ILLINOIS POLLUTION CONTROL BOARD
February 4, 1982

In the matter of:)
) R81-22
PROPOSED REGULATIONS FOR RCRA)

FINAL ORDER. ADOPTED RULES

OPINION OF THE BOARD (by D. Anderson):

On September 16, 1981 the Board adopted Parts 700 and 720 through 725. These were filed with the Secretary of State and appeared in the Illinois Register (5 Ill. Reg. 9781, October 2, 1981). In November, 1981 comments on the adopted rules were filed pursuant to the Board's request. On December 3, 1981 the Board proposed to amend the September 16 rules. A draft opinion and proposed text of the rules were made available for public comment.

On December 8, 1981 United States Environmental Protection Agency (USEPA) conducted a hearing on the Illinois Environmental Protection Agency's (Agency's) application for Phase I interim authorization pursuant to the Resource Conservation and Recovery Act (RCRA).

The Board will adopt the December 3 amendments modified pursuant to comments. The changes prior to and after December 3 will be discussed together in the following Opinion.

COMMENTS

The Board received a large number of comments generally supporting the September 16 rules. Numbers PC1 through PC4 were assigned to the comments which reviewed the regulations in detail. The Board received only four comments to the December 3 proposal, two of which were from persons who had already commented. Numbers PC5 through PC8 were assigned to the comments on the December 3 proposal.

PC1 Mary Redmond, Secretary of State, Illinois State Library.

PC2 Sheldon A. Zabel and Carolyn A. Lown, Schiff Hardin &
PC6 Waite, Central Illinois Light Company, Central Illinois Public Service Company, Commonwealth Edison Company and Illinois Power Company.

PC3 Dixie L. Laswell and Johnnine Brown Hazard, Rooks, Pitts,
PC7 Fullagar & Poust, Granite City Steel Division of National Steel Corporation, Interlake, Inc., Northwestern Steel &

** The Board acknowledges the contributions of Morton Dorothy and Tammy Weinstock.

Wire Company, Republic Steel Corporation, and United States Steel Corporation

PC4 Scott O. Phillips, Division of Land Pollution Control, Illinois Environmental Protection Agency.

PC5 Joanna Hoelscher and Dr. Robert Ginsburg, Citizens for a Better Environment.

PC8 Melanie S. Toepfer, William A. Price, Thomas L. Reid, Frank Shipton and Burness E. Melton, Chemical Industries Council of the Midwest, Chicago Association of Commerce & Industry, Illinois Manufacturers' Association, and Illinois Trucking Association.

UPDATING THE TEXT

The text has been updated to reflect changes in federal regulations since the cut off of the September 16 rules through October 1, 1981. The Board has taken account of the following changes (PC3, 4):

40 CFR PART 261	35 Ill. Admin. Code
46 FR 44,970; September 8, 1981	§721.106
46 FR 46,426; September 25, 1981	§721.104(d)

40 CFR PART 265	35 Ill. Admin. Code
46 FR 38,312; July 24, 1981	§725.240
46 FR 48,197; October 1, 1981	§725.240

The amendments incorporated into §721.104(d) provide an exception from the regulations for transportation of laboratory samples, those in §721.106 an exception for recycled spent pickle liquor. These are set forth in the new text. The amendments to Part 725 extend the date for compliance with financial responsibility regulations. The Board hereby incorporates the new dates by reference in accordance with 46 FR 48,197.

The power companies have requested incorporation of new federal amendments:

§721.103	46 FR 56,582 (November 17, 1981)
§725.412 et seq.	46 FR 56,592 (November 17, 1981)

The amendments to §721.103 exempt some mixtures of solid and hazardous waste from the definition of hazardous. The

amendments to §725.412 et seq. allow "lab packs" of ignitable waste to be landfilled.

It is necessary to bring R81-22 to a final appealable order. Past experience has shown that it is unwise to adopt regulations without notice and comment. A comment period would delay a final order by at least 60 days. The Board will therefore consider these amendments in connection with a new proposal pursuant to §720.120(a). Under the terms of §22.4(a), as argued by the commenters, the Board has at least until May 18, 1982 in which to incorporate these amendments.

MODIFICATION OF FEDERAL TEXT

The federal text has been modified in several respects. These are summarized as follows, with examples:

1. Modifications of federal rules which do not fit the Illinois scheme (§§720.102, 720.120, 721.101, 725.101).

2. Deletion of material which is unnecessary in the Illinois context (§§721.110, 723.110).

3. Codification changes (Ill. Admin. Code Parts 120 and 160, 5 Ill. Reg. 14,056, 14,112, 14,204, December 18, 1981).

4. Insertion of Chapter 9 requirements (§§722.122, 725.101).

5. Insertion of cross references (§§721.105, 722.110, 723.110, 725.101).

Section 22.4(a) of the Act directs the Board to adopt regulations "identical in substance" to federal RCRA regulations.* As is discussed in greater detail below, this obviously does not require adoption of the federal text in haec verba (PC2). At the least it allows the Board to make those modifications which are necessary to make the RCRA program work in the framework of the Illinois Act.

USEPA is a single agency which writes rules, grants variances, issues permits, performs inspections, initiates enforcement and issues orders. In Illinois these functions are divided between the Board and Agency. USEPA's rules frequently do not make sharp divisions between its functions. Care must

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*This carefully chosen term differs from the "substantially equivalent" language for state approval under RCRA (§3006).

be taken in domesticating these rules. Division of jurisdiction between Board and Agency must be in accordance with each agency's statutory authority. After jurisdiction is decided, the rules must be modified to assure proper notice and other Illinois conditions precedent (§§720.120 et seq. and §§725.210 et seq. present difficult problems of this sort).

40 CFR §260.2 provides for availability of information under the federal Freedom of Information Act. This has been deleted because the Agency and Board are not subject to this statute (§720.102). It is therefore unnecessary in the Illinois context.

The Secretary of State's office has promulgated detailed regulations concerning form of regulations, which are now subject to review by the Illinois State Library prior to filing. Although it would be possible to file these rules now without conforming, they would have to be modified before the 1983 deadline for codification.

The single example of insertion of existing Board requirements into the federal text is delivery of copies of manifests to the Agency (§§722.122 and 725.171). This is really a cross-reference, but it has been elaborated to provide a complete list of requirements in the RCRA text.

Part 700 also contains a number of rules which merely refer the public to provisions in the Act, federal RCRA Act, Chapter 7, Chapter 9 or the RCRA rules. These were adopted because, with addition of RCRA, the waste rules no longer had a logical structure.

ADDITIONAL FEDERAL MATERIALS

One commenter (PC2) has requested incorporation of various introductory materials and interpretations by USEPA. The incorporation of these materials is required neither by P.A. 82-380 nor by RCRA itself. The Board also notes that to incorporate this material would give it greater weight than it has before USEPA. Due to the fact that these rules were drafted by USEPA, federal interpretations will naturally carry weight in the application of these rules.*

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*PC2 is especially concerned that the Board follow USEPA's interpretation of the fossil fuel combustion waste exclusion of 40 CFR §261.4(b)(4). This is contained in a letter dated January 13, 1981 from Gary N. Dietrich of USEPA to Paul Emler, Jr. The Board intends to follow this interpretation as it exists on the date of adoption or amendment of §721.104, and will consider future USEPA interpretations of the corresponding federal rule in any cases which should arise under its rules.

The electric utilities have renewed their objection to the failure of the Board to actually incorporate the federal appendices by reference (PC6). The actual incorporation by reference would give the appendices greater weight than they enjoy as federal appendices. For example, the Appendix I sampling methods would then be "formally adopted by the Board," requiring a §720.121 demonstration of equivalency by anyone seeking to use other sampling methods. This would contradict the comment to §721.120(c).

AUTHORITY FOR PART 700

The September 16 regulations took the form of Part 700 and Parts 720 through 725. The latter corresponded with operating requirements found at 40 CFR Parts 260 through 265. Part 700 contained rules which integrated the RCRA rules with existing Board requirements in Chapters 7 and 9, and with other chapters. Two commenters objected to Part 700 as unauthorized (PC2 and PC3).

Section 22.4(a) and 22.4(b) provide as follows:

> Sec. 22.4. (a) The Board shall adopt within 180 days regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 3001, 3002, 3003, 3004, and 3005, of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended. The provisions and requirements of Title VII of this Act shall not apply to rules adopted under this subsection. Section 5 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to rules adopted under this subsection.
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> (b) The Board may adopt regulations relating to a state hazardous waste management program that are not inconsistent with and at least as stringent as the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, or regulations adopted thereunder. Regulations adopted pursuant to this subsection shall be adopted in accordance with the provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5 of the Illinois Administrative Procedures Act.

Section 22.4(a) provides for a quick adoption of regulations which are identical in substance, while 22.4(b) requires regular Board rulemaking for adoption of other requirements which are not inconsistent with and at least as stringent as federal rules.

In adopting Part 700, the Board interpreted §22.4 as requiring it to adopt the federal regulations, making such adjustments as were necessary to accommodate the peculiarities of Illinois law, and to integrate this with its existing rules, applying the standard of §22.4(b).* On the other hand, commenters contend that the intent of §22.4 was to repeal all existing regulations concerning hazardous waste.

Board members and staff participated in the legislative process resulting in P.A. 82-380. They assumed that the legislation continued existing requirements. The Board is not aware of anything in the legislative record indicating the alternative interpretation.

The Board presently has in place a permit system which covers hazardous waste disposal (Rules 201, 202 and 310 of Chapter 7) and a cradle-to-grave tracking system centered on hazardous waste transportation (Chapter 9). The following would be consequences of abandonment of these chapters as applied to hazardous waste:

1. Section 21(f)(1) imposes a RCRA permit requirement on hazardous waste operations. Federal and state law prohibit the issuance of these permits until Phase II authorization is received from USEPA [§3(qq) of the Act].** The interpretation urged would immediately exempt existing hazardous waste landfills from the existing Chapter 7 permit program. They would be able to operate outside any permit program on a deemed issued basis for an indefinite period of time until Phase II authorization is received.

2. Part 725, especially Subpart N, contains operating requirements for landfills. The Board has existing requirements applicable to landfills, including hazardous waste landfills (Part III of Chapter 7). The Board's existing requirements, especially Rules 303, 305 and 314, are far more detailed than the RCRA requirements. The Board requires, for example, definite amounts of daily, intermediate and final cover. The interpretation urged would allow these existing landfills to operate without complying with detailed operating regulations for an indefinite period of time until Phase II authorization.

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*Additional hearings on the existing rules pursuant to Title VII of the Act are not necessary. These were held prior to their adoption.

**However, the Board has provided that these permits are deemed issued to existing facilities under conditions similar to federal interim status (§§700.105, 700.109 and 40 CFR Part 122).

3. The Board has in place a cradle-to-grave regulatory program applicable to all hazardous waste generated in monthly quantities greater than 100 kg (Chapter 9). The RCRA rules have a 1000 kg exemption (Part 721). The interpretation urged would immediately exempt from regulation hazardous waste (non-acute) generated in quantities of 100 to 1000 kg/month. It would also result in greater regulation of certain quantities of non-hazardous special waste than hazardous waste.

4. Chapter 9 presently requires copies of manifests to be sent to the Agency by the generator and recipient of the waste. The Agency enters these on a computer which produces missing load reports and other information. The system under the federal RCRA rules relies on self-reporting of missing loads and annual reports of waste movements. The Agency's system, which is currently operating, appears to be far more efficient in tracking waste and detecting non-compliance. The interpretation urged would impose the federal system on Illinois and deprive the Agency's computer of its input. Even if the system were eventually readopted following a new round of hearings, there would be a gap in the data and a new start-up period.

The legislature has found that hazardous waste imposes special dangers to health and requires a greater degree of regulation than non-hazardous waste [§20(a)(4)]. Adoption of the interpretation urged would leave hazardous waste less regulated than general waste and non-hazardous special waste during the indefinite period prior to receipt of Phase II authorization. This would be inconsistent with the legislative findings and contrary to the intent of P.A. 82-380.

Section 21(g)(1) requires permits of hazardous waste transporters such as those presently required by Chapter 9. The federal RCRA rules have no comparable transporter permit requirement. The interpretation urged would prohibit hazardous waste transportation until the Board could conduct hearings to re-establish the Chapter 9 permit program.

The RCRA regulations would be largely moot if hazardous waste transportation were prohibited pending revalidation of Chapter 9. This would be inconsistent with the intent of §20(a)(8), in which the legislature has also found that it is in the interest of Illinois to avoid the existence of conflicting state and federal regulations [§20(a)(8)]. It could also pose a hazard to public health by requiring temporary storage of wastes in inadequate facilities at the site of generation. This would be inconsistent with §20(a)(4). Indeed the specific continuation of the Chapter 9 permit program is positive evidence of legislative intent that Chapter 9 continue after RCRA is implemented.

The intent of §22.4 was, contrary to the comments, that Chapters 7 and 9 continue to apply to hazardous waste. Indeed, the correct interpretation is that the Board is precluded by §22.4(b) from abandoning, without hearings, any of its existing requirements which are not inconsistent and at least as stringent as federal requirements.

Commenters argue that the statutory authority for Chapter 7 is now missing in that there is now specific authority for hazardous waste regulations apart from general waste regulations (§§22.4 and 22). In the first place, §22 still authorizes regulations concerning "refuse" or "waste" which includes hazardous waste. Secondly, the legislature has not specified which chapter the regulations must go into. The Board now has at least the same authority over hazardous waste landfills that it always had; only the exact wording and numbering in the Act have been changed. These sections have been similarly amended every year with no one claiming the regulations needed revalidation.

A number of comments have been made concerning the continued viability of Chapters 7 and 9 (PC6, 7, 8). These were answered in the draft opinion with the exception of one issue. Chicago Association of Commerce and Industry (CACI) has noted that the continued applicability of Chapter 9 has the effect of nullifying much of the effect of the recycler exemptions of the RCRA rules.* The Board lacks authority to summarily repeal the more stringent aspects of existing Chapters 7 and 9 which are not inconsistent with the RCRA rules. The Board has initiated rulemaking pursuant to §22.4(b) to address the Chapter 9 problems (R81-31).

INTEGRATION OF CHAPTERS 7 AND 9

Granted that the legislature intended the Board to retain its existing requirements until modified by full rulemaking, th question becomes how to best accomplish this. Several possibilities were considered:

1. Adoption of federal regulations, possibly by reference, leaving problems to be worked out on a case-by-case basis.

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*An example is spent pickle liquor used in wastewater treatment plants. Even though it is now exempt from the RCRA rules, it continues to be a special waste subject to Chapter 9. It is an example of an industrial process waste listed in the definitions in the Act.

2. Adoption of federal regulations together with provisions requiring compliance with Chapters 7 and 9 insofar as not inconsistent and at least as stringent.

3. Identification of consistent provisions in Chapters 7 and 9 to be written into the RCRA rules.

4. Adoption, outside RCRA, Chapter 7 and Chapter 9, of a new set of rules identifying consistent provisions (Part 700).

The first alternative would have been the simplest: the Board would have deferred the task of sorting this out. However, it would have left vast uncertainty in what was expected of the public.

The remaining alternatives involve some form of Board rulemaking beyond mere adoption of the federal text. The statutory basis in any case would be the inherent authority in §22.4 to adopt a set of rules which make sense. The legislature obviously did not intend that the Board adopt rules which would be too vague or contradictory for the public to follow.*

Section 20(a)(6) states that it would be inappropriate for Illinois to adopt a program which conflicts with the federal program. Section 20(a)(8) states that it is in the interest of Illinois to avoid duplicative, overlapping or conflicting state and federal programs. Section 20(b) states that it is the purpose of P.A. 82-380 to empower the Board to adopt such regulations as will enable Illinois to secure RCRA authorization.

Section 22.4(b) provides for adoption of regulations which are "not inconsistent with and at least as stringent as" RCRA. This is a directive to the Board to adopt regulations, not a rule applicable to the public. This language is missing from provisions of the Act relating to conduct by the public: §21(f)(2) requires compliance with Board regulations with no qualification as to consistency or stringency.

The original Agency proposal suggested insertion of language at several points within the RCRA rules to the effect that the affected community was also subject to Chapters 7 and 9 and were to comply with them to the extent they were not inconsistent with and more stringent than the RCRA rules (Option 2). PC2 and PC3 have, insofar as they recognize continued viability of the chapters, essentially requested the same approach.

The Agency's proposal and the comments ask that the Board merely repeat the directive of §22.4(b) in the rules applicable

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*Indeed, both PC2 and PC3 recognize inherent statutory authority beyond adoption of the federal text in haec verba: both ask for rules exempting people from Chapters 7 and 9.

to the public. Although this is an attractive alternative insofar as making certain the resulting rules conform with the statutory mandate, it still leaves the rules extremely vague. It is an evasion of the obvious duty of the Board to compare its rules to the RCRA rules and identify those which are inconsistent or less stringent.

In Part 700 the Board, among other things, went through Chapters 7 and 9 and the RCRA rules, comparing the provisions from the perspective of generators, transporters and HWM owners and operators. For each, the provisions were roughly grouped according to whether they related to permits, operating requirements, manifests or small quantity exemptions.

OUTLINE OF WASTE DISPOSAL REGULATIONS (Part 700)

Applicability (§700.101) Part 700 contains provisions which determine which set or sets of waste regulations govern various persons and activities. It provides for the inter-relation of the following:

1. Chapter 7 General Waste Disposal
2. Chapter 9 Special Waste Transportation
3. Parts 720-725 RCRA Regulations
4. Chapter 9, Part IX Hazardous Hospital Waste

Two commenters attacked the foundation of Part 700 by contending that §22.4 of the Act repealed Chapters 7 and 9 with reference to hazardous waste. This is discussed above.

Other Regulations (§700.102) Persons must generally comply with other Chapters if they would be required to comply with them under their own terms. Specific examples are given. This section drew no comments.

Organization (§700.103) This indicates the manner in which Chapters 7 and 9 may be incorporated into the codified subtitle G. It is hoped that substantive revisions coupled with codification will be completed prior to the codification deadline (R80-20, R81-7, R81-9, R81-18, R81-25, R81-31, R81-32). It is hoped that Chapters 7 and 9 can be restated in a manner so that the relationship with the RCRA rules will be within them so that most or all of Part 700 can be eliminated.

Intent and Purpose (§700.104)(PC1, PC2). This contains general principles which were followed in reviewing Chapters 7 and 9 (including hazardous hospital waste rules) and RCRA rules to arrive at the detailed rules of Subparts C, D, E and F. To arrive at these, these general rules were applied to regulations concerning permits, operating requirements, manifests and small

quantity exemptions, as applied to generators, transporters and HWM owner/operators.

Section 700.104(a) states that it is the Board's intention in general to continue the status quo from the existing situation in which the Agency administered the Chapter 7 and 9 programs at the same time as the RCRA program under contract with USEPA.

Section 700.104(b) states that the Board is not adopting new permit programs. Section 700.104(b)(1) has been added to the September 16 rules to make it clear that the Board intends Part 725 to be applicable regardless of federal interim status under 40 CFR §122.23. This is provided in §725.101 and is discussed in connection with that section and §700.105.

Section 700.104(b)(2) has also been added. The Board intends that persons who have federal interim status should be deemed issued permits under §21(f) of the Act (§700.105).

Under §700.104(c) it is the Board's intention that Parts 720-725 should have the same scope as the corresponding federal regulations. A reference to "wastes" has been added to make it clear that the Board intends to regulate both the same wastes and persons as USEPA.

Section 700.104(d) states the general rule for resolving latent conflicts between the RCRA rules and Board regulations: the rules are cumulative with a bias toward the RCRA rules. The Board has expressly identified in Part 700 and this Opinion those provisions of Chapters 7 and 9 which are not inconsistent with and at least as stringent as RCRA requirements. Any other conflicts which may crop up are to be resolved in favor of the RCRA rules, unless the Board should decide in an additional rulemaking to impose its requirements instead upon a finding that they are not inconsistent and at least as stringent. This is discussed in greater detail elsewhere.

Section 700.104(e) states a general intent to combine paperwork requirements, in particular to allow the use of only a single manifest.

Sections 700.104(f), 700.104(g) and 700.104(h) have been added to the September 16 rules to state additional general principles concerning combination of existing rules with the RCRA rules.

Section 700.104(f) states that the Board intends the generator to make the first determination as to whether a waste is hazardous and, if so, whether it is subject to exemption under Chapter 9 or the RCRA rules. This combines §722.111 with Rule 501 of Chapter 9.

Section 700.104(g) states that the Board intends to provide means whereby the status of unmanifested waste can be transmitted to subsequent handlers. These extend to Chapter 9 waste the suggestions made in the federal regulations concerning certification of unmanifested waste. This is presently missing from Chapter 9 altogether. The greater complexity now increases the need for such a mechanism.

The federal regulations are vague as to whether a certification protects the acceptor of the waste. Any attempt at clarification risks adoption of additional provisions without complying with §22.4(b). The Board has therefore provided only a statement of intent which can be quoted in the event an enforcement occurs against a person who has relied on a certification.

Section 702.104(g) states that the Board intends that persons handling manifested waste after the generator should be able to accept it without inquiry as to whether it is Chapter 9 or RCRA waste. No penalty should be incurred if waste is properly handled as though it were RCRA hazardous. The Board has effectuated this by two methods: wherever possible the transporter and HWM owner and operator have been instructed to comply only with the RCRA rules; provisions have been inserted deeming them in compliance with Chapter 9 where they have complied with the RCRA rules.

Interim Status (§700.105)(PC2, PC3, PC4). Under the federal scheme the disposer operating requirements of 40 CFR Part 265 apply only to persons who have interim status through compliance with 40 CFR §122.23. Persons who do not have interim status are required to comply with 40 CFR Part 264.

Under the Illinois scheme all persons involved in hazardous waste disposal must have a RCRA permit [§21(f)(1) of the Act]. The Board has deemed these issued under conditions similar to federal interim status (§§ 700.105 and 700.109). Everyone is required to comply with Part 725, regardless of interim status (§725.101). This latter is necessary because the Board has not yet adopted Part 724, which is to correspond with 40 CFR Part 264; otherwise there would be no operating requirements applicable to persons without interim status.

A reference has been added to §700.105(a) to make it clear that the permits deemed issued are those required by §21(f)(1) and issued pursuant to §39(c) of the Act as amended by P.A. 82-380 (PC2).

One commenter noted that Part 700 will not become effective until Phase I authorization is received (PC2). PC2 asked for an immediate effective date for §700.105 because the permit requirement of §21(f)(1) appears to be already in effect. The Board

declines to do this. The RCRA permit required by §21(f)(1) is defined as a permit issued by the Agency pursuant to USEPA authorization under RCRA [§3(qq)]. It would be beyond the Board's authority to deem these permits issued prior to authorization. The Board has however added §700.109 providing that persons with federal interim status are deemed in compliance with §21(f)(1) from the effective date of P.A. 82-380 through receipt of interim status.

Among the conditions for interim status is a requirement that a "Part A" application be submitted for the facility pursuant to 40 CFR §122.22. The Board is not at this time adopting regulations comparable to §122.22. This is intended to be incorporated by reference as of the adopted date of §700.105, or the date of its last amendment. 40 CFR §122.22(c) contains provisions allowing the filing of a Part A within certain time limits after any modification of the regulations which would bring someone under RCRA for the first time. The Board intends to expressly incorporate these by reference (PC2).

Section 700.105(a)(3) has been modified to remove a reference to USEPA review of Part A applications. This will be done by the Agency (PC4).

Three commenters contend that the December 3 proposal still did not adequately provide a "grace period" for persons coming under the RCRA rules for the first time by reason of change of facilities, new waste analysis or change in regulations (PC 6, 7, 8).

USEPA amended its rules to allow a grace period. However, as discussed above, the amendments concern when a Part A application must be filed (40 CFR §122.22). If the Part A is filed on time, federal interim status obtains [40 CFR §122.23(a)(2)]. The Board intends to incorporate these provisions by reference. However, the December 3, 1981 rules did not include amendments and a comment to 40 CFR §122.23(a)(1) which appear to relate to this problem (45 FR 76,635, November 19, 1980). This language has now been substituted (PC6).

It has been pointed out that §700.105(e)(2) contains an erroneous reference to 40 CFR §122.22(a)(3). This has been changed to 40 CFR §122.22(a)(5). The error exists also in the 1981 CFR (PC6).

The related interim status problem concerns §725.101(b). This arises because of the Board's decision to impose the operating standards on all facilities regardless of interim status. It now appears that the federal rules utilize the "grace period" for interim status to give time for facilities to come into compliance with the interim status standards corresponding to Part 725 (PC6, 7, 8). Accordingly, the Board will modify

§725.101(b) to deem persons in compliance with Part 725 from the time they first became subject to it until they acquire interim status, provided the interim status is ultimately obtained.

Effective Dates (§700.106)(PC2). The immediate effective dates for the listings and definitions have been deleted: Parts 700 and 720 through 725 will become effective on receipt of Phase I interim authorization. The immediate effective dates created an entirely new area of confusion which was unwarranted The Act states that the federal listings still control the definition of "hazardous", so there is no compelling reason for making the listings immediately effective.

The electric utilities ask that §700.109 be made effective immediately. This provides that persons with federal interim status are deemed in compliance with §21(f)(1) of the Act from its effective date to the date of interim authorization. As proposed, §700.109 will become effective on the latter date, and hence will have only retroactive effect.

The electric utilities have obtained from an Appellate Court a stay of several provisions of the September 16 rules, including §700.105, which will grant interim status after interim authorization. The stay may have the effect of preventing interim authorization by USEPA if it decides that the Illinois rules are therefore not effective.

As noted in connection with §700.109, the General Assembly probably did not intend to shut down hazardous waste treatment and disposal pending interim status. However, the lack of a phase-in provision for the permit requirement also indicates that the General Assembly contemplated prompt adoption of a RCRA program. If industry blocks interim authorization, enforcement of §21(f)(1) may be appropriate. If §700.109 were made effective, it would remove an incentive for industry to allow this program to be adopted.

Severability (§700.107). If any section of Part 700 is declared invalid on appeal the entire Part will be inapplicable until the Board is able to review and revalidate it. During this period of time it will be necessary for the public to comply with the letter of Chapters 7 and 9 as well as the RCRA rules and to determine at their own peril what provisions are not inconsistent and at least as stringent.

One commenter characterized §700.107 as an "in terrorem device" to prevent appeals in that it invalidates all of Part 700 if any part is stricken (PC6, 7). Section 700.107 is in response to comments received on Part 700 following the September 16 rules. Most of the arguments directed at provisions in Part 700 are really directed at the authority for the entire Part.

The Board has construed §22.4 as requiring continued application of Chapters 7 and 9. Within that constraint the Board has been as generous as possible in eliminating unnecessary rules. The Board has indeed added rules and language at the request of the same commenters who contend that there is no authority for Part 700.

The Board recognizes that a reviewing Court would have authority to review §700.107 itself. Its intent is to insure that both the perceived benefits and burdens are placed before the reviewing Court at the same time. This should avoid a situation where a single section is stricken by an argument which goes to the foundation of the entire Part.

Commenters have objected to §700.107 as removing the interim status provisions as a penalty for successful appeal of any other provisions of Part 700 (PC6, 7). The Board acknowledges that §700.105 is different from the remainder of Part 700 in that it is a part of the RCRA phase I program, while the other rules relate to interaction of the RCRA rules with existing programs and other transitional problems. The Board will modify the proposed language to allow §700.105 to withstand successful appeal of other sections.

References to Federal Rules (§700.108)(PC2, 3). References to federal rules and other materials are to the material as of the date of adoption of the section which refers to it. If the section is amended by the Board, the reference is deemed updated to the date of the amendment. The Administrative Procedure Act has been recently amended to prohibit adoption by reference of future amendments. It also now allows references without filing copies (SB 508).

The electric utilities have suggested that §700.108 be reworded to specify references to "the Code of Federal Regulations and other materials referred to but not reproduced." The section has been so modified. In addition, it has been made applicable to the entire Chapter rather than certain specified Parts. This will avoid the need to amend §700.108 each time a new Part is added.

Permits Prior to Authorization (§700.109)(PC2). Section 21(f)(1) of the Act requires a "RCRA permit" of hazardous waste disposers. This was immediately effective, but there was no administrative mechanism for issuing the permits; indeed, §3(qq) defines "RCRA permit" as a permit issued pursuant to USEPA authorization. Section 21(f)(1) therefore apparently prohibits most hazardous waste storage, treatment or disposal until authorization is received, at which time permits will be deemed issued under §700.105. The Board finds that this prohibition would lead to a serious public health threat, contrary to the stated legislative intent of §20(a)(5). It would also

conflict with the existing federal scheme which allows these activities pursuant to interim status under 40 CFR §122.23. The Board has therefore added §700.109 which deems persons with federal interim status in compliance with §21(f)(1) until authorization is received from USEPA. This is intended to become effective with interim authorization and will have the effect of retroactively excusing noncompliance with the permit requirement (PC6).

Definitions (§700.201 et seq.)(PC1, 2). Definitions of "Operating Requirements" and "Permits" have been provided in general and with reference to Chapter 7, Chapter 9 and the RCRA rules. Operating requirements are those which impose duties on the public other than the requirement to obtain a permit. These include methods of landfill operation, completion of manifests, display of numbers, labeling of containers and similar requirements.

Permit requirements include the duty to obtain a permit as well as attendant rules such as completion of an application. Most permit rules impose duties on the Agency relating to review, issuance and conditions.

Chapters 7, 9 and the RCRA rules all exhibit a split between permit and operating requirements. The structure in §700.103 contemplates eventual placement of the RCRA permit requirements with other waste permit requirements in a subchapter apart from the operating requirements. This will tend to produce consolidated permits. It also reflects the federal organization.

The definitions specify which Parts are permit or operating. The permit/operating split is not perfect in Chapters 7 and 9. There are rules on permit applications in the operating requirements. The general definitions are in the rules to avoid any unfair result from incorrect classification of these.

Pursuant to the utilities' comment the definition of "operating requirements" will be modified to read as follows (PC6):

> "Regulations which apply directly to the public other than requirements to obtain a permit and other requirements concerning application for, modification of, conditions to be included in and issuance of permits.

Conflict (PC2). The Board has reviewed Chapters 7 and 9 against the RCRA rules. Entire groups of rules sometimes seem to be not inconsistent and at least as stringent. The Board has provided for cumulative application. There is a possibility that in practice some provision will require an inconsistent act of some person. These unresolved inconsistencies are termed

conflicts. The Board usually provides that the RCRA rules control. Any inconsistent provisions which have escaped notice are probably inconsequential.

In some instances the definitions in the RCRA rules are not the same as those in the Illinois Act, Chapters 7 and 9. Some examples are "manifest", "waste" and "hazardous hospital waste". Any attempt to change the RCRA definitions to correspond with the Illinois definitions could change the way the RCRA rules relate to each other and change the scope of the whole program. This would result in a program which is not identical in substance. The Board has therefore not attempted to adjust the definitions. Each set of rules will be read with its own definitions. Conflicts can arise only at the level where rules are applied to control actions by the public. Adjustments are to be made in application, not definitions.

The electric utilities have objected to the exemption of definitions from the definition of "conflict" (PC6). The steel companies on the other hand have endorsed the principle that the definitions in the various sets should be read separately, while continuing their objections to applicability of the Chapters (PC7). The Board will adopt the definition of "conflict" as proposed. It is obvious that reading the definitions from Chapter 9 into the RCRA rules would render the RCRA rules not identical in substance with the federal.

RCRA Rules (PC1, 2). "RCRA rules" are Board rules "intended to be" identical in substance with USEPA rules. This has been added to avoid effect on the definition if some of the rules were held on appeal to be not identical in substance. The rules might therefore become invalid, but they would still be a part of the "RCRA rules".

Subject to (PC2). A person is "subject to" a set of rules if he would have to comply with that set of rules it it were read apart from other rules. This avoids circular definitions which would arise frequently because Part 700 contains so many rules which determine who must comply.

GENERATORS

Generator Permits* (§700.301). The Board has determined that there are no permit programs for generators in Chapter 7, Chapter 9 or RCRA, and hence no inconsistencies. Generators are cautioned to obtain an ID number from USEPA.

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*The headings are only rough guidelines. For example, ID numbers have been treated as permits because of their close relationship to Chapter 9 permits, although they clearly are not permits under the RCRA rules or Chapter 9.

Generator Operating Requirements. Chapter 7 imposes no known operating requirements on generators. Chapter 9 imposes duties relating to preparation of manifests as discussed below.* RCRA imposes various duties concerning packaging, labeling, identification, etc. (Part 722). The Board has not found any inconsistencies between Chapters 7 and 9 and the RCRA rules or any provisions which are not at least as stringent. Section 700.302 therefore requires cumulative application, but provides a RCRA override should some latent inconsistency be noted later.

Generator Manifests. (§700.303)(PC2). Chapter 9 requires the generator to send a copy of the manifest to the Agency. The federal RCRA rules require annual reports, retention of records and discrepancy reports, but not a copy to the Agency. Otherwise the manifest requirements are essentially identical.** The Board finds that the Agency copies are not inconsistent with the RCRA rules and at least as stringent. Rather than requiring the public to comply with both Chapter 9 and RCRA rules, the Board has made a slight addition to the RCRA rules and exempted generators from the Chapter 9 manifest requirements. This gets to the same result with less effort.

Section 700.303(b) contained a provision requiring generators subject to Chapter 9 to comply with the RCRA manifest requirements. This has been deleted because it would appear to extend the federal annual report requirements to non-hazardous special waste generators, a result which was not intended. However, the second sentence is intended to apply to non-hazardous special waste: compliance with the RCRA manifest requirements is deemed compliance with Chapter 9.

Generator Small Quantity Exemptions (§700.304). Chapter 9 has a 100 kg/mo. exemption for all hazardous waste while the RCRA rules have a 1 kg/mo. exception for acute hazardous waste and 1000 kg/mo. for other hazardous waste. Chapter 9 is therefore less stringent with respect to acute hazardous waste, but more stringent for hazardous waste in general. The Board has resolved the inconsistency by providing that for acute hazardous waste RCRA alone controls with monthly quantities of 1 to 100 kg, but that RCRA and Chapter 9 are cumulative for quantities in

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*Manifests are "operating requirements" but are discussed separately from other operating requirements for clarity [§700.302(e)].

**The September 16 rules did not specify when the manifests were to be sent to the Agency. Rule 501(B) specifies "within 2 working days". Section 722.234(a)(4) has been revised accordingly (PC2).

excess of 100 kg. For regular hazardous waste Chapter 9 alone controls quantities of 100 to 1000 kg, but Chapter 9 and RCRA are cumulative for quantities greater than 1000 kg.

Section 700.304(c) and 700.304(d) negate possible incorrect interpretations which would apply exemptions from one set of rules to the other. For example, the Board does not intend §721.105 to exempt 800 kg of regular hazardous waste from Chapter 9 regulation; nor does the Board intend Rule 210 to exempt a generator of 80 kg of acute hazardous waste from the RCRA rules.

Section 700.304(e) requires the generator to read Chapter 9 and the RCRA rules separately to determine if he is subject to neither, either or both by their own terms.* Specific rules on the cumulative effect on generators are found in §§700.301-700.303. The generator's determination of type of waste and monthly quantity also affects applicability of regulations when the waste is in the hands of the transporter or disposer (Subparts D and E).

TRANSPORTERS

Transporter Permits (§700.401). Chapter 9 requires transporter permits; RCRA rules do not (Rule 201 and Part 723). Chapter 9 permits are probably required of everyone hauling RCRA hazardous waste; however, the small quantity and transporter exemptions of Chapter 9 will continue to apply even if the waste is RCRA hazardous. Transporters must obtain Chapter 9 and USEPA identification numbers as required in Chapter 9 and RCRA rules.

The existing Chapter 9 permit requirement is not inconsistent with the RCRA rules and the Board finds it to be at least as stringent.**

Section 700.401(a) requires transporters to obtain both USEPA and Chapter 9 identification numbers. The USEPA number is unique nationwide. The Board cannot eliminate this number without causing confusion on manifests for waste entering or leaving the state. The Chapter 9 number is closely associated with the Chapter 9 permits and is also required of haulers who haul only non-RCRA hazardous special waste. Elimination of this number could also cause confusion and would interfere with the Chapter 9 permit. The Board therefore finds that the numbers are not duplicative and will continue with both.

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*Section 700.304(e) has been revised. In the September 16 rules it appeared to contradict other provisions of the Subpart.

**P.A. 82-380 expressly requires transporter permits [§21(g)(1)].

However, the Board would be receptive to a proposal to combine the ID numbers.

Transporter Operating Requirements (§700.402)(PC2). Sections 700.402(a) and 700.402(b) require transporters subject only to the RCRA rules or Chapter 9 to comply with each respectively. Where a transporter is subject to both they are cumulative [§700.402(c)]. Special rules are provided for manifests [§700.402(e)].

Section 700.402(d) requires transporters with Chapter 9 permits to placard and display their Chapter 9 number regardless of whether a load is subject to Chapter 9 or RCRA rules. An example would be a monthly load of 80 kg of acute hazardous waste. If the transporter had a Chapter 9 number he would be required to display it even though the load is Chapter 9 exempt. Rule 401 is not conditioned on whether a given load is subject to Chapter 9. This is a reference in an area which could be confusing to the public.

Transporter Manifests (§700.403). The Board finds the manifest requirements of Chapter 9 and the RCRA rules to be nearly identical. Compliance with the RCRA rules is deemed compliance with Chapter 9.

Transporter Small Quantity Exemptions (§700.404). Section 700.404(a) restates a rule in common between Chapter 9 and the RCRA rules: the small quantity exemptions are generator centered. For example, a transporter may pick up two monthly loads of 90 kg each of special waste from two generators. Ne Neither load requires a manifest because the generators are exempt (Rule 210). A manifest does not become necessary by reason of combining the loads to 180 kg. The same rule applies to RCRA waste, although with different exemption levels for regular and acute hazardous waste.

There is however a difference in the relationship of the Rule 210, 211 exemptions to the Chapter 9 permit requirements and the RCRA small quantity exemptions to the USEPA ID number requirement (§723.112). This is explained in §700.404(b).

The Chapter 9 permit requirement (Rule 201) contains an exemption referenced to the transporter exemptions (Rule 211), not to the generator-centered small quantity exemption (Rule 210). Accordingly, contract haulers who carry only Rule 210 exempt waste must nevertheless have Chapter 9 permits. However, if the generator carries his own waste, no permit is required.

The USEPA ID number is handled differently. The USEPA exemptions apply to all of Part 723, resulting in exemption from the ID number in the comparable situation.

Sections 700.404(a) and 700.404(b) are merely cross references which compare and contrast Chapter 9 and RCRA rules. These are intended to aid the regulated community on a minor issue which could prove confusing.

Section 700.404(c) in the September 16 rules has been changed to a comment. This is a suggestion that transporters follow the suggestion in the RCRA rules to obtain certification from the generator before accepting waste claimed to be exempt under Chapter 9 as well as under the RCRA rules. In any enforcement action this could be offered in mitigation pursuant to §33(c) of the Act.

DISPOSERS

Owner/Operator Permits (§700.501). Section 700.501(a) contains cross-references to permit requirements [§21(f)(1) of the Act, §700.105 and §725.101]. These are discussed elsewhere.

Section 700.501(b) states that HWM owners and operators must obtain Chapter 7 permits if they are subject to Chapter 7 (Rules 201 and 202). This interpretation is disputed by commenters, as is discussed elsewhere. This discussion assumes that §22.4(b) prohibits repeal of existing Chapter 7 requirements without a hearing as is discussed above. It interprets §22.4(b) as directing the Board to review its existing programs for provisions which are not inconsistent with the RCRA rules and which are at least as stringent.

Existing Chapter 7 expressly regulates hazardous waste (Rule 310). The permit requirements of Rule 201 and 202 are interpreted as cumulative with the permit required under §21(f)(1), deemed issued in certain cases under §§700.105 and 700.109.

The federal RCRA rules do not presently require permits but will do so in the future. The Chapter 7 permit requirements are not inconsistent with either the present or future federal rules, or with the RCRA rules adopted by the Board. The additional permit requirement is at least as stringent as federal RCRA requirements. Rulemaking pursuant to §22.4(b) will be needed to eliminate this permit requirement after a §21(f) permit program is in place.

Section 700.501(c) contained a reference to new legislation making it clear that the Board can impose operating requirements on general waste disposal facilities which are exempt from the permit requirement by statute. Section 700.501(c) required compliance with existing operating requirements in Part III of Chapter 7. However, the Board has previously held

these to be inapplicable in this situation (Reynolds v. IEPA, PCB 79-81, November 19, 1981). Section 700.501(c) will therefore be deleted.

Section 700.501(d) alerts the HWM owners and operators to the need to obtain a USEPA identification number.

Owner/Operator Operating Requirements (§700.502). Section 700.502(a) provides that owners and operators subject to RCRA but not Chapter 7 comply with RCRA only. Section 700.502(b) states the complementary rule: landfills disposing of non-RCRA hazardous special waste must comply only with Chapter 7 requirements.

Section 700.502(c) covers the mixed case where waste is subject to both Chapter 7 and the RCRA rules. The operating requirements of Part III of Chapter 7 and Part 725 are cumulative.* In the event of conflict, the RCRA rules control.

The Board has examined the operating requirements of Part III and Part 725. They are in all respects consistent and Part III is at least as stringent. The Board has therefore required cumulative application. However, in the event of latent conflict, the Part III rule may be disregarded, whether it is more stringent or not.

Section 700.502(d) contains a reference to Subpart A which requires compliance with other chapters on their own terms. For example, open burning of explosive waste requires a variance under Rule 505 of Chapter 2: Air Pollution.

Section 700.502(e) provides that "operating requirements" does not include manifest requirements as used in §700.502. These are provided for in a separate section.

Operator Manifests (§700.503). Section 700.503(a) warns that the rules on handling manifests in the federal rules have been adjusted: the HWM operator must forward a copy of the manifest to the Agency (§725.171). The requirement to send a copy to the Agency is inserted into language requiring a copy to the generator within 30 days of delivery. This is very similar to the Chapter 9 requirement of "at the end of the month." The federal time frame will be used to reduce friction.

Section 700.503(b) allows the HWM operator to comply with the RCRA manifest requirements regardless of whether the waste

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*Part III does not however cover the range of facilities covered by Part 725. For example, open burning of explosive waste is not subject to Part III. Section 725.502(c) is not intended to expand the scope of Chapter 7.

is Chapter 9 or RCRA. Compliance with RCRA is deemed compliance with Chapter 9. This is so the operator will not have to know facts which are in the generator's knowledge. The Board intends to allow optional compliance with the RCRA manifest requirements even if the generator knows he is dealing with non-RCRA Chapter 9 waste.

As §700.503(b) and (c) were written the operator was obliged to comply with Part 725 manifest requirements for Chapter 9 waste. This could impose annual and discrepancy reporting on operators receiving only non-RCRA special waste. The rules have been modified to make this optional.

Section 700.503(d) has been changed to a comment. This extends to Chapter 9 waste USEPA's recommendations on certification of exemption. The Board also recommends that unmanifested waste reports be filed even when the waste is Chapter 9 exempt. This again will allow the operator to protect himself in a situation where the generator has essential facts.

Small Quantity Exemptions (§700.504)(PC2). The small quantity rules relate directly only to generators. If the waste is exempt in the hands of the generator, it is exempt from Chapter 9 and Part 725. However, there is no small quantity exemption in Chapter 7. Landfilling of hazardous wastes always requires a Chapter 7 permit with specific mention of the hazardous waste (Rule 310).

The material concerning certifications and unmanifested waste reports has been made a comment.

Hazardous (Infectious) Hospital Waste (§700.601). No comments were received concerning hazardous hospital waste. The Board will, however, briefly discuss these rules.

Hazardous hospital waste, as defined in the Act, focuses only on hospital waste which is infectious in nature. The Board is given rulemaking authority, which has been exercised in Part IX of Chapter 9. Infectious waste generated by a hospital may not be placed in a landfill unless and until it has been rendered innocuous by incineration or sterilization.

The determination as to whether "hospital waste" is also RCRA hazardous must be made in accordance with Part 721. Part 721 does not address the "infectious characteristics" referred to in the federal Act [§1004(5)]. Such waste becomes RCRA hazardous only by reason of other characteristics such as chemical toxicity.

Hazardous hospital waste is always a special waste subject to Chapter 9 (§3 of the Act). If it is also RCRA hazardous,

Chapter 9 and the RCRA rules are cumulative as with the ordinary hazardous/special waste.

GENERAL (Part 720)

Federal Regulations Not Adopted (§720.102)(PC3, 7). The Board has not adopted regulations corresponding to 40 CFR §260.2 governing availability and confidentiality of information. The Board intends that this be governed by Illinois law, including Sections 7 and 7.1 of the Act and Procedural Rule 107. A reference to this effect has been added.

Definitions (§720.110). There are several typographical errors in the definitions which have been corrected without comment. There are also a number of substantial errors. These appear to derive from incorporation of a set of proposed federal definitions which have not yet been adopted (46 FR 11,170, February 5, 1981) (PC3).

Aquifer (PC3). Changes have been made to correspond with federal definition.

Cased injection well (PC2, 3). Proposed federal definition, not yet adopted, has been deleted.

Decomposition by-product (PC2, 3, 7). Proposed federal definition, not yet adopted, has been deleted.

Disposal (PC3). Changes made to correspond to federal definition.

Disposal Facility (PC3). Changes made to correspond with federal rules.

EPA Identification number (PC3). Changes made to correct typographical error and to correspond with federal rules.

Injection well (PC3). Cross reference to "underground injection" added to correspond with federal rules.

Injection Zone and Land Disposal Facility (PC2, 3). Proposed federal definitions, not yet adopted, have been deleted.

Land Treatment Facility (PC3). The phrase "such facilities are disposal facilities if the waste will remain after closure" added to correspond with federal definition.

Landfill (PC1, 3). Language deleted to correspond with federal rules.

New Hazardous Waste Management Facility (PC3). Date has been changed from that specified in the federal rules, October 21,

1976 to November 19, 1980. The latter date was specified in 1980 amendments to the RCRA act [§3005(e)(1)]. The federal rules are wrong on this point and inconsistent with the definition of "existing hazardous waste management facility".

Pile (PC3). Language modified to correspond with federal rules.

Plugging (PC2, 3). Deleted to correspond with federal rules.

Publicly Owned Treatment Works (PC1, 3). Reference to 33 USC 1362(4) added.

Reaction byproduct (PC1, 2, 3, 7). Deleted to correspond with federal rules.

Surface impoundment (PC3). The phrase "or seepage facility" deleted to correspond with federal rules.

Surficial Aquifer and Underground Seepage (PC2, 3). Deleted to correspond with federal rules.

Underground Injection (PC3). Modified to correspond to federal rules.

Wastewater Treatment Unit (PC1, 3). Reference to 33 USC 1342 or 1317(b) added.

Well and Well Injection (PC3). Modified to correspond to federal definitions.

Zone of Containment (PC3). Deleted to correspond to federal rules.

References [§720.111(b)]. These are also available at the Illinois State Library in Springfield.

Rulemaking (§720.120)(PC2, 3). Commenters objected to §720.120 of the September 16 rules. This provided that modification of the rules, including delisting of a specific waste from a specific source and approval of alternative equivalent testing methods, required variances or rulemaking petitions filed with the Board. PC2 and PC3 asked for adoption of the simpler procedures in the federal rules (40 CFR §260.20, 260.21 and 260.22). The Board has modified the provisions; however, the exact federal language is not compatible with the Illinois Act.

Section 720.120 now provides that there are two methods by which these rules can be modified. Section 720.120(a) provides for adoption of regulations identical in substance with future USEPA amendments to its rules [§22.4(a)]. Section 720.120(b)

provides for adoption of state requirements which are not inconsistent with federal requirements and are at least as stringent [§22.4(b)].

Section 720.120(a) requires that persons petitioning for future "identical in substance" regulations advise the Board of all USEPA modifications since the last amendment of the rules.

It is necessary to bring all the rules up to date with each amendment to avoid the possibility of accidentally deleting a subsequent amendment while trying to go back to pick up an earlier amendment. The subsequent amendment will not appear in the earlier Federal Register text which would be relied on in adopting a prior amendment.

Three commenters requested that the Board insert into §720.120 language obligating itself to propose future amendments on its own and to adopt them within 180 days of promulgation by USEPA (PC6, 7, 8). The commenters contend that this is required by §22.4(a) of the Act. There actually are two problems: what does the Act require with respect to future amendments; and, what does the Act require by way of procedures?

Section 22.4(a) reads in part as follows:

> "The Board shall adopt within 180 days regulations which are identical in substance to federal regulations...as amended."

Everyone agrees that this requires adoption of a set of regulations reflecting the federal rules as amended, within 180 days of the effective date of P.A. 82-380. The commenters argue that the language further requires the Board to summarily adopt any amendments within 180 days after promulgation by USEPA. They urge that the 180 days be given a double meaning.

These commenters pointed out, in connection with §700.108, that SB 508 now prohibits regulatory agencies from adopting future federal amendments by reference (PC2, 3). Here they argue that the legislature itself has required similar incorporation of future amendments.

The question of whether P.A. 82-380 requires adoption of future amendments will be decided when such amendments are before the Board. It is clear that P.A. 82-380 does not require adoption of a procedural rule on this point. If the statute requires a race with USEPA then a race is required. The presence or absence of a procedural rule cannot change this.

Section 22.4(a) is silent as to who must propose regulations. Section 28 provides in part as follows:

> "Any person may present written proposals for the adoption, amendment, or repeal of the Board's regulations, and the Board may make such proposals on its own motion."

Section 26 allows adoption of procedural rules governing regulatory proposals. Section 720.120(a) is fully consistent with the Act, allowing proposals by the Board, Agency and public.

Alternative Equivalent Testing Methods (§720.121)(PC2, 3). The Board declined to adopt the USEPA regulations because they did not appear workable in the Illinois system. P.A. 82-380 has continued the existing Illinois system in which the Board adopts regulations and grants variances while the Agency issues permits. 40 CFR §260.21, if adopted, would have to confer decisional authority on either the Board or Agency. In the latter case it would appear to confer variance or rulemaking authority on the Agency. This is contrary to existing Title IX of the Act and to the recent amendments to §22.4 which grant rulemaking authority to the Board. In the former case it would appear to allow Board rulemaking or variances without the procedural steps required in the Act, such as notice and hearings. The variances would be permanent contrary to Title IX and could be granted without a showing of arbitrary or unreasonable hardship.

40 CFR §260.21 specified procedures for alternative testing methods before USEPA. It appears that this contemplates actual revision of the testing methods which define the scope of the rules (Part 721); initial determination by a generator of applicability of the regulations (Part 722); and testing methods used by the waste recipient to confirm the identity of the waste (Part 725). Some of these appear to be within the Board's rulemaking authority, while others resemble the Agency's enforcement and permit authority.

New §720.121 references new §720.120. This makes it clear that modifications in testing method rules made by USEPA may be proposed as Board regulations. Other modifications must be made by regular rulemaking pursuant to §720.120(b).

Section 720.121(a) contains a disclaimer that the Agency cannot alter the universe of regulated wastes. This is to avoid any interpretation that the limited authority to alter testing methods given the Agency in the following paragraphs allows it to modify the scope of the regulations by changing the testing methods in Part 721. This is reserved to the Board.

The Board has retained "Rulemaking Petitions" as the Subpart heading. This is from the federal rules. The heading is not intended to infer that the Agency is granted rulemaking authority. Rather, the Agency's authority is stated in contrast to the Board's rulemaking authority.

Section 720.121(b) as modified authorizes the Agency to approve alternative equivalent testing methods applicable to a given person and a given wastestream. The Agency is charged with the duty to enforce the Act. It is the Agency to which the generator initially must look for an interpretation as to whether the RCRA rules apply to it or not. Section 720.121(b) will give the Agency flexibility on the type of proof it may accept. Although it can consider alternative testing methods, it can only determine that a waste is not subject to the RCRA rules if it is satisfied that it would not be if the test methods in Part 721 were indeed applied. The test methods must be equivalent.

Section 720.121(c) contains a disclaimer to the effect that the testing methods of Part 721 are not intended to be required for field use. Once a determination has been made that the waste is subject to the rules, any sort of test, including common sense, can be used to identify the waste. Where the facility is subject to a permit, the Agency can specify testing methods. Appeal may be taken to the Board if the Agency refuses to permit equivalent testing methods.

Section 720.121(d) references 40 CFR §260.21. Persons seeking approval of testing methods from either the Board or Agency should supply the information required by USEPA.

CACI requested that the Board "adopt the simpler procedure of 40 CFR §260.21" (PC8). This would involve rulemaking without compliance with the notice and economic impact study provisions of §§27 and 28 of the Act. The Board has attempted to copy the USEPA procedure as nearly as possible within the statutory constraints.

On the other hand both the electric and steel companies have asked that all alternative equivalent testing methods be adopted pursuant to full rulemaking before the Board (PC6, 7). This procedure would be too slow and expensive for small businesses if applied to all site-specific decisions. Section 720.121 will allow the Agency to exercise enforcement discretion and permit authority in appropriate cases.

The steel companies have stated that §720.121 proposes to subdelegate to the Agency the "authority to adopt field tests" As stated in §721.121(a), modification of testing methods requires Board rulemaking pursuant to §720.121(a).

Section 725.113 requires the HWM operator to develop a written waste analysis plan. When a permit program is adopted, these plans will become subject to Agency review and will become permit conditions [40 CFR §122.36(h)]. Specification of monitoring is well within the Agency's traditional permit authority under the Act. Section 720.121(b) would allow the

Agency to approve in individual cases testing methods which are equivalent to those specified in Board regulations.

Waste Delisting (§720.122)(PC2, 3). Section 720.122(a) references the procedures for adopting new "identical in substance" regulations [§720.120(a)]. Section 720.122(b) provides a procedural mechanism for delisting proposals addressed to the Board. There is a question however as to whether the Board has the authority under §22.4(b) of the Act; such delisting would have to be not inconsistent and at least as stringent as federal rules.

40 CFR §260.2 seems to also contemplate findings by USEPA that a given wastestream is not in fact hazardous in a given context. This is possible where a listed generic wastestream does not contain the constituent which caused it to be listed. (This is a finding similar to that needed in a permit system to determine applicability). Section 720.122(c) authorizes this finding in writing by the Agency where a given wastestream and person are involved. This may be used against the Agency in an enforcement action, but does not bind the Board or public.

CACI requested that the Board adopt the "simpler" USEPA procedures (PC8). This involves the same problems as alternative equivalent testing methods.

The steel companies contend that §720.122 fails to adequately differentiate between the authority to completely delist a generic wastestream and authority to declare a specific wastestream non-hazardous. The former is a "delisting" requiring a petition to the Board pursuant to §720.122(b); the latter is a determination, which may be made by the Agency, that a certain generator's waste from a particular source is not in fact hazardous. The distinction is made in the rules with sufficient clarity. Section 720.122(c) is deliberately worded broadly, in that the Board also intends it to cover the situation where there is a question as to whether the wastestream in fact contains a listed constituent or in fact meets one of the criteria in the absence of listing.

The steel companies also ask that "only a letter" be required from the Agency, rather than "both a letter and a permit". The proposed regulation is clearly stated in the alternative, and is certainly not intended to impose a permit requirement.

A generator subject only to Part 722 should be given a letter. A person who is both a generator and treater or disposer will eventually fall under the RCRA permit requirement. This would then be dealt with in the permit if required.

Section 720.122(d) requires that requests for delisting directed to either the Board or Agency contain the information required by USEPA in 40 CFR §260.22.

The electric companies characterize §720.122(f) as requiring generators to comply with the laws of the receiving state (PC6). This is not the intent of that Section; rather, it requires generators to comply with Part 722 for waste which is hazardous in the receiving state. The electric companies otherwise support §720.122, except for the matters concerning rulemaking procedures.

PART 721

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Purpose and Scope (§721.101)(PC1, 2, 3, 7). 40 CFR §261.1 involves three sections of the Federal Act:

Section 1004(5) Definition of "hazardous waste"

Section 3007 Inspections

Section 7003 Imminent hazard

40 CFR §261.1(b) reads as follows:

> This part identifies only some of the materials which are hazardous wastes under sections 3007 and 7003 of RCRA. A material which is not a hazardous waste identified in this part is still a hazardous waste for purposes of those sections if:
>
> 1. In the case of section 3007, EPA has reason to believe that the material may be a hazardous waste within the meaning of section 1004(5) of RCRA.
>
> 2. In the case of section 7003, the statutory elements are established.

40 CFR §261.1(b) seems to serve two purposes: first, it provides a basis for expanding the regulations to cover wastes which are hazardous under the Act but not Part 721; second, it states USEPA's inspection authority. As stated it appears to expand the definition of hazardous to include anything which USEPA "has reason to believe is hazardous." If the Board were to adopt this as a state rule, it would have to substitute either "Board" or "Agency" for "USEPA" in the text. "Board" would appear to confer inspection authority on the Board; "Agency" would appear to confer rulemaking authority on the Agency. Either result is beyond statutory authority (§§4 and 22.4 of the Act).

This problem has been resolved by splitting the rule into two subsections, one dealing with the definition, the other with inspections. Section 721.101(b) provides that Part 721 identifies only some materials which are hazardous under §§1004(5) and 7003 of RCRA. Section 721.101(c) provides that the Agency has inspection authority under §3007 of RCRA and §4 of the Illinois Act.*

Of Section 721.101(c) PC3 says: "Not only does this go beyond the Federal RCRA regulations but the Board does not have authority under the Act to grant inspection authority to the Agency beyond that contemplated by the Act." The objection is not further explained.

As explained above, the regulations adopted have limited the Agency's authority from the unlimited authority to expand the definition apparently exercised by USEPA.

Section 3007 confers inspection authority on authorized states. Section 721.101(c) assumes Illinois will receive this authorization. The section is worded not as a grant of authority by the Board, but as a recitation of the Agency's authority under the statutes. Inspections are, of course, limited by constitutional provisions as well as the terms of the statutes.

PART 721 LISTINGS

Definition of Solid Waste (§721.102)(PC3). Section 721.102(d) contains the phrase "material or any constituent thereof". This was inadvertently omitted from the September 16 rules.

Definition of Hazardous Waste (§721.103)(PC3). References to "§§721.120 and 721.122" have been changed to "§§720.120 and 720.122". These were consistently wrong in the September 16 rules. These refer to rulemaking and waste delisting petitions.

Exclusions (§721.104)(PC2, 3, 4). Section 721.104(d) has been added to provide exclusion of laboratory samples (46 FR 47,426, September 25, 1981).

Small Quantity Generators (§721.105)(PC1, 2, 3). PC3 objects to the addition of a reference to Part 700 warning the

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*Two errors in the September 16 text have been corrected:

1. Section 721.101(b) referred to "§§3007 and 7003." This has been changed to "§§1004(5) and 7003."

2. Section 721.101(c) referred to "§§3007 and 1004(5)". The latter has been stricken.

public of the 100 kg/mo. exception of Chapter 9. This is discussed in connection with Part 700.

Recycled Hazardous Waste (§721.106)(PC2, 3, 4). Language has been added to §721.106(a) and §721.106(b) to add an exemption for recycled spent pickle liquor (46 FR 44,970, September 8, 1981).

Section 721.106(a) contained an inadvertent omission of exemption from Parts 722-725 for recyclers. This error, which has been corrected, vastly increased the scope of the rules over the corresponding federal rules (PC7).

Empty Containers (§721.107)(PC1, 2, 3). This section contained a large number of clerical errors which have been corrected.

Criteria for identifying characteristics (§721.110)(PC2, 3). Subpart B of 40 CFR Part 261 contains administrative history of how USEPA arrived at the characteristics and the criteria it used for listing hazardous waste. This is neither necessary nor appropriate in Board rules. Section 721.110 contains a reference to 40 CFR §261.10; 721.111 to 40 CFR §261.11.

The steel companies ask the Board for clarification concerning the omitted material of §§721.110 and 721.111 (PC7). This material explained how USEPA arrived at the characteristics of hazardous waste and criteria for listing. 40 CFR §§261.10 and 261.11 may be referenced in a case where the issue is whether a certain waste is hazardous. However, the Board in rulemaking is not bound to the federal characteristics or criteria. The Board may adopt new characteristics or alter the criteria for listing pursuant to §22.4(b).

The federal subpart also contains the only definition of the "P" and "U" lists and the definition of "acute toxic waste". These have been preserved in the Board rules as §721.111(b) and §721.111(c).

CACI has noted that "U" and "P" were reversed in the headings to proposed §721.111 (PC8).

Characteristics (§§721.120, 721.121, 721.122, 721.123 and 721.124)(PC2, 3, 4). References to alternative equivalent testing methods have been changed to §720.121. This section has been added since the September 16 rules. A typo in the table has been corrected (D012).

The phrase "Since the Appendix I sampling methods are not being formally adopted by the Board," has been added to the comment following §721.120. The omission of this phrase which appears in the comparable federal comment was construed as implying that the Board was, unlike USEPA, formally adopting the Appendix I sampling methods (PC2).

"P" List [§721.133(e)](PC1, 3). This is the list of discarded commercial chemical products, off-specification species, containers and spill residues.

P008 4-Aminopyridine. This is listed in the federal rules as 4-aAminopyridine. This is an obvious typo in the federal rules.

P092 Mercury, phenyl-, acetate. This appears in the federal rules as Mercury, (acetato-O)phenyl. It was listed as phenyl-mercuury acetate in the May 19, 1980 version of the federal rules and in Appendix VII. The Board has reverted to this name.

"(Acetato-O)phenyl mercury" is apparently named according to nomenclature for inorganic complexes. This is the only example of this nomenclature in the lists. The name is confusing and its use in this case is questionable. "Phenylmercury acetate" is the standardized name used in all reference works consulted.

P108 Strychnine. Spelling has been corrected.

"U" list. [§721.133(f)](PC3). The phrase "manufacturing chemical products" has been stricken from §721.133(f) to correspond with the federal language.

U087 O,O-Diethyl-S-methyl-dithiophosphate. Spelling has been corrected.

U058 2H-1,3,2-Oxazaphosphorine, 2-[bis(2-chloroethyl)amino] tetrahydro-, oxide 2-. Hyphen in "chloro-ethyl" in federal rules is not necessary.

U041 Oxirane, 2-(chloromethyl)-. Spelling corrected to correspond with federal rules.

U155 Pyridine, 2-[2-(dimethylamino)-2-thenylamino] Typo has been corrected. Thenyl is one of two isomers of $C_4H_3SCH_2$-. This was listed as "methapyrilene" in the May 19, 1980 federal rules and Appendix VII.

Appendices to Part 721 (PC1, 2). References to the corresponding federal appendices have been added.

GENERATORS (Part 722)

Purpose, Scope and Applicability (§722.110](PC2, 3). Several typographical errors have been corrected. Commenters have objected to the reference to Part 700. The reasons for objection to Part 700 are stated elsewhere.

Hazardous Waste Determination (§722.111)(PC2, 3). A note has been added to §722.111 referencing §720.122 and 40 CFR §260.22. These provide mechanisms for waste delisting. The note corresponds with a similar note in 40 CFR §262.11 which was omitted from the September 16 rules.

Required Information (§722.121)(PC7). The steel companies object to the modification of federal language concerning certification of compliance with local law to specify Illinois (PC7). The manifest would then no longer be acceptable in other states. The Board will add language allowing further specification of compliance with local law [§722.121(b)]. There is another out of state shipment comment responded to in connection with §720.122, Delisting.

Number of Copies and Use of Manifest (§§722.122 and 722.123)(PC1, 3). PC3 objects to the requirements that the generator provide a copy of the manifest to the Agency and an extra copy for the waste recipient to send to the Agency. These have been added to the corresponding federal rules which provide only for retention of copies, discrepancy reporting and annual reporting (40 CFR §260.22).

As has been discussed elsewhere (§700.303), RCRA generators are presently subject to existing Chapter 9 manifest requirements. The federal rules have been modified by adding existing state requirements which are not inconsistent and at least as stringent. The slight modification to the federal rules allows the Board to deem generators in compliance with Chapter 9 manifest requirements [§700.303(b)]. This avoids the alternative of requiring duplicate state and RCRA manifests for each load.

The modifications to the manifest requirements have been placed in the body of the rules rather than Part 700. This represents an exception to the general policy of this rulemaking to keep the language of the RCRA rules as nearly identical to the federal as possible. It is convenient in this case because the manifest requirements of RCRA and Chapter 9 are so nearly identical. The federal rules can be modified with addition of a single sentence which puts the complete manifest requirements into a single place in the rules.

In connection with §722.141, Annual Reporting, the electric utilities have noted that USEPA has proposed to eliminate the annual report, replacing it with a statistical survey [46 FR 39,426 (July 31, 1981)](PC2, 3). This is an additional reason for maintaining the Illinois manifest system which currently generates complete statistics on the origin and fate of all hazardous waste in Illinois.

International Shipments (§722.150)(PC3). PC3 objects to the addition of a requirement of notification of the Agency.

This addition is not inconsistent with federal rules and at least as stringent. However, it appears that there is no equivalent existing duty under state regulations. The Board will delete the requirement. The Board however notes that existing Chapter 9 and §722.121 will require a copy of the manifest for foreign shipments to be sent to the Agency. This will accomplish the same result.

TRANSPORTERS (Part 723)

Scope (§723.110)(PC2, 3). Commenters objected to the absence of notes after §§723.110(a) and 723.110(c). A note corresponding to the equivalent federal note has been added after §723.110(c). The other note discusses the history of USEPA cooperation with the U.S. Department of Transportation and is not appropriate in the Board's rules. PC3 objected to the reference to Part 700. This is discussed in connection with Part 700.

Immediate Action (§723.130)(PC2, 3). Commenters asked that the spill notification requirement directed to the Agency be replaced with notification of the Illinois Emergency Services and Disaster Agency. This has been done. The September 16 requirement to notify the Agency would impose an additional requirement not found in the federal RCRA rules or the existing chapters. Addition of this will require rulemaking pursuant to §22.4(b). ESDA notification is required by statute (P.A. 79-1442).

The steel companies contend that Illinois law does not require written notification of ESDA. The Board has reworded §723.130(c) to require notice to ESDA. The Board will defer to ESDA concerning the manner and form of the notice (PC7).

PART 725

INTERIM STATUS STANDARDS FOR HWM OWNERS AND OPERATORS

Scope (§725.101)(PC1, 2, 3). Section 725.101(b) differs from 40 CFR §265.1(b) in that the interim status standards are applicable whether a facility qualifies for interim status or not. This is discussed in connection with §700.105. It is necessary to deviate from the federal rules because the Board has not yet adopted the equivalent of 40 CFR Part 264, operating standards applicable in the absence of interim status.

This modification does not increase the scope of the regulatory program as a whole.* Under the federal program

*The universe of wastes is governed by Part 721 which is unaffected.

some HWM operations would fall under 40 CFR Part 264, others under Part 265, depending on federal interim status. Under the Board's rules the persons subject to 40 CFR Part 264 become subject instead to Part 725. The number of persons subject to the program does not increase.

A reference to §21(f)(1) state permits deemed issued under §700.105 has been added to the comment following §725.101(b). References to the Marine Protection, Research and Sanctuaries Act (16 USC 1431-1434; 33 USC 1401) and the Safe Drinking Water Act (21 USC 349; 42 USC 201, 300f to 300j -9) have been added to the federal text.

In response to comments pursuant to the December 3 proposal, the Board has amended §725.101(b) to exempt persons who become subject to Part 725 for the first time. This will allow a grace period until interim status is obtained. This is discussed in connection with §700.105.

Section 725.101(c)(4) has been deleted (PC3). The federal text provides that Part 265 does not apply in states with an authorized program except that the federal Underground Injection Control standards continue to apply unless the state has UIC authorization also. This is not appropriate in Part 725.

PC3 objects to the reference to Part 700 in §725.101(d). This is discussed elsewhere.

Required Notices (§725.112)(PC2, 3). The September 16 rules extended to the Director of the Agency the requirement of notification of receipt of foreign waste. This is not inconsistent and at least as stringent as federal requirements. However, there is no comparable duty under the existing Board regulations. This will be deleted. Rulemaking pursuant to §22.4(b) will be required.

General Waste Analysis (§725.113)(PC3). To §725.113(a)(4) has been added the phrase "identity of the waste specified on the" to correspond with federal regulations (40 CFR §265.13(a)(4).

Security (§725.114)(PC1, 3). Prepositions have been corrected in §725.114(a). Federal language concerning signs near the Quebec or Mexican borders has been omitted from §725.115(c). This is not appropriate in Illinois.

Ignitable, Reactive or Incompatible Wastes (§725.117)(PC3). The phrase "spontaneous ignition (e.g. from heat-producing chemical reactions)" has been added to correspond with federal rules. Toxic musts have been changed to mists.

Contingency Plan (§725.152)(PC2, 3, 4). Reference to 40 CFR §151 has been changed to §1510 in §725.152(a) and 725.146(d).

Emergencies (§725.156)(PC2, 3, 4). "Appropriate local authorities. He must be available to help" has been added to §725.156(d)(1). Typo corrected in §725.156(j).

Manifests (§725.171)(PC2, 3). A requirement that the waste recipient sign the manifest has been added to correspond with federal rules [§725.171(a)(3)]. Commenters objected to requirements that copies be sent the Agency as well as what is required under federal regulations [§725.171(a)(4) and §725.171(b)(4)]. This is discussed elsewhere.

Post-closure Care (§725.217)(PC3). Section 725.217(b)(3) is a "hanging paragraph" which has been numbered to comply with codification requirements. An "or" has been removed from §725.217(b)(2) to make it clear that the third paragraph is not a part of the list.

Post-closure Plan (§725.218)(PC2, 3). Section 725.218(a) requires a post-closure plan to be kept at the facility. Section 725.218(b) requires amendment of the plan within 60 days of certain changes. Section 725.218(c) requires the operator to submit the plan to the Agency at least 180 days before he expects to begin closure. Section 725.218(d) provides for public notice when the Agency receives the plan. Section 725.218(e) allows the operator to petition the Agency to amend the plan during the post-closure care period.

Section 725.218(f) contains procedural rules for petitions to the Agency to modify the plan during or after the post-closure care period. Petitions may be filed by the operator or any member of the public to extend or reduce the 30-year care period [§725.217(a)].

Part 725 will apply to facilities only during interim status (§700.105 and 40 CFR §122.23). An actual permit program will arise only with Phase II authorization. At this time the operating standards of Part 725 will be replaced with Part 724 standards comparable to 40 CFR Part 264. The post-closure rules of Part 725 will therefore apply only during the period in which there are no actual permits, only permits "deemed issued" under §700.105.

The federal regulations are not specific as to appeal. If they were adopted verbatim as state rules, appeal would probably be through a Circuit Court action against the Agency in Sangamon County. This would be contrary to the appeal routes established in the Act (§41). The Board has therefore deemed the post-closure plan a permit for purposes of appeal [§725.218(g)].

The post-closure plan is clearly something which could be included in permits if they were required of this type of facility during interim status. Deeming modifications permit amendments

establishes a right of appeal to the Board consistent with the rest of the Illinois Act.

The steel companies continue to object to §725.218(g) to the extent it provides a mechanism for appeal of Agency decisions on closure plans to the Board (PC7). The Board is not imposing an additional permit requirement, but is establishing an appeal mechanism only. The Board will not modify §725.218(g).

In most cases it is expected that amendment of the plan will concern matters which are not specified by Board regulation. However, some things, such as the 30-year closure period, are specified by Board regulation (§725.217). In this case relief from the Board is also required, either a variance or site-specific regulation. This is necessary because the Agency has no authority to modify permits in a manner inconsistent with Board regulations. The variance procedure contemplated is similar to that of Rule 914 of Chapter 3 (§309.184).

Board variances require a showing of arbitrary or unreasonable hardship and are necessarily temporary (§35 et seq.). In many cases full relief as contemplated in the federal rules will require a site-specific regulation. The Board is required to follow the procedures of Title VII of the Act even in adopting site-specific rules [§27(a)].

Notice in Deed (§725.220). This has been changed from the federal rules to reflect the Illinois title recording systems.

Financial requirements (§725.240 et seq.)(PC2, 3, 4). The Board has adopted several sections by reference rather than by setting forth the language. These are very lengthy and subject to possible amendment by USEPA. The compliance date has been extended (46 FR 38,312, 46 FR 48,197; July 24 and October 1, 1981). The extensions are incorporated by reference. Several typos have been corrected also.

The electric and steel companies ask that the Board specifically adopt the federal suspension of the effective date of the financial responsibility rules (PC6, 7). The Board intends the federal suspension to be incorporated by reference as it exists on the date of adoption of the Board amendments proposed December 3, 1981.

Tanks (§725.293 et seq.)(PC1, 3). Section 725.293 has been modified to remove a "hanging paragraph" to comply with codification requirements. This has been inserted into §725.293(b). Sections 725.293 and 725.294 have also been relettered to comply with codification. They had an "a" with no "b". Several other sections had the same problem (§§725.325, 725.326, 725.329 and 725.356).

Piles (§725.350 et seq.)(PC 1,3). Section 725.352 needed an "a" and a "b". Section 725.353 had a "runoff"which was changed to a "run on" to correspond with federal rules.

Food Chain Crops (§725.376)(PC 2, 3). A reference to §700.105(c)(3) has been added to the comment. This corresponds to 40 CFR §122.23(c)(3) referenced in the federal comment. The Board intends growth of food chain crops at a facility which has never been used for this purpose to be a "significant change" with respect to state deemed issued permits in the same manner as federal interim status. These will require a revised Part A permit application and Agency approval. Typos have been corrected in §725.376(b)(2)) and the comment to §725.376(c).

Liquid Waste (§725.414). This section limits deposit of liquids in landfills after November 19, 1981. This may be extend extended by USEPA. Modification of Board rules may follow rulemaking pursuant to §720.120.

Incinerators (§725.440)(PC 1, 3). Section 725.440(b) contained a "hanging paragraph" which did not conform to codification requirements (see 40 CFR §265.340). The paragraph is too long to insert before the list starts. There is also an ambiguity in meaning which cannot be preserved in codification: does the final condition in the federal rule relate to exemption from everything in Subpart O except the final closure requirements, or merely the "except"? The Board has resolved this ambiguity by applying the condition to the exemption rather than the "except". Incinerators will have to comply with the closure requirements if the waste feed contains no Appendix VIII toxics and the waste either meets only the ignitability characteristic or is listed for ignitability only.

The alternative interpretation would exempt all ignitable waste from the entire Subpart, but impose closure requirements only if the operator demonstrated that there were no toxics present. What incentive would the operator have to make such a demonstration and why should greater control be needed in the absence of toxics?

The federal rule cannot be adopted verbatim because of the Secretary of State's regulations pursuant to the Illinois Administrative Procedure Act (1 Ill. Admin. Code §120.14). Section 22.4(a) of the Act grants the Board authority to modify the the federal text to make it comply with codification and to make it make sense.

Sections 725.477 and 725.503 have been relettered to conform with codification. Section 725.502 has been relettered and a "hanging paragraph" has been removed.

Section 725.506 has been modified to include §725.506(b), corresponding to 40 CFR §265.406(b). This was omitted from the September 16 rules.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 4th day of February, 1982 by a vote of 4-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board