

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

IN THE MATTER OF:)
) R91-13
RCRA UPDATE, USEPA REGULATIONS) Identical in Substance
(1/1/91 - 6/30/91)) Rules)

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

On April 9, 1992, the Board entered a final Opinion and Order in this matter. The Order indicated that the final rules would not be filed prior to May 8, 1992, to allow time for post-adoption comment. The Board has received the following post-adoption comment:

- PC 7 Scientific Control Laboratories, Inc., April 15, 1992
- PC 8 Craftsman Plating and Tinning Corporation, April 21, 1992
- PC 9 Northwestern Plating Works, Inc., April 21, 1992
- PC 10 United States Environmental Protection Agency (USEPA), May 8, 1992

USEPA noted a typographical error in language added in the April 9, 1992 Order. In Section 721.103(c)(2)(B)(iii), the standard for arsenic should be "0.055" instead of "0.056" mg/L. The Board continues to appreciate USEPA's careful review of the RCRA updates and will of course correct this error in the rules before filing.

PC 7 through 9 are closely related and will be dealt with together. The comments relate to the treatability exceptions¹ in Section 728.144. As was discussed on p. 87 in the April 9, 1992 Opinion, and on p. 71 in the December 19, 1991, Proposed Opinion, USEPA adopted two "treatability variances" by way of amendment to 40 CFR 268.44(o), on March 25, 1991, at 56 Fed. Reg. 12355.

¹The USEPA rules refer to this as a "treatability variance". This term could easily be confused with Board variances pursuant to Title IX of the Act. The Board has therefore avoided using the term "variance" in the rules to describe actions other than Title IX variances. As discussed below, there will be two methods of getting a "treatability variance" at the State level. After authorization, one would get an "adjusted treatment standard" from the Board by the adjusted standards mechanism of Section 28.1 of the Act. Prior to authorization, one would get a "treatability exception" by identical in substance rulemaking under Section 22.4(a) of the Act.

Section 728.144 was adopted in R87-5, and amended in R89-1. As adopted by the Board, it utilized the adjusted standards² procedures of 35 Ill. Adm. Code 106 and Section 28.1 of the Act for making these determinations. The general language of 40 CFR 268.44 did not make it clear that USEPA would use rulemaking when granting a specific "treatability variance". Therefore, in R87-5 and R89-1, the Board did not specifically address the possibility of handling treatability exceptions in an "identical in substance" rulemaking. Instead, the equivalent Section 728.144 provides only for Board action on an adjusted standard petition.

In the Proposed Opinion, the Board took note of the USEPA treatability exceptions, and requested comment as to whether it ought to amend Section 728.144 to provide for adoption of specific treatability exceptions by identical in substance rulemaking, and as to whether it ought to adopt the exceptions in question. As discussed in those Opinions, the Board cannot generally tell whether a specific treatability exception granted by USEPA to a particular entity needs to be adopted as part of the Illinois program, absent a comment or request from a person with knowledge of the facts. The Board received no comment on this issue, and, on April 9, 1992, adopted a Final Opinion and Order omitting the specific treatability exceptions.

In the post-adoption comment, the commenters have indicated that the Board does need to adopt these provisions as part of the Illinois program, and have asked that it do so in this Docket.

As is discussed below, the Board will make the requested changes in this Docket. This discussion supersedes the discussion of Section 728.144 on pages 87 through 89 in the April 9, 1992, Opinion.³

²While a Board variance would grant temporary relaxation of a rule based on a showing of arbitrary and unreasonable hardship, and a compliance plan, the USEPA "treatability variance" is potentially permanent, and does not necessarily require a showing of hardship. As discussed in the prior Dockets, a Board adjusted standard pursuant to Section 28.1 of the Act is the most appropriate procedure for such a determination.

³So as not to risk delay of these rulemakings by having to deal with the problems inherent in tackling new issues at the end of the process, we make a special effort to point out problems at the Proposed Opinion stage, as we did in this case, so as to get "up-front" responses during the 45 day comment period before adoption. Since PC 7, 8 and 9 all came in after the adoption stage, we would welcome being informed of any notice or other problem that might be contributing to the delayed response.

The Board has modified Section 728.144 to allow adoption of treatability exceptions by identical in substance rulemaking. If a request showing the need for adoption as part of the Illinois program is received during the course of an Update Docket, the Board will handle the matter in that Docket. Otherwise, the request will be assigned to a separate Docket, and will be handled as an identical in substance, specific rule. We note that the adjusted standard procedure will become the only procedure following authorization and State assumption of this program component.

The Board will determine whether a treatability exception needs to be adopted based on the same standard as is used for delistings in Section 720.122. The Board will adopt the federally-granted exception on a showing that a waste will be "generated or managed in Illinois".

The Board will thus adopt these two treatability exceptions in this Docket.

USEPA has adopted the treatability exceptions as part of a new table in 40 CFR 268.44(o). The text of the table is similar to the CCWE (constituent concentration in waste extract) and CCW (constituent concentration in waste) tables in 40 CFR 268.41 and 268.43. The format of those tables was such that they could not be adopted within the text of a Section meeting Administrative Code Division format requirements. The Board therefore adopted the tables as "Tables A and B", which float at the end of the Part, like appendices. The Board will adopt the treatability exceptions as a similar Table, which will be referenced into Section 728.144(o).

While 40 CFR 268.44(o) is specific to CCW "treatability variances", USEPA has "reserved" 40 CFR 268.44(m) and (n). One could speculate that those subsections are reserved for future CCWE and treatment requirement "treatability variances", such that the CCWE, treatment requirement and CCW "variances" would appear in the same order as the underlying federal requirements. In line with this, the Board will "reserve" Tables F and G, and add a new Table H for the CCW treatability exceptions.

There is no obvious place for the new procedural requirements for entering a treatability exception into the Illinois rules by the "identical in substance" mode. The Board has used Section 728.144(m). However, this may have to be moved if USEPA uses 40 CFR 268.44(m) for another type of treatability exception.

There appears to be a minor error in the text of the table in 40 CFR 268.44(o) [Table H]. The wastewater standard for Northwestern Plating for "cyanides (total)" includes a reference

to "3" ["C"]. However, this note is specific to "cyanides (amenable)". The Board has moved the note to that line.

In the footnotes, USEPA uses the term "facility" repeatedly to refer to the person who has to certify or comply. As defined in 40 CFR 260.10 [720.110], "facility" is inanimate. The correct term is "owner or operator". However, as these terms are defined, they refer only to a hazardous waste management facility, and its owner and operator, not to the "generator" of hazardous waste who is shipping waste from a manufacturing plant for off-site treatment, storage or disposal. The 40 CFR 268 requirements which are referenced include requirements applicable both to generators and to owners and operators. It is not clear whether Craftsman Plating and Northwestern Plating are "owners or operators" of "facilities", or strictly "generators". The Board has used "owner or operator", which tracks "facility" in the USEPA rule more closely, but notes the possible error.

In the April 9, 1992, Final Opinion, the Board also addressed a number of minor problems in the text of Section 728.144. This discussion is repeated in this Order to provide a complete discussion of Section 728.144 in one place, although there is no change from the April 9, 1992, Opinion.

The Board has made some minor changes to Section 728.144. These involve changes to cross references to the delisting procedures to conform with R90-17. In addition, the Board has referenced the newer generic adjusted standards procedure, rather than the former RCRA-specific adjusted standards procedures. The Board has added a requirement, patterned after Section 720.122(n)(3), that the Board maintain a list of adjusted standards in the rules. In addition, the Board has added a paraphrase of Section 28.1(d)(3), which requires the Board to publish a list of adjusted standards at the end of each fiscal year in the Illinois Register and Environmental Register (See Section 28.1).

The Board concludes that the text of Section 728.144 be modified, and a new Table H added. The complete text is as follows. Striking and underlining refer to the existing base text, not the April 9, 1992, text.

ORDER

Section 728.144 Adjustment of Treatment Standard

- a) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition to the

Board for an adjusted treatment standard. As justification, the petitioner shall demonstrate that, because the physical or chemical properties of the waste differ significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified level or by the specified methods.

BOARD NOTE: 40 CFR 268.44 refers to these as "treatability variances". The Board has not used this term in its rules to avoid confusion with the Board variances under Title IX of the Environmental Protection Act. The equivalent Board procedures are an "adjusted treatment standard" pursuant to subsections (a) through (l), or a "treatability exception" adopted pursuant to subsections (m) et seq. While the latter is adopted by "identical in substance" rulemaking following a USEPA action, the former is an original Board action which will be the only mechanism following authorization to the State of this component of the RCRA program.

- b) Each petition must be submitted in accordance with the procedures in 35 Ill. Adm. Code 106.Subpart G.
- 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 ~~adjustment of a an~~ adjusted treatment standard, the Board may request any additional information or samples which are necessary to evaluate the petition.
- e) The Board will give public notice and provide an opportunity for public comment, as provided in 35 Ill. Adm. Code 106. ~~The final decision on an adjusted treatment standard will be published in the Environmental Register.~~ 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.)

- f) A generator, treatment facility or disposal facility that is managing a waste covered by an adjusted treatment standard shall 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) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste generated under conditions specific to only one site cannot be treated to the specified level, or where treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Board for a site-specific adjusted treatment standard. The petitioner shall demonstrate that, because the physical or chemical properties of the waste differs significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.
- i) Each petition for a site-specific adjusted treatment standard must include the information in ~~40 CFR 260.20(b)(1) through (b)(4), incorporated by reference in 35 Ill. Adm. Code 720.111~~ 35 Ill. Adm. Code 720.120(b)(1) through (4).
- j) After receiving a petition for a site-specific adjusted treatment standard, the Board may request any additional information or samples which the Board determines are necessary to evaluate the application petition.
- k) A generator, treatment facility or disposal facility which is managing a waste covered by a site-specific adjusted treatment standard ~~from a treatment standard~~ shall 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 shall comply with all restrictions on land disposal under

this Part once the effective date for the waste has been reached.

- m) If USEPA grants a treatability exception by regulatory action pursuant to 40 CFR 268.44 (1991) 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.

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.

- o) The facilities listed in Table H are excluded from the treatment standard under Section 728.143(a) and Table B, and are subject to the constituent concentrations listed in Table H.

Section 728. Table H Wastes Excluded from CCW Treatment Standards

The following facilities are excluded from the treatment standard under Section 728.143(a) and Table B, and are subject to the following constituent concentrations. These facilities have received a treatability exception by regulatory action from USEPA pursuant to 40 CFR 268.44 (1991), and have demonstrated that the Board needs to adopt the treatability exception as part of the Illinois RCRA program. The Board may also grant an "adjusted treatment standard" pursuant to Section 728.144.

<u>Facility name and address</u>	<u>Waste Code</u>	<u>See Also</u>	<u>Regulated hazardous constituent</u>	<u>Wastewaters Concentration (mg/L)</u>	<u>Notes</u>	<u>Nonwaste-waters Concentration (mg/L)</u>	<u>Notes</u>
<u>Craftsman Plating and Tinning Corp., Chicago, IL</u>	<u>F006</u>	<u>Table A</u>	<u>Cyanides (Total)</u>	<u>1.2</u>	<u>B</u>	<u>1800</u>	<u>D</u>
			<u>Cyanides (amenable)</u>	<u>0.86</u>	<u>B and C</u>	<u>30</u>	<u>D</u>
			<u>Cadmium</u>	<u>1.6</u>	<u>NA</u>		
			<u>Chromium</u>	<u>0.32</u>	<u>NA</u>		
			<u>Lead</u>	<u>0.40</u>	<u>NA</u>		
			<u>Nickel</u>	<u>0.44</u>	<u>NA</u>		
<u>Northwestern Plating Works, Inc., Chicago, IL</u>	<u>F006</u>	<u>Table A</u>	<u>Cyanides (Total)</u>	<u>1.2</u>	<u>B</u>	<u>970</u>	<u>D</u>
			<u>Cyanides (amenable)</u>	<u>0.86</u>	<u>B and C</u>	<u>30</u>	<u>D</u>

c

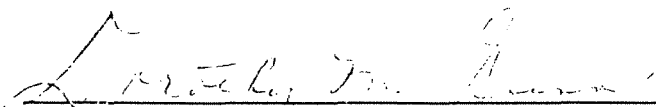
<u>Cadmium</u>	<u>1.6</u>	<u>NA</u>
<u>Chromium</u>	<u>0.32</u>	<u>NA</u>
<u>Lead</u>	<u>0.40</u>	<u>NA</u>
<u>Nickel</u>	<u>0.44</u>	<u>NA</u>

Notes:

- A An owner or operator may certify compliance with these treatment standards according to the provisions of Section 728.107.
- B Cyanide wastewater standards for F006 are based on analysis of composite samples.
- C These owners and operators shall comply with 0.86 mg/L for amenable cyanides in the wastewater exiting the alkaline chlorination system. These owners and operators shall also comply with Section 728.107(a)(4) for appropriate monitoring frequency consistent with the facilities' waste analysis plan.
- D Cyanide nonwastewaters are analyzed using SW-846 Method 9010 or 9012, sample size 10 g, distillation time one hour and fifteen minutes. SW-846 is incorporated by reference in 35 Ill. Reg. 720.111.
- NA Not applicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above supplemental opinion and order was adopted on the 21st day of May, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board