

ILLINOIS POLLUTION CONTROL BOARD

June 2, 2011

IN THE MATTER OF:	)	
RCRA SUBTITLE C UPDATE, USEPA	)	R11-2
AMENDMENTS (January 1, 2010 through	)	(Identical-in-Substance
June 30, 2010)	)	Rulemaking - Land)
	)	
RCRA SUBTITLE C UPDATE, USEPA	)	R11-16
REGULATIONS (July 1, 2010 through	)	(Identical-in-Substance Rulemaking -
December 31, 2010)	)	Land)
	)	(Consolidated)

Proposed Rule. Proposal for Public Comment. Deadline Extension.

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

**SUMMARY OF TODAY'S ACTION**

This opinion and accompanying order propose amendments that would update the Illinois hazardous waste regulations to include amendments adopted by the United States Environmental Protection Agency (USEPA) during two time periods that embrace all of calendar year 2010. The Board has included limited additional corrective and clarifying amendments.

The Board further extends the deadline for completion of rulemaking activities from July 1, 2011 until October 17, 2011. By an earlier order dated December 16, 2010, the Board previously extended the deadline for completion of rulemaking activities from the statutory due date of January 8, 2011 until July 1, 2010. Discussion of this second extension of the deadline begins at page 12 of this opinion.

Finally, the Board consolidates RCRA Subtitle C update dockets R11-2 and R11-16 by this order. Discussion of this consolidation begins at page 7 of this opinion.

This is a consolidated identical-in-substance rulemaking that would update the Illinois hazardous waste regulations to incorporate revisions to the federal hazardous waste regulations. Sections 7.2 and 22.4(a) of the Act (415 ILCS 5/7.2 and 22.4(a) (2008)) 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. USEPA adopted the underlying federal hazardous waste amendments during the two time periods of January 1, 2010 through June 30, 2010 and July 1, 2010 through December 31, 2010.

This opinion and the related order propose for public comment identical-in-substance amendments to 35 Ill. Adm. Code 702, 720, 721, 722, 723, 724, 725, 726, and 728. 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.

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 (2008)) 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 July 7, 2011, as is explained beginning on page 12 of this opinion.

As a special note, the Board particularly requests that USEPA and the Agency comment on certain aspects of the Board's proposal. These aspects are indicated in the substantive discussions of the USEPA amendments that follow, beginning on pages 14, 35, 41, and 42 of this opinion, and the Board-initiated corrections and clarifications included in this consolidated docket, beginning on page 43. The Board seeks Agency and USEPA comments in those segments of discussion. In particular, the Board wishes comments on the approach taken with regard to the January 8, 2010 USEPA amendments to the requirements for import and export of hazardous waste and the corrections and clarifying amendments added by the Board.

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### **CONSOLIDATION OF DOCKETS R11-2 AND R11-16**

The Board has maintained the practice in identical-in-substance proceedings of combining federal actions into two dockets based on two time periods of each calendar year: January 1 through June 30 and July 1 through December 31. The Board also maintains the practice of consolidating dockets where doing so would allow the more expeditious completion of the actions involved or the result is a more efficient use of State resources.

Docket R11-2 includes USEPA amendments to the federal hazardous waste rules that occurred during the period of January 1, 2010 through June 30, 2010. Docket R11-16 includes USEPA amendments during the period July 1, 2010 through December 31, 2010. The Board finds that consolidating dockets R11-2 and R11-16 for combined consideration of all amendments will both allow more expeditious completion and result in more efficient use of State resources. For this reason, the two dockets are consolidated.

### **FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING**

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

#### **Docket R11-2: January 1, 2010 through June 30, 2010 Amendments**

USEPA amended the federal hazardous waste regulations four times during the period January 1, 2010 through June 30, 2010. Board action is required on three of those four sets of amendments, as is summarized below:

**January 8, 2010 (75 Fed. Reg. 1236): Amended Requirements for Export and Import of Hazardous Waste**

**Description of the USEPA action:** USEPA amended the requirements applicable to imports and exports of hazardous waste. The amendments included revisions to the hazardous waste generator; transporter; and treatment, storage, and disposal facility standards. The amendments further add notice and consent requirements for spent lead-acid batteries exported for reclamation. Some of the amendments relate to the flow of paperwork for exception reporting and to matching paperwork for submission to USEPA for hazardous waste imports.

**Necessary Board action in response:** The Board must incorporate the federal changes into segments of the Illinois regulations. (See the discussion that begins on page 15 of this opinion.)

**March 18, 2010 (75 Fed. Reg. 12989): Technical Corrections and Clarifying Amendments to Numerous, Diverse Hazardous Waste Provisions**

**Description of the USEPA action:** USEPA adopted a direct final rule that made several technical corrections and clarifications to various of the hazardous waste regulations. Included are revisions to over 40 provisions in nine of the 10 parts of the hazardous waste regulations.

**Necessary Board action in response:** The Board has examined the corresponding segments of the Illinois regulations and made all needed corresponding changes. (See the discussion that begins on page 35 of this opinion.)

**June 4, 2010 (75 Fed. Reg. 31716): Partial Withdrawal of Segments of the March 18, 2010 Technical Corrections and Clarifying Amendments**

**Description of the USEPA action:** USEPA partially withdrew its March 18, 2010 direct final rule that included several technical corrections and clarifications to several of the hazardous waste regulations. USEPA withdrew six revisions to three provisions affected by the March 18, 2010 direct final rule. All other March 18, 2010 amendments remain valid.

**Necessary Board action in response:** As is discussed below (beginning on page 35 of this opinion), Board action is already complete, and nothing further will be required, since the Board included this USEPA action in the amendments in consolidated docket R09-16/R10-4.

**June 15, 2010 (75 Fed. Reg. 33712): Withdrawal of the Emission-Comparable Fuel Rule**

**Description of the USEPA action:** USEPA withdrew the Emission-Comparable Fuel Rule from the December 19, 2008 amendments to the Excluded Fuels Rule. The June 15, 2010 withdrawal did not affect several unrelated corrections and clarifying amendments that USEPA made to the Excluded Fuels Rule on December 19, 2008.

**Necessary Board action in response:** No Board action is necessary on this USEPA action. The Board included this action in the amendments in docket R09-16/R10-4, which included the December 19, 2008 amendments. (See the discussion that begins on page 40 of this opinion.)

**Docket R11-16: July 1, 2010 through December 31, 2010 Amendments**

USEPA amended the federal hazardous waste regulations twice during the period July 1, 2010 through December 31, 2010. Board action is required on both actions, as is summarized below:

**December 17, 2010 (75 Fed. Reg. 78926): Removal of Saccharine and Saccharine Salts from the Lists of Hazardous Waste and Hazardous Waste Constituents**

**Description of the USEPA action:** USEPA removed saccharine and saccharine salts from the list of hazardous constituents and from the list of commercial chemical products that are listed hazardous waste when discarded (hazardous waste number U202). USEPA also removed the reportable quantity threshold for releases of saccharine and saccharine salts.

**Necessary Board action in response:** The Board must remove the hazardous constituents and hazardous waste listing for saccharine and saccharine salts. No action will be necessary with regard to the reportable quantity, since that is not a RCRA Subtitle C hazardous waste regulation. (See the discussion that begins on page 41 of this opinion.)

**December 20, 2010 (75 Fed. Reg. 78304): Six Technical Corrections to the Alternative Standards for Academic Laboratories**

**Description of the USEPA action:** By a direct final rule, USEPA adopted six technical corrections to the Eligible Academic Entity Laboratory Rule. USEPA adopted the Eligible Academic Entity Laboratory Rule on December 1, 2008. The Board adopted corresponding provisions in con

**Necessary Board action in response:** The Board must ensure that all of the technical corrections are accounted for in the Illinois hazardous waste generator standards. (See the discussion that begins on page 42 of this opinion.)

**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 December 31, 2010 that further affected the RCRA Subtitle C hazardous waste rules in any way that require 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 consolidated docket, R11-2/R11-16.

**Summary Listing of the Federal Actions  
Upon Which Action is Required in This Docket**

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

Federal Action Date (citation)	Description of the Action
January 8, 2010 (75 Fed. Reg. 1236)	Amendments to the requirements for import and export of hazardous waste, including: (1) revisions to the hazardous waste generator; transporter; and treatment, storage, and disposal facility standards; (2) amendments adding notice and consent requirements for spent lead-acid batteries exported for reclamation; and (3) amendments relating to the flow of paperwork for exception reporting and to matching paperwork for submission to USEPA for hazardous waste imports.

March 18, 2010 (75 Fed. Reg. 12989)	Technical corrections and clarifications to over 40 provisions in nine of the 10 parts of the hazardous waste regulations. (Excluding the amendments withdrawn on June 4, 2010 (at 75 Fed. Reg. 31716).)
December 17, 2010 (75 Fed. Reg. 78926)	Removal of saccharine and saccharine salts from the list of hazardous constituents and from the list of commercial chemical products that are listed hazardous waste when discarded.
December 20, 2010 (75 Fed. Reg. 78304)	Six technical corrections to the December 1, 2008 Eligible Academic Entity Laboratory Waste Accumulation Rule.

**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 text of the Illinois rules also includes citations and source-citations to their federal counterparts.

As of the date of this proposal for public comment, the Board has found several updates to incorporations by reference and references and source-citations to segments of the *Code of Federal Regulations*. Discussion and tables that begin on page 69 of this opinion explain these revisions more fully.

**PUBLIC COMMENTS**

The Board will receive public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*. The presently projected date for publication is in the June 24, 2011 issue of the *Illinois Register*. If the Board manages to gain publication on that date, the public comment period would end on August 9, 2011. After that time, the Board will immediately consider adoption of the amendments, making any necessary changes made after consideration of the public comments. Of course, an earlier or later date of publication would result in an earlier or later expiration of the 45-day public comment period.

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. If USEPA expressly waives this 30-day review

period in writing, the Board could file the adopted amendments prior to expiration of the 30-day period.

Prior to adoption of the proposal for public comment in this matter, the Board received one public comment. This comment was an e-mail exchange between Board staff and USEPA requesting confirmation of the particular March 18, 2010 amendments that USEPA withdrew on June 4, 2010. That comment is described as follows:

PC 1 June 8, 2010 e-mail from Jim O’Leary, USEPA, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, in response to a June 7, 2010 e-mail from Michael J. McCambridge, Board hearing officer, requesting verification of the March 18, 2010 amendments withdrawn by USEPA on June 4, 2010. (Docketed June 8, 2010.)

By PC 1, USEPA confirmed that Board staff understood which March 18, 2010 amendments USEPA withdrew on June 4, 2010. As is discussed below (beginning at page 40 of this opinion), this confirmation obviates Board action on the June 4, 2010 amendments in this consolidated docket.

### **EXTENSION OF DUE DATE AND TIMETABLE FOR COMPLETION**

Under Section 7.2 of the Act (415 ILCS 5/7.2(b) (2008)), 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 October 30, 2008, so that the nominal statutory deadline for Board adoption of these amendments was January 8, 2011.

By an order dated December 16, 2010, the Board found that delay was necessary and unavoidable in this matter. That order extended the deadline for completion from January 8, 2011 until July 1, 2011. A Notice of Public Information Pursuant to 415 ILCS 5/7.2(b) appeared in the Illinois Register on January 3, 2011, at 35 Ill. Reg. 322.

Fulfilling the schedule projected in the December 16, 2010 order anticipated that the Board would adhere to the following schedule of intermediate actions:

<b>Due date:</b>	<b>July 1, 2011</b>
Proposal adopted date:	February 17, 2011
Publication submission deadline:	February 28, 2011
<i>Illinois Register</i> publication date:	March 11, 2011
End of 45-day public comment period:	April 25, 2011

Adoption date:	May 19, 2011
End of 30-day holding period:	June 20, 2011
<b>Possible filing and effective date:</b>	<b>June 27, 2011</b>
Possible <i>Illinois Register</i> publication date:	July 8, 2011

Since that has not occurred, the Board finds that further delay is required. Principally, incorporating the January 8, 2010 amendments pertaining to import and export of hazardous waste, ensuring completion of the March 18, 2010 corrections, and a series of corrections and clarifications added by the Board have taken more effort than originally anticipated. Based on proposal of this opinion and the accompanying order on this date, the Board again finds that delay for completion of these amendments is necessary, from July 1, 2011 until October 17, 2011, according to the following schedule:

<b>Due date:</b>	<b>August 31, 2011</b>
<b>Date of Board vote to propose amendments:</b>	<b>June 2, 2011</b>
Submission for <i>Illinois Register</i> publication:	June 13, 2011
Probable <i>Illinois Register</i> publication date:	June 24, 2011
Probable End of 45-day public comment period:	August 9, 2011
<b>Date of Board vote to adopt amendments:</b>	<b>August 18, 2011</b>
End of 30-day hold period for USEPA review:	September 19, 2011
<b>Probable filing and effective date:</b>	<b>October 3, 2011</b>
Probable <i>Illinois Register</i> publication date:	October 14, 2011

The Board hereby extends the deadline for completion of this rulemaking under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)). The Board also directs staff to cause publication of a Notice of Public Information on Proposed Rules in the *Illinois Register*, based on this order, which sets forth reasons for delay and extends the due date for this proceeding.

Board staff is directed to promptly cause publication of a Notice of Public Information on Proposed Amendments in the *Illinois Register* that sets forth the foregoing as reasons for delay.

## **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. This description is followed by a series of five substantive discussions of the federally derived amendments involved in this docket. A discussion of Board-initiated corrections and clarifying amendments follows discussion of the federal amendments. This series is organized by federal subject matter, appearing in chronological order of the relevant *Federal Register* notices involved.

### **Discussion of the Particular Federal Actions Involved in This Docket**

#### **Amendment of the Hazardous Waste Import and Export Requirements: Shipments to OECD Member Countries, Including Spent Lead-Acid Batteries—Sections 722.110, 722.155, 722.158, 722.Subpart H,<sup>1</sup> 723.110, 724.112, 724.171, 725.112, 725.171, and 726.180**

On January 8, 2010 (75 Fed. Reg. 1236), USEPA amended the requirements applicable to imports and exports of hazardous waste. The amendments included provisions applicable to spent-lead acid batteries that are exported or imported for reclamation. USEPA explained that the import-export amendments accomplish four objectives:

- 1) The amendments update the rules to reflect changes in the agreements relating to trans-boundary shipments of hazardous waste among countries that belong to the Organisation<sup>2</sup> for Economic Cooperation and Development (OECD);
- 2) The amendments establish notice and consent requirements for spent lead-acid batteries (SLABs) intended for reclamation in a foreign country;
- 3) The amendments specify that all exception reports relating to hazardous waste exports must be filed with the USEPA, Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division in Washington, DC; and
- 4) The amendments require domestic receiving facilities to match USEPA-provided import consent documentation to shipments of imported hazardous waste and submit a copy of the matched documentation together with the RCRA hazardous waste manifest for each shipment to USEPA.

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<sup>1</sup> Specifically, Sections 722.180 through 722.189, inclusive and incorporations by reference in Section 722.111.

<sup>2</sup> USEPA uses “Organization,” the American English spelling. The entity itself uses the British English spelling, “Organisation,” in its formal name. The Board has opted to use the formal name without translation to American English.

Any person interested in the substance of the federal hazardous waste import and export requirements should refer to the January 8, 2010 *Federal Register* discussion that accompanied the USEPA amendments. Alternatively, interested persons could contact USEPA as directed in the *Federal Register* notice. The discussion that follows considers the substance of the federal amendments only to the extent needed to understand any issues that the Board encountered in the process of incorporating the federal changes into the Illinois rules.

The Board has incorporated the federal amendments relating to import and export of hazardous waste without substantive changes. Nevertheless, the Board has found a number of minor stylistic and corrective revisions necessary, in order to incorporate the federal rules into the Illinois regulations. All of those stylistic and corrective changes are itemized and summarily outlined in Table B, which begins on page 82 of this opinion. No further discussion of the vast majority of those changes will appear in this discussion. The following discussions consider only the most significant of the changes made by the Board.

**The Update to the OECD Decision, the USEPA Amendments, and a Summary of the Issues Confronting the Board.** The OECD hazardous waste import and export requirements are based on several documents, with one document acting as a principal document that draws all others into play. While USEPA consistently cites to the principal agreement by its OECD document number designation, USEPA has been forced by the nature of the document to incorporate an OECD guidance manual for the text of the agreement. The Board similarly found it necessary to cite to the guidance manual, but the Board has standardized references to the agreement, expanded the citations to embrace all subsidiary documents, and limited the scope of the incorporation by reference to include only those segments of the guidance manual that include the needed segments of the documents.

The principal document governing imports and exports of hazardous waste among OECD member countries was once OECD Decision C(92)39/FINAL, entitled “Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations.” USEPA adopted hazardous waste import and export requirements based on this 1992 agreement on April 12, 1996 (at 61 Fed. Reg. 16290), and the Board incorporated those requirements into the Illinois regulations in RCRA Update, USEPA Regulations (July 1, 1995, through December 31, 1995), R96-10, UIC Update, USEPA Regulations (January 1, 1996, through June 30, 1996), R97-3, RCRA Update, USEPA Regulations (January 1, 1996, through June 30, 1996), R97-5 (Nov. 6, 1997) (consolidated).

Later in 1992, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) arose, and later underwent amendment in 1998. This resulted in amendment of OECD Decision C(92)39/FINAL. Thus, OECD decision C(2001)107/FINAL supplanted the older OECD Decision C(92)39/FINAL in 2001.

The amended OECD agreements relating to imports and exports of hazardous waste displaced the former agreements. The new agreements changed the requirements for trans-boundary movements of hazardous waste in fundamental ways. Most notably, the new agreements eliminate the trans-boundary movement of “red waste” by eliminating that category

of hazardous waste from the agreements. *See* “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” at § 3.3.1; Annex 1, § V. and Appendix 5 of C(92)39/FINAL; 75 Fed. Reg. at 1240. Also significant is the integration of the Basel Convention into the OECD Decision.

Subsequent amendments have resulted in the current international agreement OECD Decision C(2001)107/FINAL, as amended by C(2001)107 ADD1, C(2004)20; C(2005)141 and C(2008)156, entitled “Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations.”<sup>3</sup> *See* Preamble to “Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” OECD Decision C(92)39/FINAL, as amended by C(2001)107 ADD1, C(2004)20; C(2005)141 and C(2008)156.

The USEPA amendments of January 8, 2010 incorporate the several changes made by the later OECD agreements. 75 Fed. Reg. 1236, 38-39 (Jan. 8, 2010). The USEPA amendments further revised various substantive requirements to comport with the new OECD Decision. The USEPA amendments replaced citations to the old OECD agreement with citations to new one where the rules rely on incorporation by reference. The segments of the new OECD Decision that USEPA has incorporated by reference is limited to those segments that identify Green List and Amber List wastes. *See* 40 C.F.R. 262.89(d) (2010), as amended at 75 Fed. Reg. 1259.

Problems arise when trying to directly incorporate the USEPA revisions into the Illinois rules. First, USEPA incorporated an OECD guidance manual by reference for the text of the OECD Decision. This guidance manual further relies on an undated version of the Basel Convention, including future updates to the Basel Convention. Second, USEPA’s rules repeatedly rely on “amber control procedures” and “green control procedures” from the OECD Decision without either setting those procedures forth in the rules or incorporating those procedures by reference. Finally, USEPA uses several phrases and terms throughout the text in a way that varies phrases and terms from one appearance to the other and which does not clearly define the phrases and terms used. The Board’s resolutions of these issues are discussed in the following discussions.

**Incorporation by Reference 1: Use of the OECD Guidance Manual Instead of the OECD Decision and the Basel Convention.** OECD Decision C(2001)107, as amended, exists as a document available from the OECD. Segments of this OECD Decision rely on the Basel Convention to identify many of the hazardous wastes governed by the agreement. *See* Appendix 3, “List of Wastes Subject to the Green Control Procedure,” and Appendix 4, “List of Wastes Subject to the Amber Control Procedure,” to OECD Decision C(2001)107/FINAL, as amended. The Basel convention, however, does not have a discrete edition upon which to rely. The title to the Basel Convention includes the following footnote:

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<sup>3</sup> This agreement is also called “Revision of Council Decision C(92)39/FINAL on the Control of Transboundary Movements of Wastes Destined for Recovery Operations.”

The present text incorporates amendments to the Convention adopted subsequent to its entry into force and that are in force as at 8 October 2005. Only the text of the Convention as kept in the custody of the Secretary-General of the United Nations in his capacity as Depositary constitutes the authentic version of the Convention, as modified by any amendments and/or corrections thereto. This publication is issued for information purposes only. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Oct. 8, 2005, at p. 2 n. 1.

Thus, the printed copies of the Basel Convention are unofficial. This presents a problem in Illinois law, since incorporation by reference requires citation to a specific, identifiable version of a document. *See* 5 ILCS 100/5-75(a) (2008).

While the Board could incorporate the 2005 version of the Basel Convention posted on the Internet by the Convention,<sup>4</sup> USEPA has provided a viable alternative for the Board. USEPA incorporated the 2009 version of a document entitled “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations” (OECD Guidance Manual). *See* 40 C.F.R. 262.89(d) (2010), as amended at 75 Fed. Reg. 1259. The OECD Guidance Manual includes OECD Decision C(2001)107/FINAL, as amended through 2008, as “Annex A: OECD Decision C(2001)107/FINAL, as amended by C(2004)20, C(2005)141, and C(2008)156.” The OECD Guidance Manual, however, goes further to identify the complete list of Green wastes, including those identified by the Basel Convention, in Annex B and the complete list of Amber wastes in Annex C. *See* Annexes B and C to “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” 2009. In this way, USEPA incorporated Annexes B and C to the OECD Guidance Manual by reference for identification of Green List wastes and Amber List wastes.

The Board has chosen to follow USEPA’s lead and incorporate the 2009 version of the OECD Guidance Manual by reference, rather than attempt incorporation of OECD Decision C(2001)107, as amended, and the most recent version of the Basel Convention by reference. This avoids the problem of incorporating the Basel Convention by reference, which could result in incorporation of a document that is available only from the Board. The copy of the Basel Convention currently available is dated October 8, 2005. This 2005 version is included in the 2009 version of the OECD Guidance Manual. Incorporation of the OECD Guidance Manual avoids incorporation of future versions of the Basel Convention that do not yet exist.<sup>5</sup> It further

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<sup>4</sup> Web address: <http://www.basel.int/text/17Jun2010-conv-e.pdf>.

<sup>5</sup> The Board called incorporation of a future version of a document by reference a “forward incorporation by reference” and observed that such was impermissible very early in the history of identical-in-substance rulemaking. *See Pretreatment Regulations*, R86-44 (Dec. 3, 1987), slip op. at pp. 7-8, 29, 40.

avoids the possibility of incorporation of a document by reference that will not be readily available from sources other than the Board's files should the Basel Convention be amended in the future. *See 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, USEPA Amendments (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated), slip op. at p. 32 (discussing the Board's reluctance to incorporate an old USDOT rule by reference, where that rule relied on an uncertain, undated analytical method).*

Incorporation of the OECD Guidance Manual by reference is not the Board's optimum choice. The Board would prefer to incorporate original documents by reference. In this instance, the original documents are segments of the OECD Decision together with those segments of the Basel Convention upon which the OECD Decision relies. The Board has, instead, proposed incorporation of parts of the OECD Guidance manual that set forth the segments of the OECD Decision and Basel Convention upon which reliance is needed. The Board invites particular comment on this incorporation by reference.

The Board has changed the incorporations by reference. For the purposes of this segment of the discussion, the Board has shifted the names of the document segments incorporated by reference by USEPA. The Board changed the terms "Green list" and "Amber list" to "Green waste" and "Amber waste," respectively. The Board has three reasons for doing so. First, the terms "Green waste" and "Amber waste" shift focus to the listed wastes, and the rules' focus is on the wastes, rather than the lists. Second, the short-form titles "Green waste" and "Amber waste" more accurately reflect the lists' formal titles in the OECD Decision.<sup>6</sup> Third, the terms "Green waste" and "Amber waste" appear more frequently in the OECD Decision.<sup>7</sup> *See, e.g.,* ¶¶ B.8.ii. and D.1.iii.c. of the OECD Decision C(2001)107, as set forth in Annex A of the OECD Guidance Manual at pp. 43, 44. A subsequent discussion of incorporations by reference that the Board has added appears in a subsequent segment of this discussion (begging on page 29 of this opinion.)

**Added Definitions of "Amber Control Procedures," "Amber Waste," "Control," "Green Control Procedures," "Green Waste," "OECD Guidance Manual," "OECD-Listed Waste," "OECD Waste Designation," and "Waste hazardous Under U.S. National Procedures."** The Board believes that fundamental terms require definition for the sake of clarity and decided to define a few terms that USEPA did not define. For this reason, the Board previously added definitions of key terms used in the rules. USEPA did not define these terms in the federal regulations: "amber list controls," "amber list waste," "amber list controls," and "amber list waste." The Board added the definitions in the general clarifying amendments

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<sup>6</sup> The titles are "List of Wastes Subject to the Green Control Procedures" (Appendix 3 of Annex A to the OECD Guidance Manual at p. 54) and "List of Wastes Subject to the Amber Control Procedures" (Appendix 4 of Annex A to the OECD Guidance Manual at p. 56).

<sup>7</sup> The terms "Green list" and "Amber list" appear only in the guidance segments of the Guidance manual, which are not segments incorporated by reference. *See* ¶ 3.3.2 of the Guidance Manual. Note that

included in a 2005 RCRA update. *See RCRA Update, USEPA Regulations (January 1, 2004, through June 30, 2004 and October 25, 2004), R05-2 (Mar. 3, 2005), slip op. at 23.* Those definitions relied on incorporation by reference of the older OECD Decision C(92)29/FINAL, and those definitions are now obsolete.

The new OECD Decision and Basel Convention have changed the former terms applied to trans-boundary shipments of hazardous waste. The agreements have also changed the scopes of the terms used to describe regulated wastes. The former terms “amber list controls,” “amber list waste,” “green list controls,” and “green list waste” have now been replaced by “Amber control procedures,” “Amber waste,” “Green control procedures,” and “Green waste.”<sup>8</sup> USEPA’s amendments changed the terms used in the federal regulations to accommodate the international changes. USEPA also incorporated the lists of “Amber waste” and “Green waste” by reference. USEPA, however, did not formally define many of the fundamental terms. Further, the USEPA amendments include terms that would benefit by standardized usage and definition for enhanced clarity.

The Board has replaced the definitions of the obsolete terms with definitions of “Amber control procedures,” “Amber waste,” “Green control procedures,” and “Green waste.” The Board further has standardized the language and added definitions of the other key terms “consent,” “OECD-listed waste,” “OECD waste designation,” and “waste hazardous under U.S. national procedures.” Finally, the Board has created the standardized short-form name “OECD Guidance Manual” for the principal document that is the source of the lists and control procedures defined by the Board and incorporated by reference in the rules. The following short segment explains the definitions added by the Board.

**Definitions of “Amber control procedures,” “Amber waste,” “Green control procedures,” “Green waste.”** To retain the 2005 clarifying amendments, the Board added definitions of “Amber control procedures,” “Amber waste,” “Green control procedures,” and “Green waste” to replace the former definitions of “amber list controls,” “amber list waste,” “green list controls,” and “green list waste.”

The definitions rely on the OECD Decision C(2001)107/FINAL, as amended, and the Basel Convention by reference, as set forth in Annex A to the OECD Guidance Manual. The definitions incorporate the necessary segments of text by reference. (See the preceding discussion that begins on page 16 of this opinion.) The text of Annexes B and C of the Guidance Manual set forth the Green wastes and Amber wastes, respectively, as listed in both the OECD Decision and the Basel Convention. The text of Annex A of the OECD Guidance Manual contains the text of sections C and D of the OECD Decision that sets forth the Green control procedures and the Amber control procedures, respectively.

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<sup>8</sup> The Board also added definitions of “red list controls” and “red list waste” (*see* 35 Ill. Adm. Code 722.181 (2008)), but those categories no longer exist under the OECD Decision.

**Definitions of “consent,” “OECD Guidance Manual,” “OECD-listed waste,” “OECD waste designation,” and “waste hazardous under U.S. national procedures.”** The federal rules use other OECD-related terms that the Board believes require standardized usage and definition. The language used by USEPA could result in ambiguity, so the Board added a definition for these terms. The Board has standardized the following terms and added a definition for each: “consent,” “OECD Guidance Manual,” “OECD-listed waste,” “OECD waste designation,” and “waste hazardous under U.S. national procedures.”

***Definition of “consent.”*** The “consent” of the receiving country is required before export of hazardous waste is allowed under the rules. 40 C.F.R. 262.82(c) (2010), as amended at 75 Fed. Reg. 1255 (corresponding with 35 Ill. Adm. Code 722.182(c)). Further, all movement of waste must occur in conformity with the “consents” applicable to the waste. 40 C.F.R. 262.82(d) and (f) (2010), as amended at 75 Fed. Reg. 1255 (corresponding with 35 Ill. Adm. Code 722.182(d) and (f)). The rules use the word “consent,” however, in a way that implies that the consent is a document equivalent to a contract. *See* 40 C.F.R. 262.83(f) (2010), as amended at 75 Fed. Reg. 1257 (corresponding with 35 Ill. Adm. Code 722.182(f)) (using the phrase “in accordance with the terms of the contract or the consents”).

The rules contemplate three classifications of waste and two sub-classifications within the two classifications. The OECD Decision and the Basel Convention contemplate separate control procedures for “Green waste” and “Amber waste.” (*i.e.*, “OECD-listed waste”)<sup>9</sup> *See* Sections C and D of Annex A to the OECD Guidance Manual at pp. 43-49 (Sections C and D of OECD Decision C(2001)107, as amended). Further, a waste that is not listed in the OECD Decision is neither Green waste nor Amber waste (*i.e.*, not OECD-listed waste). This gives three classifications for waste under the OECD Decision-derived rules.

In these rules, USEPA further distinguishes between “waste that is hazardous under U.S. national procedures”<sup>10</sup> and waste that is not hazardous waste under U.S. law. 40 C.F.R. 262.80(a) (2010), as amended at 75 Fed. Reg. 1253 (corresponding with 35 Ill. Adm. Code 722.180(a)). Green waste, Amber waste, or waste that is not OECD-listed waste might or might not be waste that is hazardous under U.S. national procedures. Thus, there are two sub-classifications of waste: waste that is hazardous under U.S. national procedures and waste that is not.

The OECD Decision-derived consent requirements apply only to specified types of waste. The rules require that the exporter must obtain the consent from “the competent authorities of the relevant OECD countries of import and transit” prior to export of Amber waste or Green waste

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<sup>9</sup> The Board has added the defined standardized term “OECD-listed waste” to appear where the federal regulations refer to “listed waste.” See the discussion of this added definition that begins below on page 21 of this opinion.

<sup>10</sup> The Board has added the defined standardized term “waste that is hazardous under U.S. national procedures” to appear where the federal regulations refer to this type of waste. See the discussion of this added definition that begins below on page 23 of this opinion.

that is hazardous under U.S. national procedures. 40 C.F.R. 262.82(a)(1)(ii) and 262.83(a) (2010), as amended at 75 Fed. Reg. 1255-56 (corresponding with 35 Ill. Adm. Code 722.182(a)(1)(ii) and 262.83(a)). The rules specify a procedure for notification and consent. *See* 40 C.F.R. 262.83(b) (2010), as amended at 75 Fed. Reg. 1256-57 (corresponding with 35 Ill. Adm. Code 722.183(b)). Under that procedure, “tacit consent” or “written consent” is sufficient to allow shipment of the waste. 40 C.F.R. 262.83(b)(1)(ii) and (b)(1)(iii) (2010), as amended at 75 Fed. Reg. 1256 (corresponding with 35 Ill. Adm. Code 722.183(b)(1)(B) and (b)(1)(C)).

The Board believes that the word “consent,” as used in Section 722.182(c), (d), and (f) (corresponding with 40 C.F.R. 262.82(c), (d), and (f) (2010), as amended at 75 Fed. Reg. 1255-56), requires a definition. The Board understands the word “consent” in this context means only a consent obtained using the notification and consent provisions in Section 722.183 (corresponding with 40 C.F.R. 262.83 (2010), as amended at 75 Fed. Reg. 1256-57) is intended by use of the term in the Section 722.182 provisions. The application of any broader sense of the word is not intended.

The Board added a definition of “consent” in Section 722.181 to clarify that the only consent contemplated is that of the notification and consent procedure in Section 722.183. The added definition, therefore, relies on Section 722.183 for meaning, as follows:

“Consent” means a consent, whether written or tacit, that has been obtained from the competent authority of the country of export (for export from that country), the country of transit (for transit through that country), or the country of import (for import into that country), as applicable, pursuant to notification and consent provisions of Section 722.183.

***Definition of “OECD Guidance Manual.”*** Differences in the format of USEPA’s incorporation by reference and the format used by the Board, together with the addition of definitions, increase the frequency of citations to the OECD Decision and Basel Convention, as they appear in Annexes B and C of the OECD Guidance Manual. As discussed above (beginning on page 15 of this opinion), the Board has followed USEPA’s lead by incorporating the OECD Guidance Manual by reference. As is discussed below (beginning on page 29 of this opinion), the Board has incorporated segments of the OECD Guidance Manual by reference that USEPA did not similarly include. The use of a defined short-form name for the incorporated document segments facilitates citation to these segments.

The added definitions of “Green control procedures,” “Green waste,” “Amber control procedures,” and “Amber waste” increased the number of citations to the pertinent segments of the OECD Decision and the Basel Convention, as they appear in Annexes B and C of the OECD Guidance Manual. The Board chose to use the short-form name, “OECD Guidance Manual,” to refer to these document segments. The use of a short-form title enhances the clarity and readability of the several citations to the OECD Guidance Manual in Section 611.181 benefits by a definition of the term.

The Board added a definition of the short-form document title, “OECD Guidance Manual” in Section 722.181. The further added a Board note that explains the definition of the short-form document title.

**Definition of “OECD-listed waste.”** USEPA used the phrase “listed waste” in two segments of the rule to collectively describe Green waste and Amber waste. *See* 40 C.F.R. 262.82(a)(1) and (a)(2) (2010), as amended at 75 Fed. Reg. 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)(1) and (a)(2)). USEPA describes wastes that are neither Green waste nor Amber waste as “wastes not yet assigned to an OECD waste list” and “wastes that are not identified on any list.” *See* 40 C.F.R. 262.82(a)(4) and 262.83(a) (2010), as amended at 75 Fed. Reg. 1255, 56 (corresponding with 35 Ill. Adm. Code 722.182(a)(4) and 722.183(a)). The Board believes that use of the terms “listed waste” and “wastes that are not yet identified on any list” is undesirable. Standardization of the language in the pertinent segments of text and addition of a definition in Section 722.181 is necessary.

It is common to refer to hazardous waste identified based on listing in Subpart D of 35 Ill. Adm. Code 721 (corresponding with subpart D of 40 C.F.R. 261) as “listed waste.” *See* 40 C.F.R. 260.22(b), 261.3(d)(2), 261.4(a)(12)(i), 261.38(b)(13)(iii)(B) and (b)(15)(ii), 268.3(d), 268.4(a)(2)(ii), 268.9(a) and (b), 268.40(h), 268.45(b)(2) and (c), and 268.49(a) table (2010) (corresponding with 35 Ill. Adm. Code 720.122(b), 721.103(d)(2), 721.104(a)(12)(A), 721.138(b)(13)(C)(iii) and (b)(15)(B), 728.103(d), 728.104(a)(2)(ii), 728.109(a) and (b), 728.140(h), and 728.149(a) table); *see also* 40 C.F.R. 266.103(a)(3), 266.104(a)(3), and 268.45(b)(2) and (c) (2010) (corresponding with 35 Ill. Adm. Code 726.203(a)(3), 726.204(a)(3), and 728.45(b)(2) and (c)) (using “dioxin-listed waste”) (2010) (corresponding with 35 Ill. Adm. Code 726.203(a)(3), 726.204(a)(3), and 728.45(b)(2) and (c)) (using “dioxin-listed waste”).

The Board believes that USEPA intended “listed waste” to refer to waste that is listed as Green waste or Amber waste in the OECD Decision and Basel Convention. Use of the term “listed waste” having a different meaning in the context of the hazardous waste rules could cause confusion. The Board has corrected this by standardizing the references to the combined OECD Green and Amber wastes to “OECD-listed waste” and adding a definition of “OECD-listed waste.” The term “OECD-listed waste” is defined as “Green waste or Amber waste, as defined in this Section.” 35 Ill. Adm. Code 722.181.

This meaning is supported by the *Federal Register* discussion. Among the various amendments that USEPA made in the hazardous waste import and export rule was changing the reference to “unlisted wastes” to “wastes not covered in Appendices 3 and 4 of the OECD Decision.” 75 Fed. Reg. at 1241. This would mean that the wastes listed in Appendices 3 and 4 are “listed wastes.” Appendix 3 lists Green waste, and Appendix 4 lists Amber waste. *See* Appendices 3 and 4 of Annex A to the OECD Guidance Manual.

**Definition of “OECD waste designation.”** In the text of the rules, USEPA twice used the phrase “designation of waste type(s) from the appropriate OECD list.” A provision relating to import and export notifications uses the words “designation of waste type(s) from the appropriate OECD list incorporated by reference in § 262.89(d).” 40 C.F.R. 262.83(d)(12)

(2010), as amended at 75 Fed. Reg. 1257 (corresponding with 35 Ill. Adm. Code 722.183(d)(12)). The provision relating to annual reports uses the words “designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d).” 40 C.F.R. 262.87(a)(4) (2010), as amended at 75 Fed. Reg. 1258-59 (corresponding with 35 Ill. Adm. Code 722.187(a)(4)). The Board believes that greater clarity is needed.

The Board has changed “designation of waste type(s) from the appropriate OECD list “OECD waste designation incorporated by reference in § 262.89(d)” to appear as “OECD waste designation in Section 722.183(d)(12) (corresponding with 40 C.F.R. 262.83(d)(12)). The Board correspondingly changed “designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d)” to appear as “OECD waste designation and applicable waste code from the OECD lists” in Section 722.187(a)(4) (corresponding with 40 C.F.R. 262.87(a)(4)). The Board added a definition of the term “OECD waste designation” in Section 722.181. The definition states that “OECD waste designation” means “the designation by OECD of waste as Green waste or Amber waste, as defined in this Section.”

***Definition of “Waste Hazardous Under U.S. National Procedures.”*** The federal rules have used the phrase “wastes that are considered hazardous under U.S. national procedures” in various segments of the rules. This is a key term used in determining the applicability of rules for trans-boundary movements of hazardous waste to, from, and through OECD member countries. See 40 C.F.R. 262.10(d); 262.58(a); 262.80(a); 262.82(a)(1)(i), (a)(1)(ii), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3)(i), (a)(3)(ii), (a)(4)(i), and (a)(4)(ii); and 262.83(c) (2010), as amended at 75 Fed. Reg. 1253-57 (corresponding with 35 Ill. Adm. Code 722.110(d); 722.158(a); 722.180(a); 722.182(a)(1)(i), (a)(1)(ii), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3)(i), (a)(3)(ii), (a)(4)(i), and (a)(4)(ii); and 722.183(c)). The January 8, 2010 amendments added new appearances of the term. See 40 C.F.R. 262.10(d), 262.58(a) (2010), as amended at 75 Fed. Reg. at 1253.

***The Federal Language.*** The phrasing of the term, “wastes that are considered hazardous under U.S. national procedures,” is fairly uniform among the 14 occurrences in the text, but there are minor variations. Nearly all appearances of the phrase in the federal rules use the plural, but two appearances use the singular, “waste that is . . . .” See 40 C.F.R. 262.82(a)(3)(i) and (a)(3)(ii) (2010), as amended at 75 Fed. Reg. at 1254-55. Five times USEPA used the contrary term, “wastes that are not considered hazardous under U.S. national procedures.” See 40 C.F.R. 262.82(a)(1)(i), (a)(1)(iii), (a)(3)(i), and (a)(4)(ii) and 262.83(c) (2010), as amended at 75 Fed. Reg. at 1254-55 (emphasis added). In several appearances, USEPA added descriptive terms for the word “waste” or “wastes”: “green,” “amber,” “is mixed with . . . such that the resulting waste mixture,” “destined for recovery operations . . . but” and “destined for recovery operations . . . and.” See 40 C.F.R. 262.82(a)(1)(i), (a)(1)(ii), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3)(i), and (a)(3)(ii) and 262.83(c) (2010), as amended at 75 Fed. Reg. at 1254-55.

The Board believes that USEPA did not intend confusion of the term “wastes that are hazardous under U.S. national procedures” with “hazardous waste,” as used within this rule and other segments of the RCRA Subtitle C regulations. First, the OECD import and export rules

provide separate designations for “hazardous waste” under the OECD Decision and Basel Convention and “wastes that are hazardous under U.S. national procedures.” *See, e.g.*, 40 C.F.R. 262.82(a)(1) and (a)(2) (2010), as amended at 75 Fed. Reg. 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)(1) and (a)(2)). Waste that is hazardous under the OECD import and export rules is not necessarily “waste that is considered hazardous under U.S. national procedures. Second, “hazardous waste,” as such is defined by 35 Ill. Adm. Code 721.103 (corresponding with 40 C.F.R. 261.3) is not necessarily “waste that is considered hazardous under U.S. national procedures.” The definition of “wastes that are hazardous under U.S. national procedures includes two determining factors: (1) identification as hazardous waste under 40 C.F.R. 261.3; and (2) that the waste is subject to any of the following RCRA Subtitle C management standards<sup>11</sup>: (a) the RCRA manifest requirements<sup>12</sup>, (b) the universal waste rule, or (c) the spent lead-acid battery export requirements.<sup>13</sup> *E.g.*, 40 C.F.R. 262.89(a) (2010), as amended at 75 Fed. Reg. 1259 (corresponding with 35 Ill. Adm. Code 722.189(a)). The differences in definitions can result in substantive differences in a material’s identification under the rules.

*The Board’s Choice of Standardized Language.* The Board opted to depart from the federal language to enhance the clarity of the rule. The Board has uniformly replaced the federal phrase, “wastes that are considered hazardous under U.S. national procedures” and its variations, with the words, “waste hazardous under U.S. national procedures,” throughout the text. This alters the federal text in five ways: (1) the term is standardized language; (2) the term appears only in the singular, “waste”; (3) the words “that is considered” have been omitted as unnecessary; (4) no added descriptive terms for the word “waste” divide the standardized term; and (5) the term is defined in Section 722.181. The Board believes that this rigorous use of the defined term “waste hazardous under U.S. national procedures” conveys a clear meaning.

The Board could have used the term “hazardous waste under U.S. national procedures,” as this is more direct wording for the term but chose not to do so. A clause such as “any person that exports or imports a hazardous waste under U.S. national procedures” could result in confusion; “under U.S. national procedures” could be improperly read as modifying “exports or imports.” In the clause “any person that exports or imports a waste hazardous under U.S. national procedures,” on the other hand, “waste hazardous is the clear object of the prepositional clause. *See* 35 Ill. Adm. Code 722.110(d). Other possibilities exist, but those options either depart too far from the federal language, as to create the ambiguity the Board’s changes are intended to avoid,<sup>14</sup> or they are unwieldy.<sup>15</sup>

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<sup>11</sup> 40 C.F.R. 273 (2010) (corresponding with 35 Ill. Adm. Code 733).

<sup>12</sup> Subpart B of 40 C.F.R. 262 (2010) (corresponding with Subpart B of 35 Ill. Adm. Code 722).

<sup>13</sup> 40 C.F.R. 266.80 (2010), as amended at 75 Fed. Reg. 1261-62 (corresponding with 35 Ill. Adm. Code 726.180).

<sup>14</sup> Such as “U.S. national hazardous waste,” “waste hazardous under national procedures,” “U.S.-regulated hazardous waste.”

*Extensions of the Board's Standardized Language.* The Board has had to infer the meaning “waste hazardous under U.S. national procedures” in one reference in 40 C.F.R. 262.89. USEPA uses the words “if a waste is hazardous under paragraph (a) of this section” to subject waste to the Amber controls. 40 C.F.R. 262.89(b) (2010), as amended at 75 Fed. Reg. at 1259 (corresponding with 35 Ill. Adm. Code 722.189(b)). The “paragraph (a)” referred to defines when “a waste is considered hazardous under U.S. national procedures. 40 C.F.R. 262.89(a) (2010), as amended at 75 Fed. Reg. at 1259 (corresponding with 35 Ill. Adm. Code 722.189(a)). Thus, subsection (b) likely refers to waste hazardous under U.S. national procedures. The Board made a language substitution in corresponding 35 Ill. Adm. Code 722.189(b) to ensure the clarity of this provision also.

The Board did not, however, make a similar change in the language of 40 C.F.R. 262.89(c) (corresponding with 35 Ill. Adm. Code 722.189(c)), which states: “The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.” 40 C.F.R. 262.89(c) (2010), as amended at 75 Fed. Reg. at 1259 (corresponding with 35 Ill. Adm. Code 722.189(c)). Examination of the text of section 262.82 reveals that each provision in that rule clearly describes the hazardous waste or mixture of hazardous waste intended.<sup>16</sup> See 40 C.F.R. 262.82(a) (2010), as amended at 75 Fed. Reg. at 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)). There is little danger of confusion over the meaning of “hazardous wastes and hazardous waste mixtures” in this subsection.

The Board made one further change in the federal language relating to waste hazardous under U.S. national procedures. The scope of the OECD import and export regulations is stated as follows:

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the

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<sup>15</sup> Such as an acronym like “WHUUSNP” or “WHUNP.”

<sup>16</sup> Subsection (a)(1) relates to Green waste, and it is sub-divided into two subsection relative to whether the waste is waste hazardous under U.S. national procedures. Subsection (a)(2) relates to Amber waste that is or is not waste hazardous under U.S. national procedures. 40 C.F.R. 262.82(a)(2), (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) (2010), as amended at 75 Fed. Reg. at 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)(2), (a)(2)(A), (a)(2)(B), and (a)(2)(C)). Subsection (a)(3) relates to mixtures of wastes and whether the resulting mixture is waste hazardous under U.S. national procedures. 40 C.F.R. 262.82(a)(3), (a)(3)(i), and (a)(3)(ii) (2010), as amended at 75 Fed. Reg. at 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)(3), (a)(2)(A), and (a)(2)(B)). Subsection (a)(4) relates to waste not yet designated by the OECD as Green waste or Amber waste, based on whether the waste is waste hazardous under U.S. national procedures. 40 C.F.R. 262.82(a)(3), (a)(3)(i), and (a)(3)(ii) (2010), as amended at 75 Fed. Reg. at 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)(3), (a)(2)(A), and (a)(2)(B)).

national procedures of the United States, as defined in § 262.80(a). The OECD Green and Amber lists are incorporated by reference in § 262.89(d). 40 C.F.R. 262.82(a) (2010), as amended at 75 Fed. Reg. at 1254 (corresponding with 35 Ill. Adm. Code 722.182(a)).

The Board reads the second conjunction in this provision as the primary logical division and the first as subordinate. Under this construction, the Board reads that the level of control depends on (1) the status of the waste as Green waste or Amber waste; and (2) “by the national procedures of the United States.” Thus, the Board reads the clause “and by the national procedures of the United States” as the determination of “wastes that are considered hazardous under U.S. national procedures.”

For this reason, the Board has substituted “by whether the waste is waste hazardous under U.S. national procedures” in place of USEPA’s language, “by the national procedures of the United States,” to clarify the rule. The scope statement appears as follows in the Illinois rules:

Scope. The level of control for exports and imports of waste is indicated by designation of the waste as either Green waste or Amber waste and by whether the waste is waste hazardous under U.S. national procedures, as these terms are defined in Section 722.181.

*USEPA Definitions and Definition of the Board’s Standardized Language.* The federal rules include four segments of the substantive rules that identically define the phrase as follows:

A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G. 40 C.F.R. 262.10(d) and 262.58(a) (2010), as amended at 75 Fed. Reg. 1253; *see* 40 C.F.R. 262.80(a), and 262.89(a) (2010), as amended at 75 Fed. Reg. 1253, 59 (using the same substantive language but dividing the definition into subsections).

The Board used this federal language as the basis for a definition of “waste hazardous under U.S. national procedures” in Section 722.181. The Board replaced the federal definitions (at 40 C.F.R. 262.10(d), 262.58(a), 262.80(a), and 262.89(a) (2010), as amended at 75 Fed. Reg. 1253, 59) with explanatory Board notes (at 35 Ill. Adm. Code 722.110(d), 722.158(a), 722.180(a), and 722.189(a)) that explain the Board’s changes in phrasing and direct attention to the definition in Section 722.181. The Board appended a similar explanatory Board note to the segments of text that use the term “waste hazardous under U.S. national procedures” and to the definition of the term in Section 722.181. The Board’s definition of “waste hazardous under U.S. national procedures and appended Board note appear as follows:

“Waste hazardous under U.S. national procedures” means, for the purposes of Sections 722.110(d) and 722.159(a) and Subpart H of this Part, a waste that meets the definition of hazardous waste, as set forth in 35 Ill. Adm. Code 721.103, and which is subject to any of the following regulations:

The hazardous waste manifesting requirements of Subpart B of this Part;

The universal waste management standards of 35 Ill. Adm. Code 733, 40 CFR 273, or analogous requirements of a sister state; or

The export requirements in the spent lead-acid battery management standards of Subpart G of 35 Ill. Adm. Code 726, subpart G of 40 CFR 266, or analogous requirements of a sister state.

BOARD NOTE: USEPA used identical language in 40 CFR 262.10(d), 262.58(a), 262.80(a), and 262.89(a) to define when a waste is considered hazardous under U.S. national procedures. The Board has chosen to uniformly use the standardized term “waste hazardous under U.S. national procedures” throughout the text and to add this definition of the term.

*Summary.* The Board has altered the language of the federal rules relating to “waste hazardous under U.S. national procedures as follows:

1. The Board used uniform wording, “waste hazardous under U.S. national procedures” wherever the fact that USEPA intended this type of waste is clear, including where the original federal language stated “waste is hazardous”;
2. The Board added a centralized definition of “waste hazardous under U.S. national procedures” in Section 722.181 based on the language USEPA used in 40 C.F.R. 262.10(d), 262.58(a) 262.80(a), and 262.89(a);
3. The Board replaced the existing defining language that appears in the substantive provisions at 40 C.F.R. 262.10(d), 262.58(a), 262.80(a), and 262.89(a) with a cross-reference in corresponding 35 Ill. Adm. Code 722.110(d), 722.158(a), 722.180(a), and 722.189(a) to the centralized definition;
4. The Board added a Board note at the definition of “waste hazardous under U.S. national procedures” in Section 722.181 and at end of each substantive provision at Sections 722.110(d), 722.158(a), 262.80(a), and 262.89(a) that directs attention to the centralized definition and explains the movements of text.

The following table summarizes the segments of text that the Board has altered to use the term “waste hazardous under U.S. national procedures:

Segments of Text That the Board Has Converted to Read  
“Waste Hazardous Under U.S. National Procedures”

<u>Federal Citation:</u> Language Used by USEPA	<u>Corresponding Illinois Citation:</u> Language Used by the Board
<u>40 C.F.R. 262.10(d):</u> wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.110(d):</u> waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.58(a):</u> wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.158(a):</u> waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.80(a):</u> wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.158(a):</u> waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a):</u> by the national procedures of the United States	<u>35 Ill. Adm. Code 722.182(a):</u> by whether the waste is waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(1)(i):</u> Green wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(1)(A):</u> Green waste that is not waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(1)(ii):</u> Green wastes that are considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(1)(B):</u> Green waste that is waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(2)(i):</u> Amber wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(2)(A):</u> Amber waste that is not waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(2)(ii):</u> Amber wastes that are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(2)(B):</u> Amber waste that is not waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(2)(iii):</u> Amber wastes that are considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(2)(C):</u> Amber waste that is waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(3)(i):</u> resulting mixture is not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(3)(A):</u> resulting mixture is not waste hazardous under U.S. national procedures

<u>40 C.F.R. 262.82(a)(3)(ii):</u> resulting mixture is not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(3)(B):</u> resulting mixture is not waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(4)(i):</u> such wastes are considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(4)(A):</u> such waste is waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.82(a)(4)(ii):</u> such wastes are not considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(4)(B):</u> such waste is not waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.83(c):</u> wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, . . . but which are considered hazardous under U.S. national procedures	<u>35 Ill. Adm. Code 722.182(a)(4)(B):</u> waste destined for recovery operations that is not Green waste or Amber waste, . . . and which is waste hazardous under U.S. national procedures
<u>40 C.F.R. 262.89(a):</u> a waste is considered hazardous under U.S. national procedures . . . if the waste . . . .	<u>35 Ill. Adm. Code 722.189(a):</u> a waste hazardous under U.S. national procedures, as defined in Section 722.180
<u>40 C.F.R. 262.89(b):</u> if a waste is hazardous under paragraph (a) of this section	<u>35 Ill. Adm. Code 722.189(b):</u> waste hazardous under U.S. national procedures, as defined in Section 722.180

**Incorporation by Reference 2: Incorporation of Segments of the OECD Decision (Using the OECD Guidance Manual) Not Incorporated by USEPA.** The Board added definitions, as discussed above (beginning on page 18 of this opinion). The Board relied on segments of OECD Decision C(2001)107/FINAL, as amended, that USEPA did not incorporate by reference. The Board drew from the main body of the OECD Decision and the Basel Convention, as set forth in Annex A to the OECD Guidance Manual, to create the new definitions. The definitions added and the segments of the OECD Decision and Basel Convention used to create the definitions are summarized in the following table:

USEPA’s rules refer to “the OECD Green and Amber lists, incorporated by reference in § 262.89(d).” 40 C.F.R. 262.83(c) (2010), as amended at 75 Fed. Reg. 1257 (corresponding with 35 Ill. Adm. Code 722.183(c)); *see* 40 C.F.R. 262.82(a), 262.82(d)(12), 262.87(a)(4) (2010), as amended at 75 Fed. Reg. 1258-59 (corresponding with 35 Ill. Adm. Code 722.182(a), 722.182(d)(12), 722.187(a)(4)). The federal incorporation of the “Green list” and “Amber list” appear in 40 C.F.R. 262.89(d).

As previously discussed (on page 16 of this opinion), the Board has shifted the names of the document segments incorporated by reference to “Green waste” and “Amber waste.” The Board has further added definitions of the terms “Amber control procedure” and “Green control procedure.” The definitions are based on the OECD Guidance Manual, as is discussed above (beginning on page 20 of this opinion), and rely on incorporations of segments of the OECD Decision and Basel Convention, as they appear in Annexes B and C of the OECD Guidance Manual by reference.

These changes require frequent citation to the OECD Decision and Basel Convention, as they appear in Annexes B and C of the OECD Guidance Manual, in the added definitions of “Green control procedures,” “Green waste,” “Amber control procedures,” and “Amber waste.” The use of a short-form title enhances the clarity and readability of the several citations to the OECD Guidance Manual in Section 611.181 benefits by a definition of the term.

The Board added a definition of the short-form document title, “OECD Guidance Manual” in Section 722.181. The further added a Board note that explains the definition of the short-form document title.

Defined Term	OECD Guidance Manual Segment Relied Upon (Corresponding Segment of OECD Decision C(2001)107/FINAL, as amended, and Basel Convention)
Amber control procedures	Section D of Annex A to OECD Guidance Manual (Section D of OECD Decision C(2001)107)
Amber waste	Appendix 4 to Annex A and Annex C to OECD Guidance Manual (Appendix 4 of OECD Decision C(2001)107 and Annexes II and VIII of the Basel Convention)
Green control procedures	Section C of Annex A to OECD Guidance Manual (Section C of OECD Decision C(2001)107)
Green waste	Appendix 3 to Annex A and Annex B to OECD Guidance Manual (Appendix 3 of OECD Decision C(2001)107 and Annex IX of the Basel Convention)

Thus, in addition to Annexes B and C, as relied on by USEPA, the Board incorporates all of Annexes A, B, and C. The Board further adds a Board note to indicate the on-line source of the OECD Guidance Manual and explain reliance on the Manual for the OECD Decision and the Basel convention. The incorporation by reference added by the Board in Section 720.111(B) and explanatory Board note appear as follows:

OECD Guidance Manual. “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” 2009 (also called “Guidance Manual for the Control of Transboundary Movements of Recoverable Materials” in OECD documents), but only the following segments, which set forth the substantive requirements of OECD decision C(2001)107/FINAL, as amended by C(2004)20; C(2005)141 and C(2008)156:

“Annex A: OECD Decision C(2001)107/FINAL, as Amended by C(2004)20; C(2005)141 and C(2008)156” (also called “Revision of Council Decision C(92)39/FINAL on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” within the text of Annex A, and “Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations” in the original OECD decision source document, C(2001)107/FINAL (June 14, 2001), as amended by C(2001)107/ADD1 (February 28, 2002), C(2004)20 (March 9, 2004), C(2005)141 (December 2, 2005), and C(2008)156 (December 4, 2008)).

“Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure” (individually referred to as “Annex B to OECD Guidance Manual” in 35 Ill. Adm. Code 722), combining Appendix 3 to OECD decision C(2001)107/FINAL, as amended as described above, together with the text of Annex IX (“List B”) to the “Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal” (“Basel Convention”).

“Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure” (individually referred to as “Annex C to OECD Guidance Manual” in 35 Ill. Adm. Code 722), combining Appendix 4 to OECD decision C(2001)107/FINAL, as amended, together with the text of Annexes II (“Categories of Wastes Requiring Special Consideration”) and VIII (“List A”) to the Basel Convention.

BOARD NOTE: The OECD Guidance Manual is available online from OECD at [www.oecd.org/dataoecd/57/1/42262259.pdf](http://www.oecd.org/dataoecd/57/1/42262259.pdf). The OECD Guidance Manual is considered the unofficial text of these documents by the OECD and the Basel Convention. The Board has, notwithstanding, chosen to follow USEPA’s lead and incorporate the OECD Guidance Manual by reference, rather than separately incorporate the OECD decision C(2001)107/FINAL (with its subsequent amendments: OECD decisions C(2001)107/ADD1, C(2004)20, C(2005)141, and C(2008)156) and the Basel Convention by reference. Use of the OECD Guidance Manual eases reference to the documents, facilitates access to the international standards, and makes future updates to this incorporation by reference easier. All references to “OECD C(2001)107/FINAL” in the text of 35 Ill. Adm. Code 722

refer to both the OECD decision and the Basel Convention that the OECD decision references. The OECD Guidance Manual includes as Annex A the full text of OECD document C(2001)107/FINAL, (with amendments), and Annexes B and C set forth lists of wastes subject to Green control procedures and wastes subject to Amber control procedures, respectively, which consolidate the wastes from C(2001)107/FINAL together with those from the Basel Convention. The Board can easily monitor for future updates to the OECD Guidance Manual to keep this incorporation current.

**Shifting references to “R12 and R13 Recovery Facilities” to the Owners and Operators of Those Facilities.”** The OECD Decision and Basel Convention designate the universe of recovery operations by the alphanumeric codes R1 through R13, as follows:

#### RECOVERY OPERATIONS\*

Appendix 5.B is meant to encompass all such operations with respect to materials considered to be or legally defined as wastes and which otherwise would have been destined for operations included in [this] Appendix 5.A.

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10

- R12 Exchange of wastes for submission to any of the operations numbered R1-R11
- R13 Accumulation of material intended for any operation in [this] Appendix 5.B

\* The wording of R1 to R13 in [this] Appendix 5.B is identical to that of Annex IV.B of the Basel Convention. *See* Appendix 5B of the OECD Decision C(2001)107/FINAL, as amended, as set forth in Annex A to the OECD Guidance Manual, at p. 59.

The last two operations designations, R12 and R13, are treated as special cases in the OECD Decision and Basel Convention and the federal regulations to the extent that they are the only recovery operation designations cited for additional requirements. *See* section D.6. of Chapter II of the OECD Decision C(2001)107/FINAL, as amended, as set forth in Annex A to the OECD Guidance Manual, at pp. 48-49; 40 C.F.R. 262.82(f) (2010), as amended at 75 Fed. Reg. 1256 (corresponding with 35 Ill. Adm. Code 722.182).

The Board has altered the USEPA language of provisions relating to R12 and R13 operations. Initially, the federal regulations refer to “R12 and R13 facilities.” *E.g.*, 40 C.F.R. 262.82(f) (2010), as amended at 75 Fed. Reg. at 1256. The Board prefers to call these entities “R12 or R13 recovery operations” (35 Ill. Adm. Code 722.182(f)), as such is closer to the usage in the OECD Decision and Basel Convention. *See* section D.6. of Chapter II of the OECD Decision C(2001)107/FINAL, as amended, as set forth in Annex A to the OECD Guidance Manual, at pp. 48-49. The Board further prefers to impose the obligation of compliance on a persona, rather than on a nebulous entity like a “operation” of “facility.”

Thus, the Board has changed the federal language, “the R12/R13 recovery facility or facilities,” in 40 C.F.R. 262.82(f)(2) (2010), as amended at 75 Fed. Reg. at 1256, to “a facility engaged in R12 or R13 recovery operations” in corresponding 35 Ill. Adm. Code 722.182(f). The Board made a similar change from “the R12/R13 recovery operation . . . R12 or R13 facility(ies) shall” in 40 C.F.R. 262.82(f)(3) (2010), as amended at 75 Fed. Reg. at 1256, to “the owner or operator of a facility engaged in R12 or R13 recovery operations . . . the owner or operator of an R12 or R13 recovery operation facility must” in corresponding 35 Ill. Adm. Code 722.182(f)(3). The same is true of the shifted language from 40 C.F.R. 262.82(f)(4) to that of corresponding 35 Ill. Adm. Code 722.182(f)(4) (shifting “R12/R13 recovery facility . . . an R1-R11 recovery facility . . . the owner or operator of the R12 or R13 recovery operation facility must . . . it shall . . . R12/R13 facility” to “a facility engaged in R12 or R13 recovery operation . . . a facility engaged in R1 through R11 recovery operation . . . the owner or operator of the R12 or R13 recovery operation facility”) and shifting that of 40 C.F.R. 262.82(f)(5) to that of corresponding 35 Ill. Adm. Code 722.182(f)(5) (shifting “R12/R13 recovery facility. . . R1-R11 recovery facility” to “R12 or R13 recovery operation facility . . . R1 through R11 recovery operation facility”).

**General Citations to the Analogous Regulations of a Sister State.** The federal rules include general citations to bodies of federal requirements and equivalent state regulations. *E.g.*, 40 C.F.R. 261.6(a)(5), 262.10(d), 262.58(a), 262.80(a), and 263.10(d) (2010) (“State requirements analogous to 40 CFR part 273”) (corresponding with 35 Ill. Adm. Code 721.106(a)(5), 722.110(d), 722.158(a), 722.180(a), and 723.110(d)). This language is part of the language that USEPA used to define “wastes that are hazardous under U.S. national procedures.” *See* 40 C.F.R. 262.89(a) (2010), as amended at 75 Fed. Reg. at 1259.

The Board has rendered the federal language in a way that embraces both “analogous” Illinois requirements and the “analogous” regulations of sister states. Thus, the Board used the following language in the added definition of “haste hazardous under U.S. national procedures”:

“Waste hazardous under U.S. national procedures” means, for the purposes of Sections 722.110(d) and 722.159(a) and Subpart H of this Part, a waste that meets the definition of hazardous waste, as set forth in 35 Ill. Adm. Code 721.103, and which is subject to any of the following regulations:

The hazardous waste manifesting requirements of Subpart B of this Part;

The universal waste management standards of 35 Ill. Adm. Code 733, 40 CFR 273, or analogous requirements of a sister state; or

The export requirements in the spent lead-acid battery management standards of Subpart G of 35 Ill. Adm. Code 726, subpart G of 40 CFR 266, or analogous requirements of a sister state. 35 Ill. Adm. Code 722.181.

The Board does not wish to limit regulated entities in Illinois to wastes governed solely by Illinois law. While the Board does not now foresee a situation where an Illinois exporter would export “waste hazardous under U.S. national procedures” that is such based on regulation under a sister state’s requirements, the Board does not wish the realization of such a possibility to cause the Illinois hazardous waste export requirements to differ in impact from that of the federal requirements upon which they are based. Waste that would be regulated under regulations derived from the federal universal waste management requirements or the spent lead-acid battery requirements, if governed by those federal requirements or the comparable Illinois rules, are included as “waste hazardous under U.S. national procedures” when governed under the comparable laws of a sister state.

**Requests for Comments.** The Board requests comments on the incorporation of the January 8, 2010 amendments into the Illinois hazardous waste regulations. In particular, the Board requests comments on the following items:

1. The incorporation by reference of limited segments of the OECD Guidance 2001 (Manual in place of the original documents, the OECD Decision )107/FINAL, as amended by OECD Decisions C(2001)107/ADD1, C(2004)20, C(2005)141, and C(2008)156), and the Basel Convention.

2. The addition of definitions of the terms “Amber control procedures,” “Amber waste,” “Green control procedures,” and “Green waste.”
3. The addition of a definition of the term “consent.”
4. The addition of a definition of the term “OECD Guidance Manual.”
5. The addition of definitions of the terms “OECD-listed waste” and “OECD waste designation.”
6. The use of the term “waste hazardous under U.S. national procedures.”
7. Whether the Board should use an alternative to the term “waste hazardous under U.S. national procedures.”
8. The addition of a definition of the term “waste hazardous Under U.S. national procedures.”
9. The expanded use of the term “waste hazardous Under U.S. national procedures” in Sections 722.182(a) and 722.189(b).
10. The shift from “operations” to the owner or operator of those operations in Sections 722.182(f)(2) through (f)(4).
11. The addition of a reference to “analogous requirements of a sister state” in the definition of “waste hazardous under U.S. national procedures.”

**Technical Corrections and Clarifications to More Than 40 Provisions in Nine Parts of the RCRA Subtitle C Hazardous Waste Regulations—Parts 702, 720 through 726, and 728<sup>17</sup>**

USEPA adopted a number of varied corrections and clarifications to several provisions of the hazardous waste regulations by a direct final rule on March 18, 2010 (at 75 Fed. Reg. 12989). USEPA subsequently withdrew a handful of the direct final amendments on June 4, 2010 (at 75 Fed. Reg. 12989). The primary reason given for withdrawal of the amendments was the

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<sup>17</sup> Sections 702.181; 720.110, 720.111(c), and Appendix A to Part 720; 721.101, 721.102, 721.104, 721.105, 721.106, 721.107, 721.123, 721.130, 721.131, 721.132, and Appendices G and Z to Part 721.; 722.110, 722.111, 722.123, 722.134, 722.141, 722.142, and 722.160; 723.112; 724.152, 724.156, 724.172, 724.414, 724.416, and 724.652; 725.152, 725.156, 725.172, 725.414, and 725.416; 726.120, 726.122, 726.170, 726.180, and 726.201; and Tables T and 728 to Part 728.

submission of adverse public comments on some of the amendments.<sup>18</sup> USEPA further withdrew an additional amendment due to a typographic error.<sup>19</sup> By PC 1, USEPA affirmed the Board's assessment of the scope of the amendments withdrawn on June 4, 2010.

The Board has reviewed the various USEPA amendments of March 18, 2010 to determine what action is required to incorporate all of the amendments into the Illinois regulations. Table B (beginning on page 82 of this opinion) summarizes the Board's deviations from the literal text of the federal amendments involved in this proceeding, including those of March 18, 2010.

No action, however, will be required on many of the March 18, 2010 federal amendments because the Board took corrective action on those changes upon observing them in prior proceedings. Table A (beginning on page 77 of this opinion) specifically lists the various federal amendments upon which no action will be required and gives a brief explanation of the federal correction and why no Board action will be required on each.

The Board will not further discuss most of the March 18, 2010 federal amendments and the Board's response to each amendment. The Board directs attention to the discussion in the March 18, 2010 *Federal Register* notice for the substance of the various amendments. The discussions that follow are limited to the Board's responses to a limited number of the federal amendments. These discussions highlight issues that the Board encountered incorporating the federal revisions into the Illinois rules.

**No Amendments to Three Rules.** The Board observes that the Board included the text of three Illinois hazardous waste provisions in this proposal for public comment, even though no amendments are proposed for these provisions. USEPA amended these provisions, but no Board action is now perceived as necessary on them. The Board included the text in the proposal for the sake of public comment. Inclusion of their text in the proposal for public comment will further facilitate amendments upon final adoption, should the public comment period justify amendments. If no amendments become necessary, the Board will delete these provisions from the text upon final adoption. The following table lists the Illinois Sections affected, the particular Illinois rule involved, and the federal amendment upon which the Board currently foresees no action as necessary:

Particular Provision Involved	Federal Section Amended
721.104(a)(17)(F)	261.4(a)(17)(vi)

<sup>18</sup> Four amendments to 40 C.F.R. 262.34(a), (a)(2), and (a)(5) and 266.20(b) (corresponding with 35 Ill. Adm. Code 722.134(a), (a)(1)(D)(ii), (a)(2), and (a)(5) and 726.120(b)) and an associated amendment to 40 C.F.R. 262.34(a)(1)(iv)(B) (corresponding with 35 Ill. Adm. Code 722.134(a)(1)(D)(ii)).

<sup>19</sup> An amendment to 40 C.F.R. 261.32(a) (corresponding with 35 Ill. Adm. Code 721.132(a)).

721.132(a)	261.31(a) topical subheadings “Primary copper,” “Primary lead,” “Primary zinc,” and “Ferroalloys”
722.155(a)	262.55(a)

**Obsolete Citations to SPCC Regulations.** A USEPA amendment to four other provisions warrants specific discussion. The March 8, 2010 amendments removed obsolete citations to the federal Spill, Prevention, and Control Countermeasures (SPCC) regulations in four contingency plan provisions of the hazardous waste rules. The Board followed USEPA’s lead in now removing the citations after having attempted several years ago to correct them. The Board notes, however, that two more instances of the obsolete citation remain in the used oil management standards in both the federal and State rules. USEPA and the Board must one day remove one citation to be consistent with the March 18, 2010 amendments, and USEPA should correct the other citation.

The federal rules formerly included citations to the SPCC regulations at “part 112 of this chapter, or part 1510 of chapter V” in four provisions.<sup>20</sup> See 40 C.F.R. 264.52(b), 264.56(d)(2), 265.52(b), and 265.56(d)(2) (2010) (corresponding with 35 Ill. Adm. Code 724.152(b), 724.156(d)(2), 725.152(b), and 725.156(d)(2)). USEPA recodified the 40 C.F.R. 1510 SPCC regulations as 40 CFR 300 on July 16, 1982, at 47 Fed. Reg. 31202. While 40 C.F.R. 112 was and is the federal SPCC regulations, 40 C.F.R. 1510 was and 40 C.F.R. 300 is the National Contingency Plan (NCP) rules. The Board later noted the citation change and amended the reference for SPCC rules to “40 CFR 112 or 300” in 35 Ill. Adm. Code 724.152(b), 724.156(d)(2), 725.152(b), and 725.156(d)(2) (corresponding with 40 CFR 264.52(b), 264.56(d)(2), 265.52(b), and 265.56(d)(2)).<sup>21</sup> RCRA Update, USEPA Regulations (January 1, 1994 through June 30, 1994), R94-17 (Oct. 20, 1994).

The effect of the March 18, 2010 amendments was to remove the citation to the NCP rules from the four affected provisions and retain the citation to the SPCC rules. The Board followed the USEPA lead in deletion of the citation to the NCP rules from the Illinois rules. The Board notes, however, that USEPA did not remove two similar citations to the NCP rules from

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<sup>20</sup> The original rules provided “part 151 of this Chapter.” 45 Fed. Reg. 33154, 225, 237 (May 19, 1980). USEPA later corrected this to “part 1510 of chapter V.” 46 Fed. Reg. 27480 (May 20, 1981). The Board adopted the corrected citation in the initial Illinois hazardous waste rules. See Proposed Regulations for RCRA, R81-22 (Feb. 4, 1982) slip op. at p. 36.

<sup>21</sup> The Board also updated the references to SPCC rules in 35 Ill. Adm. Code 739.152(b)(2)(B) and (b)(6)(D)(ii) to “40 CFR 112 or 40 CFR 300.” RCRA Update, USEPA Regulations (January 1, 1994 through June 30, 1994), R94-17 (Oct. 20, 1994).

the used oil management standards of 40 C.F.R. 279.<sup>22</sup> *See* 40 C.F.R. 279.52(b)(2)(ii) and (b)(6)(iv)(B) (2010) (corresponding with 35 Ill. Adm. Code 739.152(b)(2)(B) and (b)(6)(D)(ii)).

**Omitted Citations to Subparts AA and BB of 40 C.F.R. 267.** USEPA revised a citation to “subparts AA and BB of part 264 or 265” to “subparts AA and BB of part 264, 265 or 267.” 40 C.F.R. 261.6(d) (2010), as amended at 75 Fed. Reg. at 13002 (corresponding with 35 Ill. Adm. Code 721.106(d)). These two subparts of the federal rules are marked “reserved.” *See* 40 C.F.R. 267 (2010). Since the Board does not include “reserved” provisions in the Illinois regulations, the Board cannot cite to “Subparts AA and BB of 35 Ill. Adm. Code 724, 725 or 727.” Instead, the Board has cited to “Subparts AA and BB of 35 Ill. Adm. Code 724 or 725 or 35 Ill. Adm. Code 727.”

**Omitted Citation to 49 C.F.R. 173.53.** USEPA updated the defining characteristic of reactivity to cite to the latest version of U.S. Department of Transportation (USDOT) regulations. The federal characteristic of reactivity, one of four characteristics used to define whether a secondary material is hazardous waste, relied on USDOT defining rules for classification of explosives since the initial adoption of the hazardous waste rules in 1980. *See* 75 Fed. Reg. at 12993; 40 C.F.R. 261.23(a)(8), as adopted at 45 Fed. Reg. 33084, 122 (May 19, 1980). Until amended on March 18, 2010, the federal rule provided that a secondary material exhibits the characteristic of reactivity as follows with regard to explosives:

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88. 40 C.F.R. 261.23(a)(8) (2010) (corresponding with 35 Ill. Adm. Code 721.123(a)(8)).

USDOT subsequently materially restructured and revised its hazardous materials transportation regulations in 1990. *See* 55 Fed. Reg. 52402, 617-19 (Dec. 21, 1990). USDOT made the following changes that affected the hazardous waste characteristic of reactivity<sup>23</sup> quoted above:

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<sup>22</sup> The used oil management standards are not involved in this proceeding, and the Board cannot include them because USEPA has not amended corresponding 40 C.F.R. 279. The first obsolete citation in the used oil management standards, in 40 C.F.R. 279.52(b)(2)(ii) (corresponding with 35 Ill. Adm. Code 739.152(b)(2)(B)), relates to SPCC rules, so it is of the type that USEPA removed from 40 C.F.R. 264 and 265 by the March 18, 2010 amendments. The Board will mark the obsolete citation for deletion from the corresponding Illinois rule in a future proceeding that involves the used oil rules. On the other hand, the second citation to 40 C.F.R. 1510, in 40 C.F.R. 279.52(b)(6)(iv)(B), relates to the NCP. USEPA should update that citation to 40 C.F.R. 300, as it appears in the Illinois rules at 35 Ill. Adm. Code 739.152(b)(6)(D)(B)).

<sup>23</sup> The same problem formerly existed for the characteristic of ignitability’s reliance on obsolete USDOT definitions in 40 C.F.R. 261.21(a)(3) and (a)(4) (2006).

1. The provision relating to forbidden explosives was changed from 49 C.F.R. 173.51 (1990) to 49 C.F.R. 173.54 (2010).
2. Class A explosives, formerly defined in 49 C.F.R. 173.53 (1990), became hazard class 1, Division 1.1 and Division 1.2 hazardous materials, as defined in 49 C.F.R. 173.50(b)(1) and (b)(2) (2010). *See* 49 C.F.R. 173.53 (2010).
3. Class B explosives, formerly defined in 49 C.F.R. 173.88 (1990), became hazard class 1, Division 1.2 and Division 1.3 hazardous materials, as defined in 49 C.F.R. 173.50(b)(2) (2010). *See* 49 C.F.R. 173.53 (2010).

The Board noted this change in the USDOT terms and regulatory structure and made corresponding changes in the Illinois regulations in 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 and August 1, 2005), R06-6, RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Jan. 5, 2006) (consolidated).<sup>24</sup> USEPA did not revise the characteristic of reactivity to reflect the changes in the USDOT regulations until the March 18, 2010 amendments.<sup>25</sup>

USEPA's recent amendments changed the characteristic of reactivity to accommodate the 1990 changes in the USDOT rules. USEPA updated the explosives designations and citations to the USDOT rules as follows (with underlining and overstrike used to indicate the federal amendments:

(8) (8) It is a forbidden explosive as defined in 49 CFR ~~173.51~~ 173.54, or is a Class A Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53 ~~or a Class B explosive as defined in 49 CFR 173.88~~. *Comparing* 40 C.F.R. 261.23(a)(8) (2010) *with* 40 C.F.R. 261.23(a)(8) (2009) (corresponding with 35 Ill. Adm. Code 721.123(a)(8)).

This agrees in all material respects with the changes made by the Board in the consolidated R6-5/R06-6/R06-7 update in 2006, except one. USEPA cites to 49 C.F.R. 173.53 for definition of Division 1.1, 1.2, and 1.3 explosives. That USDOT provision does not actually define these Divisions; the Divisions are defined in 49 C.F.R. 173.50. Instead, 49 C.F.R. 173.53

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<sup>24</sup> The Board also updated the citations to the current USDOT regulations in that characteristic of ignitability in the consolidated R06-5/R06-6/R06-7 hazardous waste update.

<sup>25</sup> USEPA did revise the characteristic of ignitability by incorporating language from the 1980 version of the USDOT regulations and citation to the obsolete USDOT rules. *See* 71 Fed. Reg. 40254-55, 59 (July 14, 2006). The Board declined to follow USEPA's lead and retained the use of current USDOT terms and citation to the current USDOT regulations 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, USEPA Amendments (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated), slip op. at 29-60.

correlates the obsolete “Class A explosive” and “Class B explosive” designations with the current Division 1.1, 1.2, and 1.3 hazardous material designations.

The Board does not believe that the citation to the USDOT provision that correlates the former USDOT designations with the current designations is necessary in the text of the rule that defines the characteristic of reactivity. The Board did not add the citation to the existing text of the rule. Instead, the Board revised explanation of the differences between the respective State and federal provisions, in the Board note to 35 Ill. Adm. Code 721.123(a)(8), to replace the explanation of differences as they formerly existed with an explanation of the Board’s omission of a citation to 49 C.F.R. 173.53.

**Conclusion and Requests for Comments.** The Board incorporated the USEPA amendments of March 18, 2010, as modified on June 4, 2010, without deviation from the federal text, except as discussed above and outlined in Tables B and C in this opinion (which begin on pages 82 and 111, respectively). The Board requests comments on the incorporation of the March 18, 2010 amendments into the Illinois hazardous waste regulations. In particular, the Board requests comments on the following items:

1. Whether the Board has included all of the USEPA amendments of March 18, 2010 and excluded all of the amendments withdrawn by USEPA on June 4, 2010.
2. Whether the Board should remove the text of Sections 721.104, 721.132, and 722.155 from the current amendments because no changes are necessary in the text.
3. Whether the Board should remove all references to the NCP provisions from the text of Sections 724.152(b), 724.156(d)(2), 725.152(b), and 725.156(d)(2).

### **Withdrawal of Emission-Comparable Fuel Rule—Section 721.138**

On June 15, 2010 (at 75 Fed. Reg. 33712), USEPA withdrew the Emissions-Comparable Fuels (ECF) Rule. USEPA amended the Comparable Fuels Rule of 40 C.F.R. 261.138 to further exclude “emission-comparable fuels” from the definition of solid waste on December 19, 2008 (73 Fed. Reg. 77594). USEPA determined that ECF is best considered “discarded material,” and hence hazardous waste. 75 Fed. Reg. at 33712. The withdrawal removed all segments relative to the ECF Rule.

The Board included the June 15, 2010 USEPA withdrawal of the ECF Rule with the action on the underlying December 19, 2008 USEPA actions on the Comparable Fuels Rule. *See RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008 and June 15, 2010), R09-16, RCRA Subtitle C Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-4 (Oct. 7, 2010), at pp. 15-16.* By PC 1, USEPA affirmed the Board’s understanding of the scope of the June 15, 2010 withdrawal at that time. There is no further Board action required on the June 15, 2010 USEPA withdrawal of the ECF Rule.

**Removal of Saccharin and Saccharin Salts from the Lists of Hazardous Constituents and Hazardous Wastes—Section 721.133 and Appendix H to Part 721**

On December 17, 2010 (75 Fed. Reg. 78918), USEPA removed saccharin and saccharin salts<sup>26</sup> from the list of hazardous constituents (in Appendix VIII to 40 C.F.R. 721, corresponding with 35 Ill. Adm. Code 721.Appendix H) and from the list of commercial chemical products, manufacturing chemical intermediates, and off-specification chemical products that are listed as becoming hazardous waste when discarded (in 40 C.F.R. 261.33(f), corresponding with 35 Ill. Adm. Code 721.133(f)). Saccharin and saccharin salts formerly bore the USEPA hazardous waste number U202. USEPA accordingly removed U202 waste from the land disposal restrictions (LDRs): (1) the treatment standards entries for U202 waste in the table in 40 C.F.R. 268.40 (corresponding with 35 Ill. Adm. Code 728.Table T); and (2) the entry for U202 in the table of LDR effective dates in Appendix VII to 40 C.F.R. 268 (corresponding with 35 Ill. Adm. Code 728.Appendix G).<sup>27</sup>

The Board incorporated the USEPA amendments of December 17, 2010 without deviation from the federal text, except as discussed above and The Board requests comments on the incorporation of the March 18, 2010 amendments into the Illinois hazardous waste regulations, as modified by USEPA on June 4, 2010. In particular, the Board requests comments on the following items:

1. Whether the Board has included all of the USEPA amendments of March 18, 2010 and excluded all of the amendments withdrawn by USEPA on June 4, 2010 in the present amendments.
2. Whether any amendments are necessary to the text of Sections 721.104, 721.132, and 722.155.
3. Whether the Board should remove all references to the NCP provisions from the text of Sections 724.152(b), 724.156(d)(2), 725.152(b), and 725.156(d)(2).

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<sup>26</sup> Also listed as “1,2-benzisothiazol-3(2H)-one, 1,1-dioxide, and salts” in 40 C.F.R. 261.33(f) (corresponding with 35 Ill. Adm. Code 721.133(f)) and given this an an alternative name in Appendix VIII to 40 C.F.R. 721 (corresponding with 35 Ill. Adm. Code 721.Appendix H)).

<sup>27</sup> USEPA also removed all entries to saccharin and saccharin salts (including under the name 1,2-benisothiazol-3(2H)-one, 1,1-dioxide-, and salts”) from the table and appendix to 40 C.F.R. 302.4 designating hazardous substances and reportable quantities. The designations of hazardous substances and reportable quantities are not RCRA Subtitle C regulations, and they are not incorporated by reference in the Illinois hazardous waste rules, so no Board action is required on these amendments.

**Technical Corrections to the Alternative Standards for Laboratory Waste Accumulation at Eligible Academic Entities—Sections 722.300, 722.306, 722.312, and 722.314**

On December 20, 2010 (75 Fed. Reg. 79304), USEPA adopted a direct final rule that made technical corrections to the alternative hazardous waste management standards for “unwanted material” generated by laboratories at an “eligible academic entity.” USEPA adopted the alternative standards on December 1, 2008 (at 73 Fed. Reg. 72912). The Board adopted the alternative standards in the prior RCRA Subtitle C update, RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008 and June 15, 2010), R09-16, RCRA Subtitle C Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-4 (Oct. 7, 2010). USEPA made six corrections to four separate provisions of the rules.

The alternative standards are a set of optional alternative hazardous waste generator requirements applicable to college and university laboratories and other facilities affiliated with colleges and universities. The facilities to which the standards could apply are designated “eligible academic entities.” An eligible academic entity may opt to comply with the alternative standards in lieu of the generally applicable large-quantity waste generator, small-quantity waste generator, or conditionally exempt small-quantity generator waste regulations.

The alternative standards designate laboratory waste as “unwanted material,” and they include provisions relating to waste labeling and accumulation, worker training, hazardous waste determination, and removal from the laboratory to a “central accumulation area,” and removal from the central accumulation area to a treatment, storage, or disposal facility. The alternative rules require annual laboratory cleanouts and the assembly of a written “laboratory management plan” that describes the procedures the laboratory will use for managing its waste. Persons interested in the substance of the alternative standards should read the *Federal Register* notice that accompanied their adoption on December 1, 2008.

The Board incorporated the USEPA corrections without deviation from the substance of the federal text. The corrections included two amendments to the definition of “central accumulation area,” in 35 Ill. Adm. Code 722.300 (corresponding with 40 C.F.R. 262.200 (2010), as amended at 75 Fed. Reg. at 79306); one amendment to the container labeling requirements at 35 Ill. Adm. Code 722.306(b)(3)(A) (corresponding with 40 C.F.R. 262.206(b)(3)(i) (2010), as amended at 75 Fed. Reg. at 79306); one amendment to the hazardous waste determination requirements at 35 Ill. Adm. Code 722.306(b)(3)(A) (corresponding with 40 C.F.R. 262.206(b)(3)(i) (2010), as amended at 75 Fed. Reg. at 79306); and two amendments to the Laboratory Management Plan requirements at 35 Ill. Adm. Code 722.314(a)(1) and (b)(1) (corresponding with 40 C.F.R. 262.214(a)(1) and (b)(1) (2010), as amended at 75 Fed. Reg. at 79306-07).

The Board will not further discuss the USEPA corrections in this opinion. The Board directs attention of interested persons to the December 20, 2010 issue of the *Federal Register* for discussion of the substance and details of the corrections. The Board requests public comments on the incorporation of the federal corrections into the Illinois regulations. In particular, the

Board requests comments on whether the Board has included all of the USEPA corrections of December 20, 2010 in the present amendments.

### **Discussion of Board-Initiated Corrections**

The Board made a number of changes in the text of various rules that are not directly based on USEPA actions during calendar 2010, the two time-frames of January 1, 2010 through June 30, 2010 and July 1, 2010 through December 31, 2010 spanned by the consolidated dockets. Some of the changes complete prior federal amendments. Others correspond with changes in implementation of the federal RCRA Subtitle C program that USEPA has not yet incorporated by formal rulemaking. The following segments of discussion consider the amendments added by the Board.

### **Completion of 2006 Amendments to the Hazardous Waste Manifest Requirements**

USEPA amended the federal hazardous waste manifest requirements in 2005. *See* 70 Fed. Reg. 10776 (Mar. 4, 2005). The effective date of those amendments was September 6, 2006. The 2005 edition of the *Code of Federal Regulations* included two versions of many amended provisions: one version reflecting the existing rule until September 5, 2006, and second version reflecting the amended rule after September 5, 2006. *See, e.g.*, 40 C.F.R. 261.7(b)(1)(iii), 263.20(a), and 263.21(b) (2005) (corresponding with 35 Ill. Adm. Code 721.107(b)(1)(C), 723.120(a), and 723.121(b)).

The Board incorporated the hazardous waste manifest amendments into the Illinois regulations in early 2006. This forced the Board to codify both versions of the amended provisions in parallel, with recitations of effective dates in the provisions and appended Board notes to explain the dual provisions. *See* 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 and August 1, 2005), R06-6, RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Jan. 5, 2006) (consolidated), slip op. at pp. 10-12.

The Board later removed nearly all of the obsolete provisions that were no longer effective after September 5, 2006, nearly all recitations of the September 5, 2006 effective date from the revised requirements, and all of the explanatory Board notes. *See* 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, USEPA Amendments (July 1, 2006 through December 31, 2006), R07-14 (June 5, 2008) (consolidated), slip op. at p. 5. The Board missed two occurrences of the obsolete provisions and recitations of the September 5, 2006 effective date in 35 Ill. Adm. Code 721.107. The Board notes that this provision did not appear in the list of provisions that would require future amendment to complete the 2006 amendments in the opinion that adopted those amendments. *See* 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 and August 1, 2005), R06-6, RCRA Subtitle C Update,

USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Jan. 5, 2006) (consolidated), slip op. at p. 186.

The Board completes the removal of the expired provisions and recitations of the September 5, 2006 effective date in this proceeding. The only provisions remaining in the rules that still refer to the September 5, 2006 effective date are parallel Board notes appended to 35 Ill. Adm. Code 724.170 and 725.170 that explain why the Board did not incorporate subsections (b) from corresponding 40 C.F.R. 264.70 and 265.70 into the Illinois rules.

**Removal of Provisions Relating to the Former Federal Performance Track Program—Sections 720.110, 722.134, 724.115, 724.170, 724.274, 724.295, 724.1104, 725.115, 725.274, 725.295, 725.301, and 725.1104**

In a footnote to the March 18, 2010 technical corrections and clarifications, USEPA stated that it had terminated the National Environmental Performance Track Program (Program) in 2009. 75 Fed. Reg. 12989, 92 n. 1 (Mar. 18, 2010; *see* 74 Fed. Reg. 22741 (May 14, 2009) (notice terminating the Program). The Program allowed certain qualifying regulated entities to comply with alternative requirements that imposed slightly less-stringent requirements. USEPA will ultimately remove all provisions relating to the Program by rulemaking.

USEPA's observation relative to termination of the Program prompted Board review of the Illinois regulations. The Illinois rules include a number of requirements derived from provisions in corresponding federal rules that apply to members of the Program. The Board has added deletion of all of the obsolete provisions relating to the Program to this proceeding. The Board would prefer not to wait for USEPA to take formal action to remove the obsolete provisions because USEPA might not take action for years, and retention of the obsolete provisions could result in confusion. The following provisions are affected: 35 Ill. Adm. Code 720.110 (definition of "Performance Track member facility"); 722.134(j), (k), and (l); 724.115(b)(4) and (b)(5); 724.274; 724.295(e); 724.1104(c)(4); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1104(c)(4).

**Rewording and Reorganization of the F039 Waste Listing—Section 721.131**

A public information call to Board staff requested clarification of the language of the F039 waste listing in 35 Ill. Adm. Code 721.131(a) (corresponding with 40 C.F.R. 261.31(a)). This prompted Board review of the USEPA and Illinois texts of the listing. That review prompted the Board to review the discussion in the *Federal Register* notice that adopted the listing. The Board has reworded the listing to more clearly recite what USEPA intended in the listing.

The F039 waste listing is for multi-source leachate derived from land disposal of multiple listed hazardous wastes. The listing parenthetically describes what is intended by "leachate." A subsequent parenthetical limits the listing by exclusion of leachate derived from land disposal of six wastes that contain dioxins and furans (*see* 55 Fed. Reg. at 22622) which are specified by USEPA hazardous waste numbers: "F020, F021, F022, F026, F027, and/or F028." *See* 40

C.F.R. 261.31(a) (2010) (corresponding with 35 Ill. Adm. Code 721.131(a)). The language of the listing would benefit by clarification in important aspects. The Board considers each aspect in turn.

**Use of the Name “Multi-Source Leachate.”** The Board believes that the beginning of the F039 hazardous waste listing should describe the covered secondary material as “multi-source leachate.” The current federally derived listing begins by describing the covered material as “leachate,” then adds limiting language relative to derivation from the disposal of more than one restricted waste.” *Id.* The listing nowhere uses the words “multi-source leachate.”

The *Federal Register* discussion accompanying adoption of the listing uniformly described F039 waste as “multi-source leachate.” *See* 55 Fed. Reg. 22520, 33, 54, 86-87, 600-01, 05, 19-21, 68 (June 1, 1990). That notice further included the following definition of “multi-source leachate”:

*Definition of Multi-source Leachate.* Leachate is defined in 40 CFR 260.10 as any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste. Leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the “derived-from” rule in 40 CFR 261.3(c)(2). Multi-source leachate is leachate that is derived from the treatment, storage or disposal of more than one listed hazardous waste. 55 Fed. Reg. at 22619 (citation omitted).

The Board has changed the opening words of the F039 listing for enhanced clarity. The opening words “multi-source leachate” pointedly describe the secondary materials covered by the listing. The Board believes that this use of the more descriptive name, which is the name most commonly used to describe the covered secondary materials, will enhance the clarity of the F039 listing.

**Definition of “Leachate.”** The Board has replaced the parenthetical description of “leachate” with a more formal definition that is tailored to the purposes of the listing.<sup>28</sup> Using the words “liquids that have percolated through land-disposed wastes” to define, rather than describe, the covered wastes enhances the clarity of the rule in two important ways. First, using the words to define limits the range of interpretation more than using the words to describe. Second, moving the parenthetical to define “leachate” in a separate sentence facilitates presentation of “multi-source leachate” as the initial words of the listing, as described immediately above.

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<sup>28</sup> The term “leachate” is elsewhere more broadly defined by USEPA as water deriving contamination by percolation through other materials than listed hazardous wastes. *Terms of Environment: Glossary, Abbreviations, and Acronyms* (1977), EPA 175-B-97-001, at p. 26.

The Board derived the first two sentences of the F039 waste listing from the first sentence of the federal waste listing and the above-quoted segment from the *Federal Register* discussion defining “multi-source leachate.” The Board, however, has reversed presentation of the definitions of “leachate” and “multi-source leachate,” so that the first words of the opening sentence state the name of the secondary materials covered by the listing: “multi-source leachate.” The second sentence then defines “leachate” for the purposes of the listing. The further descriptive words and the statement of exclusions follow the two opening sentences.

**Use of the Phrase “Restricted Waste.”** The Board sees the significance of USEPA’s use of the term “restricted waste” as limiting the applicability of the F039 listing. The Board has not rephrased that segment of the listing. USEPA explained the phrase “restricted waste” in the following *Federal Register* discussion:

[US]EPA has stated in earlier rules . . . that “restricted” wastes are subject to certain Part 268 requirements (e.g., the § 268.7 recordkeeping requirements and the § 268.3 dilution prohibitions) even if such wastes are subject to an exemption, extension, or variance making them eligible for land disposal. . . .

“Restricted” wastes are those categories of hazardous wastes that are prohibited from land disposal either by regulation or statute (regardless of whether [an applicable exception] makes them currently eligible for land disposal). In other words, a hazardous waste is “restricted” no later than the date of the deadline established in, or pursuant to, RCRA section 3004. . . .

Generators must determine whether their wastes are “restricted” at the point of initial generation, i.e., when the waste is first considered a hazardous waste subject to RCRA regulation. To determine whether a hazardous waste is “restricted,” generators need only determine whether the waste belongs to a category of wastes that has been prohibited from land disposal by regulation or . . . provisions of RCRA. . . . 53 Fed. Reg. 31138, 208-09 (Aug. 17, 1988); *see* 55 Fed. Reg. at 22520, 25, 31, 629, 50-51 (June 1, 1990) (adopting the F039 listing); 54 Fed. Reg. 36967, 68 (Sep. 6, 1989) (elaborating this description of “restricted waste”).

The term “restricted waste” relates to the land-disposed waste from which the leachate derives, not to the leachate itself. The listing is limited to leachate derived from “restricted waste” that was land disposed.<sup>29</sup> *See* 55 Fed. Reg. at 22660. Since the term “restricted waste” could exclude waste that was not restricted at the time of generation and land disposal, changing the wording could change the scope of the exclusion. The Board must assure that the F039 waste

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<sup>29</sup> The listing further embraces “prohibited waste.” USEPA distinguishes between “restricted waste” and “prohibited waste,” as follows: “‘Prohibited’ wastes are a subset of ‘restricted’ wastes, i.e., they are those ‘restricted’ wastes that are currently ineligible for land disposal.” 53 Fed. Reg. at 31209 (Aug. 17, 1988).

listing has the same scope in State law that it has in federal law. *See* 415 ILCS 5/22.4(a) (2008). The object here is to clarify ambiguities in the language that have come to the attention of the Board.

**Exclusion of Specified Wastes “and No Other Hazardous Wastes.”** The F039 waste listing includes a parenthetical that expressly excludes specified dioxin- and furan-containing wastes, as follows:

(Leachate resulting from the disposal of one or more of the following [US]EPA Hazardous Wastes and no other Hazardous Wastes retains its [US]EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.) 40 C.F.R. 261.31(a) (2010) (F039 listing) (corresponding with 35 Ill. Adm. Code 721.131(a)).

The Board observes that USEPA is stating a special case for the excluded wastes, but the language is somewhat confusing. The clarity of the exclusion could improve with minor changes in structure and language.

**Removal of Parentheses and Expansion of the Language.** As is explained above with regard to the definition of “leachate,” the Board prefers to directly state the exclusions, rather than in a concluding parenthetical. For this reason, the Board has omitted the parentheses. The Board has further split and expanded the federal exclusion statement into two separate statements: (1) a statement that the multi-source leachate listing does not apply to the excluded leachate; and (2) a statement of the status of the excluded leachate as single-source leachate.

**Removal of the Singular “One” and “Number(s)” from the Waste Listing.** The Board has eliminated the possible consideration of leachate from land disposal of one listed waste under the exclusion. The Board removed the singular from “resulting from disposal of one or more of the following” and “hazardous waste number(s)” by rewording these clauses as “resulting from disposal of more than one of the following” and “hazardous waste numbers,” respectively (emphasis added). The first sentence of the F039 listing clearly excludes the possibility of including single-source leachate derived from a single listed waste. *See* 40 C.F.R. 261.31(a) (2010) (F039 listing stating “more than one restricted waste”) (corresponding with 35 Ill. Adm. Code 721.131(a) (also stating “more than one restricted waste,” but now using “multi-source leachate”). The use of singular case for the statement of exclusion could lead to confusion.

**Calling the Excluded Wastes “Single-Source Leachate.”** The Board has, nevertheless, added language categorizing the excluded waste as “single-source leachate.” This is despite the derivation of the leachate from land disposal of multiple listed wastes. Describing the excluded leachate as “single-source leachate” is consistent with the language that USEPA used to distinguish them from “multi-source leachate” in the following passage of *Federal Register* discussion of the F039 listing:

There is one definitional clarification to be made pertaining to leachate derived from more than one listed dioxin-containing waste. [USEPA] requested comments specifically on whether to consider leachate derived exclusively from F020-F028 and F02F F028 dioxin-containing wastes to be single-source leachate. The majority of commenters supported such a classification . . . . These wastes are acute hazardous dioxin wastes (with the exception of F028) subject to special management standards and (as practical matter) special and appropriate public and regulatory scrutiny. The leachate derived from only these hazardous wastes most often will have the same attributes as the underlying wastes (see 54 FR 4M82), and thus would require the same scrutiny and should be subject to the same management standards. Therefore, leachate derived exclusively from F020-F023 and F026-F028, and no other listed hazardous wastes, is single source leachate that is classified as, and must meet the treatment standards for, the underlying waste codes, F020-F023 and F026-F028. 55 Fed. Reg. at 22619.

**Using a Less-Ambiguous Alternative to “and No Other Hazardous Wastes.”** The phrase “and no other Hazardous Wastes” is ambiguous. The phrase could mean that leachate from disposal of F020, F021, F022, F026, F028, and/or F028 wastes is not excluded from the F039 listing if co-disposal with other hazardous wastes occurred. Alternatively, the phrase could emphasize that leachate derived from land disposal of all other hazardous wastes is F039 waste if none of F020, F021, F022, F026, F027, or F028 wastes is involved.

The Board reviewed the *Federal Register* discussion of the F039 listing to determine USEPA’s intent. In addition to the passage quoted relative to the use of “single-source leachate,” the Board found the following:

All of the comments agreed with the Agency that multi-source leachate should not be classified under a listed dioxin waste code or prohibition. [US]EPA is adopting this position in the final rule . . . . In addition, the Agency notes that by classifying leachate that is derived from the listed dioxin waste codes, and no other hazardous waste, as single source leachate, the Agency is retaining the dioxin classification for the type-of leachate most likely to be sufficiently contaminated with dioxins and furans to warrant the special status and scrutiny required for these wastes. 55 Fed. Reg. at 22622.

Based on this, the Board concludes that USEPA clearly intended that leachate derived from land disposal of multiple listed wastes is F039 waste, notwithstanding the presence of any of the excluded dioxin- and furan-containing wastes, so long as listed waste is present that is not one of the excluded listed wastes. The Board has chosen language that clearly expresses this understanding.

**Conclusion: the Reworded F039 Listing.** The Board has examined the F039 hazardous waste listing in response to a public inquiry seeking clarification. This prompted examination of the *Federal Register* discussion of the F039 listing and other *Federal Register* discussions to determine the meanings of key phrases used in the F039 listing. As a result, the Board has

restructured the F039 waste listing and changed some of the wording to reflect the Board's understanding of USEPA's intent. The net result of the revisions<sup>30</sup> is an F039 listing that reads as follows:

F039	Multi-source leachate resulting from the disposal of more than one restricted waste classified as hazardous under this Subpart D. For purposes of this hazardous waste listing, "leachate" means liquids that have percolated through land-disposed wastes. This multi-source leachate listing does not apply to leachate resulting from the disposal of more than one of the following USEPA hazardous wastes where the disposal of no other hazardous waste is involved: F020, F021, F022, F026, F027, and F028. Leachate from exclusive disposal of any combination of these excluded hazardous wastes is considered single-source leachate, and that leachate retains the USEPA hazardous waste numbers of the wastes from which it is derived, and the leachate must meet the treatment standards for the underlying waste codes. BOARD NOTE: Derived from the listing for F039 at 40 CFR 261.31(a) (2010) and the discussion at 55 Fed. Reg. 22520, 619-23 (June 1, 1990).	(T)
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The Board has reworded the F039 hazardous waste listing in response to examination of the language prompted by a public inquiry. The Board has restructured the listing and changed some of the wording to reflect USEPA's intent as indicated in *Federal Register* discussion of the F039 listing and language used in the listing.

### **Harmonization of the Requirements for Obtaining a USEPA Identification Number.**

All entities engaged in hazardous-waste-related activities must obtain a facility identification number from USEPA (USEPA identification number). USEPA requires use of its standardized Form 8700-12 (currently entitled "Notification of RCRA Subtitle C Activity"<sup>31</sup>).

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<sup>30</sup> The text of the amendment in the attached order indicates the specific changes using underlining and overstrike markings.

<sup>31</sup> The latest version (November 2009) expires towards the end of 2011. This form was formerly called "Notification of Regulated Waste Activity" (July 2006 and January 2004). Since the title has changed over time, the Board prefers to refer to this form as "USEPA Form 8700-12," a designation that has not changed over time. See RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008 and June 15, 2010), R09-16, RCRA Subtitle C Update, USEPA Regulations (January 1, 2009 through June 30, 2009), R10-4 (June 17, 2010) (consolidated), slip- op. at p0. 271-72.

This is required of every hazardous waste generator; transporter; and treatment, storage, or disposal facility.<sup>32</sup> See 35 Ill. Adm. Code 722.112, 723.111, 724.101(j)(1), 724.111, 725.111, 727.111, and 727.112 (corresponding with 40 C.F.R. 262.12, 263.11, 264.01(j)(1), 264.11, 265.11, 267.11, and 277.12 (2010)).

The Board has long required regulated entities to obtain copies of the form from the Agency. See, e.g., 35 Ill. Adm. Code 724.111 Board note; see also RCRA Subtitle C Update, USEPA Amendments (January 1, 2002 through June 30, 2002), R03-7 (Jan. 9, 2003), slip op. at pp. 59 and 150 (adding the language to Section 724.111). This was once required for regulated entities in Illinois by the instructions to USEPA Form 8700-12. E.g., *Notification of Regulated Waste Activity*, USEPA Form 8700-12 (Dec. 1999), at p. 17.

In recent years, however, USEPA revised the activity notification form to require filing with USEPA, but cautioning regulated entities that the applicable state may have independent notification requirements. USEPA dropped the instruction that regulated entities in Illinois must obtain the forms from the Agency. See *Notification of RCRA Subtitle C Activity*, USEPA Form 8700-12 (Nov. 2009) at pp. 1, 6, 7; *Notification of Regulated Waste Activity*, USEPA Form 8700-12 (Jan. 2004), at 1, 5, 7, 8-9, 13. As a result, there is nothing to require a regulated entity to direct the Agency's attention to any regulated waste activities in which the entity is engaged.

Observing this change in USEPA Form 8700-12 has prompted the Board to review the various identical-in-substance provisions that require obtaining a USEPA facility identification number. The Board found that many require obtaining the form from the Agency, but several do not do so. Further, the provisions in the used oil regulations direct attention to the now-defunct RCRA/Superfund Hotline formerly run by USEPA. The various Illinois RCRA Subtitle C-related provisions that require notification using USEPA Form 8700-12 provide as follows:

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<sup>32</sup> Reclaimers of hazardous secondary materials; eligible academic entities that opt into the alternative standards for waste accumulation; very large quantity handlers of universal waste; and third-party transporters, processors, burners, and marketers of used oil must also notify USEPA and obtain a USEPA identification number using Form 8700-12. See 35 Ill. Adm. Code 721.102(a)(2)(B) and 721.104(a)(23)(F), (a)(24)(G), and (a)(25)(L); 722.302; 733.142; 739.132; 739.142; 739.151; 739.162; and 739.173 (corresponding with 40 C.F.R. 261.2(a)(2)(ii) and 261.4(a)(23)(vi), (a)(24)(vii), and (a)(25)(xii); 262.202; 273.42; 279.32; 279.42; 279.51; 279.62; and 279.73).

Illinois Provision	USEPA Provision	Applicable Regulated Entities	Requirements re USEPA Form 8700-12
720.142(a)	260.42(a)	Hazardous secondary materials (HSM) generator, tolling contractor, toll manufacturer, reclaimer, or intermediate facility seeking exclusion from the definition of solid waste	Submit to USEPA Region 5 on Form obtained from the Agency
720.142(b)	260.42(b)	HSM generator, tolling contractor, toll manufacturer, reclaimer, or intermediate facility ceasing HSM management under an exclusion from the definition of solid waste	Submit to USEPA Region 5 on Form obtained from the Agency
722.112(b)	262.12(b)	Hazardous waste generator	Submit to the Agency, in addition to USEPA Region 5, on Form obtained from the Agency
722.303(a)	262.203(a)	Eligible academic entity opting into the alternative waste accumulation standards	Must notify the Agency using Form, Form available from the Agency or from USEPA on-line
722.304(a)	262.204(a)	Eligible academic entity opting out of the alternative waste accumulation standards	Must notify the Agency using Form, Form available from the Agency or from USEPA on-line
723.111(b)	263.11(b)	Hazardous waste transporter	Must apply to USEPA using Form

724.101(j)(1) & 724.111	264.1(j)(1) & 264.11	Interim status hazardous waste treatment, storage, or disposal (T/S/D) facility	Must apply to USEPA using Form (Form instructions require filing with the Agency)
725.111	265.11	Permitted hazardous waste T/S/D facility	Must apply to USEPA using Form (Form instructions require filing with the Agency)
727.110(c)	267.12	Hazardous waste T/S/D facility under standardized permit	Must apply obtain Form from and submit to the Agency, in addition to any requirement to submit the Form to USEPA
733.132 Board note	273.32 & <i>Federal Register</i> discussion	Large-quantity handler of universal waste	Must notify USEPA and the Agency, may use Form
739.142(b)	279.42(b)	Used oil transporter or transfer facility	Must obtain Form from USEPA (RCRA/Superfund Hotline) and submit to USEPA Region 5
739.151(b)	279.51(b)	Used oil processor	Must obtain Form from USEPA (RCRA/Superfund Hotline) and submit to USEPA Region 5
739.162(b)	279.62(b)	Used oil burner	Must obtain Form from USEPA (RCRA/Superfund Hotline) and submit to USEPA Region 5
739.173(b)	279.73(b)	Used oil fuel marketers	Must obtain Form from USEPA (RCRA/Superfund Hotline) and submit to USEPA Region 5

The Board has proposed amendments to several of the USEPA identification number provisions in the Parts involved in this proceeding. The object is to harmonize these provisions so that each requires obtaining USEPA Form 8700-12 from the Agency and submitting the completed Form to both USEPA and the Agency. This required amendments to six notification provisions in this proceeding; no change was required in three others. The nature of the conforming amendments to each notification provision is summarized in the following table:

Provision	Nature of the Conforming Amendments
720.142(a)	No change necessary.
720.142(b)	No change necessary.
722.112(b)	No change necessary.
722.303(a)	Added requirement for submission of Form to USEPA Region 5
722.304(a)	Added requirement for submission of Form to USEPA Region 5
723.111(b)	Changed “an EPA identification number” to “a USEPA identification number,” “the Administrator” to “USEPA Region 5,” and “EPA Form 8700-12” to “USEPA Form 8700-12”; added requirement to obtain Form from the Agency and submit Form to the Agency, in addition USEPA Region 5
724.101(j)(1)	Changed “USEPA” to “USEPA Region 5”; added cross-reference to Section 724.111 for requirement
724.111	Changed “USEPA” to “USEPA Region 5” and “in accordance with USEPA notification procedures” to “using USEPA Form 8700-12”; added requirement to obtain Form from the Agency and submit Form to the Agency, in addition USEPA Region 5; removed the obsolete Board note explaining the former requirement in the Form instructions for obtaining copies from the Agency
725.111	Changed “USEPA” to “USEPA Region 5” and “in accordance with USEPA notification procedures” to “using USEPA Form 8700-12”; added requirement to obtain Form from the Agency and submit Form to the Agency, in addition USEPA Region 5; removed the obsolete Board note explaining the former requirement in the Form instructions for obtaining copies from the Agency

The Board cannot revise six notification provisions at this time. These are the notification provisions in Parts 727, 733, and 739, which are not involved in this proceeding.

These six provisions will require future amendments. The natures of the future conforming amendments marked for future completion are summarized in the following table:

Provision	Nature of the Future Conforming Amendments
727.110(c)	Change “USEPA” to “USEPA Region 5,” “USEPA form 8700-12” to “USEPA Form 8700-12,” and “may obtain information and required forms” to “must obtain a copy of the form”; remove “following the USEPA notification procedures”; add requirement to submit Form to the Agency, in addition USEPA Region 5
733.132 Board note	Retain permissive “may use USEPA Form 8700-12”; change “(To obtain USEPA Form 8700-12 call the Agency at 217-782-6761.)” to “Obtain USEPA Form 8700-12 from the Agency.”; add requirement to submit notification to the Agency and USEPA Region 5, whether Form or some other means is used
739.142(b)	Retain letter notification as an alternative to using USEPA Form 8700-12; add requirement to submit notification to the Agency, whether Form or letter is used and Board note that requires obtaining Form from the Agency; remove obsolete references re the RCRA/Superfund Hotline
739.151(b)	Retain letter notification as an alternative to using USEPA Form 8700-12; add requirement to submit notification to USEPA Region 5 and the Agency, and Board note that requires obtaining Form from the Agency; remove obsolete references re the RCRA/Superfund Hotline
739.162(b)	Retain letter notification as an alternative to using USEPA Form 8700-12; add requirement to submit notification to USEPA Region 5 and the Agency, and Board note that requires obtaining Form from the Agency; remove obsolete references re the RCRA/Superfund Hotline
739.173(b)	Retain letter notification as an alternative to using USEPA Form 8700-12; add requirement to submit notification to USEPA Region 5 and the Agency, and Board note that requires obtaining Form from the Agency; remove obsolete references re the RCRA/Superfund Hotline

**Restoring the Federal Definitions of “Substantial Business Relationship”—Sections 721.243, 724.241, and 725.241**

The federal regulations require owners and operators of hazardous waste treatment, storage, or disposal (T/S/D) facilities to maintain financial assurance for facility closure and post-closure care, and against liability from sudden accidental occurrences. *See* 40 C.F.R. 264.143, 264.145, 264.147, 265.143, 265.145, 265.147, 267.143, and 267.147 (2010) (corresponding with

35 Ill. Adm. Code 724.243, 724.245, 724.247, 725.243, 725.245, 725.247, and 721.240(d) and (h)(1), respectively). Financial assurance is also required of owners and operators of hazardous secondary material (HSM) reclamation facilities that are not the generator of the materials.<sup>33</sup> See 40 C.F.R. 261.104(a)(24)(vi)(F), 261.143, and 261.147 (2010) (corresponding with 35 Ill. Adm. Code 721.104(a)(24)(F)(vi), 721.243, and 721.247).

One mode of providing financial assurance is by the guarantee of one of the following: (1) a parent corporation of the facility owner or operator; (2) a corporation that has the same corporate parent as the facility owner or operator; or (3) a corporation that shares a “substantial business relationship” with the facility owner or operator.<sup>34</sup> See 40 C.F.R. 261.143(e)(10), 261.147(g), 264.143(f)(10), 264.145(f)(11), 264.147(g), 265.143(f)(10), 265.145(f)(11), 265.147(g), 267.143(g), and 267.147(g) (2010) (corresponding with 35 Ill. Adm. Code 721.243(e)(10), 721.247(g), 724.243(f)(10), 724.245(f)(11), 724.247(g), 725.243(f)(10), 725.245(f)(11), 725.247(g), and 721.240(d)(7) and (h)(7), respectively). Issues arise under the Illinois regulations relative to the third type of corporate guarantee: the guarantee of a corporation that shares a “substantial business relationship” with the facility owner or operator.

In this proceeding, the Board deals with issues relating to differing definitions of “substantial business relationship” in the Illinois rules. The Board does so by restoring language formerly omitted from two identical definitions of “substantial business relationship” in the hazardous waste T/S/D facility standards and making minor corrections to the rules that define solid and hazardous waste. The Board omitted federal language several years ago, when adopting the initial financial assurance requirements in the T/S/D facility standards. The Board subsequently included the federal language in two newer rules that included financial assurance requirements. The Board desires internal consistency within the Illinois rules, and that the Illinois rules are consistent with their federal counterparts.

What follow are discussions of how the inconsistencies arose through the evolution of financial assurance provisions in the hazardous waste regulations. The first discussion briefly recounts how the Illinois regulations became inconsistent with their federal counterparts. The second discussion outlines how the Illinois rules became internally inconsistent. A final segment indicates the measures the Board is now taking to achieve consistency.

#### **Early Evolution of the Illinois Definitions of “Substantial Business Relationship.”**

The initial federal financial assurance requirements applied to hazardous waste T/S/D facilities. Those requirements did not allow use of a corporate guarantee for providing financial assurance for facility closure or for post-closure care of the facility. See 40 C.F.R. 264.143(f), 264.145(f), 265.143(e), and 265.145(e) (1981) (all pertinent subsections marked “reserved,” re closure and

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<sup>33</sup> The underground injection control (UIC) regulations also require financial assurance for plugging and abandonment of Class I hazardous waste injection wells. See 40 C.F.R. 144.63 (2010) (corresponding with 35 Ill. Adm. Code 704.213-704.222).

<sup>34</sup> See 40 C.F.R. 144.63(f)(1) (2010) (corresponding with 35 Ill. Adm. Code 704.219(j) (use of a corporate guarantee for a Class I hazardous waste injection well)).

post-closure care); 40 C.F.R. 264.147 and 265.147 (1981) (no provisions for corporate guarantee for liability coverage). In 1982, USEPA amended the financial assurance rules to allow a corporate guarantee, but the amendments limited the guarantor to “the parent corporation of the owner or operator.” *See* 40 C.F.R. 264.143(f)(10), 264.145(f)(11), 265.143(e)(10), and 265.145(e)(11) (1982) (for closure and post-closure care); 47 Fed. Reg. 15032 (Apr. 7, 1982). The Board adopted corresponding Illinois financial assurance requirements in Phase II RCRA Rules, R82-19 (July 26, 1983).

The federal provisions requiring financial assurance for liability for sudden and non-sudden occurrences evolved similarly to those relating to facility closure and post-closure care, but slightly later. The initial liability provisions applied to T/S/D facilities, and they did not allow use of the corporate guarantee. *See* 40 C.F.R. 264.147(f) and 265.147(f) (1982) (no provisions for corporate guarantee for liability coverage). In 1986, however, USEPA amended the liability financial assurance requirements to allow use of the corporate guarantee. The amendments required that the guarantor be the parent corporation of the subject facility. *See* 40 C.F.R. 264.147(g) and 265.147(g) (1987); 51 Fed. Reg. 25350 (July 11, 1986) (interim final rule); *see also* 40 C.F.R. 264.147(g) and 265.147(g) (1988); 52 Fed. Reg. 44313 (Nov. 18, 1987) (final rule expanding eligibility to foreign parent corporations). The Board adopted corresponding Illinois requirements in RCRA Update, USEPA Regulations (July 1, 1986 through September 30, 1986), R86-46 (July 16, 1987) and RCRA Update, USEPA Regulations (July 1, 1987 through December 31, 1987), R87-39 (June 16, 1988).

Thus, by mid-1988 the federal and Illinois regulations had financial assurance provisions applicable to permitted and interim status hazardous waste T/S/D facilities. Both the federal and Illinois rules required financial assurance for facility closure, for facility post-closure care, and for liability arising at the facility for sudden and non-sudden occurrences. Both the federal and Illinois rules allowed the use of a corporate guarantee for establishing financial assurance, but both required that the guarantor must be a parent corporation of the T/S/D facility owner or operator. This began to change after mid-1988.

Later in 1988, USEPA revised the T/S/D facility liability financial assurance requirements to allow an entity other than the parent corporation to act as guarantor. USEPA changed the requirement that “the guarantor must be the parent corporation of the owner or operator” to read as follows:

The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship with the owner or operator. 40 C.F.R. 264.147(g)(1) and 265.147(g)(1) (1989) (corresponding with 35 Ill. Adm. Code 724.247(g)(1) and 725.247(g)(1)); *see* 53 Fed. Reg. 33938, 51 (Sep. 1, 1988).

The rule defined “substantial business relationship” in the terms used to this day (as quoted above in this segment of discussion). The rule required submission of the guarantee and provided as follows:

If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee. 40 C.F.R. 264.147(g)(1) and 265.147(g)(1) (1989)

The closure and post-closure care financial assurance provisions were not affected in 1988.<sup>35</sup> The changes in the federal provisions that allow a person having a substantial business relationship with the owner or operator to provide financial assurance for closure and post-closure care of a T/S/D facility occurred in 1992. *See* 40 C.F.R. 264.143(f)(10), 264.145(f)(11), 265.143(e)(10), and 265.145(e)(11) (1993); 57 Fed. Reg. 42832 (Sep. 16, 1982).

The Board incorporated the 1988 federal amendments into the Illinois rules in 1989. When doing so, the Board chose to limit the definition in RCRA Update, USEPA Regulations (Aug. 1, 1988 through Dec. 31, 1988), R89-1 (Sep. 13, 1989). The Board cited a number of problems with the definition. The primary concerns related to enforceability of a corporate guarantee where the laws of multiple states are involved.<sup>36</sup> *See id.* at pp. 21-27.

The Board incorporated the 1992 federal amendments into the Illinois rules in 1993. When doing so, the Board did not alter the Illinois definition of “substantial business relationship.” *See* RCRA Update, USEPA Regulations (July 1, 1992 through December 31, 1992), R93-4 (Sep. 23, 1993), slip order at p. 160 (on-line in PDF-formatted copy; paper copy pages unnumbered).

The definition of “substantial business relationship” in the T/S/D facility standards has remained substantively unchanged since 1989. This is despite the fact that intervening changes have occurred relative to use of a “substantial business relationship” to establish financial assurance.

**Later Evolution of the Illinois Definitions of “Substantial Business Relationship.”**

After 1989, USEPA twice more added financial assurance requirements to the federal regulations that would allow a corporate guarantee by an entity that has a substantial business relationship

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<sup>35</sup> The UIC financial responsibility rules were also unaffected, and the UIC rules still require that the guarantor must be the parent corporation of the well owner or operator. *See* 40 C.F.R. 144.63(f)(10) (2010) (corresponding with 35 Ill. Adm. Code 704.219(j)).

<sup>36</sup> The Board principally cited complexities in regulatory oversight within Illinois among several State agencies, interstate conflict-of-laws issues, and issues relating to legal forum for gaining judicial enforcement of a guarantee. *See* RCRA Update, USEPA Regulations (Aug. 1, 1988 through Dec. 31, 1988), R89-1 (Sep. 13, 1989), at pp. 21-27; *see also* RCRA Update, USEPA Regulations (July 1, 1987 through Dec. 31, 1987), R87-39 (June 16, 1988), at pp. 15-17 (guarantee by a parent corporation for liability coverage); RCRA Update, USEPA Regulations (July 1, 1986 through Sep. 30, 1986), R86-46 (July 16, 1987), at pp. 12-14 (guarantee by a parent corporation for liability coverage).

with the facility owner or operator. Both defined “substantial business relationship in the same terms that USEPA used in the T/S/D facility standards. The Board incorporated these two new federal financial assurance requirements into the Illinois hazardous waste regulations. On the first occasion, the Board added a new definition of “substantial business relationship” that used the federal language to define the term. On the second occasion, the Board inadvertently failed to correct the existing definitions in the T/S/D facility standards to use the federal language of the definitions.

In 2005, USEPA adopted the Standardized Permit Rule. This rule included financial assurance requirements for closure, post-closure care, and liability coverage applicable to hazardous waste management facilities<sup>37</sup> that parallel the provisions of the T/S/D facility standards. *Compare generally* 40 C.F.R. 267 (2010) (corresponding with 35 Ill. Adm. Code 727) *with* 40 C.F.R. 264 and 265 (2010) (corresponding with 35 Ill. Adm. Code 724 and 725). This includes financial assurance provisions that are nearly identical to those in the hazardous waste T/S/D facility standards. *Compare generally* subpart H of 40 C.F.R. 267 (2010) (corresponding with 35 Ill. Adm. Code 727.240) *with* subpart H of 40 C.F.R. 264 and subpart H of 40 C.F.R. 265 (2010) (corresponding with Subpart H of 35 Ill. Adm. Code 724 and Subpart H of 35 Ill. Adm. Code 725) (the Standardized Permit Rule lacking only the post-closure care provisions included in the T/S/D facility standards).

The Standardized Permit Rule included financial assurance requirements that allow the use of a corporate guarantee by a person that has a “substantial business relationship” with the facility owner or operator for facility closure and liability coverage. 40 C.F.R. 267.143(g) and 40 C.F.R. 267.147(g) (corresponding with 35 Ill. Adm. Code 727.240(d)(7) and (h)(7), respectively); *see* 70 Fed. Reg. 53420 (Sep. 8, 2005). The Rule further included a definition of “substantial business relationship” that was nearly identical to the definition included in the T/S/D facility standards. *Compare* 40 C.F.R. 267.141(h) (corresponding with 35 Ill. Adm. Code 727.240(b)(8)) *with* 40 C.F.R. 264.141(h) and 265.141(h) (2010) (corresponding with 35 Ill. Adm. Code 724.241(h) and 725.240(h)).

The Board incorporated the Standardized Permit Rule into the Illinois regulations in 2006. The Board used the language of the federal definition of “substantial business relationship” when doing so. *See* 35 Ill. Adm. Code 727.240(b)(8); UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005), R06-16, RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005), R06-17, RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006), R06-18) (Consolidated) (Nov. 16, 2006), slip op. at pp. 134, 135-36, 138-39. The Illinois Standardized Permit Rule allows an entity that has a substantial business relationship with the

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<sup>37</sup> The covered facilities are (1) generating facilities that non-thermally treat or store their hazardous waste on-site in tanks, containers, or containment buildings; and (2) off-site facilities that so treat hazardous waste generated at a facility that is under the same ownership. 40 C.F.R. 270.1(b)(1) and (b)(2) (2010) (corresponding with 35 Ill. Adm. Code 703.250(b)(1)(A) and (b)(1)(B)).

owner or operator of a covered facility to provide a guarantee for financial assurance for facility closure and liability coverage. *See* 35 Ill. Adm. Code 727.240(d)(7) and (h)(7). The Board took no notice of the Illinois definition of “substantial business relationship” in the T/S/D facility standards.

USEPA later adopted another set of rules that included financial assurance requirements that allowed a corporate guarantee by an entity that has a substantial business relationship with the facility owner or operator. In 2008, USEPA adopted a series of exclusions for certain reclaimed materials from the definition of solid waste. *See* 40 C.F.R. 261.2(a)(2)(ii) and 261.4(a)(23), (a)(24), and (a)(25) (2010) (corresponding with 35 Ill. Adm. Code 721.102(a)(2)(B) and 721.104(a)(23), (a)(24), and (a)(25)); 73 Fed. Reg. 64668 (Oct. 30, 2008).

One of the exclusions applies to HSM that is managed at off-site transfer and reclamation facilities within the United States. *See* 40 C.F.R. 261.4(a)(24) (2010) (corresponding with 35 Ill. Adm. Code 721.104(a)(24)). That exclusion requires that the facility owner or operator maintain financial assurance for liability arising from sudden and non-sudden occurrences arising through facility operations and for facility closure.<sup>38</sup> *See* 40 C.F.R. 261.4(a)(24)(vi)(F) (2010) (corresponding with 35 Ill. Adm. Code 721.104(a)(24)(F)(vi)).

The terms of the financial assurance provisions applicable to HSM intermediate and reclamation facilities are nearly identical to those in the T/S/D facility standards. *Compare generally* 40 C.F.R. 261.143 and 261.147 (2010) (corresponding with 35 Ill. Adm. Code 721.243 and 721.247) *with* 40 C.F.R. 724.243 and 724.247 and 40 C.F.R. 725.243 and 725.247 (2010) (the HSM management facility requirements lacking only the post-closure care provisions included in the T/S/D facility standards). The owner or operator of an HSM management facility may provide financial assurance using a corporate guarantee, and the guarantor may be an entity that has a substantial business relationship with the facility owner or operator.

One significant difference exists between the federal financial assurance requirements applicable to off-site HSM intermediate and reclamation facilities and those that apply to hazardous waste T/S/D facilities. Each body of financial assurance requirements that apply to T/S/D facilities has an independent definition of “substantial business relationship.” *See* 40

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<sup>38</sup> USEPA meticulously avoided use of the word “closure cost estimate” with regard to HSM management facilities. Instead, USEPA calls this the “cost estimate” for the facility. *See* 40 C.F.R. 261.142 (2010) (corresponding with 35 Ill. Adm. Code 721.242); 73 Fed. Reg. at 64692. The rules describe the “cost estimate” as follows:

[A] detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.” 40 C.F.R. 261.142(a) (2010) (corresponding with 35 Ill. Adm. Code 721.242(a))

The Board notes this distinction in terms, and uses “facility closure” for the purposes of this discussion only.

C.F.R. 264.141(h), 265.141(h), and 267.141(h) (2010) (corresponding with 35 Ill. Adm. Code 724.241(h), 725.241(h), and 727.240(b)(8)). The financial assurance requirements that apply to HSM facilities refer to 40 C.F.R. 265.141 for definitions of terms. *See* 40 C.F.R. 261.141 (2010) (corresponding with 35 Ill. Adm. Code 261.241).

The Board incorporated the federal exclusions from the definition of solid waste into the Illinois regulations in RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008 and June 15, 2010), R09-16, RCRA Subtitle C Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-4 (Oct. 7, 2010). The Board included federally derived financial assurance requirements for HSM intermediate and reclamation facilities. *See* Subpart H of 35 Ill. Adm. Code 721 (corresponding with subpart H of 40 C.F.R. 261). The new financial assurance provisions refer to the interim status T/S/D facility standards for a definition of “substantial business relationship.” *See* 35 Ill. Adm. Code 721.241 (referring to 35 Ill. Adm. Code 725.241 for definitions).

In the course of incorporating the financial assurance provisions, the Board noted the discrepancy between the definitions of “substantial business relationship” in 35 Ill. Adm. Code 725.241(h) and that in corresponding 40 C.F.R. 265.141(h). The Board attempted to correct the discrepancy. The Board added a definition of “substantial business relationship” in 35 Ill. Adm. Code 721.247(g)(1)(B). The Board added a cross-reference to the added definition in 35 Ill. Adm. Code 721.247(g)(1) and appended an explanation of the prior omission of the definition from 35 Ill. Adm. Code 724.241(h) and 725.241(h) and addition to 35 Ill. Adm. Code 721.247(g)(1) in a Board note appended to 35 Ill. Adm. Code 721.247(g)(1)(B). The Board further attempted to add a cross-reference to the added definition of “substantial business relationship” in 35 Ill. Adm. Code 721.243(e)(10), and the Board appended an explanatory statement in a Board note appended to that provision, but the references to a definition “in subsection (g)(1)(B) of this Section” are clearly defective.

Further, there is a conflict between the inclusion of a definition of “substantial business relationship” in 35 Ill. Adm. Code 721.247(g)(1)(B) and the statement in 35 Ill. Adm. Code 721.241 that is defined in the interim status T/S/D facility standards (in the basic terms that the Board selected while rejecting the federal language). The definition in 35 Ill. Adm. Code 721.247(g)(1)(B) uses the federal language to define the term. The definition in the T/S/D facility standards uses the more basic language that the Board used while rejecting the language of the federal definition.

**The Disparity Between the Illinois and Federal Definitions.** The federal financial assurance provisions include three identical definitions of “substantial business relationship” that apply to four bodies of financial assurance requirements. The federal definition appears:

(h) Substantial business relationship means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business

relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable [US]EPA Regional Administrator. 40 C.F.R. 264.141(h), 265.141(h), and 727.141(h) (2010) (corresponding with 35 Ill. Adm. Code 724.241(h), 725.241(h), and 727.240(b)(8), respectively).

This federal definition focuses on the legal sufficiency of the business relationship between the owner or operator of a T/S/D facility and the guarantor to act as consideration in contract to support the enforceability of the guarantee. The federal definition requires an administrative determination of the sufficiency of the business relationship as consideration that would support enforcement of the guarantee. The federal definition requires that three basic factors be true of the guarantee: (1) the guarantee must be “incident to” the relationship between the guarantor and the owner or operator; (2) that the contract for guarantee “must arise from a pattern of recent or ongoing business transactions” that are independent of the guarantee; and (3) that the business relationship between the T/S/D facility owner or operator and the guarantor must be sufficient to make the guarantee “valid and enforceable” at law.

The Illinois rules include the federal language in definitions of “substantial business relationship” in two bodies of financial assurance requirements. The Board used the federal language when incorporating the Standardized Permit Rule into the Illinois regulations. *See* 35 Ill. Adm. Code 727.240(d)(8). The Board further included federal language from 40 C.F.R. 265.141(h) (2008) in the financial assurance requirements that apply to off-site HSM intermediate and reclamation facilities. *See* 35 Ill. Adm. Code 721.247(g)(1)(B).

The Board did not follow the federal language in the financial assurance requirements in the T/S/D facility standards. Instead, the Board rejected the federal language and instead defined “substantial business relationship” in more basic terms that are not equivalent to those used by USEPA. The Illinois T/S/D facility standards included the following definition of “substantial business relationship”:

- h) “Substantial business relationship” means that one business entity has an ownership interest in another. 35 Ill. Adm. Code 724.241(h) and 725.241(h) (corresponding with 40 C.F.R. 264.141(h) and 265.241(h)).

The Board currently sees problems with this shortened definition. This is not equivalent to the federal definition. This definition can be read as substantially more or less limiting than the language used by USEPA, and subsequently by the Board. The Board observes potential problems with the shortened definition.

First, the Board’s shortened definition could mean that only a minority interest was intended. Like the federal rules, the Illinois rules allow a guarantee by a parent corporation, a sibling corporation of the same parent corporation, or a corporation that has a “substantial business relationship” with the subject facility to provide the guarantee. *See* 35 Ill. Adm. Code 721.243(e)(10), 721.247(g), 724.243(f)(10), 724.245(f)(11), 724.247(g), 725.243(f)(10), 725.245(f)(11), 725.247(g), and 721.240(d)(7) and (h)(7) (corresponding with 40 C.F.R. 261.143(e)(10), 261.147(g), 264.143(f)(10), 264.145(f)(11), 264.147(g), 265.143(f)(10),

265.145(f)(11), 265.147(g), 267.143(g), and 267.147(g), respectively). Defining “substantial business relationship” in terms of ownership interest could result in equally absurd interpretations. The first interpretation is that the provision that allows an entity that has a “substantial business relationship” to provide a guarantee is redundant to the provision which allows a parent corporation to provide a guarantee. The alternative interpretation is that the “substantial business relationship” provision is independent of the parent corporation provision. This would restrict the “substantial business relationship” provision to meaning a minority ownership interest in the T/S/D facility, since a “parent company” is one that holds a majority interest. *See* Black’s Law Dictionary, 5th ed. (1979), at p. 1004. Thus, under this alternative interpretation, the range of ownership interests that would satisfy this criterion could include a *de minimis* ownership interest. Aside from the use of the word “significant” in the defined term, the Board’s shortened definition provides no way to gauge what degree of partial ownership interest is sufficient.

Second, the language does not allow any criterion other than ownership to factor into the consideration needed to support the guarantee. This conflicts with USEPA’s clear intent when adopting “substantial business relationship” as a basis for a corporate guarantee. USEPA wished to allow an entity other than a parent or a sibling company to provide a corporate guarantee for financial assurance when providing for a guarantee based on a “substantial business relationship.” USEPA stated as follows:

The issue of consideration arises in the context of all guarantees; however, parent and sibling firms . . . can demonstrate consideration by the inherent benefits or detriments that accrue to the guarantor firm by virtue of its corporate relationship with the owner or operator. [C]ourts have generally recognized that guarantees offered by a parent or sibling corporation are valid and enforceable. [US]EPA believes that other related and unrelated firms should be able to demonstrate sufficient consideration for the contract if they have a substantial business relationship with the owner or operator.

[USEPA’s] review of legal literature indicated that a sufficiently close business relationship between two firms could be comparable to the shared economic interests that typify the relationship between corporate siblings and between a parent and its subsidiary. Because it is these mutual economic interests that underlie the validity and enforceability of downstream and cross-stream guarantees, the existence of such interests between other types of firms should enable guarantees between these firms also to be valid and enforceable. 53 Fed. Reg. at 33942.

Finally, the shortened definition falls short of providing criteria for administrative determinations or a framework within which those determinations are to be made. The federal definition provides three criteria for an administrative determination that a business relationship provides sufficient consideration in contract to make the guarantee enforceable (as is discussed immediately above in this segment of discussion). The federal definition further requires that a regulated entity demonstrate the sufficiency of the relationship to the satisfaction of the

applicable regulatory agency. *See* 40 C.F.R. 264.141(h), 265.141(h), and 267.141(h) (2010) (corresponding with 35 Ill. Adm. Code 724.241(h), 725.241(h), and 727.240(d)(8)). The Board's shortened definition removes these criteria for an Agency determination, all discretion from the Agency to determine the sufficiency of a business relationship, and the duty of the regulated entity to demonstrate the sufficiency.

**Corrections to the Definitions of “Substantial Business Relationship” and Ancillary Changes to Related Rules.** The Board has determined that the definitions of “substantial business relationship” in the Illinois T/S/D facility standards is not equivalent to the definitions in the corresponding rules. The Board does not desire that the Illinois regulations be any more or less stringent than their federal counterparts, and the Board wishes to correct any inconsistencies in this proceeding. The needed corrections are not elaborate, and the Board has included nearly all of them in this docket. The following list indicates the corrections included in this docket:

1. The Board has reworded the definitions of “substantial business relationship” in 35 Ill. Adm. Code 724.241(h) and 725.241(h) to more closely follow the federal language of corresponding 40 C.F.R. 264.141(h) and 265.141(h), as follows:
 

“Substantial business relationship” means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party.
2. The Board has removed the parenthetical “as that term is defined in subsection (g)(1)(B) of this Section” from each of 35 Ill. Adm. Code 721.243(e)(10) and 721.247(g)(1).
3. The Board has removed the explanatory Board note from 35 Ill. Adm. Code 721.243(e)(10).
4. The Board has removed the definition of “substantial business relationship” from 35 Ill. Adm. Code 261.247(g)(1)(B), replacing with an explanation that USEPA has marked corresponding 40 C.F.R. 721.247(g)(1)(ii) as “reserved.”
5. The Board has removed the explanation of the definition of “substantial business relationship” from the Board note to 721.247(g)(1)(B).

6. At the end of each definition of “substantial business relationship” in 35 Ill. Adm. Code 724.241(h) and 725.241(h), the Board has appended the following definition of “applicable state law”:

“Applicable state law,” as used in this subsection (h), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

7. To the definition of “substantial business relationship” in 35 Ill. Adm. Code 724.241(h), the Board has appended the following explanatory Board note:

BOARD NOTE: Derived from 40 CFR 264.241(h) (2010) and the discussion at 53 Fed. Reg. 33938, 41-43 (Sep. 1, 1988). This term is also independently defined in 35 Ill. Adm. Code 725.241(h) and 727.240(b)(8). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to section 40 of the Act [415 ILCS 5/40].

8. To the definition of “substantial business relationship” in 35 Ill. Adm. Code 725.241(h), the Board has appended the following explanatory Board note:

BOARD NOTE: Derived from 40 CFR 265.241(h) (2010) and the discussion at 53 Fed. Reg. 33938, 41-43 (Sep. 1, 1988). This term is also independently defined in 35 Ill. Adm. Code 724.241(h) and 727.240(b)(8). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to section 40 of the Act [415 ILCS 5/40].

Since 35 Ill. Adm. Code 727 is not a natural part of this proceeding, the Board can make no revisions to the financial assurance provisions of that Part. Nevertheless, the Board will mark the following as future possible revisions that would harmonize the financial assurance requirements of the Standardized Permit Rule with those of the hazardous waste T/S/D facility standards:

1. Reword the definition of “substantial business relationship” in 35 Ill. Adm. Code 727.240(b)(8) to more closely follow the language of 35 Ill. Adm. Code 724.241(h) and 725.241(h) as amended in this proceeding, as follows:

“Substantial business relationship” means the extent of a business relationship necessary under applicable ~~State-state~~ law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship ~~currently existing business~~

~~relationship exists~~ between the guarantor and the facility owner or operator ~~is demonstrated to the satisfaction of the Agency that is~~ adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party.

2. Append the following definition of “applicable state law” at the end of the definition of “substantial business relationship” in 35 Ill. Adm. Code 727.240(d)(8):

“Applicable state law,” as used in this subsection (h), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

3. Append the following explanation to the Board note to the definition of “substantial business relationship” in 35 Ill. Adm. Code 727.240(d)(8):

Subsection (b)(8) is also derived from the discussion at 53 Fed. Reg. 33938, 41-43 (Sep. 1, 1988). The term “substantial business relationship” is also independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to section 40 of the Act [415 ILCS 5/40]

### **Requests for Comments on Board-Initiated Corrections and Clarifications**

The Board requests comments on the several Board-initiated corrections and clarifications included in this docket. In particular, the Board specifically requests comments on the following:

1. Whether the present amendments will complete the federal amendments to the hazardous waste manifest requirements that were effective on September 5, 2006.
2. Whether the Board has appropriately removed all provisions relative to the former federal Performance Track Program.
3. Whether the rewording and reorganization of the F039 hazardous waste listing has properly captured USEPA’s intent and added clarity to the language of the listing.
  - a. Whether the use of the words “multi-source leachate” more accurately reflect the scope intended by USEPA for the F039 waste listing than does the use of “leachate.”
  - b. Whether movement of the parenthetical explanation of “leachate” to a separate sentence that defines the term adds clarity to the scope of the F039 waste listing as intended by USEPA.

- c. Whether the Board has properly retained the phrase “restricted waste” instead of replacing this term with the word “waste” or phrase “hazardous waste.”
  - d. Whether the Board’s rewording of the F039 exclusion, including removal of parentheses, rewording of the exclusion, and use of “single-source leachate” and “and no other hazardous waste” adds clarity to the term “an no other hazardous wastes” as intended by USEPA.
4. Whether the proposed amendments appropriately harmonize the various notification requirements for obtaining a USEPA identification number spread throughout the several segments of the hazardous waste regulations.
- a. Whether it is necessary or desirable to require notification of regulated waste activity and changes in regulated waste activity to the Agency directly, rather than relying on indirect notification by USEPA Region 5.
  - b. Whether it is necessary or desirable to require obtaining USEPA Form 8700-12 from the Agency.
  - c. Whether it is necessary or desirable to require submission of the completed USEPA Form 8700-12 to the Agency in addition to submission to USEPA.
  - d. Whether the Board appropriately removed the obsolete references to the requirement in the instructions to former editions of USEPA Form 8700-12 that required obtaining the Form from the Agency.
  - e. Whether the Board suggestions for future changes in the notification requirements in Parts 727, 733, and 739 will be necessary or desirable when federal amendments cause the opening of those Parts.
5. Whether the proposed amendments to the definitions of “substantial business relationship” are desirable and necessary to make the Illinois regulations equivalent to the corresponding federal regulations.

**General Explanations of Board Deviation**  
**from the Literal Text of Federal Rules**

When incorporating the federal rules into the Illinois system, the Board cannot always follow their literal text. Some deviation from the literal federal text is unavoidable. There are a variety reasons that copying the federal text is not possible.

Principally, deviation arises primarily through differences between the federal and state regulatory structure and systems. In Illinois, the responsibilities are divided among several entities—principally between the Board and the Agency.<sup>39</sup> *See* 415 ILCS 5/4 and 5 (2008). The scope of the particular identical-in-substance mandate may not embrace all aspects of the USEPA action involved in a particular proceeding. Further, the Illinois environmental regulations are organized differently than are the more extensive rules of USEPA, sometimes requiring the Board to parse many of the federal requirements into segments of the Illinois rules. Finally, the Board must comply with the Illinois Administrative Procedure Act (5 ILCS 100 (2008)) and codification requirements of the Office of the Secretary of State (1 Ill. Adm. Code 100) when incorporating the federal requirements.

Another source of deviation from the literal federal text of a rule relates to updating incorporations by reference and references and source-citations to federal rules. Sometimes this involves federal rules that are part of the USEPA action that prompts the Board amendments. The Board has incorporated many segments of USEPA rules by reference, so that updating the references completes the amendments without use of the literal text of federal amendments. At other times, the deviation is the result of updated federal regulations that are not directly involved in an underlying USEPA action within the timeframe of the docket. The Board has incorporated federal regulations not directly involved by reference because USEPA has cited to unrelated USEPA rules or rules of other federal agencies. As a result, the Board routinely examines federal regulations that are incorporated by reference or source-cited in the Illinois rules and updates the references and citations to ensure reliance on the most recent versions, unless incorporation of an earlier version is required.

Finally, some deviation also arises through errors in and problems with the federal text itself. The language of many federal rules differs stylistically from the Board's preferences. The Board also sometimes finds segments of federal text that are less than clear or which contain errors. 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.

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<sup>39</sup> Many other State agencies have some role to play in many functions under the Environmental Protection Act: the Department of Commerce and Community Affairs (*see* 415 ILCS 5/22, 22.23, 22.34, 25, 27, 55, 55.2, 55.6, 55.7, 55.14, 55.14a, and 55.15 (2008)), the Department of Natural Resources (*see* 415 ILCS 5/17.1-17.3, 27, and 55.6 (2008)), the Department of Agriculture (*see* 415 ILCS 5/14.3, 14.6, 22.2, 22.34, 22.35, 39.4, and 55.6 (2008)), the Illinois Department of Transportation (*see* 415 ILCS 5/3.135, 22.51, 39, and 39.2 (2008)), the Office of the State Fire Marshall (*see* 415 ILCS 5/22.12, 57.3-57.6, 57.9, and 57.11 (2008)), the Illinois Emergency Management Agency (*see* 415 ILCS 5/13.6, 25a-1, 25b, and 57.5 (2008)), the Department of Public Health (*see* 415 ILCS 5/13.2, 22.55, 25d-6, 55.2, and 55.6 (2008)), and the Department of Labor (*see* 415 ILCS 5/52 (2008)). Although the Board must remain mindful of the roles of every State agency in a particular subject matter area, the major divisions of authority of concern in identical-in-substance proceedings are those between the Board and the Agency.

The following discussion segments explain in broad terms some of the changes to the literal text of federal rules that the Board makes on a more routine basis. What follows are general consideration of deviation from the literal text of federal rules that are prompted by three sources: (1) the divisions of authority between the Board and Agency under the Act; (2) routine updating of incorporations by reference of and citations to the *Code of Federal Regulations*; and (3) stylistic changes, clarifications, and corrections routinely made.

The Board will not further discuss changes prompted by three other causes: (1) differences in regulatory structure; (2) the scope of an identical-in-substance mandate, or (3) Illinois rulemaking procedure and codification requirements. The Board includes discussion of deviation caused by these considerations in substantive segments of opinions when issues arise.

**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, general and 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.

**Updating Code of Federal Regulations Incorporations by Reference and Citations.**

The Board has updated the various incorporations by reference and references and source-citations to the *Code of Federal Regulations* to the most recent version available for each incorporation by reference, reference, or source-citation. The federal Government Printing Office releases an updated version of the *Code of Federal Regulations* every year. This occurs quarterly, and several updated versions are published each quarter in a way that assures a new edition of each *Code* title every year.

The most recent versions of the *Code of Federal Regulations* available are the January 1, 2011 edition for some NRC regulations (Title 10) and 2010 for others. The most recent for Coast Guard regulations (Title 33) and most USEPA regulations (Title 40) the July 1, 2010 edition. The latest version for limited segments of USEPA regulations is the July 1, 2009 edition because no amendments occurred to the rules contained in those printed volumes. The latest version for pertinent USDOT regulations (Title 49) is the October 1, 2010 edition.

The Board has updated all citations to Titles 10, 33, 40 and 49 to the appropriate of the 2009, 2010, and editions of the *Code of Federal Regulations*. The Board has added the *Federal Register* citation, where necessary, for amendments that occurred after the *Code of Federal Regulations* edition date but before the cutoff date for amendments included in this docket.

The following tables list the several *Code of Federal Regulations* segments that appear in the Illinois hazardous waste regulations. The tables indicate the most recent version available for each segment and include the *Federal Register* citation for each set of later federal amendments.

**Listing of Updated Code of Federal Regulations Provisions**

**U.S. Nuclear Regulatory Commission Regulations  
(C.F.R. updated January 1, 2011, except January 1, 2010 for 10 C.F.R. 20)**

Federal Provision	Amendments Since Most Recent C.F.R. Edition
10 C.F.R. 20.2006	No federal amendments since the 2010 edition of this part.
Table II, column 2 in Appendix B to 10 CFR 20	November 30, 2010 (75 Fed. Reg. 73935)
Appendix G to 10 CFR 20	No federal amendments since the 2010 edition of this part.
10 CFR 71	No federal amendments since the 2011 edition of this part.

10 CFR 71.5	No federal amendments since the 2011 edition of this part.
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**U.S. Coast Guard Regulations  
(Updated July 1, 2010)**

Federal Provision	Amendments Since Most Recent C.F.R. Edition
33 C.F.R. 153.203	No federal amendments since the 2010 edition of this part.

**U.S. Environmental Protection Agency Regulations  
(Updated July 1, 2010, except July 1, 2009 for the following:  
the appendices to 40 C.F.R. 60 and subpart EEE of 40 C.F.R. 63<sup>40</sup>)**

Federal Provision	Amendments Since Most Recent C.F.R. Edition
40 C.F.R. 3.2	No federal amendments since the 2010 edition of this part.
40 C.F.R. 3.3	No federal amendments since the 2010 edition of this part.
40 C.F.R. 3.10	No federal amendments since the 2010 edition of this part.
40 C.F.R. 3.2000	No federal amendments since the 2010 edition of this part.
40 C.F.R. 51.100(ii)	No federal amendments since the 2010 edition of this part.
Appendix W to 40 C.F.R. 51	No federal amendments since the 2010 edition of this part.

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<sup>40</sup> The Government Printing Office website lists these segments as “Cover Only” because they were not amended during the period July 1, 2009 through June 30, 2010. *See List of CFR Sections Affected*, National Archives and Records Administration, Government Printing Office (June 2010), at pp. 65 and 66 (as retrieved from GPO Access: <http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=201040>).

Appendix B to 40 C.F.R. 52.741	No federal amendments since the 2010 edition of this part.
40 C.F.R. 60	September 9, 2010 (75 Fed. Reg. 54970) September 10, 2010 (75 Fed. Reg. 55274) September 13, 2010 (75 Fed. Reg. 55636) November 12, 2010 (75 Fed. Reg. 69348)
Subpart VV of 40 C.F.R. 60 (§§ 60.480-60.489)	No federal amendments since the 2010 edition of this part.
Appendix A to 40 C.F.R. 60	September 13, 2010 (75 Fed. Reg. 55636)
40 C.F.R. 61	September 10, 2010 (75 Fed. Reg. 55274) September 13, 2010 (75 Fed. Reg. 55636) November 12, 2010 (75 Fed. Reg. 69348)
Subpart V of 40 C.F.R. 61 (§§ 61.240-61.247)	No federal amendments since the 2010 edition of this part.
Subpart FF of 40 C.F.R. 61 (§§ 61.340-61.359)	No federal amendments since the 2010 edition of this part.
40 C.F.R. 63	August 20, 2010 (75 Fed. Reg. 51570) September 9, 2010 (75 Fed. Reg. 54970) September 13, 2010 (75 Fed. Reg. 55636) November 12, 2010 (75 Fed. Reg. 69348) December 14, 2010 (75 Fed. Reg. 77760)
Subpart RR of 40 C.F.R. 63 (§§ 63.960-63.967)	No federal amendments since the 2010 edition of this part.
Subpart EEE of 40 C.F.R. 63 (§§ 63.1200-63.1214)	No federal amendments since the 2009 edition of this part.
Method 301 in Appendix A to 40 C.F.R. 63	No federal amendments since the 2010 edition of this part.
Appendix C to 40 C.F.R. 63	No federal amendments since the 2010 edition of this part.
Appendix D to 40 C.F.R. 63	No federal amendments since the 2010 edition of this part.
40 C.F.R. 232.2	No federal amendments since the 2010 edition of this part.

40 C.F.R. 136.3	No federal amendments since the 2010 edition of this part.
40 C.F.R. 144.70	No federal amendments since the 2010 edition of this part.
40 C.F.R. 232.2	No federal amendments since the 2010 edition of this part.
40 C.F.R. 257	No federal amendments since the 2010 edition of this part.
40 C.F.R. 258	August 18, 2010 (75 Fed. Reg. 50932) August 31, 2010 (75 Fed. Reg. 53220)
40 C.F.R. 260.21	No federal amendments since the 2010 edition of this part.
Appendix I to 40 C.F.R. 260	March 18, 2010 (75 Fed. Reg. 12989)
Appendix III to 40 C.F.R. 261	No federal amendments since the 2010 edition of this part.
40 C.F.R. 262.53	No federal amendments since the 2010 edition of this part.
40 C.F.R. 262.54	No federal amendments since the 2010 edition of this part.
40 C.F.R. 262.55	No federal amendments since the 2010 edition of this part.
40 C.F.R. 262.56	No federal amendments since the 2010 edition of this part.
40 C.F.R. 262.57	No federal amendments since the 2010 edition of this part.
Appendix to 40 C.F.R. 262	No federal amendments since the 2010 edition of this part.
40 C.F.R. 264.151	No federal amendments since the 2010 edition of this part.
Appendix I to 40 C.F.R. 264	No federal amendments since the 2010 edition of this part.

Appendix IV to 40 C.F.R. 264	No federal amendments since the 2010 edition of this part.
Appendix V to 40 C.F.R. 264	No federal amendments since the 2010 edition of this part.
Appendix VI to 40 C.F.R. 264	No federal amendments since the 2010 edition of this part.
Appendix I to 40 C.F.R. 265	No federal amendments since the 2010 edition of this part.
Appendix III to 40 C.F.R. 265	No federal amendments since the 2010 edition of this part.
Appendix IV to 40 C.F.R. 265	No federal amendments since the 2010 edition of this part.
Appendix V to 40 C.F.R. 265	No federal amendments since the 2010 edition of this part.
Appendix IX to 40 C.F.R. 265	No federal amendments since the 2010 edition of this part.
40 C.F.R. 270.5	No federal amendments since the 2010 edition of this part.
40 C.F.R. 761	No federal amendments since the 2010 edition of this part.
40 C.F.R. 761.3	No federal amendments since the 2010 edition of this part.
40 C.F.R. 761.60	No federal amendments since the 2010 edition of this part.
40 C.F.R. 761.65	No federal amendments since the 2010 edition of this part.
40 C.F.R. 761.70	No federal amendments since the 2010 edition of this part.

**U.S. Department of Transportation Regulations**  
**(Updated October 1, 2010)**

Federal Provision	Amendments Since Most Recent C.F.R. Edition
Subpart B of 49 C.F.R. 107 (§§ 107.101-107.127)	No federal amendments since the 2010 edition of this part.
49 C.F.R. 171	No federal amendments since the 2010 edition of this part.
49 C.F.R. 171.3	No federal amendments since the 2010 edition of this part.
49 C.F.R. 171.8	No federal amendments since the 2010 edition of this part.
49 C.F.R. 171.15	No federal amendments since the 2010 edition of this part.
49 C.F.R. 171.16	No federal amendments since the 2010 edition of this part.
49 C.F.R. 172	No federal amendments since the 2010 edition of this part.
49 C.F.R. 172.304	No federal amendments since the 2010 edition of this part.
Subpart F of 49 C.F.R. 172 (§§ 172.500-172.560)	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.2	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.12	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.28	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.50	No federal amendments since the 2010 edition of this part.

49 C.F.R. 173.54	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.115	No federal amendments since the 2010 edition of this part.
49 C.F.R. 173.127	No federal amendments since the 2010 edition of this part.
49 C.F.R. 174	No federal amendments since the 2010 edition of this part.
49 C.F.R. 175	No federal amendments since the 2010 edition of this part.
49 C.F.R. 176	No federal amendments since the 2010 edition of this part.
49 C.F.R. 177	No federal amendments since the 2010 edition of this part.
49 C.F.R. 178	No federal amendments since the 2010 edition of this part.
49 C.F.R. 179	No federal amendments since the 2010 edition of this part.
49 C.F.R. 180	No federal amendments since the 2010 edition of this part.

**Routine Board Stylistic Changes, Clarifications, and Corrections.** In addition to the amendments derived from federal amendments, the Board often makes necessary alterations in 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 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. The Board 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 this word 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 B sets forth the miscellaneous deviations from the federal text, and Table C itemizes the corrections to the pre-amended base text of the rules in detail. Table B begins on page 82 of this opinion, and Table C begins on page 111 . There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

#### **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 A (beginning immediately below) outlines federal corrections of March 18, 2010 that are not necessary in this docket, with summary explanation why the Board need take no action with regard to each. Table B (beginning immediately after Table A on page 82) includes deviations made in this proposal for public comment from the verbatim text of the federal amendments. Table C (beginning immediately after Table B on page 111) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in Table C 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 14 of this opinion.

**Table A:  
Federal Corrections of March 18, 2010  
That Are Not Necessary in This Docket**

Provision Citations 35 Ill. Adm. Code/ 40 C.F.R.	USEPA Correction/ Explanation Why Not Made in This Docket
702.181(a)/ 270.4(a)(2)	<p>Restore the sentence relating to permit modification, revocation and reissuance, and termination erroneously removed at 52 Fed. Reg. 45787, 99 (Dec. 1, 1987)./</p> <p>The Board did not remove the first segment of this statement in the applicable update, <u>RCRA Update, USEPA Regulations (July 1, 1987 through December 31, 1987)</u>, R87-39 (June 16, 1988), to correspond with USEPA's erroneous deletion. (The Board adds the second segment at this time. See the related entry for this provision in Table C.)</p>
721.104(a)(17)(F)/ 261.4(a)(17)(vi)	<p>Restore the cross-reference "subsection (a)(7)" to "subsection (b)(7)." USEPA changed "(b)(7)" to "(a)(7)" in error at 67 Fed. Reg. 1125, 54 (Mar. 13, 2002)./</p> <p>The Board did not make this change in the applicable update, <u>RCRA Subtitle C Update, USEPA Amendments (January 1, 2001 through June 30, 2001)</u>, R02-1, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2001 through December 31, 2001, January 22, 2002, March 13, 2002, and April 9, 2002)</u>, R02-12, <u>UIC Update, USEPA Amendments (July 1, 2001 through December 31, 2001)</u>, R02-17 (Consolidated) (April 18, 2002), which included the March 13, 2002 USEPA amendments, to correspond with USEPA's erroneous deletion.</p>
721.105(b)/ 261.5(b)	<p>Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./</p> <p>The Board changed "through 726, 728" to "through 728" upon adoption of the Standardized Permit Rule in <u>UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u>, R06-16, <u>RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u>, R06-17, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006)</u>, R06-18) (Consolidated) (Nov. 16, 2006).</p>
721.105(e)/ 261.5(e)	<p>Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./</p> <p>See the above explanation for Section 721.105(b).</p>

721.105(f)(2)/ 261.5(f)(2)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ See the above explanation for Section 721.105(b).
721.105(g)(2)/ 261.5(g)(2)	(1) Change “1000” to “1,000.”/ The Board added the comma to “1,000” in <u>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 and August 1, 2005), R06-6, RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Consolidated) (Jan. 5, 2006).</u> (2) Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ See the above explanation for Section 721.105(e).
721.105(g)(2)/ 261.5(g)(2)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ See the above explanation for Section 721.105(b).
721.107(a)(1)/ 261.7(a)(1)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ See the above explanation for Section 721.105(b).
721.123(a)(8)/ 261.23(a)(8)	Change the citation “49 CFR 173.51” to “49 CFR 173.54”; change “Class A explosive . . . or a Class B explosive” to “Division 1.1, 1.2 or 1.3 explosive”; change “49 CFR 173.53 . . . as defined in 49 CFR 173.88” to “49 CFR 173.50 and 173.53.”/ The Board previously updated the obsolete references to Class A and Class B explosives and citations to obsolete USDOT regulations to the current “Division 1.1, 1.2, or 1.3” explosives and the current version of the defining USDOT rules in <u>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 and August 1, 2005), R06-6, RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Consolidated) (Jan. 5, 2006).</u> (See the related entries for this provision in Tables 2 and 3.)

721.130(c)/ 261.30(c)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ The Board changed “through 725, 728” to “through 728” upon adoption of the Standardized Permit Rule in <u>UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-16, <u>RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-17, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006)</u> , R06-18) (Consolidated) (Nov. 16, 2006). That is now corrected to “through 725, 727, and 728,” since USEPA did not include 40 C.F.R. 266 in this reference. (See the related entry for this provision in Table C.)
721.130(d)/ 261.30(d)	Correct “FO20, FO21, FO22, FO23, FO26, and FO27” to “F020, F021, F022, F023, F026, and F027.”/ The Board previously made this correction upon initial adoption of the provision in <u>RCRA Update, USEPA Regulations (Apr. 24, 1984 through June 30, 1984)</u> , R85-22 (Dec. 20, 1985).
721.131(a) “F037”/ 261.31(a) “F037”	Correct “oil cooling wastewaters” to “oily cooling wastewaters.”/ The Board previously made this correction upon initial adoption of the provision in <u>RCRA Update, USEPA Regulations (July 1, 1990 through December 31, 1990)</u> , R91-1 (Aug. 8, 1991).
721.132(a) “Primary copper”/ 261.31(a)	Remove the obsolete specific source subheading./ The Board previously made this correction upon initial deletion of the K064 waste listing under the heading in <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 1999, through December 31, 1999)</u> , R00-13 (May 18, 2000) in response to 64 Fed. Reg. 56469, 70 (Oct. 20, 1999).
721.132(a) “Primary lead”/ 261.31(a)	Remove the obsolete specific source subheading./ The Board previously made this correction upon initial deletion of the K065 waste listing under the heading in <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 1999, through December 31, 1999)</u> , R00-13 (May 18, 2000) in response to 64 Fed. Reg. 56469, 70 (Oct. 20, 1999).
721.132(a) “Primary zinc”/ 261.31(a)	Remove the obsolete specific source subheading./ The Board previously made this correction upon initial deletion of the K066 waste listing under the heading in <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 1999, through December 31, 1999)</u> , R00-13 (May 18, 2000) in response to 64 Fed. Reg. 56469, 70 (Oct. 20, 1999).

721.132(a) “Ferroalloys”/ 261.31(a)	Remove the obsolete specific source subheading./ The Board previously made this correction upon initial deletion of the waste listings K090 and K091 under the heading in <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 1999, through December 31, 1999)</u> , R00-13 (May 18, 2000) in response to 64 Fed. Reg. 56469, 70 (Oct. 20, 1999).
722.111(d)/ 262.11(d)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ The Board changed “724, 725, 728, and 733” to “724 through 728, 733, and 739” upon adoption of the Standardized Permit Rule in <u>UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-16, <u>RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-17, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006)</u> , R06-18) (Consolidated) (Nov. 16, 2006). That is now corrected to “through 724 through 728 and 733,” since USEPA did not include 40 C.F.R. 279 in this reference. (See the related entry for this provision in Table C.)
722.141(b)/ 262.41(b)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ The Board changed “724, 725, and 726” to “724 through 727” upon adoption of the Standardized Permit Rule in <u>UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-16, <u>RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-17, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006)</u> , R06-18) (Consolidated) (Nov. 16, 2006).
722.142(a)(1)/ 262.42(a)(1)	Change “1000” to “1,000.”/ The Board added the comma to “1,000” in <u>UIC Corrections, USEPA Amendments (January 1, 2005 through June 30, 2005)</u> , R06-5, <u>RCRA Subtitle D Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005)</u> , R06-6, <u>RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005)</u> , R06-7 (Consolidated) (Jan. 5, 2006).
722.142(a)(2)/ 262.42(a)(2)	Change “1000” to “1,000.”/ See the above explanation for Section 722.142(a)(1).
722.142(b)/ 262.42(b)	Change “1000” to “1,000.”/ See the above explanation for Section 722.142(a)(1).

722.155(a)/ 262.55(a)	Add a specific USEPA office and address for filing exception reports./ Since initial adoption of the exception reporting requirement in <u>RCRA Update, USEPA Regulations (July 1, 1986 through September 30, 1986)</u> , R86-46 (July 16, 1987) based on 51 Fed. Reg. 28663 (Aug. 8, 1986), the Board has used an incorporation of the federal reporting requirement by reference in 35 Ill. Adm. Code 720.111, rather than recitation of the requirement, to require exception reporting.
724.152(b)/ 264.52(b)	Remove the reference to “or part 1510 of chapter V.”/ The Board previously replaced the obsolete references to the National Contingency Plan regulations with the current reference at 40 C.F.R. 300. The Board now removes the references to those rules.
724.156(d)(2)/ 264.56(d)(2)	Remove the reference to “or part 1510 of chapter V.”/ The Board previously replaced the obsolete references to the National Contingency Plan regulations with the current reference at 40 C.F.R. 300. The Board now removes the references to those rules.
724.652(e)(4)(D)(vi)/ 264.552(e)(4)(iv)(F)	Change “260.11(a)(11)” to “260.11(c)(3)(v).” No change is necessary, since the Illinois incorporations by reference do not strictly follow the federal numbering.
725.152(b)/ 265.52(b)	Remove the reference to “or part 1510 of chapter V.”/ The Board previously replaced the obsolete references to the National Contingency Plan regulations with the current reference at 40 C.F.R. 300. The Board now removes the references to those rules.
725.156(d)(2)/ 265.56(d)(2)	Remove the reference to “or part 1510 of chapter V.”/ The Board previously replaced the obsolete references to the National Contingency Plan regulations with the current reference at 40 C.F.R. 300. The Board now removes the references to those rules.
724.652(e)(4)(D)(vi)/ 264.552(e)(4)(iv)(F)	Change “260.11(a)(11)” to “260.11(c)(3)(v).” No change is necessary, since the Illinois incorporations by reference do not strictly follow the federal numbering.

726.170(d)/ 266.70(d)	Expand the citation to include the Standardized Permit Rule, 40 C.F.R. 267 (corresponding with 35 Ill. Adm. Code 727)./ The Board changed “722 through 725” to “722 through 728” upon adoption of the Standardized Permit Rule in <u>UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-16, <u>RCRA Subtitle D Update, USEPA Amendments (July 1, 2005 through December 31, 2005)</u> , R06-17, <u>RCRA Subtitle C Update, USEPA Amendments (July 1, 2005 through December 31, 2005 and March 23, 2006)</u> , R06-18) (Consolidated) (Nov. 16, 2006). That is now corrected to “through 724 through 728 and 733,” since USEPA did not include 40 C.F.R. 279 in this reference. (See the related entry for this provision in Table C.)
728.Table U/ 268.48(a) table	Restore the missing listings for “bis(2-ethylhexyl)phthalate” and “hexachloropropylene.”/ These entries inadvertently disappeared from the 1999 edition of the <i>Code of Federal Regulations</i> and have remained missing since. The Board never copied the original error.

**Table B:**  
**Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
702.181(a)	270.4(a)(2)	Changed “the permit” to “a permit”; Changed “set forth in” to “provided by” and added a comma to offset the parenthetical “as provided by”; rendered “§ 270.42” as “35 Ill. Adm. Code 703.280 through 703.283.” (See the related entry for this provision in Table B.)
720.111(a) “OECD,” “OECD Guidance Manual”	262.89(d)	Moved the incorporation by reference to the centralized listing of incorporated documents; changed the format of the incorporation to list the segments incorporated individually with a fuller, more specific description of each segment.

720.111(a) "OECD," "OECD Guidance Manual" Board note	262.89(d)	Added explanation of the on-line availability of the Guidance Manual; added explanation of the nature of the original documents; added explanation of use of the Guidance Manual instead of by direct reference to the original documents; added explanation of the correlation between the Guidance Manual and the original documents.
721.105(e)(2)	261.5(e)(2)	Removed the unnecessary comma after "721.131" that separated a two-element series after removal of "721.132" and the separating comma.
721.106(a)(2)	261.6(a)(2)	Arranged the citations in numerical order.
721.106(d)	261.6(d)	Corrected "subparts AA and BB of part 264, 265 or 267" to "Subparts AA and BB of 35 Ill. Adm. Code 724 or 725 or 35 Ill. Adm. Code 727."
721.123(a)(8)	261.123(a)(8)	Omitted the comma and verb "is" from before "Division 1.1, 1.2, or 1.3 explosive" because this is the second element of a two-element series and not an independent clause; omitted a reference to correspond with "and 173.53." (See the related entries for this provision in Tables 1 and 3.)
721.Appendix Z "scrap metal"	721.102(c), Table B "scrap metal"	Changed "under" to "pursuant to."
722 table of contents, Subpart H heading	262 table of contents, subpart H heading	Changed "Transboundary" to hyphenated "Trans-boundary."
722 table of contents	262 table of contents, section 262.88 heading	Omitted the heading of this section marked "reserved" by USEPA.
722.110(d)	262.10(d)	Changed plural "wastes that are considered" to singular "a waste considered."

722.110(d) Board note	262.10(d)	Added explanation of the Board’s addition of a definition of a term “waste hazardous under U.S. national procedures” in Section 722.181 in place of USEPA’s use of identical language in 40 C.F.R. 262.10(d), 262.58(a), and 262.80(a) (corresponding with 35 Ill. Adm. Code 722.110(d), 722.158(a), and 722.180(a)) to define when a waste is considered hazardous under U.S. national procedures. (See the related entries for Sections 722.158(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.123(f)	262.23(f)	Changed passive-voice “that are returned . . . by the designated facility” to active-voice “that the designated facility has returned . . .”; added “do each of the following” after “the generator must.”
722.123(f)(1)	262.23(f)(1)	Added “the generator must” before “sign”; changed “either” to “the hazardous waste manifest (USEPA Form 8700-22) as follows.”
722.123(f)(2)	262.23(f)(2)	Added “the generator must” before “provide”; changed “the transporter a copy of the manifest” to “a copy of the manifest to the transporter.”
722.123(f)(3)	262.23(f)(3)	Changed “within 30 days of” to “within 30 days after”; added “the generator must” before “send.”
722.123(f)(4)	262.23(f)(4)	Added “the generator must” before “retain”; moved “at the generator’s site” from after “retain” to follow “each manifest.”

722.134(a)(4)	262.34(a)(4)	Replaced the conjunction “and” after “725” with a comma to separate elements of a three-element series; added a comma after “726.116” to separate elements of a three-element series; changed “under” to “in.” (See the related entry for this provision in Table C.)
722.134(d)(4)	262.34(d)(4)	Added the preposition “with” before “Subpart C” to correspond with the appearances before the other two elements of the series; changed “under” to “in.” (See the related entry for this provision in Table C.)
722.142(c)	262.42(c)	Changed “the generator must comply . . . , as applicable” to “a generator must comply . . . , as applicable” and moved it from after “(following procedures . . . 725.172(e)(1) through (e)(6))” to become the opening clause; changed passive-voice “for rejected shipments . . . that are forwarded to an alternate facility by a designated facility” to active-voice “where a designated facility has forwarded a rejected shipment . . . to an alternate facility”; removed the now-redundant parenthetical clause “for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility” and its offsetting comma; added “generator compliance with” after “for purposes of”; changed “for a shipment forwarding such waste” to “where a designated facility forwards a shipment of rejected waste”; added “the following requirements apply” offset by a comma.
722.142(c)(1)	262.42(c)(1)	Changed the ending comma to a semicolon.
722.142(c)(1)	262.42(c)(1)	Changed “35/45/60-day timeframes” to “35-, 45-, or 60-day timeframes”; changed “the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment” to “on the date that the initial transporter accepts the waste”; added “for shipment” before “to the alternate facility.”

722.158(a)	262.58(a)	Changed plural “wastes that are considered hazardous under U.S. national procedures” to the defined singular term “waste hazardous under U.S. national procedures”; added “as defined in Section 722.181” as a parenthetical offset by commas; added “any of the” before “designated member countries”; retained lower-case “OECD member”; retained “where Subpart H of this Part applies.” (See the related entries for this provision, Sections 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c), and the Board notes to this provision and Sections 722.110(d), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a) and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.158(a)(2)	262.58(a)(2)	Retained lower-case “OECD member.”
722.158(a) Board note	262.58(a)	Added explanation of use of the defined term “waste hazardous under U.S. national procedures” and use of a centralized definition of the term. (See the related entries for this provision, Sections 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c), and the Board notes to Sections 722.110(d), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Sections 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.158(b)	262.58(b)	Retained “any” in place of “a” before “designated OECD member country”; retained lower-case “OECD member”; added “that person” before “is not subject to.”

722.Subpart H heading	262, subpart H heading	Changed “Transboundary” to hyphenated “Trans-boundary.”
722.181 “competent authority”	262.81 “competent authority”	Changed plural “concerned countries” to singular “concerned country”; changed “transboundary” to hyphenated “trans-boundary.”
722.181 “countries concerned”	262.81 “countries concerned”	Retained lower-case “OECD member” (twice).
722.181 “consent”	262.83 generally	Added this definition of a fundamental term. (See the discussion that begins on page 20 of this opinion.)
722.181 “consent” Board note	262.83 generally	Added the note indicating that the Board added the definition.
722.181 “country of export”	262.81 “country of export”	Retained lower-case “OECD member”; changed “transboundary” to hyphenated “trans-boundary”; changed plural “wastes” to singular “waste.”
722.181 “country of import”	262.81 “country of import”	Retained lower-case “OECD member”; changed “transboundary” to hyphenated “trans-boundary”; changed plural “wastes” to singular “waste” (twice).
722.181 “country of transit”	262.81 “country of transit”	Retained lower-case “OECD member”; changed “722.158(a)(1) and (a)(2)” to “722.158(a)(1) or (a)(2)”; changed “transboundary” to hyphenated “trans-boundary.” (See the related entry for this provision in Table C below.)
722.181 “exporter”	262.81 “exporter”	Changed “transboundary” to hyphenated “trans-boundary” (twice); changed “U.S.” to “United States.” (See the related entry for this provision in Table C below.)
722.181 “importer”	262.81 “importer”	Added quotation marks to the defined term; changed “to whom . . . is assigned” to active-voice “that is assigned . . .”
722.181 “OECD-listed waste”	262.82(a)(1) and (a)(2) generally	Created this fundamental term and added this definition. (See the discussion that begins on page 22 of this opinion.)

722.181 “OECD-listed waste” Board note	262.82(a)(1) and (a)(2) generally	Added the note indicating that the Board created this fundamental term and added the definition.
722.181 “OECD”	262.81 “OECD area”	Separated the last sentence of the definition of “OECD area” into a separate definition of “OECD”; added quotation marks to the defined term “OECD”; changed the spelling “Organization” to “Organisation” to agree with the formal (British) English name of the organization.
722.181 “OECD area”	262.81 “OECD area”	Retained lower-case “OECD member”; changed “OECD country” to “OECD member country.”
722.181 “OECD Guidance Manual”	262.89(d) generally	Created this title for the principal source document and added this definition, directing attention to the incorporation by reference in Section 720.111(a). (See the discussion that begins on page 21 of this opinion.)
722.181 “OECD Guidance Manual” Board note	262.89(d) generally	Added the note indicating that the Board created this title for the principal source document and added this definition, explaining the use of this document to access the OECD reference materials.
722.181 “OECD waste designation”	262.83(d)(12) and 262.89(d) generally	Created this fundamental term and added this definition. (See the discussion that begins on page 22 of this opinion.)
722.181 “OECD waste designation” Board note	262.83(d)(12) and 262.89(d) generally	Added the note indicating that the Board created this fundamental term and added the definition.
722.181 “recognized trader”	262.81 “recognized trader”	Changed “transboundary” to hyphenated “trans-boundary.”
722.181 “recovery operation”	262.81 “recovery operation”	Added “the following types of operations.”
722.181 “recovery operation,” “R13”	262.81 “recovery operation,” “R13”	Added “in this listing.”

722.181 “trans-boundary movement”	262.81 “transboundary movement”	Changed “transboundary” to hyphenated “trans-boundary”; retained lower-case “OECD member” (twice).
722.181 “waste hazardous under U.S. national procedures”	262.10(d), 262.58(a), and 262.80(a)	Created this fundamental term from defining language moved from locations in the body of the rules to this added definition. (See the related entries for Sections 722.158(a); 722.180(a); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to this provision, Sections 722.110(d), 722.158(a), and 722.180(a) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.181 “waste hazardous under U.S. national procedures” Board note	262.10(d), 262.58(a), and 262.80(a)	Added the note indicating that the Board created this fundamental term moved from defining language in the body of the rules and added this definition. (See the related entries for this provision, Sections 722.158(a); 722.180(a); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), and 722.180(a) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Sections 722.180(a) in Table C below.)

722.182(a)	262.82(a)	Changed “is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States” to “considered hazardous under U.S. national procedures, as defined in Section 722.181, is indicated by designation of the waste as either Green waste or Amber waste, as such are defined in Section 722.181.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for this provision, Section 722.180(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussion that begins on page 22 of this opinion.)
722.182(a)(1)	262.82(a)(1)	Changed “listed wastes” to “OECD-listed wastes.” (See the related entry for Sections 722.181 (“OECD-listed waste”) and 722.182(a)(2) in this Table B. See the discussion that begins on page 22 of this opinion.)
722.182(a)(1)(A)	262.82(a)(1)(i)	Retained the singular “is not waste”; added commas before and after “as defined in Section 722.181,” to offset the parenthetical.
722.182(a)(1)(B)	262.82(a)(1)(ii)	Retained the singular “that is waste.”
722.182(a)(2)	262.82(a)(2)	Changed “listed wastes” to “OECD-listed wastes.” (See the related entry for Sections 722.181 (“OECD-listed waste”) and 722.182(a)(1) in this Table B.)
722.182(a)(2)(A)	262.82(a)(2)(i)	Retained the singular “Amber waste that is waste.”

722.182(a)(2)(B)	262.82(a)(2)(ii)	Retained the singular “Amber waste that is waste”; added commas before and after “as defined in Section 722.181,” to offset the parenthetical; changed “in the United States” to “within the United States”; changed “as provided” to “as follows.”
722.182(a)(2)(B)(i)	262.82(a)(2)(ii)(A)	Changed “for U.S. exports” to “for exports of Amber waste from the United States”; changed “the United States shall” to “USEPA has stated that the United States will.”
722.182(a)(2)(B)(ii)	262.82(a)(2)(ii)(B)	Changed “for U.S. imports” to “for imports of Amber waste into the United States”; changed “the U.S. recovery/importer facility and the United States shall” to “USEPA has stated that the U.S. recovery facility or importer must assume the obligations associated with the Amber control procedures that normally apply to the exporter and the United States will assume the obligations associated with the Amber control procedures that normally apply to the country of export.”

722.182(a)(2)(C)	262.82(a)(2)(iii)	<p>Changed plural “Amber wastes that are not considered hazardous under U.S. national procedures . . . but are . . . are” to the singular “Amber waste that is not waste hazardous under U.S. national procedures . . . but which is . . . is,” using the defined term “waste hazardous under . . . procedures”; added a comma before “as defined” to offset the parenthetical; changed capitalized “OECD Member” to lower-case “OECD member” (three times); added a comma after “member country” to offset the parenthetical; changed “importer/exporter” to “importer or exporter.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(3)(A), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Section 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussion that begins on page 23 of this opinion.)</p>
722.182(a)(2) Board note	262.82(a)(2) note	Added “that are” before “subject to.”

722.182(a)(3)(A)	262.82(a)(3)(i)	<p>Changed “is not considered hazardous under U.S. national procedures” to the defined term “is not waste hazardous under U.S. national procedures”; added a comma before “as defined in Section 722.181” to offset it as a parenthetical; changed “shall be subject to” to “is subject to.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(B), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussion that begins on page 23 of this opinion.)</p>
722.182(a)(3)(A) Board note	262.82(a)(3)(i) note	<p>Changed “the regulated community should note that some . . . , by domestic law,” to “USEPA has noted that the law of some”; changed capitalized “OECD Member” to lower-case “OECD member.”</p>
722.182(a)(3)(B)	262.82(a)(3)(ii)	<p>Changed “is considered hazardous under U.S. national procedures” to the defined term “is waste hazardous under U.S. national procedures”; added a comma before and after “as defined in Section 722.181” to offset it as a parenthetical; corrected plural “are” to singular “is” before “subject to.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(4)(B)(i), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussion that begins on page 23 of this opinion.)</p>

722.182(a)(3)(B) Board note	262.82(a)(3)(ii) note	Changed “the regulated community should note that some . . . , by domestic law,” to “USEPA has noted that the law of some”; changed capitalized “OECD Member” to lower-case “OECD member.”
722.182(a)(4)	262.82(a)(4)	Changed plural “wastes not yet assigned to an OECD waste list” to singular “waste that is not yet OECD-listed waste,” using the defined term “OECD-listed waste”; changed “transboundary” to hyphenated “trans-boundary.” See the discussion that begins on page 22 of this opinion.
722.182(a)(4)(A)	262.82(a)(4)(i)	Changed “is considered hazardous under U.S. national procedures” to the defined term “is waste hazardous under U.S. national procedures”; changed “such waste” to “the waste.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(B)(ii), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)

722.182(a)(4)(B)	262.82(a)(4)(ii)	Changed “is not considered hazardous under U.S. national procedures” to the defined term “is not waste hazardous under U.S. national procedures”; changed plural “such wastes are” to singular “the waste is.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), and (a)(4)(B)(i), and 722.183(c) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.182(b)	262.82(b)	Changed “transboundary” to hyphenated “trans-boundary.”
722.182(b)(2)	262.82(b)(2)	Changed “transboundary” to hyphenated “trans-boundary.”
722.182(b)(3)	262.82(b)(3)	Changed capitalized “OECD Member” to lower-case “OECD member.”
722.182(c)	262.82(c)	Retained the ending period.
722.182(c)(1)	262.82(c)(1)	Retained numeric “30” without changing it to the written and numeric combination “thirty (30).”
722.182(c)(1)(A)	262.82(c)(1)(i)	Retained numeric, hyphenated “30-day” without changing it to the written and numeric combination “thirty (30) day.”
722.182(c)(1)(B)	262.82(c)(1)(ii)	Changed “transboundary” to hyphenated “trans-boundary”; changed “importing and transit countries” to the defined terms “countries of import and countries of transit.”
722.182(c)(2)	262.82(c)(2)	Retained lower-case “OECD member” (three times).

722.182(d)	262.82(d)	Changed “transboundary” to hyphenated “trans-boundary”; changed “consent(s)” to “consents”; added a comma before “as appropriate” to offset it as a parenthetical.
722.182(d)(1)	262.82(d)(1)	Changed the colon after the topical subheading “return to the . . . country of export” to a period; changed “EPA” to “USEPA” (five times); changed “specified address” to “address specified”; changed “USEPA will” to “USEPA stated that it will”; changed “reason(s)” to “reasons”; changed written and numeric combination “ninety (90)” to numeric “90”; changed “Member countries” to “OECD member countries.”
722.182(d)(2)	262.82(d)(2)	Changed the colon after the topical subheading “return . . . to the United States” to a period; changed written and numeric combination “ninety (90)” to numeric “90”; changed “EPA” to “USEPA” (twice); changed “Member countries” to “OECD member countries.”
722.182(e)	262.82(e)	Changed “transboundary” to hyphenated “trans-boundary”; added a comma before “as appropriate” to offset it as a parenthetical.
722.182(e)(1)	262.82(e)(1)	Changed the colon after the topical subheading “return from the . . . country of export” to a period; changed “EPA” to “USEPA” (four times).
722.182(e)(2)	262.82(e)(2)	Changed the colon after the topical subheading “return from the . . . (as country of export)” to a period; changed written and numeric combination “ninety (90)” to numeric “90”; changed “EPA” to “USEPA” (twice); changed “Member countries” to “OECD member countries.”

722.182(f)	262.82(f)	Changed “R12 and R13 facilities” to “facilities engaged in R12 and R13 recovery operations” to use the term defined in Section 722.181; changed “transboundary” to hyphenated “trans-boundary”; changed plural “R12 and R13 operations” to singular “R12 or R13 recovery operation” to standardize the usage; added a comma before “as set forth in” to offset the parenthetical (twice); changed plural “R12/R13 facilities” to singular “a facility engaged in R12 or R13 recovery operation” to standardize the usage; added “the following” after “include.” (See the discussion that begins on page 32 of this opinion.)
722.182(f)(1)	262.82(f)(1)	Changed “R1-R11 recovery operation takes place” to “R1 through R11 recovery operation will take place.”
722.182(f)(2)	262.82(f)(2)	Changed written and numeric combination “three (3)” to written “three”; changed “the R12/R13 recovery facility or facilities” to “the owner or operator of a facility engaged in R12 or R13 recovery operations”; changed “facility(ies) shall” to “facility owner or operator must” (twice); changed plural “countries of export and import” to singular “country of export and the country of import.” (See the discussion that begins on page 32 of this opinion.)
722.182(f)(3)	262.82(f)(3)	Changed written and numeric combination “thirty (30)” to numeric “30”; changed “the R12/R13 recovery operation” to “R12 or R13 recovery operation”; changed “R12 or R13 facility(ies) shall” to “an R12 or R13 recovery operation facility owner or operator must”; added “USEPA . . . , at the following address:” before the address; changed the address to a block-indent format; moved “by mail, email without digital signature followed by mail, or fax followed by mail,” offset by a comma, after “to USEPA.” (See the discussion that begins on page 32 of this opinion.)

722.182(f)(4)	262.82(f)(4)	Changed “R12/R13 recovery facility” to “a facility engaged in R12 or R13 recovery operation”; changed “an R1-R11 recovery facility” to “a facility engaged in R1 through R11 recovery operation”; changed “it shall” to “the owner or operator of the R12 or R13 recovery operation facility must”; added a comma before “as soon as possible” to offset it as a parenthetical”; changed “R12/R13 facility” to “the owner or operator of the R12 or R13 recovery operation facility”; changed “countries of export and import” to singular “country of export and the country of import”; changed “transboundary” to hyphenated “trans-boundary”; corrected “certification pertain” to “certification pertains.” (See the discussion that begins on page 32 of this opinion.)
722.182(f)(5)	262.82(f)(5)	Changed “R12/R13 recovery facility” to “R12 or R13 recovery operation facility”; changed “R1-R11 recovery facility” to “R1 through R11 recovery operation facility”; added “as follows, the indicated requirements apply” after “located.” (See the discussion that begins on page 32 of this opinion.)
722.182(f)(5)(B)	262.82(f)(5)(B)	Changed “additional provision” to “additional requirement”; changed “shall” to “must”; changed “transboundary” to hyphenated “trans-boundary.”
722.182(g)	262.82(g)	Changed “transboundary” to hyphenated “trans-boundary”; changed “it” to “the Amber waste”; changed “such waste shall” to “such Amber waste must”; moved “adequately from after “particular case” to before “perform”; added “may the amount of Amber waste” before “exceed”; changed “twenty-five kilograms (25 kg)” to “25 kilograms (kg)”; changed “waste destined” to “Amber waste destined.”

722.183(a)	262.83(a)	Changed plural “countries of import and transit” to use the singular defined terms “country of import and country of transit”; changed the semicolon before “and wastes” to a comma to offset the independent clause; changed “wastes not identified on any list” to “wastes that are not OECD-listed waste” to use the defined term added by the Board.
722.183(b)	262.83(b)	Changed plural “exports . . . that are subject to Amber control procedures are” to the singular “export . . . that is subject to the Amber control procedures is”; added commas before and after “as described in Section 722.180(a)” to offset it as a parenthetical.
722.183(b)(1)(A)	262.83(b)(1)(i)	Retained numeric “45”; changed “transboundary” to hyphenated “trans-boundary” (twice); retained the abbreviation “Ave.”; added “the Amber wastes” before are to be sent”; retained numeric “one year.”
722.183(b)(1)(B)	262.83(b)(1)(ii)	Changed plural “any countries concerned” to singular “any country concerned”; changed “exporting, importing, or transit countries” to singular use of defined terms “country of export, country of import, or country of transit; retained numeric “30”; changed “transboundary” to hyphenated “trans-boundary”; retained written “one calendar year”; retained numeric “30-day.”
722.183(b)(1)(C)	262.83(b)(1)(iii)	Retained numeric “30”; changed “transboundary” to hyphenated “trans-boundary”; retained written “one calendar year.”
722.183(b)(2)	262.83(b)(2)	Changed “transboundary” to hyphenated “trans-boundary.”
722.183(b)(2)(A)	262.83(b)(2)(i)	Changed “all the information” to “all of the information”; retained numeric “10”; retained the abbreviation “Ave.”; changed written and numeric combination “three (3)” to written “three.”

722.183(b)(2)(B)	262.83(b)(2)(ii)	Changed written and numeric combination “seven (7)” to written “seven”; added a comma before “unless” to offset the parenthetical; changed present-tense “objects” to the present participle “has objected.”
722.183(c)	262.83(c)	Changed “not covered in the OECD Green and Amber lists” “not Green waste of Amber waste,” using defined terms; changed plural “wastes . . . , that have not been assigned to the OECD Green and Amber lists, incorporated by reference in § 262.80(a), but which are” to “waste . . . that is not Green waste or Amber waste, as defined in Section 722.181, but which is,” retaining the singular; changed “considered hazardous under U.S. national procedures, as defined in § 262.80(a)” to use the defined term “waste hazardous under U.S. national procedures, as defined in § 262.81”; changed plural “wastes . . . that have not been . . . and are not” to singular “waste . . . that has not been . . . and which is not”; changed “as defined in § 262.80(a)” to “as defined in § 262.81.” (See the related entries for this provision; Sections 722.158(a); 722.180(a); 722.181 (“waste hazardous under U.S. national procedures); and 722.182(a), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(3)(B)(i), and (a)(3)(B)(ii) and the Board notes to Sections 722.110(d), Sections 722.158(a), 722.180(a), and 722.181 (“waste hazardous under U.S. national procedures) in this Table B. See the related entries for Sections 722.180(a) and 722.182(a), and the Board note attached to Section 722.180(a) in Table C below. See the discussions that begin on page 23 of this opinion.)
722.183(d)	262.83(d)	Retained “following information” in place of “information specified in paragraphs (d)(1) through (d)(14) of this section.”
722.183(d)(1)	262.83(d)(1)	Added the definite article before “serial.”

722.183(d)(2)	262.83(d)(2)	Added the definite article before and changed “exporter name” to “exporter’s name”; changed “address, telephone, fax numbers, and e-mail address” to “address telephone, fax number, and e-mail address.”
722.183(d)(3)	262.83(d)(3)	Changed “address, telephone, fax numbers, and e-mail address” to “address telephone, fax number, and e-mail address.” (See the related entry for this provision in Table C below.)
722.183(d)(4)	262.83(d)(4)	Added the definite article before and changed “importer name” to “importer’s name”; changed “address, telephone, fax numbers, and e-mail address” to “address telephone, fax number, and e-mail address.”
722.183(d)(5)	262.83(d)(5)	Added the definite article before and changed “intended transporter(s) or their agent(s)” to “the intended transporters’ or their agents’”; changed “address, telephone, fax numbers, and e-mail address” to “address telephone, fax number, and e-mail address.”
722.183(d)(10)	262.83(d)(10)	Added the definite article before and changed “date(s)” to “the dates”; changed “transboundary” to hyphenated “trans-boundary”; changed “movement(s)” to “movements.”
722.183(d)(11)	262.83(d)(11)	Added the definite article before “means.”
722.183(d)(12)	262.83(d)(12)	Changed “designation of the waste types from the appropriate OECD list”; to “the OECD waste designation (e.g., Green waste or Amber waste) for each waste type; added the definite article before “the”; changed “description(s) of each waste type” to singular “a description of each waste type.” (See the related entry for this provision in Table C below.)
722.183(d)(13)	262.83(d)(13)	Changed “operation(s)” to “operations.”

722.183(d)(14) certification statement	262.83(d)(13) certification statement	Changed “transboundary” to hyphenated “trans-boundary.” (See the related entry for this provision in Table C below.)
722.183(e)	262.83(e)	Changed written and numeric combination “thirty (30)” to numeric “30”; changed “completion of recovery and no later than one (1) calendar year . . . , the U.S. facility shall” to “completion of recovery or one calendar year . . . , whichever comes first, the U.S. facility must”; broke the run-on sentence by adding a period after “import” and adding “The recovery facility . . . certificate of recovery by mail”; further broke the run-on sentence by adding a period after “by mail” and adding “Alternatively, the recovery facility . . . certificate by” before “e-mail”; changed “digital signature followed by mail, or fax followed by mail” to “digital signature or by fax, so long as the sending is immediately followed by mail”; changed “shall” to “must” after “certificate of recovery”; added a comma before “and dated” to offset the final element of a series; changed “that affirms that” to “which affirms that” to avoid repetitious usage.
722.184(a)	262.84(a)	Changed “transboundary” to hyphenated “trans-boundary”; retained “this subsection (a)” in place of “paragraphs (a)(1) and (2) of this section.”
722.184(b)	262.84(b)	Retained “following information” in place of “following paragraphs (b)(1) through (b)(7) of this section.”
722.184(b)(2)	262.84(b)(2)	Added the definite article before “exporter”; added the definite article before “primary exporter.”
722.184(b)(5)	262.84(b)(5)	Retained “transporters” in place of “transporter(s).”

722.183(b)(6) certification statement	262.83(b)(6) certification statement	Changed “transboundary” to hyphenated “trans-boundary”; moved “the parenthetical “delete sentences that are not applicable” from before the signature line to precede the three alternative statements; changed the ending semicolon inside the quotation marks at the end of the alternative statement to a period and added an ending semicolon after the quotation marks (twice); added the ending conjunction “or” after the second alternative statement. (See the related entry for this provision in Table C below.)
722.184(e)	262.84(e)	Changed written and numeric combination “three (3)” to written “3” (twice); retained numeric “10”; retained the abbreviation “Ave.”; changed plural “countries of export and transit” to singular use of the defined terms “country of export and country of transit”; changed “R12/R13 recovery facility” to “R12 or R13 recovery operation facility”; added a comma before “as defined” to completely offset the parenthetical; changed “the facility shall” to “the facility owner or operator must retain.”
722.185(a)	262.85(a)	Changed “transboundary” to hyphenated “trans-boundary”
722.185(b)	262.85(b)	Retained “the following . . . , where available” in place of “. . . , where available, of paragraph (b)(1) through (b)(4) of this section.”
722.185(c)(1)	262.85(c)(1)	Changed plural “countries of export and transit” to singular use of the defined terms “country of export and country of transit.”
722.185(e)	262.85(e)	Retained singular “any country concerned.”
722.185(e) Board note	262.85(e) note to paragraph	Changed “Member countries” to “OECD member countries”; changed plural “transporters or importers” to singular “a transporter or importer.”
722.185(g)	262.85(g)	Changed plural “U.S. exporters, importers, or recovery facilities” to singular “a U.S. exporter, importer, or recovery facility.”

722.185(g) Board note	262.85(g) note to paragraph	Changed “OECD Council Decision” to “OECD Guidance Manual”; changed “Member countries” to “OECD member countries” (three times).
722.186(b)	262.86(b)	Changed “transboundary” to hyphenated “trans-boundary”
722.187(a)	262.87(a)	Changed “or who initiate” to “or which initiate”; changed “under § 262.84” to “pursuant to Section 722.184”; retained the abbreviation “Ave.”; changed “or the person who initiates” to “or the person that initiates”; changed “Member countries” to “OECD member countries”; retained “the following information” in place of “the following paragraphs (a)(1) through (a)(6) of this section specified as follows.”
722.187(a)(4)	262.87(a)(4)	Changed “designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d)”; the “OECD waste designation, as defined in Section 722.181”; added the definite article before “USDOT hazard class”; added the definite article before “number of shipments.” (See the discussion that begins on page 22 of this opinion.)
722.187(a)(5)	262.87(a)(5)	Retained “100 kilograms (kg)” in place of “100kg”; retained “1,000 kg” in place of “1,000kg.”
722.187(b)	262.87(b)	Changed “or who initiates” to “or which initiates”; retained “USEPA” in place of “Office of Enforcement and Compliance Assurance, . . . Washington, DC 20460,” instead moving the address to an appended Board note.
722.187(b) Board note	262.87(b)	Added the statement “The primary exporter must file . . . with USEPA at the following address:”; moved the address “Office of Enforcement and Compliance Assurance, . . . Washington, DC 20460,” from the text to the note, changing “Avenue” to abbreviated “Ave.”

722.187(c)	262.87(c)	Changed plural “persons that meet” to singular “a person that meets”; changed “or who initiates” to “or which initiates”; retained “the following records” in place of “the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section specified as follows.”
722.187(c)(1)(A)	262.87(c)(1)(i)	Retained written “three” in place of combined written and numeric “three (3).”
722.187(c)(1)(B)	262.87(c)(1)(ii)	Retained written “three” in place of combined written and numeric “three (3).”
722.187(c)(1)(C)	262.87(c)(1)(iii)	Retained written “three” in place of combined written and numeric “three (3).”
722.187(c)(1)(D)	262.87(c)(1)(iv)	Added a comma before “for at least three years from . . . waste shipment” to offset it as a parenthetical; retained written “three” in place of combined written and numeric “three (3).”
722 text	section 262.88 heading	Omitted the heading of this section marked “reserved” by USEPA
722.189(a)(2)	262.89(a)(2)	Removed the word “either,” since more than two options follow in the text; restructured the material to divide the references to hazardous waste manifesting requirements, to universal waste management standards, and to export requirements for spent lead-acid batteries into three separate subsections; added “any of the following requirements” and the ending colon.
722.189(a)(2)(A)	262.89(a)(2)	Moved “the hazardous waste manifesting requirements of Subpart B of this Part” into this separate subsection; added “those of corresponding subpart B of 40 CFR 262, or those of a sister state that are analogous to subpart B of 40 CFR 262” as the final two elements of a three-element series. (See the discussion that begins on page 34 of this opinion.)

722.189(a)(2)(B)	262.89(a)(2)	Moved “the universal waste management standards of 35 Ill. Adm. Code 733” into this separate subsection; added “those of corresponding 40 CFR 273, or those of a sister state that are analogous to 40 CFR 733” as the final two elements of a three-element series. (See the discussion that begins on page 34 of this opinion.)
722.189(a)(2)(C)	262.89(a)(2)	Moved “the export requirements in the spent lead-acid battery management standards of Subpart G of 35 Ill. Adm. Code 726” into this separate subsection; added “those of corresponding subpart G of 40 CFR 266, or those of a sister state that are analogous to subpart G of 40 CFR 266” as the final two elements of a three-element series. (See the discussion that begins on page 34 of this opinion.)
722.189(b)	262.89(b)	Changed “appears in Appendix 4 of the OECD Decision, as defined” to “is Amber waste, as defined” using the Board-added defined term. (See the discussion that begins on page 19 of this opinion.)
722.189(d)	262.89(d)	Retained the text explaining the omission of the federal incorporation by reference in place of the incorporation by reference at this location; changed the references to the Amber list and Green list to a reference to the OECD Guidance Manual. (See the discussion that begins on page 16 of this opinion.)
722.300 “central accumulation area”	262.200 “central accumulation area”	Changed “262.34(a)-(b)” to “722.134(a) and (b).” (See the related entry for this provision in Table C below.)
723.112	263.12	Changed the conjunction in the series from “and” to “or.”

724.112(a)(2)	264.12(a)(2)	Retained the abbreviation “Ave.”; retained written “three” in place of combined “three (3)” (twice); changed “owner or operator shall” to “owner or operator must”; moved the parenthetical “as soon as possible but no later than . . . completion of recovery and no later than one calendar year following the receipt of the hazardous waste” from after “must” to follow “recovery,” removing the first offsetting comma and adding a comma before and after “but no later than . . . completion of recovery” to offset it as a parenthetical; removed the conjunction “and” and added a comma after “foreign exporter”; removed the conjunction “and” and added a comma after “country of export”; changed “EPA’s” to “USEPA’s”; changed combined numeric and written “thirty (30)” to numeric “30”; changed combined “one (1)” to written “one.” (See the related entry for this provision in Table C below.)
724.171(a)(3)	264.71(a)(3)	Changed “EPA’s” to “USEPA’s”; retained numeric “30” in place of combined “thirty (30)”; retained abbreviated “Ave.”
724.171(d)	264.71(d)	Retained written “three” in place of combined written and numeric “three (3)” (twice). (See the related entry for this provision in Table C below.)
724.172(f)(7)	264.72(f)(7)	Changed “(f)(1), (2), (3), (4), (5), (6), and (8)” to “(f)(1) through (f)(6) and (f)(8).” (See the related entry for this provision in Table C below.)
724.172(f)(8)	264.72(f)(8)	Changed “facility” to “facility owner or operator.”
724.172(g)	264.72(f)(8)	Changed “facility” to “facility owner or operator” (four times).

725.112(a)(2)	265.12(a)(2)	Retained the abbreviation “Ave.”; retained written “three” in place of combined “three (3)” (twice); changed “owner or operator shall” to “owner or operator must”; moved the parenthetical “as soon as possible but no later than . . . completion of recovery and no later than one calendar year following the receipt of the hazardous waste” from after “must” to follow “recovery,” removing the first offsetting comma and adding a comma before and after “but no later than . . . completion of recovery” to offset it as a parenthetical; removed the conjunction “and” and added a comma after “foreign exporter”; removed the conjunction “and” and added a comma after “country of export”; changed “EPA’s” to “USEPA’s”; changed combined numeric and written “thirty (30)” to numeric “30”; changed combined “one (1)” to written “one.” (See the related entry for this provision in Table C below.)
725.171(a)(3)	265.71(a)(3)	Changed “EPA’s” to “USEPA’s”; retained numeric “30” in place of combined “thirty (30)”; retained abbreviated “Ave.”
725.171(d)	265.71(d)	Retained written “three” in place of combined written and numeric “three (3)” (twice). (See the related entry for this provision in Table C below.)
725.172(f)(7)	264.72(f)(7)	Changed “(f)(1), (2), (3), (4), (5), (6), and (8)” to “(f)(1) through (f)(6) and (f)(8).” (See the related entry for this provision in Table C below.)
725.172(f)(8)	264.72(f)(8)	Changed “facility” to “facility owner or operator.”
725.172(g)	264.72(f)(8)	Changed “facility” to “facility owner or operator” (four times).
726.122	266.22	Added a comma before “and 727” to separate the final element of the series.

726.180(a)	266.80(a)	Retained the format in paragraphs in place of the corresponding tabular format.
726.180(a)(6)	266.80(a)(6) columns 1, 2, and 3	Changed “if your batteries . . .” to “if the spent lead-acid batteries” and moved it to appear before “will be reclaimed” in the text; changed “and if you . . .” to “and the batteries are” and moved it to appear before “exported . . . a foreign country” in the text, changing it; changed “export these batteries” to “exported the batteries for”; moved “then you . . .” to appear before “is exempt . . . section 3010 of RCRA” in the text, changing it to “the owner or operator”; changed “are exempt” to “is exempt”; changed “40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter” to “35 Ill. Adm. Code 702, 703, 723 through 726, and 728.”
726.180(a)(6)(A)	266.80(a)(6) columns 2 and 3	Moved “then you . . .” to appear before “are exempt” in the text, changing it to “the owner or operator . . . is also exempt”; changed “in either: (1) 40 CFR part 262 subpart H; or (2) 262.53 ‘Notification of Intent to Export [sic], 262.56(a)(1) through (4)(6) and (b) ‘Annual Reports,’ and 262.57 ‘Recordkeeping’” to “set forth in subsection (a)(6)(B) and (a)(6)(C) of this Section.”
726.180(a)(6)(B)	266.80(a)(6) column 4 preamble	Changed “and you . . . are” to “the owner or operator is” and moved it appear before “subject to” in the text.
726.180(a)(6)(C)	266.80(a)(6) column 4 preamble	Changed “if shipping from one of the OECD countries specified in 40 CFR 262.58(a)(1)” to “where the owner or operator ships spent lead-acid batteries to one of the OECD countries specified in 35 Ill. Adm. Code 722.158(a)(1)” and moved it from the parentheses after to appear before the citation of applicable requirements; added “the owner or operator” before “must comply”; added “the applicable provisions of” before “Subpart H of 35 Ill. Adm. Code 722.”

726.180(a)(6)(D)	266.80(a)(6) column 4 preamble	Added “where the provisions of Subpart H do not apply as described in subsection (a)(6)(C) of this Section” repeated “the owner or operator” before “must”; added “comply with the following requirements.”
726.180(a)(6)(D)(i)	266.80(a)(6) column 4 ¶ (a)	Added “the owner or operator must” before “comply with the requirements”; changed “262.56(a)(1) through (4), (6), and (b)” to “722.156(a)(1) through (a)(4), (a)(6), and (b).”
726.180(a)(6)(D)(ii)	266.80(a)(6) column 4 ¶ (b)	Added “the owner or operator must” before “export”; changed “these batteries” to “the spent lead-acid batteries”; added “only” before “in conformance”; changed “EPA” to “USEPA”; changed “as defined in” to “as required by,” preceded by a comma to offset it as a parenthetical.
726.180(a)(6)(D)(iii)	266.80(a)(6) column 4 ¶ (c)	Added “the owner or operator must” before “provide a copy”; changed “EPA” to “USEPA.”
726.180(a)(7)	266.80(a)(7) columns 1, 2, and 3	Changed “if your batteries . . .” to “if the spent lead-acid batteries” and moved it to appear before “will be reclaimed” in the text; changed “and if you . . .” to “the person that” and moved it to appear before “transports . . . a foreign country”; changed “transport these batteries in the U.S. . . . in a foreign country” to “transports the batteries in the United States”; changed “then you . . . are” to “(the transporter) is” and moved it to appear before “is exempt . . . section 3010 of RCRA.”
726.180(a)(7)(A)	266.80(a)(7) column 2 and column 4 preamble	Moved “and if you . . .” to appear before “(if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1))” and changed it to appear as “where the transporter ships spent-lead-acid batteries to one of the OECD countries specified in 35 Ill. Adm. Code 722.158(a)(1)”; added a comma to offset the introductory clause; changed “and you . . . must comply” to “the transporter must comply.”

726.180(a)(7)(B)	266.80(a)(7) column 4 preamble	Moved “and if you . . .” to appear before “or must comply with the following” and changed it to appear as “where the provisions . . . do not apply as described in subsection (a)(7)(A) of this Section, the transporter must comply with the following requirements.”
726.180(a)(7)(B)(i)	266.80(a)(7) column 4 ¶ (a)	Changed “you may not” to “the transporter must not”; changed “if you know” to “if the transporter knows that”; changed “EPA Acknowledgment of Consent” to “USEPA Acknowledgment of Consent.”
726.180(a)(7)(B)(ii)	266.80(a)(7) column 4 ¶ (b)	Changed “you” to “the transporter”; changed “EPA Acknowledgment of Consent” to “USEPA Acknowledgment of Consent.”
726.180(a)(7)(B)(iii)	266.80(a)(7) column 4 ¶ (c)	Changed “you” to “the transporter.”

**Table C:  
Board Housekeeping Amendments**

Section	Source	Revision(s)
702.101(b)(2) table	Board	Corrected “35 Ill. Adm. Code 702Subpart” to “Subpart of 35 Ill. Adm. Code 702” in the second column heading; corrected “35 Ill. Adm. Code 703Subpart” to “Subpart of 35 Ill. Adm. Code 703” in the third column heading; corrected “35 Ill. Adm. Code 704Subpart” to “Subpart of 35 Ill. Adm. Code 705” in the fourth column heading; changed four hyphens “----” to a single em-dash “—” in each cell that does not have a letter Subpart designation (19 times).
702.101(b)(2) Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
702.110 “new injection well” Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
702.110 “point of injection” Board note	Board	Changed two hyphens in “box--the” to a single em-dash “box—the.”

702.110 Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
702.120(a)	Board	Changed the personal pronoun “who” to “that” (twice); changed “shall” to “must.”
702.120(b)	Board	Separated the text of subsection (b) from that of subsection (a) by a blank line.
702.120(b)(3)	Board	Changed “702.120 through 702.124” to “702.121 through 702.124.”
702.120 Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available (twice), including removal of an obsolete <i>Federal Register</i> citation.
702.181(a) Board note	Board	Changed “it” to “40 CFR.4(a)(1)”; changed the comma after “federal law” to a semicolon; changed “it enumerates” to “40 CFR 270.4(a)(1)(i) through (a)(1)(iv) enumerate”; added “events” and a colon after “intervening”; added “new or amended” before “statutory requirements”; added “new or amended” before “40 CFR 268 land disposal restrictions”; added “the adoption of the” before and changed “subparts AA, BB, and CC of 40 CFR 264 leak detection requirements” to “air emissions limitations of subparts AA, BB, and CC of 40 CFR 264.”
702.181 Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.110 “designated facility”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available (twice).

720.110 “Performance Track member facility”	Board	Removed the entire definition due to USEPA’s termination of the Performance Track Program in 2009. (See the related entries for Sections 721.107(b)(1)(C)(i); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C. See the discussion that begins on page 44 of this opinion.)
720.111(b) “Table II, column 2 in Appendix B to 10 CFR 20 (2010)”	Board	Added citation to the <i>Federal Register</i> for amendments that occurred later than the latest available version of <i>Code of Federal Regulations</i> .
720.111(b) “10 CFR 71”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “10 CFR 71.5”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “33 CFR 153.203”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 3.2”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 3.3”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 3.10”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 3.2000”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 51.100(ii)”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Appendix W to 40 CFR 51”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Appendix B to 40 CFR 52.741”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.

720.111(b) “40 CFR 60”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of <i>Federal Register</i> citations to later amendments.
720.111(b) “Subpart VV of 40 CFR 60”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations.
720.111(b) “Appendix A to 40 CFR 60”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “40 CFR 61”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations.
720.111(b) “Subpart V of 40 CFR 61”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of <i>Federal Register</i> citations to later amendments.
720.111(b) “Subpart FF of 40 CFR 61”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 63”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of <i>Federal Register</i> citations to later amendments.
720.111(b) “Subpart RR of 40 CFR 63”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Subpart EEE of 40 CFR 63 (2010)”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Method 301 . . . in appendix A to 40 CFR 63”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “Appendix C to 40 CFR 63”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Appendix D to 40 CFR 63”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.

720.111(b) “40 CFR 136.3”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 144.70”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 232.2”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 257”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 258”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including addition of <i>Federal Register</i> citations to later amendments.
720.111(b) “40 CFR 260.21”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Appendix I to 40 CFR 260”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “40 CFR 261.151”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Appendix III to 40 CFR 261”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 262.53”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 262.54”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 262.55”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “40 CFR 262.56”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “40 CFR 262.57”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.

720.111(b) "Appendix to 40 CFR 262"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "40 CFR 264.151"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix I to 40 CFR 264"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix IV to 40 CFR 264"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix V to 40 CFR 264"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix VI to 40 CFR 264"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix I to 40 CFR 265"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix III to 40 CFR 265"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix IV to 40 CFR 265"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix V to 40 CFR 265"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "Appendix IX to 40 CFR 266"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "40 CFR 267.151"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "40 CFR 270.5"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "40 CFR 761"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) "40 CFR 761.3"	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.

720.111(b) “40 CFR 761.60”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 761.65”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “40 CFR 761.70”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Subpart B of 49 CFR 107”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 171”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 171.3”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “49 CFR 171.8”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of <i>Federal Register</i> citations to later amendments.
720.111(b) “49 CFR 171.15”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “49 CFR 171.16”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “49 CFR 172”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 172.304”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “Subpart F of 49 CFR 172”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation and addition of a <i>Federal Register</i> citation to later amendments.

720.111(b) “49 CFR 173”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations.
720.111(b) “49 CFR 173.2”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “49 CFR 173.12”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “49 CFR 173.28”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “49 CFR 173.50”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “49 CFR 173.54”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
720.111(b) “49 CFR 173.115”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “49 CFR 174”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations.
720.111(b) “49 CFR 175”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 176”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 177”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation and addition of a <i>Federal Register</i> citation to later amendments.

720.111(b) “49 CFR 178”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of obsolete <i>Federal Register</i> citations and addition of a <i>Federal Register</i> citation to later amendments.
720.111(b) “49 CFR 179”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
720.111(b) “49 CFR 180”	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation and addition of a <i>Federal Register</i> citation to later amendments.
720.111(c) “Section 11 of the Atomic Energy Act of 1954”	Board	Updated the <i>United States Code</i> citation to the latest version available.
720.111(c) “Sections 201(v), 201(w), and 512(j) of the Federal Food, Drug, and Cosmetic Act”	Board	Updated the <i>United States Code</i> citation to the latest version available, adding “January 3” and an offsetting comma before the year.
720.111(c) “Section 1412 of the Department of Defense Authorization Act of 19864”	Board	Updated the <i>United States Code</i> citation to the latest version available, adding “January 3” and an offsetting comma before the year.
720.Appendix A heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
721.101 Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available, including removal of an obsolete <i>Federal Register</i> citation.
721.106(c)(1)	Board	Removed the unnecessary second citation to “724,” together with its offsetting comma.
721.107(b)(1)(C)(i)	Board	Removed the obsolete language “until September 5, 2006, or . . . effective September 5, 2006.” (See the related entry for Section 721.107(b)(1)(C)(ii) in this Table C. See the discussion that begins of page 43 of this opinion.)

721.107(b)(1)(C)(ii)	Board	Removed the obsolete language “until September 5, 2006, or . . . effective September 5, 2006.” (See the related entry for Section 721.107(b)(1)(C)(i) in this Table C. See the discussion that begins of page 43 of this opinion.)
721.123(a)(8) Board note	Board	Replaced the former explanation of reliance on current USDOT regulations with an explanation for the dropped citation to 49 C.F.R. 173.53. (See the related entries for this provision in Tables 1 and 2.)
721.130(c)	Board	Corrected “35 Ill. Adm. Code 702, 703, and 722 through 728” to “35 Ill. Adm. Code 702, 703, and 722 through 725, 727, and 728.” (See the related entry for this provision in Table B.)

721.131(a) "F039"	Board	Reworded and reorganized the listing for enhanced clarity: Added "multi-source" before "leachate" (twice); added "this" before "Subpart D"; changed "land disposed" to hyphenated "land-disposed," replaced the parenthetical "(liquids that have percolated through land-disposed wastes)" after "leachate" with a free-standing sentence: "For purposes of this hazardous waste listing, 'leachate' means liquids that have percolated through land-disposed wastes," moved to follow the opening sentence: "Multi-source leachate . . . hazardous under this Subpart D."; added "This multi-source leachate listing does not apply to" before "leachate"; changed "one or more" to "more than one"; changed "the following USEPA hazardous wastes and no other hazardous wastes" to "the following USEPA hazardous waste where the disposal of no other hazardous waste is involved"; moved "F020, F021, . . . and F028," added a colon after "involved," and split the run-on sentence at this point; added "Leachate from exclusive disposal of any combination of these hazardous wastes is considered single-source leachate, and that leachate" before "retains"; changed "retains it's the USEPA hazardous waste number(s)" to "the USEPA Hazardous waste numbers of the wastes from which the leachate derived"; added "and that leachate retains the USEPA hazardous waste numbers of the wastes from which it is derived"; added "and the leachate must meet the treatment standards for the underlying waste codes" after "derived," offset as a parenthetical by a comma. (See the discussions that begin on page 44 of this opinion.)
721.131(a) "F039" Board note	Board	Added explanation that the discussion at 55 Fed. Reg. 22520, 619-23 (June 1, 1990) is a significant source of the listing in part. (See the discussions that begin on page 44 of this opinion.)
721.139(a)(3)	Board	Corrected the cross reference "subsections (a)(1)(B) and (a)(1)(2)" to "subsections (a)(1)(B) and (a)(2)."
721.139(a)(5)(A)(i)	Board	Corrected "USEPA ID number" to "USEPA identification number."
721.141(a)	Board	Corrected "USEPA ID number" to "USEPA identification number."

721.243(e)(10)	Board	Deleted the parenthetical “as that term is defined in subsection (g)(1)(B) of this Section” and its offsetting comma. (See the discussions that begin of page 54 of this opinion.)
721.243(e)(10) Board note	Board	Deleted the entire note. (See the discussions that begin of page 54 of this opinion.)
721.247(g)(1)	Board	Deleted the parenthetical “as that term is defined in subsection (g)(1)(B) of this Section” and its offsetting comma. (See the discussions that begin of page 54 of this opinion.)
721.247(g)(1)(B)	Board	Replaced the definition of “substantial business relationship” with an explanation that USEPA marked the corresponding federal provision “reserved.” (See the discussions that begin of page 54 of this opinion.)
721.243(g)(1)(B) Board note	Board	Deleted the explanation relative to the definition of “substantial business relationship.” (See the discussions that begin of page 54 of this opinion.)
721.Appendix H heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
721.Appendix Z Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest version available.
722.111(d)	Board	Corrected “724 through 728, 733, and 739” to “724 through 728 and 733.” (See the related entry for this provision in Table B.)
722.134(a)(4)	Board	Restored the previously omitted preposition “with” before “all applicable requirements.” (See the related entry for this provision in Table B.)
722.134(d)(4)	Board	Restored the previously omitted word “requirements” after the federally added “all applicable.” (See the related entry for this provision in Table B.)

722.134(j)	Board	Replaced the entire subsection with an explanatory note relative to USEPA's termination of the Performance Track Program in 2009. (See the related entries for Sections 720.110 ("Performance Track member facility"); 721.107(b)(1)(C)(i); 722.134(k) and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C. See the discussion that begins on page 44 of this opinion.)
722.134(k)	Board	Replaced the entire subsection with an explanatory note relative to USEPA's termination of the Performance Track Program in 2009. (See the related entry for Section 722.134(j) in this Table C. See the discussion that begins on page 44 of this opinion.)
722.134(l)	Board	Replaced the entire subsection with an explanatory note relative to USEPA's termination of the Performance Track Program in 2009. (See the related entry for Section 722.134(j) in this Table C. See the discussion that begins on page 44 of this opinion.)
722.158(a)	Board	Changed "as defined in subsection (a)(1)" to "as listed in subsection (a)(1)." (See the related entry for this provision in Table B.)

722.180(a)	Board	<p>Changed plural “wastes that are considered hazardous under U.S. national procedures” to the singular defined term “waste hazardous under U.S. national procedures”; replaced the defining language with “as defined in Section 722.181” offset by a comma. (See the related entries for Sections 722.110(a); 722.158(a); this provision and 722.181 (definition of term); 722.182(a), (a)(1)(A), (a)(1)(B), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(A), and (a)(4)(B); 722.183(c); and 722.189(a) and (b) and Board notes in Table B above. See the related entries for Sections 722.181 (definition of term); 722.182(a), (a)(1)(A), (a)(1)(B), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(A), and (a)(4)(B); 722.183(c); and 722.189(a) and (b) and Board notes in this Table C. See the discussions that begin on page 23 of this opinion.)</p>
722.180(a) Board note	Board	<p>Added explanation of use of the defined term “waste hazardous under U.S. national procedures” and use of a centralized definition of the term. (See the related entries for Sections 722.110(a); 722.158(a); 722.180(a), 722.181 (definition of term); 722.182(a), (a)(1)(A), (a)(1)(B), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(A), and (a)(4)(B); 722.183(c); and 722.189(a) and (b) and Board notes in Table B above. See the related entries for Sections 722.181 (definition of term); 722.182(a), (a)(1)(A), (a)(1)(B), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(3)(A), (a)(3)(B), (a)(4)(A), and (a)(4)(B); 722.183(c); and 722.189(a) and (b) and Board notes in this Table C. See the discussions that begin on page 23 of this opinion.)</p>
722.180(b)	Board	<p>Added “which” before “otherwise subjects” for a subsequent restrictive relative clause.</p>
722.181 preamble	Board	<p>Added “and to other provisions . . . as specifically indicated.”</p>

722.181 “Amber control procedures”	Board	Retained this added definition of a fundamental term; changed the defined term “Amber list controls” to “Amber control procedures” to correspond with the federal amendments of January 8, 2010; changed the name of the list to correspond with the federal amendments of January 8, 2010. (See the discussion that begins on page 19 of this opinion.)
722.181 “Amber control procedures” Board note	Board	Added the note indicating that the Board added the definition.
722.181 “Amber waste”	Board	Retained this added definition of a fundamental term; changed the defined term “Amber list waste” to “Amber waste” to correspond with the federal amendments of January 8, 2010; changed the name of the list to correspond with the federal amendments of January 8, 2010. (See the discussion that begins on page 19 of this opinion.)
722.181 “Amber waste” Board note	Board	Added the note indicating that the Board added the definition.
722.181 “country of transit”	Board	Changed plural “wastes” to singular “waste.” (See the related entry for this provision in Table B above.)
722.181 “exporter”	Board	Changed plural “wastes” to singular “waste”; dropped the definite article and changed plural “movement of the hazardous wastes” to singular “movement of hazardous waste”; removed the parenthetical abbreviation “(U.S.)” (See the related entry for this provision in Table B above.)
722.181 “Green control procedures”	Board	Retained this added definition of a fundamental term; changed the defined term “Green list controls” to “Green control procedures” to correspond with the federal amendments of January 8, 2010; changed the name of the list to correspond with the federal amendments of January 8, 2010. (See the discussion that begins on page 19 of this opinion.)
722.181 “Green control procedures” Board note	Board	Added the note indicating that the Board added the definition.

722.181 “Green waste”	Board	Retained this added definition of a fundamental term; changed the defined term “Green list waste” to “Green waste” to correspond with the federal amendments of January 8, 2010; changed the name of the list to correspond with the federal amendments of January 8, 2010. (See the discussion that begins on page 19 of this opinion.)
722.181 “Green waste” Board note	Board	Added the note indicating that the Board added the definition.
“Red list controls”	Board	Removed the obsolete definition to correspond with the removal of the Red list waste category by the federal amendments of January 8, 2010
“Red list waste”	Board	Removed the obsolete definition to correspond with the removal of the Red list waste category by the federal amendments of January 8, 2010
722.182(a)	Board	Removed the statement relating to incorporation by reference: “The green, amber, and red lists . . . 35 Ill. Adm. Code 720.111(a).” (See the related entry for this provision in Table B above.)
722.183(d)(3)	Board	Added the definite article before “importer’s”; changed “facility name” to “facility’s name.” (See the related entry for this provision in Table B above.)
722.183(d)(6)	Board	Added the definite article before “country of export.”
722.183(d)(7)	Board	Added the definite article before “countriez of transit.”
722.183(d)(8)	Board	Added the definite article before “country of import.”
722.183(d)(9)	Board	Added the indefinite article before “statement.”
722.183(d)(12)	Board	Added the definite article before “the.” (See the related entry for this provision in Table B above.)
722.183(d)(14) certification statement	Board	Changed hyphenated “legally-enforceable” to “legally enforceable.” (See the related entry for this provision in Table B above.)
722.184(b)(6) certification statement	Board	Changed hyphenated “legally-enforceable” to “legally enforceable.” (See the related entry for this provision in Table B above.)

722.300 “central accumulation area”	Board	Added a comma after “for a large quantity generator” to offset it as a parenthetical. (See the related entry for this provision in Table B above.)
722.303(a)	Board	Added “and USEPA Region 5” (three times) (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.304(a), 723.101(j)(1), 724.101(j), 724.111 and Board note, and 725.111 and Board note in this Table C.)
722.304(a)	Board	Added “and USEPA Region 5” (three times) (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 723.101(j)(1), 724.101(j), 724.111 and Board note, and 725.111 and Board note in this Table C.)
723.111(a)	Board	Changed “an EPA identification number” to “a USEPA identification number” to agree with the use of this term elsewhere in the hazardous waste rules.
723.111(b)	Board	Changed “the Administrator” to “USEPA Region 5”; added the statement, “The transporter must obtain a copy . . . directly to USEPA.” (See the discussion that begins on page 49 of this opinion.)
724.101(j)(1)	Board	Changed “USEPA” to “USEPA Region 5”; added the parenthetical statement, “as described in Section 724.111.” (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 722.304(a), 723.101(j)(1), 724.111 and Board note, and 725.111 and Board note in this Table C.)
724.111	Board	Changed “USEPA” to “USEPA Region 5”; added the statement, “The facility owner or operator must obtain a copy . . . directly to USEPA.” (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 722,304(a), 723.101(j)(1), 724.101(j), and 725.111 and Board note in this Table C.)

724.111 Board note	Board	Removed the now-unnecessary explanation of the availability of USEPA Form 8700-12. (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 722.304(a), 723.101(j)(1), 724.101(j), 724.111, and 725.111 and Board note in this Table C.)
724.112(a)(2)	Board	Corrected USEPA's address from "401 M St., SW" to "1200 Pennsylvania Ave., NW." (See the related entry for this provision in Table B above.)
724.115(b)(4)	Board	Removed the obsolete statement relative to Performance Track member facilities due to USEPA's termination of the Performance Track Program in 2009. (See the related entries for Sections 720.110 ("Performance Track member facility"); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C. See the discussion that begins on page 44 of this opinion.)
724.115(b)(5)	Board	Replaced the obsolete subsection (and subsidiary subsections) relative to Performance Track member facilities with an explanation of USEPA's termination of the Performance Track Program in 2009. (See the related entry for Section 724.115(b)(4) in this Table C. See the discussion that begins on page 44 of this opinion.)
724.170 Board note	Board	Removed the unnecessary explanation of the omission of the discussion of effective dates in 40 C.F.R. 264.70(b).
724.171(d)	Board	Corrected USEPA's address from "401 M St., SW" to "1200 Pennsylvania Ave., NW." (See the related entry for this provision in Table B above.)
724.172(d)(1)	Board	Changed "facility" to "facility owner or operator" (three times).

724.172(d)(2)	Board	Changed “facility” to “facility owner or operator” (twice).
724.172(e)	Board	Changed “facility” to “facility owner or operator.”
724.172(e)(1)	Board	Added “the facility owner or operator must” before “write” (three times).
724.172(e)(2)	Board	Added “the facility owner or operator must” before “write.”
724.172(e)(3)	Board	Added “the facility owner or operator must” before “copy.”
724.172(e)(4)	Board	Added “the facility owner or operator must” before “copy.”
724.172(e)(5)	Board	Added “the facility owner or operator must” before “write.”
724.172(e)(6)	Board	Added “the facility owner or operator must” before “sign.”
724.172(e)(7)	Board	Changed “facility” to “facility owner or operator” (three times).
724.172(f)	Board	Changed “facility” to “facility owner or operator”; corrected “(f)(1) through (f)(6)” to “(f)(1) through (f)(6) and (f)(8).”
724.172(f)(1)	Board	Added “the facility owner or operator must” before “write” (three times).
724.172(f)(2)	Board	Added “the facility owner or operator must” before “write.”
724.172(f)(3)	Board	Added “the facility owner or operator must” before “copy.”
724.172(f)(4)	Board	Added “the facility owner or operator must” before “copy.”
724.172(f)(5)	Board	Added “the facility owner or operator must” before “write.”

724.172(f)(6)	Board	Added “the facility owner or operator must” before “sign.”
724.172(f)(7)	Board	Changed “facility” to “facility owner or operator” (three times). (See the related entry for this provision in Table B above.)
724.241(g) “bodily injury” Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
724.241(g) “property damage” Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
724.241(h)	Board	Replaced “that one business entity has an ownership interest in another” with “the extent or a business relationship necessary under applicable state law . . . , such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration . . . relating to any liability towards a third party,” language drawn from the corresponding federal rule and the <i>Federal Register</i> discussion of that rule; added the subsidiary definition of “applicable state law.” (See the discussions that begin of page 54 of this opinion.)
724.241(h) Board note	Board	Added explanation of the Board’s derivation of the definition; noted the parallel definitions of the term; added explicit reference to the right to appeal any Agency determination that a substantial business relationship exists. (See the discussions that begin of page 54 of this opinion.)
724.242(a)(3)	Board	Changed “applicable under Section 725.213(d)” to “permitted by the Agency pursuant to Section 725.213(d).”
724.242(a)(4)	Board	Changed “applicable under Section 725.213(d)” to “permitted by the Agency pursuant to Section 725.213(d).”
724.242(b)	Board	Added the parenthetical short-form title “(Deflator)” after the title; added a comma before “as specified in Subsections (b)(1) and (b)(2) of this Section” to offset the parenthetical.

724.242(b) Board note	Board	Added explanation of the source and availability of the Deflator document.
724.243(a)(2)	Board	Added a comma before “and the trust agreement must be . . .” to offset the independent clause; replaced the parentheses on “as specified by Section 725.251” with a comma to offset the parenthetical.
724.274	Board	Removed the language relative to Performance Track Program due to USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C.)
724.295(e)	Board	Replaced the language relative to Performance Track Program with explanation of USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C.)
724.414(c)(4)	Board	Added commas before and after “as defined in Section 724.416” to offset it as a parenthetical.
724.652(e)(6)(F)(i)	Board	Added “the final cover must” before “provide.”
724.652(e)(6)(F)(ii)	Board	Added “the final cover must” before “function.”
724.652(e)(6)(F)(iii)	Board	Added “the final cover must” before “promote.”
724.652(e)(6)(F)(iv)	Board	Added “the final cover must” before “accommodate.”
724.652(e)(6)(F)(v)	Board	Added “the final cover must” before “have.”

724.1101(c)(4)	Board	Removed the language relative to Performance Track Program due to USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (See the related entries for Section 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C.)
725.111	Board	Changed “USEPA” to “USEPA Region 5”; added the statement, “The facility owner or operator must obtain a copy . . . directly to USEPA.” (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 722,304(a), 723.101(j)(1), 724.101(j), 724.111 and Board note, and 725.111 Board note in this Table C.)
725.111 Board note	Board	Removed the now-unnecessary explanation of the availability of USEPA Form 8700-12. (See the discussion that begins at page 49 of this opinion and the related entries for Sections 722.303(a), 722,304(a), 723.101(j)(1), 724.101(j), 724.111 and Board note, and 725.111 in this Table C.)
725.112(a)(2)	Board	Corrected USEPA’s address from “401 M St., SW” to “1200 Pennsylvania Ave., NW.” (See the related entry for this provision in Table B above.)
725.115(b)(4)	Board	Removed the obsolete statement relative to Performance Track member facilities due to USEPA’s termination of the Performance Track Program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(5); 725.274; 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C.)

725.115(b)(5)	Board	Replaced the obsolete subsection (and subsidiary subsections) relative to Performance Track member facilities with an explanation of USEPA's termination of the Performance Track Program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entry for Section 725.115(b)(4) in this Table C.)
725.170 Board note	Board	Removed the note that explaining the omission of 40 C.F.R 265.70(b) in its entirety.
725.171(d)	Board	Corrected USEPA's address from "401 M St., SW" to "1200 Pennsylvania Ave., NW." (See the related entry for this provision in Table B above.)
725.172(d)(1)	Board	Changed "facility" to "facility owner or operator" (three times).
725.172(d)(2)	Board	Changed "facility" to "facility owner or operator" (twice).
725.172(e)	Board	Changed "facility" to "facility owner or operator."
725.172(e)(1)	Board	Added "the facility owner or operator must" before "write" (three times).
725.172(e)(2)	Board	Added "the facility owner or operator must" before "write."
725.172(e)(3)	Board	Added "the facility owner or operator must" before "copy."
725.172(e)(4)	Board	Added "the facility owner or operator must" before "copy."
725.172(e)(5)	Board	Added "the facility owner or operator must" before "write."
725.172(e)(6)	Board	Added "the facility owner or operator must" before "sign."
725.172(e)(7)	Board	Changed "facility" to "facility owner or operator" (three times).

725.172(f)	Board	Changed “facility” to “facility owner or operator”; corrected “(f)(1) through (f)(6)” to “(f)(1) through (f)(6) and (f)(8).”
725.172(f)(1)	Board	Added “the facility owner or operator must” before “write” (three times).
725.172(f)(2)	Board	Added “the facility owner or operator must” before “write.”
725.172(f)(3)	Board	Added “the facility owner or operator must” before “copy.”
725.172(f)(4)	Board	Added “the facility owner or operator must” before “copy.”
725.172(f)(5)	Board	Added “the facility owner or operator must” before “write.”
725.172(f)(6)	Board	Added “the facility owner or operator must” before “sign.”
725.172(f)(7)	Board	Changed “facility” to “facility owner or operator” (three times). (See the related entry for this provision in Table B above.)
725.241(g) “bodily injury” Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
725.241(g) “property damage” Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
725.241(h)	Board	Replaced “that one business entity has an ownership interest in another” with “the extent or a business relationship necessary under applicable state law . . . , such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration . . . relating to any liability towards a third party,” language drawn from the corresponding federal rule and the <i>Federal Register</i> discussion of that rule; added the subsidiary definition of “applicable state law.” (See the discussions that begin of page 54 of this opinion.)

725.241(h) Board note	Board	Added explanation of the Board’s derivation of the definition; noted the parallel definitions of the term; added explicit reference to the right to appeal any Agency determination that a substantial business relationship exists. (See the discussions that begin on page 54 of this opinion.)
725.242(a)(3)	Board	Changed “applicable under Section 725.213(d)” to “permitted by the Agency pursuant to Section 725.213(d).”
725.242(a)(4)	Board	Changed “applicable under Section 725.213(d)” to “permitted by the Agency pursuant to Section 725.213(d).”
725.242(b)	Board	Added the parenthetical short-form title “(Deflator)” after the title; added a comma before “as specified in Subsections (b)(1) and (b)(2) of this Section” to offset the parenthetical.
725.242(b) Board note	Board	Added explanation of the source and availability of the Deflator document.
725.243(a)(2)	Board	Added a comma before “and the trust agreement must be . . .” to offset the independent clause; added a comma before “as specified by Section 725.251” to offset the parenthetical.
725.274	Board	Removed the language relative to Performance Track Program due to USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.295(d); 725.301(e); and 725.1101(c)(4) in this Table C.)

725.295(d)	Board	Replaced the language relative to Performance Track Program with explanation of USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.301(e); and 725.1101(c)(4) in this Table C.)
725.301(e)	Board	Replaced the language relative to Performance Track Program with explanation of USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); and 725.1101(c)(4) in this Table C.)
725.1101(c)(4)	Board	Removed the language relative to Performance Track Program due to USEPA’s termination of the program in 2009. (See the discussion that begins on page 44 of this opinion. See the related entries for Sections 720.110 (“Performance Track member facility”); 721.107(b)(1)(C) (multiple subsections); 722.134(j), (k), and (l); 723.120(a) and (g) (multiple subsections); 723.121(b); 724.115(b)(4) and (b)(5); 724.170 (Board note); 724.274; 724.295(e); 724.1101(c)(4); 725.115(b)(4) and (b)(5); 725.115(b)(4) and (b)(5); 725.274; 725.295(d); and 725.301(e) in this Table C.)
726 table of contents, 726.Appendix A heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
726 table of contents, 726.Appendix B heading	Board	Changed “Appendix” to upper-case “APPENDIX.”

726 table of contents, 726.Appendix C heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix D heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix E heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix F heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix G heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix H heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix I heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix J heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix K heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix L heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Appendix M heading	Board	Changed "Appendix" to upper-case "APPENDIX."
726 table of contents, 726.Table A heading	Board	Changed "Table" to upper-case "TABLE."

726.122	Board	Corrected “724, 725 728, 733, and 739” to “724 through 728 and 733.” (See the related entry for this provision in Table B.)
726.170(d)	Board	Corrected “722 through 728” to “722 through 727.” (See the related entry for this provision in Table B.)
726.180(a)(1)	Board	Added “lead-acid” before “batteries”; added “the requirements of” after “is exempt from”; added “the requirements of” after “is subject to.”
726.180(a)(2)	Board	Added “lead-acid” before “batteries”; added “the requirements of” after “is exempt from”; added “the requirements of” after “is subject to.”
726.180(a)(3)	Board	Added “lead-acid” before “batteries”; added “the requirements of” after “is exempt from”; added “the requirements of” after “is subject to.”
726.180(a)(4)	Board	Added “lead-acid” before “batteries”; added “the requirements of” after “is exempt from”; added “the requirements of” after “is subject to.”
726.180(a)(5)	Board	Added “lead-acid” before “batteries”; added “the requirements of” after “is exempt from”; added “the requirements of” after “is subject to.”
726.201(c)(2)	Board	Added “that are” before “applicable.”
728.Appendix C heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
728.Appendix C, entry I.15.	Board	Corrected the em-dash in “trans-1,4-Dichloro-2—butene” to a hyphen in “trans-1,4-Dichloro-2-butene.”
728.Appendix C Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
728.Appendix G heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
728.Table T heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
728.Table T, entry K156	Board	Removed the superscripted footnote number “10” from the waste description

728.728.Table T Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.
728.Table U heading	Board	Changed “Appendix” to upper-case “APPENDIX.”
728.Table U entry “bis(2-ethylhexyl)-phthalate”	Board	Corrected the spelling “bis(2-ethylhexyl) phthalate” to “bis(2-ethylhexyl)phthalate.”
728.728.Table U Board note	Board	Updated the <i>Code of Federal Regulations</i> citation to the latest edition available.

### **HISTORY OF RCRA SUBTITLE C AND UIC REGULATIONS IN ILLINOIS**

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); published at

- 30 Ill. Reg. 2845, effective February 23, 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); published at 31 Ill. Reg. 438, effective December 20, 2007. (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); published at 32 Ill. Reg. 11672, effective July 14, 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); published at 32 Ill. Reg. 11672, effective July 14, 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 (Nov. 20, 2008); published at 33 Ill. Reg. 922, effective December 30, 2008.
- R09-16 RCRA Subtitle C Update, USEPA Regulations (January 1, 2010 through June 30, 2010), R09-16. (This docket.) (Consolidated with RCRA Subtitle C Update docket R10-4.)
- R10-4 RCRA Subtitle C Update, USEPA Regulations (July 1, 2010 through December 31, 2010), R10-4. (This docket.) (Consolidated with RCRA Subtitle C Update docket R09-16.)
- R10-13 RCRA Subtitle C Update, USEPA Regulations (July 1, 2009 through December 31, 2009), R09-3 (Apr. 1, 2010). (Dismissed because no federal actions in the period.)
- R11-2 RCRA Subtitle C Update, USEPA Regulations (January 1, 2010 through June 30, 2010), R11-2. (Reserved docket.)

### **Other RCRA Subtitle C and State Hazardous Waste Actions**

The Board has taken other actions since May 18, 2000 relating to administration of the Illinois hazardous waste program. The following is a summary of those actions.

**Petitions for Solid Waste Determinations.** 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 (granted 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).

**Petitions for Hazardous Waste Delistings.** 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 Dec. 4, 2008) (granted delisting as to landfill leachate (F039 waste)).
- AS 08-10 *In re* RCRA Delisting Adjusted Standard Petition of Peoria Disposal Co., AS 08-10 (Jan. 8, 2009) (granted delisting as to stabilized EAFD (K061 waste)).

**Petitions for Boiler Designations.** 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).

**Petitions for Relief from Permit Requirements.** 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); published at 30 Ill. Reg. 2845, effective February 23, 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); published at 31 Ill. Reg. 438, effective December 20, 2007. (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.)
- R09-14 UIC Update, USEPA Regulations (January 1, 2010 through June 30, 2010), R09-14 (Feb. 19, 2009). (Dismissed because no federal actions in the period.)
- R10-2 UIC Update, USEPA Regulations (July 1, 2010 through December 31, 2010), R10-2 (Aug. 20, 2009) (Dismissed because no federal actions in the period.)
- R10-11 UIC Update, USEPA Regulations (July 1, 2009 through December 31, 2009), R10-11 (Apr. 1, 2010). (Dismissed because no federal actions in the period.)

R11-1 UIC Update, USEPA Regulations (January 1, 2010 through June 30, 2010), R11-1 (Reserved docket.)

**Other UIC Actions**

**Petitions for No Migration Determinations.** 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 June 2, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board