of the Illinois landfill rules apply to any non-MSWLF landfill that could accept the excluded waste.¹⁰

All Illinois landfills are reviewed and approved by the Agency before accepting waste. They are all “permitted, licensed or otherwise authorized by the state.” 40 C.F.R. 261.31(a) (F019 listing) (2006), as amended at 73 Fed. Reg. 31756, 31768 (June 4, 2008). In Illinois, permits are required for all RCRA Subtitle C hazardous waste, RCRA Subtitle D MSWLF, and most other landfill facilities. *See* 415 ILCS 5/21(d) (2006). The only type of landfill in Illinois that does not require a permit is one on the site where the waste was generated in which the person who generates the waste disposes of its own waste. *See* 415 ILCS 5/21(d)(1) (2006). The unpermitted owner and operator of an on-site landfill must comply with the liner requirement of Subpart C of 35 Ill. Adm. Code 811 (*see* 35 Ill. Adm. Code 812.306), and it must submit its landfill liner design to the Agency for review prior to commencing waste disposal. *See* 35 Ill. Adm. Code 812.203. The Board believes that these limitations on on-site disposal would satisfy USEPA’s requirement that the State review and otherwise authorize the liner design.¹¹

Thus, within Illinois, three types of landfills would fulfill the federal requirements: (1) a RCRA Subtitle C hazardous waste landfill; (2) a RCRA Subtitle D MSWLF; or (3) a putrescible or chemical waste landfill that is subject to the requirements of Subpart C of 35 Ill. Adm. Code 811. All of these facilities are subject to liner requirements that exceed the federal Subtitle D standards and which meet or exceed those applicable to a RCRA Subtitle C hazardous waste landfill,¹² and all are subject to permit requirements, or prior Agency review, in those limited

1100.101 (2006).

¹⁰ The Part 811 requirements apply to both MSWLF facilities and non-MSWLF landfill facilities, but exclude hazardous waste facilities. 35 Ill. Adm. Code 811.101 (2006). The Part 811 rules include requirements for inert waste landfills (Subpart B of 35 Ill. Adm. Code 811) and chemical and putrescible waste landfills (Subpart C of 35 Ill. Adm. Code 811). The excluded waste would not fulfill the definition of “inert waste,” *see* 35 Ill. Adm. Code 810.103 (207), so the Subpart B standards would not apply. There are two types of specialized, industry-specific monofill facilities that are excluded from regulation under Part 811, but neither type of facility could receive the excluded waste from the automobile manufacturing industry. *See* 35 Ill. Adm. Code 811.101(a), 816.101(a) (flue gas desulfurization sludges and coal combustion wastes produced by coal combustion power generating facilities), and 817.101(a) and (b) (steel and foundry industry wastes) (2006).

¹¹ It is the Board’s understanding that the owners and operators of many on-site landfills voluntarily seek a permit before they commence operations, in order to ensure compliance with the regulations and environmentally sound design and operation of the landfill, and to minimize the potential for future liability.

¹² The Illinois putrescible and chemical waste landfill standards of Subpart C require a five-foot

instances where a permit is not required. There is no need to recite the single clay liner and permit or state authorization requirements with regard to Illinois landfills. The Board will incorporate language into the exclusion from the F019 hazardous waste listing to include these three types of Illinois landfills. The Board believes that the liner and permit requirements imposed on all Illinois landfills are more stringent than those required by USEPA under the F019 waste exclusion and 40 C.F.R. 257.

There is an issue with regard to disposal of the excluded waste outside of Illinois. If the landfill that accepts the waste does not comply with the conditions of the exclusion, the waste remains F019 waste. The disposal destination is a condition precedent to the exclusion from the waste listing. Were the Board to require compliance with Illinois disposal facility standards, it would limit the generator's ability to export the waste for disposal. The Board does not wish to unnecessarily limit the generator's disposal options. To provide for compliant disposal of the excluded waste, the Board has essentially repeated the language added to the F019 listing by USEPA as the requirements for out-of-State disposal.

This leads to the second change in the USEPA language made by the Board. Aside from dividing the landfill requirements into two segments, one relating to an Illinois landfill and the other relating to a landfill located outside Illinois, the Board has felt it necessary to subdivide the single paragraph used by USEPA into several paragraphs, each relating to a single aspect of the listing and the exclusion. The first division is between the language listing F019 waste and excluding sludges from zirconium phosphating in aluminum can washing¹³ from that excluding the wastewater treatment sludges from motor vehicle manufacturing. The second division is between the language that recites the exclusion and its conditions and the references to the locations of definition of "motor vehicle manufacturing" and the recordkeeping requirements applicable to the exclusion. The third division is in the recitation of the exclusion and its conditions, and it is between the requirements imposed on a landfill within Illinois and a landfill located outside Illinois. Fourth, the Board subdivided between the types of landfills that may accept the excluded waste within Illinois and those that may do so outside of Illinois. Finally, the Board has indented the paragraphs in a way that rapidly distinguishes coordinate and subordinate segments.

The Board believes that the changes in language and structure applied to the language used by USEPA in the exclusion from the F019 waste listing enhance the clarity of the

compacted earth liner or a three-foot compacted earth under layer for a composite liner. *See* 35 Ill. Adm. Code 811.306(d) (2006). The federal MSWLF regulations require a composite liner with a two-foot compacted earth under layer for a composite liner. *See* 40 C.F.R. 258.40(d) (2007). The federal RCRA Subtitle C hazardous waste landfill standard require a composite liner that has a three-foot compacted earth under layer. *See* 40 C.F.R. 264.301(c); 265.301(a) (2006).

¹³ The Board did not separate the exclusion of sludges from zirconium phosphating in aluminum can washing, adopted by USEPA in 1990 (55 Fed. Reg. 5340 (Feb. 14, 1990)), because that exclusion is drafted into the same sentence as the basic F019 waste listing, it is short, and it does not include conditions, unlike the exclusion of sludges from motor vehicle manufacturing.

provision. For the foregoing reasons, the Board has altered the F019 waste listing to read as follows (with omissions from the USEPA language indicated by overstriking and additions indicated by underlining):

Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.

Wastewater treatment ~~sludges~~ sludge from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the ~~wastes are~~ waste is not placed outside on the land prior to shipment to a landfill for disposal and ~~are either~~ it is disposed of in a regulated landfill that fulfills either of the following conditions:

If it is located in Illinois, it is one of the following types of landfills:

It is a landfill that is a hazardous waste management unit, as defined in 35 Ill. Adm. Code 720.110;

It is a municipal solid waste landfill, as defined in 35 Ill. Adm. Code 810.103; or

It is a putrescible or chemical waste landfill that is subject to the requirements of Subpart C of 35 Ill. Adm. Code 811.

If it is located outside Illinois, it is one of the following types of landfills:

~~disposed in~~ It is a RCRA Subtitle D municipal solid waste or industrial solid waste landfill unit that is equipped with a single clay liner and which is permitted, licensed or otherwise authorized by the state; or

~~disposed in~~ It is a landfill unit that is subject to; or which otherwise meeting, meets the landfill requirements in § 40 C.F.R. 258.40, § 264.301 or § 265.301.

For the purposes of this hazardous waste listing, “motor vehicle manufacturing” is defined in ~~§ 261.31(b)(4)(i) subsection (b)(4)(A) of this Section, and § 261.31(b)(4)(ii) subsection (b)(4)(B) of this Section~~ describes the recordkeeping requirements for motor vehicle manufacturing facilities.

The Board requests public comment on the incorporation of the June 4, 2008 exclusion of wastewater treatment sludges from motor vehicle manufacturing from the F019 hazardous waste listing. In particular, the Board requests comment on the changes in the language and structure discussed above, made to translate the exclusion into terms of Illinois regulations and clarify the exclusion. The Board specifically requests comment on the following three questions posed by the exclusion: (1) Does the language selected by the Board adequately embrace all the types of

landfills within Illinois that might receive the excluded waste? (2) Is it necessary to include language that would impose the minimum federal requirements on a landfill outside of Illinois that might receive the waste? (3) Does the organization of the language of the F019 clearly and accurately state the scope of the waste listing and the exclusion from the listing?

Agency or Board Action

Section 7.2(a)(5) of the Act requires the Board to specify those portions of the program over which USEPA will retain decision making authority. Based on the general division of functions within the Act and other Illinois statutes, the Board is also to specify which State agency is to make decisions.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced “Regional Administrator” with USEPA, so as to avoid specifying which office within USEPA is to make a decision.

In some identical-in-substance rules, certain decisions pertaining to a permit application are not appropriate for the Agency to consider. In determining the general division of authority between the Agency and the Board, the following factors should be considered:

1. Whether the entity making the decision is applying a Board regulation, or taking action contrary to, *i.e.*, “waiving,” a Board regulation. It generally takes some form of Board action to “waive” a Board regulation.
2. Whether there is a clear standard for action such that the Board can give meaningful review to an Agency decision.
3. Whether the action would result in exemption from the permit requirement itself. If so, Board action is generally required.
4. Whether the decision amounts to “determining, defining or implementing environmental control standards” within the meaning of Section 5(b) of the Act. If so, it must be made by the Board.

There are four common classes of Board decisions: variance, adjusted standard, site-specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site-specific rulemaking). There often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

Table 1: **Listing of Updated Code of Federal Regulations Provisions**

As discussed above on page 5 of this opinion, various provisions of the *Code of Federal Regulations* are incorporated by reference in 35 Ill. Adm. Code 720.111(b). The Board has updated the edition of each title incorporated to the latest version available. The following table

indicates the latest edition available and lists the *Federal Register* citations to subsequent updates to that latest edition.¹⁴

Nuclear Regulatory Commission Regulations (C.F.R. updated January 1, 2008)

Federal Provision	Amendments Since Most Recent C.F.R. Edition
Appendix G to 10 C.F.R. 20	May 28, 2008 (73 Fed. Reg. 30456)
10 C.F.R. 71	May 28, 2008 (73 Fed. Reg. 30456)

U.S. Environmental Protection Agency Regulations (C.F.R. updated July 1, 2007)

Federal Provision	Amendments Since Most Recent C.F.R. Edition
40 C.F.R. 60	September 7, 2007 (72 Fed. Reg. 51365) September 7, 2007 (72 Fed. Reg. 51494) September 28, 2007 (72 Fed. Reg. 55278) October 19, 2007 (72 Fed. Reg. 59190) November 5, 2007 (72 Fed. Reg. 62414) November 16, 2007 (72 Fed. Reg. 64860) January 18, 2008 (73 Fed. Reg. 3568) April 3, 2008 (73 Fed. Reg. 18162) May 6, 2008 (73 Fed. Reg. 24870) May 22, 2008 (73 Fed. Reg. 29691) May 27, 2008 (73 Fed. Reg. 30308) June 2, 2008 (73 Fed. Reg. 31368) June 2, 2008 (73 Fed. Reg. 31372) June 24, 2008 (73 Fed. Reg. 35838)
40 C.F.R. 60, subpart VV (§§ 60.480-60.489)	November 16, 2007 (72 Fed. Reg. 64860)
40 C.F.R. 60, appendix A	September 7, 2007 (72 Fed. Reg. 51365) September 7, 2007 (72 Fed. Reg. 51494) September 28, 2007 (72 Fed. Reg. 55278) May 22, 2008 (73 Fed. Reg. 29691)
40 C.F.R. 61	April 3, 2008 (73 Fed. Reg. 18162) May 6, 2008 (73 Fed. Reg. 24870)

¹⁴ Segments of the *Code of Federal Regulations* that are not listed were not amended since the latest edition of the *Code*, even if incorporated by reference.

Federal Provision	Amendments Since Most Recent C.F.R. Edition
40 C.F.R. 63	July 3, 2007 (72 Fed. Reg. 36363) July 16, 2007 (72 Fed. Reg. 38864) October 29, 2007 (72 Fed. Reg. 61060) December 26, 2007 (72 Fed. Reg. 73180) December 28, 2007 (72 Fed. Reg. 73611) December 28, 2007 (72 Fed. Reg. 74088) January 2, 2008 (73 Fed. Reg. 226) January 9, 2008 (73 Fed. Reg. 1738) January 10, 2008 (73 Fed. Reg. 1916) January 18, 2008 (73 Fed. Reg. 3568) February 7, 2008 (73 Fed. Reg. 7210) March 7, 2008 (73 Fed. Reg. 12276) April 1, 2008 (73 Fed. Reg. 17252) April 3, 2008 (73 Fed. Reg. 18169) April 8, 2008 (73 Fed. Reg. 18970) April 23, 2008 (73 Fed. Reg. 21825) May 6, 2008 (73 Fed. Reg. 24870)
Subpart EEE of 40 C.F.R. 63 (§§ 63.1200-63.1214)	April 8, 2008 (73 Fed. Reg. 18970)
40 C.F.R. 761	September 18, 2007, 72 Fed. Reg. 53152 October 9, 2007, 72 Fed. Reg. 57235
40 C.F.R. 761.60	October 9, 2007, 72 Fed. Reg. 57235
40 C.F.R. 761.65	October 9, 2007, 72 Fed. Reg. 57235
40 C.F.R. 761.70	October 9, 2007, 72 Fed. Reg. 57235

U.S. Department of Transportation Regulations (C.F.R. updated October 1, 2007)

Federal Provision	Amendments Since Most Recent C.F.R. Edition
Subpart B of 49 C.F.R. 107 (§§ 107.101-107.127)	October 1, 2007, 72 Fed. Reg. 55678
49 C.F.R. 171	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2008, 73 Fed. Reg. 4699 April 30, 2008, 73 Fed. Reg. 23362
49 C.F.R. 171.8	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2007, 73 Fed. Reg. 4699 April 30, 2008, 73 Fed. Reg. 23362
49 C.F.R. 171.15	October 1, 2007, 72 Fed. Reg. 55678
49 C.F.R. 172	October 1, 2007, 72 Fed. Reg. 55678 October 18, 2007, 72 Fed. Reg. 59146 January 7, 2008, 73 Fed. Reg. 1089 January 28, 2008, 73 Fed. Reg. 4699 April 16, 2008, 73 Fed. Reg. 20752

Federal Provision	Amendments Since Most Recent C.F.R. Edition
49 C.F.R. 172.304	October 1, 2007, 72 Fed. Reg. 55678
Subpart F of 49 C.F.R. 172 (§§ 172.500-172.560)	October 1, 2007, 72 Fed. Reg. 55678
49 C.F.R. 173	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2008, 73 Fed. Reg. 4699 April 30, 2008, 73 Fed. Reg. 23362
49 C.F.R. 173.12	January 28, 2008, 73 Fed. Reg. 4699
49 C.F.R. 174	October 1, 2007, 72 Fed. Reg. 55678 April 16, 2008, 73 Fed. Reg. 20752
49 C.F.R. 175	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2007, 73 Fed. Reg. 4699 April 30, 2008, 73 Fed. Reg. 23362
49 C.F.R. 176	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2008, 73 Fed. Reg. 4699
49 C.F.R. 177	January 28, 2008, 73 Fed. Reg. 4699
49 C.F.R. 178	October 1, 2007, 72 Fed. Reg. 55678 October 18, 2007, 72 Fed. Reg. 59146
49 C.F.R. 179	October 1, 2007, 72 Fed. Reg. 55678
49 C.F.R. 180	October 1, 2007, 72 Fed. Reg. 55678 January 28, 2008, 73 Fed. Reg. 4699

Tables of Deviations from the Federal text and Corrections to and Clarifications of the Base Text

The tables below list numerous corrections and amendments that are not based on current federal amendments. Table 2 (beginning immediately below) includes deviations made in this proposal for public comment from the verbatim text of the federal amendments. Table 3 (beginning immediately after Table 2 on page 26) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in Table 3 are not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 7 of this opinion.

Table 2
Deviations from the Text of the Federal Amendments

Illinois Section	40 C.F.R. Section	Revision(s)
721.110 “gasification”	261.10 “gasification”	Changed “Gasification. For the purposes . . . 40 CFR 261.4(a)(12)(i), gasification is a process” to “‘Gasification’ means, for the purposes . . . 35 Ill. Adm. Code 721.104(a)(12)(A), a process”; removed the commas before and after “conducted in an

Illinois Section	40 C.F.R. Section	Revision(s)
		enclosed device or system”; added “that is” before “designed and operated” for a restrictive relative clause; added commas before and after “utilizing thermal . . . gas cleaning” for a parenthetical that defines “controlled steps”
720.111(b)	Subpart EEE of part 63 (63.1209, 63.1210, 63.1212, 63.1215, 63,1217, and 63.1220)	Added “as amended at 73 Fed. Reg. 18970 (Apr. 8, 2008)” to incorporate the April 8, 2008 amendments by reference
721.104(a)(12)(A)	261.4(a)(12)(i)	Added a comma after “gasification (as defined . . . 720.110)” to offset the final element of a series
721.131(a) table, “F019”	261.31(a) table, “F019”	Added the exception as nine separate paragraphs, indented as necessary to accentuate the subordinate and coordinate nature of each; changed “sludges . . . wastes are” to singular “sludge . . . waste is”; changed “are either: disposed in” to “it is disposed of in a regulated landfill that fulfills either of the following conditions:”; added “it is located in Illinois, and it is one of the following types of landfills:”; added “it is a landfill that is a hazardous waste management unit . . . 720.110;”; added “it is a municipal solid waste landfill . . . 810.103; or”; added “is it a putrescible or chemical waste landfill . . . 811.”; added “it is located outside Illinois, and it is one of the following types of landfills:”; divided the conditional language indicating USEPA’s two disposal options into two coordinate paragraphs; changed “subtitle D municipal or industrial landfill” to “it is a RCRA Subtitle D municipal solid waste landfill or industrial solid waste landfill”; changed “and is” to “and which is”; added “it is” before “a landfill”; changed “unit subject to, or otherwise meeting” to “unit that is subject to or which otherwise meets”; changed “§ 258.40, § 264.301, or § 265.301” to “40 C.F.R. 258.40, 264.301, or 265.301”; added “hazardous waste” before “listing”; added quotation marks to the defined term “motor vehicle manufacturing”

Illinois Section	40 C.F.R. Section	Revision(s)
721.131(a)(4)	261.31(a)(4)	Added “hazardous waste” before “listing”
721.131(a)(4)(A)	261.31(a)(4)(i)	Added quotation marks to the defined term “motor vehicle manufacturing”; changed “trucks/utility vehicles” to “trucks or utility vehicles”; changed “facilities” to singular “a facility owner or operator”; changed the ending period to a semicolon; added the ending conjunction “and”
721.131(a)(4)(B)	261.31(a)(4)(ii)	Changed “generators . . . are” to singular “a generator . . . is”; changed “sludges . . . meet” to singular “sludge . . . meets”; added “the following information” after “include”; changed “volume” to plural “volumes” to agree with the second appearance in the sentence; changed “generators” to singular “the generator”; changed “course of any enforcement action” to “pendency of any enforcement action”; changed “the Regional Administrator” to “USEPA”; changed “the state regulatory agency” to “by the Agency in writing”
726.100(b)(3)(C)	266.100(b)(3)(iii)	Correction to subsection numbering, already made by the Board, was omitted

Table 3
Board Housekeeping Amendments

Section	Source	Revision(s)
720.111(a), “10 CFR 20.2006”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition
720.111(a), “table II, column 2 in appendix B to 10 CFR 20”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition
720.111(a), “appendix G to 10 CFR 20”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition, including a <i>Federal Register</i> citation for later amendments
720.111(a), “10 CFR 71”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition, including a <i>Federal Register</i> citation for later amendments
720.111(a), “10 CFR 71.5”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition
720.111(a), “33 CFR 153.203”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition

Section	Source	Revision(s)
720.111(a), “40 CFR 61”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “40 CFR 63”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “subpart EEE of 40 CFR 63”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “40 CFR 761”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “40 CFR 761.60”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “40 CFR 761.65”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “40 CFR 761.70”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “subpart B of 49 CFR 107”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “49 CFR 171”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 171.8”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 171.15”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “49 CFR 172”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 172.304”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “subpart F of 49 CFR 172”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments

Section	Source	Revision(s)
720.111(a), “49 CFR 173”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 173.12”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “49 CFR 174”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 175”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 176”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 177”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “49 CFR 178”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(a), “49 CFR 179”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding a <i>Federal Register</i> citation for later amendments
720.111(a), “49 CFR 180”	Board	Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition by adding <i>Federal Register</i> citations for later amendments
720.111(c), “section 11 of the Atomic Energy Act of 1954”	Board	Changed “January 3, 2005” to “January 3, 2006” to update the citation to the <i>United States Code</i> to the most recent edition
720.111(c), “sections 201(v), 201(w), and 512(j) of the Federal Food, Drug, and Cosmetic Act”	Board	Changed “January 3, 2005” to “January 3, 2006” to update the citation to the <i>United States Code</i> to the most recent edition
720.111(c), “section 1412 of the Department of Defense Authorization Act of 1986”	Board	Changed “January 3, 2005” to “January 3, 2006” to update the citation to the <i>United States Code</i> to the most recent edition
720.122(a)(2)	Board	Changed the double hyphen to an em-dash in “EPA RCRA Delisting Program—Guidance Manual for the Petitioner”

Section	Source	Revision(s)
720.122(c)(2)	Board	Changed the double hyphen to an em-dash in “EPA RCRA Delisting Program—Guidance Manual for the Petitioner”
720.122(e)(2)	Board	Changed the double hyphen to an em-dash in “EPA RCRA Delisting Program—Guidance Manual for the Petitioner”
720.122(l) Board note	Board	Changed the double hyphen to an em-dash in “EPA RCRA Delisting Program—Guidance Manual for the Petitioner”
721.102(c)	Board	Changed the double hyphens to an em-dashes before and after “or accumulated, stored, or treated before recycling”
721.102(c)(3)	Board	Changed the double hyphen to an em-dash in “a material noted with a ‘—’ in column 3”
721.123(a)(8)	Board	Changed the double hyphen to an em-dash in “Class 1—Definitions”
721.133(e), alphabetic listing “P128”	USEPA, Board	Corrected “P129” to “P128”; changed “315-8-4” to “315-18-4”
721.133(e), numeric listing “P128”	USEPA, Board	Corrected “P129” to “P128”; changed “315-8-4” to “315-18-4”
721.133(e), numeric listing “U055”	USEPA	Corrected the spelling “cumeme” to “cumene”
721.133(e), numeric listing “U227”	USEPA	Removed the duplicate listing that included the erroneous “725.176”
721.Appendix G, note	Board	Changed the double hyphen to an em-dash in “N.A.—Waste”
721.Appendix Y	Board	Changed the double hyphen to an em-dash in the third and fourth columns (200 times)
721.Appendix Z	Board	Changed the double hyphen to an em-dash in the fourth and fifth columns (four times)
724.103	Board	Changed the double hyphens to an em-dashes before and after “as defined in . . . 35 Ill. Adm. Code 703”; changed “35 Ill. Adm. Code 703, Subpart C” to “Subpart C of 35 Ill. Adm. Code 703, Subpart C”
724.114	Board	Changed the double hyphen to an em-dash in “Danger—Unauthorized Personnel Keep Out” (twice)
724.154(c)	Board	Changed the double hyphens to an em-dashes before and after “in its design, . . . or other circumstances”
724.194(a)(3) table heading	Board	Changed the double hyphen to an em-dash in “Table 1—Maximum Concentration”
724.416(a)	Board	Changed the double hyphen to an em-dash in “Shippers—General Requirements”
724.982(c)(5)(C)	Board	Changed the double hyphen to an em-dash in “Procedure T—Criteria for and Verification of” (twice)

Section	Source	Revision(s)
724.989(b)(2)(D)(i)	Board	Changed the double hyphen to an em-dash in “Procedure T—Criteria for and Verification of”
724.989(d)(1)	Board	Changed the double hyphen to an em-dash in “Procedure T—Criteria for and Verification of”
724.Appendix I “diallate”	Board	Removed the extra hyphen to correct “S-(2,3-dichloro--2-propenyl)” to “S-(2,3-dichloro-2-propenyl)”
725.114	Board	Changed the double hyphen to an em-dash in “Danger—Unauthorized Personnel Keep Out” (twice)
725.154(c)	Board	Changed the double hyphens to an em-dashes before and after “in its design, . . . or other circumstances”
725.176	Board, USEPA	Removed the first subsection (a), which should have been removed in the prior update docket
725.416(a)	Board	Changed the double hyphen to an em-dash in “Shippers—General Requirements”
725.933(f)(2)(A)	Board	Removed the space to change “± 0.5 ^o ” to “±0.5 ^o ”
725.933(f)(2)(B)	Board	Removed the space to change “± 0.5 ^o ” to “±0.5 ^o ”
725.933(f)(2)(D)	Board	Removed the space to change “± 0.5 ^o ” to “±0.5 ^o ”
728.102 “land disposal restriction”	USEPA, Board	Corrected “40 CFR 738” to “35 Ill. Adm. Code 738”

HISTORY OF RCRA SUBTITLE C AND UIC ADOPTION
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY OR BOARD ACTION
EDITORIAL CONVENTIONS

It has previously been the practice of the Board to include an historical discussion in its RCRA Subtitle C and UIC identical-in-substance rulemaking proposals. However, in the last RCRA Subtitle C update docket, RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through December 31, 1999), R00-13 (May 18, 2000), the Board indicated that it would cease this practice. Therefore, for a complete historical summary of the Board’s RCRA Subtitle C and UIC rulemakings and programs, interested persons should refer back to the May 18, 2000 opinion and order in R00-13.

The historical summary contains all Board actions taken to adopt and maintain these programs since their inception and until May 18, 2000. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all USEPA program authorizations issued during that timeframe. As necessary the Board will continue to update the historical summary as a segment of the opinion in each RCRA Subtitle C and UIC update docket, but those opinions will not repeat the information contained in the opinion of May 18, 2000, in docket R00-13.

The following summarizes the history of the Illinois RCRA Subtitle C hazardous waste and UIC programs since May 18, 2000:

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the RCRA Subtitle C hazardous waste rules in the following docket since May 18, 2000:

- R00-13 RCRA Subtitle C Update, USEPA Regulations (July 1, 1999 through December 31, 1999), R00-13 (May 18, 2000); published at 24 Ill. Reg. 9443 (July 7, 2000), effective June 20, 2000.
- R01-3 RCRA Subtitle C Update, USEPA Regulations (January 1, 2000 through June 30, 2000), R01-3 (Dec. 7, 2000); published at 25 Ill. Reg. 1266 (Jan. 26, 2001), effective January 11, 2001.
- R01-23 RCRA Subtitle C Update, USEPA Regulations (July 1, 2000 through December 31, 2000), R01-23 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. (Consolidated with UIC update docket R01-21.)
- R02-1 RCRA Subtitle C Update, USEPA Regulations (January 1, 2001 through June 30, 2001), R02-1 (Apr. 18, 2002); published at 26 Ill. Reg. 6667 (May 3, 2002), effective April 22, 2002. (Consolidated with RCRA Subtitle C Update docket R02-12 and UIC Update docket R02-17.)
- R02-12 RCRA Subtitle C Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-12 (Apr. 18, 2002); published at 26 Ill. Reg. 6667 (May 3, 2002), effective April 22, 2002. (Consolidated with RCRA Subtitle C Update docket R02-1 and UIC Update docket R02-17.)
- R03-7 RCRA Subtitle C Update, USEPA Regulations (January 1, 2002 through June 30, 2002), R03-7 (Jan. 9, 2003); published at 27 Ill. Reg. 3496, effective February 14, 2003.
- R03-18 RCRA Subtitle C Update, USEPA Regulations (July 1, 2002 through December 31, 2002), R03-7 (June 5, 2003); published at 27 Ill. Reg. 12683, effective July 17, 2003.
- R04-6 RCRA Subtitle C Update, USEPA Regulations (January 1, 2003 through June 30, 2003), R04-6 (Aug. 7, 2003). (Dismissed because no federal actions in the period.)
- R04-16 RCRA Subtitle C Update, USEPA Regulations (July 1, 2003 through December 31, 2003), R04-16 (Apr. 1, 2004); published at 28 Ill. Reg. 10693, effective July 19, 2004.

- R05-2 RCRA Subtitle C Update, USEPA Regulations (January 1, 2004 through June 30, 2004 and October 25, 2004), R05-2 (Mar. 3, 2005); published at 29 Ill. Reg. 6290, effective April 22, 2005.
- R05-13 RCRA Subtitle C Update, USEPA Regulations (July 1, 2004 through December 31, 2004), R05-13 (Feb. 3, 2005) (Dismissed because no federal actions in the period.)
- R06-7 RCRA Subtitle C Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R06-7 (Jan. 5, 2006 and Feb. 2, 2006).
(Consolidated with UIC Update docket R06-5 and RCRA Subtitle D Update docket R06-6.)
- R06-18 RCRA Subtitle C Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R06-18 (Nov. 16, 2006). (Consolidated with UIC Update docket R06-5 and RCRA Subtitle D Update docket R06-7.)
- R07-5 RCRA Subtitle C Update, USEPA Regulations (January 1, 2006 through June 30, 2006), R07-5, R07-14 (June 5, 2008). (Consolidated with RCRA Subtitle C Update docket R07-14.)
- R07-14 RCRA Subtitle C Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R07-14 (June 5, 2008). (Consolidated with RCRA Subtitle C Update docket R07-5.)
- R08-3 RCRA Subtitle C Update, USEPA Regulations (January 1, 2007 through June 30, 2007), R08-3 (Sep. 6, 2007) (Dismissed because no federal actions in the period.)
- R08-16 RCRA Subtitle C Update, USEPA Regulations (July 1, 2007 through December 31, 2007), R08-16 (May 1, 2008). (Dismissed because no federal actions in the period.)
- R09-3 RCRA Subtitle C Update, USEPA Regulations (January 1, 2008 through June 30, 2008), R09-3. (This docket.)

The Board has taken other actions since May 18, 2000 relating to administration of the Illinois hazardous waste program. The Board has received the following petitions for a solid waste determination:

- AS 01-7 In re Petition of Progressive Environmental Services, Inc. for an Adjusted Standard under 35 Ill. Adm. Code 720.131(c), AS 02-7 (Jan. 10, 2002) (granted as to used automotive antifreeze).

- AS 02-2 *In re* Petition of World Recycling, Inc. d/b/a Planet Earth Antifreeze for an Adjusted Standard under 35 Ill. Adm. Code 720.131, AS 02-2 (May 2, 2002) (granted as to used automotive antifreeze).
- AS 06-4 *In re* Petition of Big River Zinc Corp. for an Adjusted Standard under 35 Ill. Adm. Code 720.131(c), AS 06-4 (May 2, 2002) (granted as to EAFD (K061 waste) used in a zinc recycling process).
- AS 08-9 *In re* Petition of Big River Zinc Corp. for and Adjusted Standard Under 35 Ill. Adm. Code 721.131(c), AS 08-9 (presently pending as to revision of the solid waste determination made in *In re* Petition of Big River Zinc Corp. for and Adjusted Standard Under 35 Ill. Adm. Code 721.131(c), AS 99-3 (May 6, 1999) as to zinc oxide raw material containing EAFD (K061 waste)).

The Board has considered petitions since May 18, 2000 for hazardous waste delisting:

- AS 05-3 *In re* Petition of Waste Management of Illinois, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122 for Solid Treatment Residual for CID Recycling and Disposal Facility Biological Liquid Treatment Center, AS 05-3 (Mar. 17, 2005) (dismissed for lack of proof of timely publication and for deficiencies in the petition; relating to lime-conditioned filter cake from the treatment of hazardous and non-hazardous leachates and wastewaters (F001, F002, F003, F004, F005, F039, U202, U210, U220, and U228 wastes).
- AS 05-7 *In re* Petition of Waste Management of Illinois, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122 for Solid Treatment Residual for CID Recycling and Disposal Facility Biological Liquid Treatment Center, AS 05-7 (Dec. 15, 2005) (denied as to lime-conditioned filter cake from the treatment of hazardous and non-hazardous leachates and wastewaters (F001, F002, F003, F004, F005, F039, U202, U210, U220, and U228 wastes).
- AS 06-2 *In re* Petition of BP Products North America, Inc. for RCRA Waste Delisting Pursuant to 35 Ill. Adm. Code 720.122, AS 06-2 (Mar. 2, 2006) (dismissed for lack of proof of timely publication; relating to leachate from a landfill containing dissolved air floatation float (K048 waste)).
- AS 07-1 *In re* Petition of BP Products North America, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122, AS 07-1 (Feb. 15, 2007) (denied as to leachate from a landfill containing dissolved air floatation float (K048 waste)).

- AS 08-5 *In re* Petition of BFI Waste Systems of North America, Inc. for Waste Delisting, AS 08-5 (presently pending as to landfill leachate (F039 waste)).
- AS 08-10 *In re* RCRA Delisting Petition of Peoria Disposal Company, AS 08-10 (presently pending as to stabilized residue of electric arc furnace dust (K061 waste)).

The Board has heard petitions since May 18, 2000 for boiler designations for burning off-specification oil for energy recovery:

- AS 06-1 *In re* Petition of LaFarge Midwest, Inc. for Boiler Determination Pursuant to 35 Ill. Adm. Code 720.132 and 720.133, AS 06-1 (Apr. 20, 2006) (granted as to a slag dryer).
- AS 06-3 *In re* Petition of LaFarge Midwest, Inc. for Boiler Determination Through Adjusted Standard Proceedings Pursuant to 35 Ill. Adm. Code 720.132 and 720.133, AS 06-3 (June 1, 2006) (granted as to two raw mill dryers).

The Board has granted relief since May 18, 2000 from a permit requirement applicable to HWM facility:

- AS 00-14 *In re* Petition of Heritage Environmental Services, LLC. for an Adjusted Standard from 35 Ill. Adm. Code 702.126(d)(1), AS 00-14 (June 8, 2000) (dismissed for lack of proof of timely publication; relating to alternative permit application certification language).
- AS 00-15 *In re* Petition of Heritage Environmental Services, LLC. for an Adjusted Standard from 35 Ill. Adm. Code 702.126(d)(1), AS 00-15 (Feb. 1, 2001) (alternative permit application certification language).

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in the following dockets since May 18, 2000:

- R00-11 UIC Update, USEPA Regulations (July 1, 1999 through December 31, 1999), R00-11 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (December 22, 2001), effective December 7, 2001. (Consolidated with docket R01-1.)
- R01-1 UIC Update, USEPA Regulations (Jan. 1, 2000 through June 30, 2000), R01-1 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (Dec. 22, 2001), effective December 7, 2001. (Consolidated with docket R00-11.)

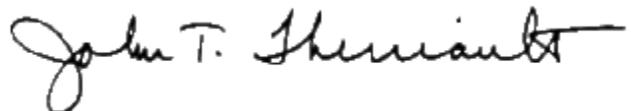
- R01-21 UIC Update, USEPA Regulations (July 1, 2000 through December 31, 2000), R01-21 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. (Consolidated with UIC update docket R01-23.)
- R02-17 UIC Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-17 (Apr. 18, 2002); published at 26 Ill. Reg. 6667 (May 3, 2002), effective April 22, 2002. (Consolidated with RCRA Subtitle C Update dockets R02-1 and R02-12.)
- R03-5 UIC Update, USEPA Regulations (January 1, 2002 through June 30, 2002), R03-5 (Aug. 8, 2002). (Dismissed because no federal actions in the period.)
- R03-16 UIC Update, USEPA Regulations (July 1, 2002 through December 31, 2002), R03-16 (Feb. 6, 2003). (Dismissed because no federal actions in the period.)
- R04-4 UIC Update, USEPA Regulations (January 1, 2003 through June 30, 2003), R04-4 (Aug. 7, 2003). (Dismissed because no federal actions in the period.)
- R04-14 UIC Update, USEPA Regulations (July 1, 2003 through December 31, 2003), R04-14 (Mar. 4, 2004). (Dismissed because no federal actions in the period.)
- R05-7 UIC Update, USEPA Regulations (January 1, 2004 through June 30, 2004), R05-7 (Sept. 16, 2004). (Dismissed because no federal actions in the period.)
- R05-18 UIC Update, USEPA Regulations (July 1, 2004 through December 31, 2004), R05-18 (Feb. 3, 2005). (Dismissed because no federal actions in the period.)
- R06-5 UIC Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R06-5 (Jan. 5, 2006 and Feb. 2, 2006). (Consolidated with RCRA Subtitle D Update docket R06-6 and RCRA Subtitle C Update docket R06-7.)
- R06-16 UIC Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R06-16 (Nov. 16, 2006). (Consolidated with RCRA Subtitle D Update docket R06-17 and RCRA Subtitle C Update docket R06-18.)
- R07-3 UIC Update, USEPA Regulations (January 1, 2006 through June 30, 2006), R07-3 (Sep. 21, 2006). (Dismissed because no federal actions in the period.)

- R07-12 UIC Update, USEPA Regulations (July 1, 2005 through December 31, 2005), R07-12 (Feb. 1, 2007). (Dismissed because no federal actions in the period.)
- R08-1 UIC Update, USEPA Regulations (January 1, 2007 through June 30, 2007), R08-1 (Sep. 6, 2007) (Dismissed because no federal actions in the period.)
- R08-14 UIC Update, USEPA Regulations (July 1, 2007 through December 31, 2007), R08-14 (Mar. 6, 2008). (Dismissed because no federal actions in the period.)
- R09-1 UIC Update, USEPA Regulations (January 1, 2008 through June 30, 2008), R09-1 (Aug. 21, 2008) (Dismissed because no federal actions in the period.)

The Board has received petitions for a “no migration determination” to allow the continued underground injection of hazardous waste:

- AS 07-6 In re Petition of Cabot Corporation for Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B (May 17, 2007), AS 07-5. (presently pending as to modification of the exemption granted in Petition of Cabot Corporation for Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B (Mar. 7, 1996), AS 96-3 to allow continued injection of D002, F003, and F039 wastes until December 31, 2027).
- AS 07-5 In re Petition of Cabot Corporation for Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B (May 17, 2007), AS 07-5. (dismissed for lack of proof of timely publication; relating to modification of the exemption granted in Petition of Cabot Corporation for Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B (Mar. 7, 1996), AS 96-3 as to injection of D002, F003, and F039 wastes).

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion on September 4, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board