

ILLINOIS POLLUTION CONTROL BOARD
February 4, 1993

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R92-13
(1/1/92 - 6/30/92)) (Identical in Substance
) Rules)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 7.2, 13(c) and 22.4(a) of the Environmental Protection Act (Act), the Board is amending the UIC underground injection control regulations. The amendments involve 35 Ill. Adm. Code 738.101 and 738.110. The Board will not file the adopted rules until 30 days after the date of this order, to allow time for post-adoption comments, particularly from the agencies involved in the authorization process.

Section 13(c) of the Act governs adoption of regulations establishing the UIC program in Illinois. Section 13(c) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 13(c) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UIC regulations are found at 40 CFR 146 and 148. This rulemaking updates Illinois' UIC rules to correspond with federal amendments during the period January 1 through June 30, 1992. The USEPA actions during this period are as follows:

<u>57 Fed. Reg.</u>	<u>Date</u>	<u>Summary</u>
1109	Jan. 10, 1992	Approval of water-brine interface mechanical integrity test.
8088	Mar. 6, 1992	Third-third corrections.

PUBLIC COMMENT

The Board adopted a proposal for public comment on October 16, 1992. The proposed rules appeared on November 6, 1992, at 16 Ill. Reg. 16770. The Board has received the following public comment:

PC 1 Department of Commerce and Community Affairs,

0139-0361

Regulatory Flexibility Unit (DCCA), November 12, 1992

- PC 2 Administrative Code Division, December 8, 1992
- PC 3 Illinois Environmental Protection Agency (Agency),
December 10, 1992
- PC 4 United States Environmental Protection Agency
(USEPA), December 28, 1992

DCCA indicated that the proposed rules will not significantly impact small business. The Code Division noted a number of minor editorial problems, which have been corrected.

The Agency and USEPA noted an error in the text of Section 738.101(d), and alerted the Board to a recent federal court decision which may impact certain portions of the Board's UIC rules. These issues are discussed below.

EXTENSION OF TIME ORDERS

Section 7.2(b) of the Act requires that identical in substance rulemakings be completed within one year after the first USEPA action in the batch period. If the Board is unable to do so it must enter an "extension of time" Order. The earliest USEPA action in the Docket was January 10, 1992. However, this affected only Section 730.108. As is discussed below, this USEPA action does not result in any amendment to the Board rule. The due date is therefore governed by the second USEPA action, making the rule due by March 6, 1993.

REGULATORY HISTORY

The complete history of the RCRA and UIC rules appears at the end of this opinion. While a short form of reference to the adopting opinions will be used in the body of this opinion, complete citations are included in the history.

PART 730

UNDERGROUND INJECTION CONTROL OPERATING REQUIREMENTS

SUBPART A: GENERAL

Section 730.108 Mechanical Integrity (Not Amended)

This Section is drawn from 40 CFR 146.8. It governs "mechanical integrity" tests for injection wells. USEPA approved the use of the "water-brine interface" mechanical integrity test for Class III salt solution mining injection wells, at 57 Fed. Reg. 1109, January 10, 1992. The "approval" did not include any amendment to the rule. This raises a question as to what sort of

action the Board ought to take in response to the approval.¹

USEPA granted interim approval for this test at 54 Fed. Reg. 34169, August 18, 1989. The Board addressed the approval in R89-11, at p. 8. In that Docket, the Board had proposed to take no action, but set forth the alternative of incorporating the test approval by reference. The Board received no comment, and made no change in that Docket in response to the USEPA action.

Section 730.108(d) provides for Agency approval of alternative tests of mechanical integrity. If someone wants to use the water-brine interface test in Illinois, the person can apply to the Agency for approval. USEPA's approval of the test would certainly bear on the Agency's action.

PART 738
HAZARDOUS WASTE INJECTION RESTRICTIONS

SUBPART A: GENERAL

738.101 Purpose Scope and Applicability

This Section is drawn from 40 CFR 148.1, which was amended at 57 Fed. Reg. 8088, March 6, 1992, in connection with the current round of corrections to the "third third" land disposal bans.

The base text for Section 738.101(d), as used in the proposal, contained an error with respect to the USEPA version at 40 CFR 148.1(d). (PC 3, 4.) An extra "not" was added to the text when it was adopted in R90-14. The base text should read as follows:

- d) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited from injection under this Part, are not prohibited from injection if the wastes:

Pursuant to the March 6, 1992, USEPA amendment, the Board proposed to amend subsection (d) as follows (with the above correction made):

- d) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited from injection under this

¹Section 13(c) of the Act requires the Board to take action based on "regulations" adopted by USEPA. (Order of August 13, 1992, in R92-16, the Cabot Corporation petition for a site-specific "no migration exemption".)

Part, are not prohibited from injection if the wastes:

- 1) Are disposed into a nonhazardous waste injection well defined under 35 Ill. Adm. Code 730.106(a); and
- 2) Do not exhibit any prohibited characteristic of hazardous waste identified in 35 Ill. Adm. Code 721.Subpart C at the point of injection.

In addition, the Agency and USEPA alerted the Board to a recent federal court decision affecting 40 CFR 148.1, the source of this Section. (Chemical Waste Management et al. v. USEPA, 976 Fed. 2d 2, decided September 25, 1992, in the U.S. Court of Appeals for the District of Columbia.) According to USEPA, the decision essentially repealed USEPA's decision that some injected waste would be exempt from RCRA's dilution prohibition. The court said that a waste which is characteristically hazardous at the point of generation, and is diluted (through wastestream aggregation or otherwise), must still be treated to substantially reduce the mass loading of toxics before it can be land-disposed. Although USEPA has requested reconsideration, it appears that USEPA will be rewording 40 CFR 148.1 to make it clear that dilution of characteristically hazardous wastestreams followed by injection will not be allowed under most circumstances. USEPA indicated that, to the best of its knowledge, no Illinois facilities were diluting, and suggested that the State delete Section 738.101(d), pending USEPA amendment. (PC 3 and 4.)

The Board has had to deal in several Dockets with federal litigation concerning the RCRA rules. (For example, see the discussion at p. 11 - 15 in the R91-1 Opinion, and Sections 724.673 and 725.543, discussed in the recent opinion in R92-10.) The identical in substance mandate of Sections 7.2 and 13(c) of the Act requires the Board to respond to regulatory actions taken by USEPA. The Board generally cannot modify its regulations in anticipation of USEPA's regulatory response to a federal court action. Moreover, the Board cannot take action prior to finalization of the federal court order, as is the case here. However, the Board believes that federal court decisions concerning USEPA regulations in these programs are equally applicable to the derivative Board regulations, which generally have no independent basis in State law. When faced with similar situations in the RCRA program, the Board has added notes to the Sections in question, alerting readers to the pendency of federal litigation and possible USEPA amendments. (R91-1, Opinion, p. 12.)

The Board has added the following note, after Section 738.101(d) (2):

0139-0364

BOARD NOTE: The exemption for injection of diluted hazardous waste in this subsection (d) is the subject of pending litigation in *Chemical Waste Management et al. v. USEPA*, 976 Fed. 2d 2, decided September 25, 1992, in the U.S. Court of Appeals for the District of Columbia. This litigation may result in the repeal or modification of 40 CFR 148.1(d), from which this subsection is derived. The Board views any federal court decision on the effectiveness or enforceability of the USEPA rule as binding on this subsection.

SUBPART B: PROHIBITIONS ON INJECTION

Section 738.110 Waste Specific Prohibitions - Solvent Wastes

This Section is drawn from 40 CFR 148.10, which was also amended at 57 Fed. Reg. 8088, March 6, 1992, in connection with the "third third" corrections. The amendment corrects entries to 40 CFR 148.10, Table A. That table does not appear in the Board rule, for reasons which are rather involved.

The Board adopted this Section in R89-2, and amended it pursuant to USEPA corrections in R89-11. USEPA then amended its rule, adding the Tables, with the third third rules and (first) corrections at 55 Fed. Reg. 22521, June 1, 1990, and 56 Fed. Reg. 3864, January 31, 1991. The Board addressed these in R90-14². (Opinion, p. 10). By this time, 40 CFR 148.10 had evolved into a very complex rule with numerous delayed effective dates, which had already passed by the time of Board action. The Board noted that, with the effective dates removed, the rule collapsed into a simple ban. Since these dates had already passed, the Board adopted the simple version of the rule. The Tables were not adopted, since they served only to differentiate among wastes subject to different effective dates.

The March 6, 1992, Federal Register is a correction to the third third corrections. Since it affects only the Table, which is not present in the Board rule, there is no need to amend the Section. The Board will, however, update the Board Note, to show that the rule is derived from the CFR, as amended:

BOARD NOTE: Derived from 40 CFR 148.10 (1991), as

²There is some potential confusion here, since the January 31, 1991, corrections came after the normal batch period for R90-14. The Board addressed the corrections ahead of time, in order to avoid adopting an incorrect rule. The corrections would normally have been addressed in R91-16, which the Board dismissed on December 6, 1991. The Order stated that USEPA did not amend its rules during the batch period, without noting that the corrections had been addressed in a prior Docket.

amended at 57 Fed. Reg. 8088, March 6, 1992.

HISTORY OF RCRA and UIC ADOPTION

The Illinois RCRA and UIC (Underground Injection Control) regulations, together with more stringent State regulations particularly applicable to hazardous waste, include the following:

702	RCRA and UIC Permit Programs
703	RCRA Permit Program
704	UIC Permit Program
705	Procedures for Permit Issuance
709	Wastestream Authorizations
720	General
721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management Facilities
728	USEPA Land Disposal Restrictions
729	Landfills: Prohibited Wastes
730	UIC Operating Requirements
738	Injection Restrictions

Special procedures for RCRA cases are included in Parts 102, 103, 104 and 106.

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

R81-22	45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828, April 23, 1982.
R82-18	51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

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

The UIC regulations were adopted as follows:

R81-32	47 PCB 93, May 13, 1982; October 15, 1982, 6 Ill. Reg. 12479.
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The UIC regulations were amended in R82-18, which is referenced above. The UIC regulations were also amended in R83-39:

R83-39	55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338,
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December 20, 1983.

Illinois received UIC authorization February 1, 1984. The Board has updated the UIC regulations:

- R85-23 70 PCB 311, June 20, 1986; 10 Ill. Reg. 13274, August 8, 1986.
- R86-27 Dismissed at 77 PCB 234, April 16, 1987 (No USEPA amendments through 12/31/86).
- R87-29 January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988; (1/1/87 through 6/30/87).
- R88-2 June 16, 1988; 12 Ill. Reg. 13700, August 26, 1988. (7/1/87 through 12/31/87).
- R88-17 December 15, 1988; 13 Ill. Reg. 478, effective December 30, 1988. (1/1/88 through 6/30/88).
- R89-2 January 25, 1990; 14 Ill. Reg. 3059, effective February 20, 1990 (7/1/88 through 12/31/88).
- R89-11 May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89).
- R90-5 Dismissed March 22, 1990 (12/1/89 through 12/31/89)
- R90-14 Adopted May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991 (1/1/90 through 6/30/90)
- R91-4 Dismissed February 28, 1991 (7/1 through 12/31/90)
- R91-16 Dismissed December 6, 1991 (1/1 through 6/30/91)
- R92-4 Dismissed April 9, 1992 (7/1/91 through 12/31/91)
- R92-13 This Docket (1/1/92 through 6/30/92)
- R93-6 Next UIC Docket (7/1/92 through 12/31/92)

The Phase II RCRA regulations included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II regulations were adopted and amended as follows:

- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.
- R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200,

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January 6, 1984.

On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison et al. v. IPCB, 127 Ill. App. 3d 446; 468 NE 2d 1339 (Third Dist. 1984).)

The Board updated the RCRA regulations to correspond with USEPA amendments in several dockets. The period of the USEPA regulations covered by the update is indicated in parentheses:

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985. (through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986. (4/25/84 -- 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)
- R86-46 July 16, 1987; August 14, 1987; 11 Ill. Reg. 13435. (7/1/86 -- 9/30/86)
- R87-5 October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987. (10/1/86 -- 12/31/86)
- R87-26 December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988. (1/1/87 -- 6/30/87)
- R87-32 Correction to R86-1; September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987.
- R87-39 Adopted June 14, 1988; 12 Ill. Reg. 12999, August 12, 1988. (7/1/87 -- 12/31/87)
- R88-16 November 17, 1988; 13 Ill. Reg. 447, effective December 28, 1988 (1/1/88 -- 7/31/88)
- R89-1 September 13, October 18 and November 16, 1989; 13 Ill. Reg. 18278, effective November 13, 1989 (8/1/88 -- 12/31/88)
- R89-9 March 8, 1990; 14 Ill. Reg. 6225, effective April

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- 16, 1990 (1/1/89 through 6/30/89)
- R90-2 July 3 and August 9, 1990; 14 Ill. Reg. 14401, effective August 22, 1990 (7/1/89 through 12/31/89)
- R90-10 August 30 and September 13, 1990; 14 Ill. Reg. 16450, effective September 25, 1990 (TCLP Test) (1/1/90 through 3/31/90)
- R90-11 April 11, May 23, 1991; 15 Ill. Reg. 9323, effective June 17, 1991 (Third Third) (4/1/90 through 6/30/90); Corrected August 8, 1991; Uncorrected August 22, 1991.
- R90-17 Delisting Procedures (See below)
- R91-1 August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991 (Wood Preserving) (7/1/90 through 12/30/90)
- R91-13 April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992; Boilers and Industrial Furnaces (BIFs) (1/1/91 through 6/30/91)
- R91-26 Wood Preserving Compliance Dates; January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992.
- R92-1 September 17, 1992, 16 Ill. Reg. 17636, effective November 6, 1992 (7/1/91 through 12/31/91)
- R92-10 Adopted January 21, 1993; Leak Detection Systems (LDSs) (1/1/92 through 6/30/92)
- R93-4 Next RCRA Docket (7/1/92 through 12/31/92)

Illinois received final authorization for the RCRA program effective January 31, 1986.

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

- R84-34 61 PCB 247, November 21, 1984; 8 Ill. Reg. 24562, effective December 11, 1984.

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by S.B. 1834.

The Board has adopted USEPA delistings at the request of Amoco, Envirite and USX:

- R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986.
- R87-30 June 30, 1988; 12 Ill. Reg. 12070, effective July 12, 1988.
- R91-12 December 19, 1991; 16 Ill. Reg. 2155, Effective January 27, 1992 (USX)

The Board has modified the delisting procedures to allow the use of adjusted standards in lieu of site-specific rulemakings:

- R90-17 February 28, 1991; 15 Ill. Reg. 7934, effective May 9, 1991

The Board has granted a delisting by way of adjusted standard:

- AS91-1 Keystone, February 6, 1992

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

- R84-10 62 PCB 87, 349, December 20, 1984 and January 10, 1985; 9 Ill. Reg. 1383, effective January 16, 1985.

The Board also adopted in Part 106 special procedures to be followed in certain determinations. Part 106 was adopted in R85-22 and amended in R86-46, listed above.

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

- R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 4, 1984;
- R83-28 February 26, 1986; 10 Ill. Reg. 4875, effective March 7, 1986.
- R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed (CBE and IEPA v. IPCB et al., First District, January 26, 1987).

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ORDER

The complete text of the amended rules is as follows and will appear in the Illinois Register. The Board will not file the adopted rules until 30 days after the date of this order, to allow time for post-adoption comments, particularly from the agencies involved in the authorization process.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND
 UNDERGROUND STORAGE TANK PROGRAMS.

PART 738
 HAZARDOUS WASTE INJECTION RESTRICTIONS

SUBPART A: GENERAL

Section
 738.101 Purpose Scope and Applicability
 738.102 Definitions
 738.103 Dilution Prohibited as a Substitute for Treatment
 738.104 Case-by-Case Extensions of an Effective Date
 738.105 Waste Analysis

SUBPART B: PROHIBITIONS ON INJECTION

Section
 738.110 Waste Specific Prohibitions - Solvent Wastes
 738.111 Waste Specific Prohibitions - Dioxin - Containing
 Wastes
 738.112 Waste Specific Prohibitions - California List Wastes
 738.114 Waste Specific Prohibitions - First Third Wastes
 738.115 Waste Specific Prohibitions - Second Third Wastes
 738.116 Waste Specific Prohibitions - Third Third Wastes

SUBPART C: PETITION STANDARDS AND PROCEDURES

Section
 738.120 Petitions to Allow Injection of a Prohibited Waste
 738.121 Required Information to Support Petitions
 738.122 Submission, Review and Approval or Denial of Petitions
 738.123 Review of Adjusted Standards
 738.124 Termination of Adjusted Standards

AUTHORITY: Implementing Section 13 and 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1013, 1022.4 and 1027).

SOURCE: Adopted in R89-2 at 14 Ill. Reg. 3059, effective February 20, 1990; amended in R89-11 at 14 Ill. Reg. 11948, effective July 9, 1990; amended in R90-14 at 15 Ill. Reg. 11425, effective July 24, 1991; amended in R92-13 at 17 Ill. Reg. effective

SUBPART A: GENERAL

Section 738.101 Purpose Scope and Applicability

- a) This Part identifies hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.
- b) The requirements of this Part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.
- c) Wastes otherwise prohibited from injection may continue to be injected:
 - 1) If an extension from the effective date of a prohibition has been granted pursuant to Section 738.104; or
 - 2) If an adjusted standard has been granted in response to a petition filed under Section 738.120; or
 - 3) If the waste is generated by a conditionally exempt small quantity generator, as defined in 35 Ill. Adm. Code 721.105.
- d) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited from injection under this Part, are not prohibited from injection if the wastes:
 - 1) Are disposed into a nonhazardous waste injection well defined under 35 Ill. Adm. Code 730.106(a); and
 - 2) Do not exhibit any prohibited characteristic of hazardous waste identified in 35 Ill. Adm. Code 721.Subpart C at the point of injection.

BOARD NOTE: The exemption for injection of diluted hazardous waste in this subsection (d) is the subject of pending litigation in *Chemical Waste Management et al. v. USEPA*, 976 Fed. 2d 2, decided September 25, 1992, in the U.S. Court of Appeals for the District of Columbia. This litigation may result in the repeal or modification of 40 CFR 148.1(d), from which this subsection is derived. The Board views any federal court decision on the

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effectiveness or enforceability of the USEPA rule as binding on this subsection.

BOARD NOTE: Derived from 40 CFR 148.1 (1991), as amended at 57 Fed. Reg. 8088, March 6, 1992.

(Source: Amended at 17 Ill. Reg. , effective)

SUBPART B: PROHIBITIONS ON INJECTION

Section 738.110 Waste Specific Prohibitions - Solvent Wastes

- a) The spent solvent wastes specified in 35 Ill. Adm. Code 721.131 by the following EPA Hazardous Waste numbers are prohibited from underground injection:

F001
F002
F003
F004
F005

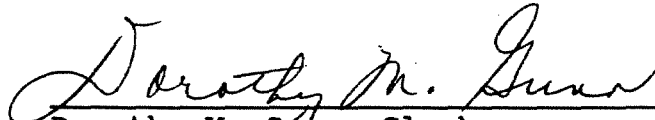
- b) The requirements of subsection (a) do not apply:
- 1) If the wastes meet or are treated to meet the standards of 35 Ill. Adm. Code 728.Subpart D; or
 - 2) If an adjusted standard has been granted in response to a petition under Subpart C; or
 - 3) During the period of extension of the applicable effective date if an extension has been granted under Section 738.Subpart D.

BOARD NOTE: Derived from 40 CFR 148.10 (1991), as amended at 57 Fed. Reg. 8088, March 6, 1992.

(Source: Amended at 17 Ill. Reg. , effective)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4th day of February, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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