

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Land Disposal Restrictions
- 2) Code Citation: 35 Ill. Adm. Code 728
- 3) Section Numbers: 728.144 Proposed Action: Amend
- 4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27
- 5) A Complete Description of the Subjects and Issues Involved: The amendments to Part 728 are a single segment of the docket R13-15 rulemaking that also affects 35 Ill. Adm. Code 703, 704, 720, 722, 724, 725, 726, 727 and 738, each of which is covered by a separate notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R13-15 rulemaking in this issue of the *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 20, 2013, proposing amendments in docket R13-15, which opinion and order is available from the address below.

RECEIVED
CLERK'S OFFICE
JUL 03 2013
STATE OF ILLINOIS
Pollution Control Board

Specifically, the amendment to Part 728 implement corrections suggested by USEPA and make a correction that the Board has determined is needed. The Board's opinion and order of June 20, 2013 in docket R13-15 discusses the more substantial corrections made in the text. Tables that appear in that opinion and order list all of the various corrections and amendments included in this proceeding. Persons interested in the details of those corrections and amendments should refer to the June 20, 2013 opinion and order in docket R13-15.

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 9) Does this rulemaking contain incorporations by reference? No. The centralized location of all incorporations by reference for the purposes of all of the Illinois hazardous waste and underground injection control regulations, including Part 728, is 35 Ill. Adm. Code 720.111.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- 11) Are there any other rulemakings pending on this Part? No
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R13-15 and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R13-15:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

Phone: 312-814-6924
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at <http://www.ipcb.state.il.us>.

- 13) Initial regulatory flexibility analysis:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].

14) Regulatory Agenda on which this rulemaking was summarized: December 2012

The full text of the Proposed Amendment begins on the next page:

~~NOTICE OF PROPOSED AMENDMENT~~

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 728
LAND DISPOSAL RESTRICTIONS

SUBPART A: GENERAL

Section	
728.101	Purpose, Scope, and Applicability
728.102	Definitions
728.103	Dilution Prohibited as a Substitute for Treatment
728.104	Treatment Surface Impoundment Exemption
728.105	Procedures for Case-by-Case Extensions to an Effective Date
728.106	Petitions to Allow Land Disposal of a Waste Prohibited Pursuant to Subpart C
728.107	Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and Disposal Facilities
728.108	Landfill and Surface Impoundment Disposal Restrictions (Repealed)
728.109	Special Rules for Characteristic Wastes

SUBPART B: SCHEDULE FOR LAND DISPOSAL PROHIBITION AND ESTABLISHMENT OF TREATMENT STANDARDS

Section	
728.110	First Third (Repealed)
728.111	Second Third (Repealed)
728.112	Third Third (Repealed)
728.113	Newly Listed Wastes
728.114	Surface Impoundment Exemptions

SUBPART C: PROHIBITION ON LAND DISPOSAL

Section	
728.120	Waste-Specific Prohibitions: Dyes and Pigments Production Wastes
728.130	Waste-Specific Prohibitions: Wood Preserving Wastes
728.131	Waste-Specific Prohibitions: Dioxin-Containing Wastes
728.132	Waste-Specific Prohibitions: Soils Exhibiting the Toxicity Characteristic for Metals and Containing PCBs

~~NOTICE OF PROPOSED AMENDMENT~~

- 728.133 Waste-Specific Prohibitions: Chlorinated Aliphatic Wastes
- 728.134 Waste-Specific Prohibitions: Toxicity Characteristic Metal Wastes
- 728.135 Waste-Specific Prohibitions: Petroleum Refining Wastes
- 728.136 Waste-Specific Prohibitions: Inorganic Chemical Wastes
- 728.137 Waste-Specific Prohibitions: Ignitable and Corrosive Characteristic Wastes
Whose Treatment Standards Were Vacated
- 728.138 Waste-Specific Prohibitions: Newly-Identified Organic Toxicity Characteristic
Wastes and Newly-Listed Coke By-Product and Chlorotoluene Production Wastes
- 728.139 Waste-Specific Prohibitions: Spent Aluminum Potliners and Carbamate Wastes

SUBPART D: TREATMENT STANDARDS

- Section
- 728.140 Applicability of Treatment Standards
- 728.141 Treatment Standards Expressed as Concentrations in Waste Extract
- 728.142 Treatment Standards Expressed as Specified Technologies
- 728.143 Treatment Standards Expressed as Waste Concentrations
- 728.144 ~~Adjustment of~~ USEPA Variance from a Treatment Standard
- 728.145 Treatment Standards for Hazardous Debris
- 728.146 Alternative Treatment Standards Based on HTMR
- 728.148 Universal Treatment Standards
- 728.149 Alternative LDR Treatment Standards for Contaminated Soil

SUBPART E: PROHIBITIONS ON STORAGE

- Section
- 728.150 Prohibitions on Storage of Restricted Wastes

- 728.APPENDIX A Toxicity Characteristic Leaching Procedure (TCLP) (Repealed)
- 728.APPENDIX B Treatment Standards (As concentrations in the Treatment Residual
Extract) (Repealed)
- 728.APPENDIX C List of Halogenated Organic Compounds Regulated under Section 728.132
- 728.APPENDIX D Wastes Excluded from Lab Packs
- 728.APPENDIX E Organic Lab Packs (Repealed)
- 728.APPENDIX F Technologies to Achieve Deactivation of Characteristics
- 728.APPENDIX G Federal Effective Dates
- 728.APPENDIX H National Capacity LDR Variances for UIC Wastes
- 728.APPENDIX I EP Toxicity Test Method and Structural Integrity Test
- 728.APPENDIX J Recordkeeping, Notification, and Certification Requirements (Repealed)
- 728.APPENDIX K Metal-Bearing Wastes Prohibited from Dilution in a Combustion Unit

~~NOTICE OF PROPOSED AMENDMENT~~

	According to Section 728.103(c)
728.TABLE A	Constituent Concentrations in Waste Extract (CCWE)
728.TABLE B	Constituent Concentrations in Wastes (CCW)
728.TABLE C	Technology Codes and Description of Technology-Based Standards
728.TABLE D	Technology-Based Standards by RCRA Waste Code
728.TABLE E	Standards for Radioactive Mixed Waste
728.TABLE F	Alternative Treatment Standards for Hazardous Debris
728.TABLE G	Alternative Treatment Standards Based on HTMR
728.TABLE H	Wastes Excluded from CCW Treatment Standards
728.TABLE I	Generator Paperwork Requirements
728.TABLE T	Treatment Standards for Hazardous Wastes
728.TABLE U	Universal Treatment Standards (UTS)

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R87-5 at 11 Ill. Reg. 19354, effective November 12, 1987; amended in R87-39 at 12 Ill. Reg. 13046, effective July 29, 1988; amended in R89-1 at 13 Ill. Reg. 18403, effective November 13, 1989; amended in R89-9 at 14 Ill. Reg. 6232, effective April 16, 1990; amended in R90-2 at 14 Ill. Reg. 14470, effective August 22, 1990; amended in R90-10 at 14 Ill. Reg. 16508, effective September 25, 1990; amended in R90-11 at 15 Ill. Reg. 9462, effective June 17, 1991; amended in R90-11 at 15 Ill. Reg. 11937, effective August 12, 1991; amendment withdrawn at 15 Ill. Reg. 14716, October 11, 1991; amended in R91-13 at 16 Ill. Reg. 9619, effective June 9, 1992; amended in R92-10 at 17 Ill. Reg. 5727, effective March 26, 1993; amended in R93-4 at 17 Ill. Reg. 20692, effective November 22, 1993; amended in R93-16 at 18 Ill. Reg. 6799, effective April 26, 1994; amended in R94-7 at 18 Ill. Reg. 12203, effective July 29, 1994; amended in R94-17 at 18 Ill. Reg. 17563, effective November 23, 1994; amended in R95-6 at 19 Ill. Reg. 9660, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11100, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 783, effective December 16, 1997; amended in R98-12 at 22 Ill. Reg. 7685, effective April 15, 1998; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17706, effective September 28, 1998; amended in R98-21/R99-2/R99-7 at 23 Ill. Reg. 1964, effective January 19, 1999; amended in R99-15 at 23 Ill. Reg. 9204, effective July 26, 1999; amended in R00-13 at 24 Ill. Reg. 9623, effective June 20, 2000; amended in R01-3 at 25 Ill. Reg. 1296, effective January 11, 2001; amended in R01-21/R01-23 at 25 Ill. Reg. 9181, effective July 9, 2001; amended in R02-1/R02-12/R02-17 at 26 Ill. Reg. 6687, effective April 22, 2002; amended in R03-18 at 27 Ill. Reg. 13045, effective July 17, 2003; amended in R05-8 at 29 Ill. Reg. 6049, effective April 13, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3800, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1254, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12840, effective July 14, 2008; amended in R09-3 at 33 Ill. Reg.

~~NOTICE OF PROPOSED AMENDMENT~~

~~the latter is adopted by "identical in substance" rulemaking following a USEPA action, the former is an original Board action that will be the only mechanism following authorization to the State of this component of the RCRA program.~~ A variance from a treatment standard is available only from USEPA. USEPA has reserved to itself authority to grant a variance form from a treatment standard to itself.

- b) Each petition must be submitted in accordance with the procedures in ~~Subpart D of 35 Ill. Adm. Code 104.40 C.F.R. 40 CFR~~ 260.20.
- c) Each petition must include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

- d) After receiving a petition for an adjusted treatment standard, ~~the Board~~ USEPA has stated that it may request any additional information or samples that are necessary to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.
- e) ~~The Board~~ USEPA has stated that it will give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment, ~~as provided in Subpart D of 35 Ill. Adm. Code 104. In conjunction with any updating of the RCRA regulations, the Board will maintain, in this Part, a listing of all adjusted treatment standards granted by the Board pursuant to this Section. A listing of all adjusted standards granted pursuant to this section will be published in the Illinois Register and Environmental Register at the end of each fiscal year. (Section 28.1(d)(3) of the Environmental Protection Act [415 ILCS 5/28.1(d)(3)]).~~ USEPA has stated that the final decision on a variance from a treatment standard will be published in the Federal Register.
- f) A generator, treatment facility or disposal facility that is managing a waste covered by an adjusted treatment standard must comply with the waste analysis requirements for restricted wastes found under Section 728.107.

~~NOTICE OF PROPOSED AMENDMENT~~

- g) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this Part once the effective date for the waste has been reached.
- h) Based on a petition filed by a generator or treater of hazardous waste, ~~the Board will grant an adjusted standard~~ USEPA has stated that it may approve a site-specific variance from an applicable treatment standard if the petitioner can demonstrate that either of the following applies to treatment of the waste:
- 1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or
 - 2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must demonstrate that either of the following applies to treatment of the waste:
 - A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or
 - B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.
 - 3) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short- and long-term threats to human health and the environment. ~~An adjusted standard from a treatment standard~~ USEPA has stated that a treatment variance granted under ~~this subsection (h)(3)~~ 40 CFR 268.44(h)(3) will include the following features:

~~NOTICE OF PROPOSED AMENDMENT~~

- A) At a minimum, ~~the adjusted standard from the treatment standard~~ USEPA has stated that a treatment variance approved under 40 CFR 268.44(h)(3) will impose an alternative land disposal restriction treatment standard that will achieve the following, using a reasonable maximum exposure scenario:
- i) For carcinogens, it will achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime, generally falling within a range from 10^{-4} to 10^{-6} ; and
 - ii) For constituents with non-carcinogenic effects, it will achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.
- B) ~~The treatment adjusted standard~~ USEPA has stated that a treatment variance approved under 40 CFR 268.44(h)(3) will not consider post-land-disposal controls.
- 4) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will be land disposed.
- 5) ~~The Board will follow the procedures of Section 28.1 of the Act and Subpart D of 35 Ill. Adm. Code 104 pertaining to public notice and a reasonable opportunity for public comment before granting or denying a petition.~~ USEPA has stated that public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.
- i) Each petition for a site-specific ~~adjusted~~ variance from a treatment standard must include the information in ~~35 Ill. Adm. Code 720.120(b)(1) through (b)(4)~~ 40 CFR 260.20(b)(1) through (b)(4).
 - j) After receiving ~~a petition for a site-specific adjusted treatment standard~~ an application for a site-specific variance from a treatment standard, ~~the Board~~

~~NOTICE OF PROPOSED AMENDMENT~~

USEPA may request any additional information or samples that ~~the Board~~ USEPA determines are necessary to evaluate the petition.

- k) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific ~~adjusted~~ variance from a treatment standard must comply with the waste analysis requirements for restricted wastes in Section 728.107.
- l) During the petition review process, the petitioner for a site-specific ~~adjusted treatment standard~~ variance must comply with all restrictions on land disposal under this Part once the effective date for the waste has been reached.
- m) For any ~~adjusted treatment standard~~ variance from a treatment standard, the petitioner must also demonstrate that compliance with the requested ~~adjusted treatment standard~~ variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, ~~the Board~~ USEPA has stated that it will take into account whether the ~~adjusted standard~~ treatment variance should be granted if the subject waste is to be used in a manner constituting disposal pursuant to ~~Sections 728.120 through 728.123~~ 40 CFR 266.20 through 266.23.
- n) This subsection (n) corresponds with 40 CFR 268.44(n), marked ~~"reserved"~~ by USEPA. This statement maintains structural consistency with corresponding federal regulations.
- o) The facilities listed in Table H of this Part are excluded from the treatment standards under Section 728.143(a) and Table B of this Part, and are subject to the constituent concentrations listed in Table H of this Part.
- p) ~~If~~ After USEPA grants a treatability exception by regulatory action pursuant to 40 CFR 268.44 and a person demonstrates that the treatability exception needs to be adopted as part of the Illinois RCRA program because the waste is generated or managed in Illinois, the Board will adopt the treatability exception by identical in substance rulemaking pursuant to Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)].

~~BOARD NOTE: The Board will adopt the treatability exception during a RCRA update Docket if a timely demonstration is made. Otherwise, the Board will assign the matter to a separate Docket.~~

Document comparison by Workshare Compare on Friday, June 28, 2013 1:04:59 PM

Input:	
Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received\2013\June2013\35-728-Agency(issue27).docx
Description	35-728-Agency(issue27)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received\2013\June2013\35-728-r01(issue 27).docx
Description	35-728-r01(issue 27)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	12
Deletions	43
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	55

EXEMPT

JCAR350728-1309430r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS
5

6 PART 728
7 LAND DISPOSAL RESTRICTIONS
8

9 SUBPART A: GENERAL
10

11	Section	
12	728.101	Purpose, Scope, and Applicability
13	728.102	Definitions
14	728.103	Dilution Prohibited as a Substitute for Treatment
15	728.104	Treatment Surface Impoundment Exemption
16	728.105	Procedures for Case-by-Case Extensions to an Effective Date
17	728.106	Petitions to Allow Land Disposal of a Waste Prohibited Pursuant to Subpart C
18	728.107	Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and 19 Disposal Facilities
20	728.108	Landfill and Surface Impoundment Disposal Restrictions (Repealed)
21	728.109	Special Rules for Characteristic Wastes

22
23 SUBPART B: SCHEDULE FOR LAND DISPOSAL PROHIBITION AND
24 ESTABLISHMENT OF TREATMENT STANDARDS
25

26	Section	
27	728.110	First Third (Repealed)
28	728.111	Second Third (Repealed)
29	728.112	Third Third (Repealed)
30	728.113	Newly Listed Wastes
31	728.114	Surface Impoundment Exemptions

32
33 SUBPART C: PROHIBITION ON LAND DISPOSAL
34

35	Section	
36	728.120	Waste-Specific Prohibitions: Dyes and Pigments Production Wastes
37	728.130	Waste-Specific Prohibitions: Wood Preserving Wastes
38	728.131	Waste-Specific Prohibitions: Dioxin-Containing Wastes
39	728.132	Waste-Specific Prohibitions: Soils Exhibiting the Toxicity Characteristic for 40 Metals and Containing PCBs
41	728.133	Waste-Specific Prohibitions: Chlorinated Aliphatic Wastes
42	728.134	Waste-Specific Prohibitions: Toxicity Characteristic Metal Wastes
43	728.135	Waste-Specific Prohibitions: Petroleum Refining Wastes

44	728.136	Waste-Specific Prohibitions: Inorganic Chemical Wastes
45	728.137	Waste-Specific Prohibitions: Ignitable and Corrosive Characteristic Wastes
46		Whose Treatment Standards Were Vacated
47	728.138	Waste-Specific Prohibitions: Newly-Identified Organic Toxicity Characteristic
48		Wastes and Newly-Listed Coke By-Product and Chlorotoluene Production Wastes
49	728.139	Waste-Specific Prohibitions: Spent Aluminum Potliners and Carbamate Wastes

SUBPART D: TREATMENT STANDARDS

53	Section	
54	728.140	Applicability of Treatment Standards
55	728.141	Treatment Standards Expressed as Concentrations in Waste Extract
56	728.142	Treatment Standards Expressed as Specified Technologies
57	728.143	Treatment Standards Expressed as Waste Concentrations
58	728.144	<u>USEPA Variance from a</u> Adjustment of Treatment Standard
59	728.145	Treatment Standards for Hazardous Debris
60	728.146	Alternative Treatment Standards Based on HTMR
61	728.148	Universal Treatment Standards
62	728.149	Alternative LDR Treatment Standards for Contaminated Soil

SUBPART E: PROHIBITIONS ON STORAGE

66	Section	
67	728.150	Prohibitions on Storage of Restricted Wastes
69	728.APPENDIX A	Toxicity Characteristic Leaching Procedure (TCLP) (Repealed)
70	728.APPENDIX B	Treatment Standards (As concentrations in the Treatment Residual
71		Extract) (Repealed)
72	728.APPENDIX C	List of Halogenated Organic Compounds Regulated under Section
73		728.132
74	728.APPENDIX D	Wastes Excluded from Lab Packs
75	728.APPENDIX E	Organic Lab Packs (Repealed)
76	728.APPENDIX F	Technologies to Achieve Deactivation of Characteristics
77	728.APPENDIX G	Federal Effective Dates
78	728.APPENDIX H	National Capacity LDR Variances for UIC Wastes
79	728.APPENDIX I	EP Toxicity Test Method and Structural Integrity Test
80	728.APPENDIX J	Recordkeeping, Notification, and Certification Requirements (Repealed)
81	728.APPENDIX K	Metal-Bearing Wastes Prohibited from Dilution in a Combustion Unit
82		According to Section 728.103(c)
83	728.TABLE A	Constituent Concentrations in Waste Extract (CCWE)
84	728.TABLE B	Constituent Concentrations in Wastes (CCW)
85	728.TABLE C	Technology Codes and Description of Technology-Based Standards
86	728.TABLE D	Technology-Based Standards by RCRA Waste Code

87 728.TABLE E Standards for Radioactive Mixed Waste
 88 728.TABLE F Alternative Treatment Standards for Hazardous Debris
 89 728.TABLE G Alternative Treatment Standards Based on HTMR
 90 728.TABLE H Wastes Excluded from CCW Treatment Standards
 91 728.TABLE I Generator Paperwork Requirements
 92 728.TABLE T Treatment Standards for Hazardous Wastes
 93 728.TABLE U Universal Treatment Standards (UTS)

94
 95 AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the
 96 Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].
 97

98 SOURCE: Adopted in R87-5 at 11 Ill. Reg. 19354, effective November 12, 1987; amended in
 99 R87-39 at 12 Ill. Reg. 13046, effective July 29, 1988; amended in R89-1 at 13 Ill. Reg. 18403,
 100 effective November 13, 1989; amended in R89-9 at 14 Ill. Reg. 6232, effective April 16, 1990;
 101 amended in R90-2 at 14 Ill. Reg. 14470, effective August 22, 1990; amended in R90-10 at 14 Ill.
 102 Reg. 16508, effective September 25, 1990; amended in R90-11 at 15 Ill. Reg. 9462, effective
 103 June 17, 1991; amended in R90-11 at 15 Ill. Reg. 11937, effective August 12, 1991; amendment
 104 withdrawn at 15 Ill. Reg. 14716, October 11, 1991; amended in R91-13 at 16 Ill. Reg. 9619,
 105 effective June 9, 1992; amended in R92-10 at 17 Ill. Reg. 5727, effective March 26, 1993;
 106 amended in R93-4 at 17 Ill. Reg. 20692, effective November 22, 1993; amended in R93-16 at 18
 107 Ill. Reg. 6799, effective April 26, 1994; amended in R94-7 at 18 Ill. Reg. 12203, effective July
 108 29, 1994; amended in R94-17 at 18 Ill. Reg. 17563, effective November 23, 1994; amended in
 109 R95-6 at 19 Ill. Reg. 9660, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11100,
 110 effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 783, effective
 111 December 16, 1997; amended in R98-12 at 22 Ill. Reg. 7685, effective April 15, 1998; amended
 112 in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17706, effective September 28, 1998; amended in R98-
 113 21/R99-2/R99-7 at 23 Ill. Reg. 1964, effective January 19, 1999; amended in R99-15 at 23 Ill.
 114 Reg. 9204, effective July 26, 1999; amended in R00-13 at 24 Ill. Reg. 9623, effective June 20,
 115 2000; amended in R01-3 at 25 Ill. Reg. 1296, effective January 11, 2001; amended in R01-
 116 21/R01-23 at 25 Ill. Reg. 9181, effective July 9, 2001; amended in R02-1/R02-12/R02-17 at 26
 117 Ill. Reg. 6687, effective April 22, 2002; amended in R03-18 at 27 Ill. Reg. 13045, effective July
 118 17, 2003; amended in R05-8 at 29 Ill. Reg. 6049, effective April 13, 2005; amended in R06-
 119 5/R06-6/R06-7 at 30 Ill. Reg. 3800, effective February 23, 2006; amended in R06-16/R06-
 120 17/R06-18 at 31 Ill. Reg. 1254, effective December 20, 2006; amended in R07-5/R07-14 at 32
 121 Ill. Reg. 12840, effective July 14, 2008; amended in R09-3 at 33 Ill. Reg. 1186, effective
 122 December 30, 2008; amended in R11-2/R11-16 at 35 Ill. Reg. 18131, effective October 14,
 123 2011; amended in R12-7 at 36 Ill. Reg. 8790, effective June 4, 2012; amended in R13-15 at 37
 124 Ill. Reg. _____, effective _____.
 125

126 SUBPART D: TREATMENT STANDARDS

127
 128 **Section 728.144 USEPA Variance from aAdjustment of Treatment Standard**
 129

- 130 a) Based on a petition filed by a generator or treater of hazardous waste, USEPA has
131 stated that it may approve a variance the Board will grant an adjusted standard
132 from an applicable treatment standard if the petitioner can demonstrate that either
133 of the following applies to treatment of the waste:
134
- 135 1) It is not physically possible to treat the waste to the level specified in the
136 treatment standard, or by the method specified as the treatment standard.
137 To show that this is the case, the petitioner must demonstrate that because
138 the physical or chemical properties of the waste differ significantly from
139 waste analyzed in developing the treatment standard, the waste cannot be
140 treated to the specified level or by the specified method; or
141
- 142 2) It is inappropriate to require the waste to be treated to the level specified in
143 the treatment standard or by the method specified as the treatment
144 standard, even though such treatment is technically possible. To show that
145 this is the case, the petitioner must demonstrate that either of the following
146 applies to treatment of the waste:
147
- 148 A) Treatment to the specified level or by the specified method is
149 technically inappropriate (for example, resulting in combustion of
150 large amounts of mildly contaminated environmental media); or
151
- 152 B) For remediation waste only, treatment to the specified level or by
153 the specified method is environmentally inappropriate because it
154 would likely discourage aggressive remediation.
155
- 156 BOARD NOTE: A variance from a treatment standard is available only from
157 USEPA. USEPA has reserved to itself authority to grant a variance from a
158 treatment standard. Corresponding federal 40 CFR 268.44 refers to these as
159 "treatability variances." The Board has not used this term in its rules to avoid
160 confusion with the Board variances under Title IX of the Environmental
161 Protection Act. The equivalent Board procedures are an "adjusted standard from
162 a treatment standard" pursuant to subsections (a) through (m) of this Section, or a
163 "treatability exception" adopted pursuant to subsection (p) of this Section. While
164 the latter is adopted by "identical in substance" rulemaking following a USEPA
165 action, the former is an original Board action that will be the only mechanism
166 following authorization to the State of this component of the RCRA program.
167
- 168 b) Each petition must be submitted in accordance with the procedures in 40 CFR
169 260.20, Subpart D of 35 Ill. Adm. Code 104.
170
- 171 c) Each petition must include the following statement signed by the petitioner or an
172 authorized representative:

173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

- d) After receiving a petition for an adjusted treatment standard, USEPA has stated that itthe Board may request any additional information or samples that are necessary to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.
- e) USEPA has stated that itThe Board will give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment. USEPA has stated that the final decision on a variance from a treatment standard will be published in the Federal Register, as provided in Subpart D of 35 Ill. Adm. Code 104. In conjunction with any updating of the RCRA regulations, the Board will maintain, in this Part, a listing of all adjusted treatment standards granted by the Board pursuant to this Section. A listing of all adjusted standards granted pursuant to this Section will be published in the Illinois Register and Environmental Register at the end of each fiscal year. (Section 28.1(d)(3) of the Environmental Protection Act [415 ILCS 5/28.1(d)(3)])
- f) A generator, treatment facility or disposal facility that is managing a waste covered by an adjusted treatment standard must comply with the waste analysis requirements for restricted wastes found under Section 728.107.
- g) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this Part once the effective date for the waste has been reached.
- h) Based on a petition filed by a generator or treater of hazardous waste, USEPA has stated that it may approve a site-specific variancethe Board will grant an adjusted standard from an applicable treatment standard if the petitioner can demonstrate that either of the following applies to treatment of the waste:
 - 1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be

216 treated to the specified level or by the specified method; or

217
218 2) It is inappropriate to require the waste to be treated to the level specified in
219 the treatment standard or by the method specified as the treatment
220 standard, even though such treatment is technically possible. To show that
221 this is the case, the petitioner must demonstrate that either of the following
222 applies to treatment of the waste:

223
224 A) Treatment to the specified level or by the specified method is
225 technically inappropriate (for example, resulting in combustion of
226 large amounts of mildly contaminated environmental media where
227 the treatment standard is not based on combustion of such media);
228 or

229
230 B) For remediation waste only, treatment to the specified level or by
231 the specified method is environmentally inappropriate because it
232 would likely discourage aggressive remediation.

233
234 3) For contaminated soil only, treatment to the level or by the method
235 specified in the soil treatment standards would result in concentrations of
236 hazardous constituents that are below (i.e., lower than) the concentrations
237 necessary to minimize short- and long-term threats to human health and
238 the environment. USEPA has stated that a treatment variance~~An adjusted~~
239 ~~standard from a treatment standard granted under 40 CFR 268.44(h)(3)~~this
240 ~~subsection (h)(3)~~ will include the following features:

241
242 A) At a minimum, USEPA has stated that a treatment variance
243 approved under 40 CFR 268.44(h)(3)~~the adjusted standard from~~
244 ~~the treatment standard~~ will impose an alternative land disposal
245 restriction treatment standard that will achieve the following, using
246 a reasonable maximum exposure scenario:

247
248 i) For carcinogens, it will achieve constituent concentrations
249 that result in the total excess risk to an individual exposed
250 over a lifetime, generally falling within a range from 10^{-4} to
251 10^{-6} ; and

252
253 ii) For constituents with non-carcinogenic effects, it will
254 achieve constituent concentrations that an individual could
255 be exposed to on a daily basis without appreciable risk of
256 deleterious effect during a lifetime.

257
258 B) USEPA has stated that a treatment variance approved under 40

CFR 268.44(h)(3)~~The treatment-adjusted standard~~ will not consider post-land-disposal controls.

- 4) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will be land disposed.
- 5) USEPA has stated that public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.~~The Board will follow the procedures of Section 28.1 of the Act and Subpart D of 35 Ill. Adm. Code 104 pertaining to public notice and a reasonable opportunity for public comment before granting or denying a petition.~~
 - i) Each petition for a site-specific variance from a adjusted treatment standard must include the information in 40 CFR 260.20(b)(1) through (b)(4)~~35 Ill. Adm. Code 720.120(b)(1) through (b)(4).~~
 - j) After receiving an application for a site-specific variance from a treatment standard~~a petition for a site-specific adjusted treatment standard~~, USEPA~~the Board~~ may request any additional information or samples that USEPA~~the Board~~ determines are necessary to evaluate the petition.
 - k) A generator, treatment facility or disposal facility that is managing a waste covered by a site-specific variance from a adjusted treatment standard must comply with the waste analysis requirements for restricted wastes in Section 728.107.
 - l) During the petition review process, the petitioner for a site-specific variance adjusted treatment standard ~~must comply with all restrictions on land disposal under this Part once the effective date for the waste has been reached.~~
 - m) For any variance adjusted standard ~~from a treatment standard~~, the petitioner must also demonstrate that compliance with the requested variance adjusted standard is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, USEPA has stated that it~~the Board~~ will take into account whether the treatment variance adjusted standard should be granted if the subject waste is to be used in a manner constituting disposal pursuant to 40 CFR 266.20 through 266.23~~Sections 728.120 through 728.123.~~

- 302 n) This subsection (n) corresponds with 40 CFR 268.44(n), marked "reserved" by
303 USEPA. This statement maintains structural consistency with corresponding
304 federal regulations.
- 305
- 306 o) The facilities listed in Table H of this Part are excluded from the treatment
307 standards under Section 728.143(a) and Table B of this Part, and are subject to the
308 constituent concentrations listed in Table H of this Part.
- 309
- 310 p) After~~If~~ USEPA grants a treatability exception by regulatory action pursuant to 40
311 CFR 268.44 and a person demonstrates that the treatability exception needs to be
312 adopted as part of the Illinois RCRA program because the waste is generated or
313 managed in Illinois, the Board will adopt the treatability exception by identical in
314 substance rulemaking pursuant to Section 22.4(a) of the Environmental Protection
315 Act [415 ILCS 5/22.4(a)].

316
317 ~~BOARD NOTE: The Board will adopt the treatability exception during a RCRA~~
318 ~~update Docket if a timely demonstration is made. Otherwise, the Board will~~
319 ~~assign the matter to a separate Docket.~~

320 (Source: Amended at 37 Ill. Reg. _____, effective _____)

321