

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1998

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R97-21
(July 1, 1996, through December 31, 1996)) (Identical-in-Substance Rulemaking
) - Land)

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R98-3
(January 1, 1997, through June 30, 1997)) (Identical-in-Substance Rulemaking
) - Land)

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R98-5
(January 1, 1997, through June 30, 1997)) (Identical-in-Substance Rulemaking
) - Land)

Proposed Rule. Proposal for Public Comment.

OPINION OF THE BOARD (by K.M. Hennessey):

Under Sections 13(c) and 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/13(c) & 22.4(a) (1996)), the Board proposes amendments to the Illinois regulations that are “identical-in-substance” to hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA) to implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C), 42 U.S.C. §§ 6921 *et seq.* (1996). The Board further proposes amendments to the Illinois regulations that are “identical-in-substance” to underground injection control (UIC) regulations adopted by the USEPA to implement provisions of the Safe Drinking Water Act (SDWA), 42 USC § 300h *et seq.* (1996). The nominal timeframe of this consolidated docket includes federal RCRA Subtitle C amendments adopted by USEPA in the periods July 1, 1996, through December 31, 1996, and January 1, 1997, through June 30, 1997. The nominal timeframe also includes federal UIC amendments adopted in the period January 1, 1997, through June 30, 1997.

Section 22.4(a) provides for quick adoption of regulations that are “identical-in-substance” to federal regulations adopted by USEPA to implement Sections 3001 through 3005 of RCRA, 42 U.S.C. §§ 6921-6925 (1996) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 & 5-40 (1996)) shall not apply. The federal RCRA Subtitle C regulations are found at 40 C.F.R. 260 through 268, 270 through 271, 279, and, more recently, 273. Section 13(c) similarly provides for quick adoption of regulations that are “identical-in-substance” to federal regulations adopted by USEPA to implement Section 1421 of SDWA, 42 U.S.C. § 300h (1996)). The federal UIC regulations

are found at 40 C.F.R. 144 through 148. Because this consolidated rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR).

This proposed opinion supports a proposed order that the Board also adopts today. The Board will cause the proposed amendments to be published in the *Illinois Register* and will hold the docket open to receive public comments for 45 days after the date of publication.

PROCEDURAL BACKGROUND

In January 1997, the Board reserved docket R97-21 for amendments to the federal RCRA Subtitle C hazardous waste management regulations that USEPA adopted in the period of July 1, 1996, through December 31, 1996. In July 1997, the Board reserved docket R98-5 for RCRA Subtitle C amendments that USEPA adopted in the period of January 1, 1997, through June 30, 1996, and docket R98-3 for federal UIC program amendments that occurred in the same period. Under Section 7.2 of the Act, the deadline for Board adoption of amendments under docket R97-21 was July 1, 1997, which was one year after the earliest federal amendments that occurred in the timeframe of the docket. The deadline for Board adoption of amendments under RCRA Subtitle C docket R98-3 was similarly February 12, 1998, and that for UIC docket R98-5 was May 12, 1998.

Section 7.2 of the Act provides that the Board can extend the deadline for adoption of identical-in-substance amendments by publishing a notice in the *Illinois Register* that states the reasons for delay. On September 18, 1997, the Board adopted an order that consolidated RCRA Subtitle update C dockets (R97-21 and R98-5) and UIC update docket (R98-3). The principal reasons for consolidation were similarities and overlap of subject matters and the need to proceed as expeditiously as possible. The September 18, 1997, order further set forth reasons a reasons for delay at to the amendments involved in docket R97-21. The principal reasons given for delay related to the difficulties in finalizing the amendments in the prior consolidated RCRA Subtitle C and UIC docket, In the Matter of: RCRA Update, USEPA Regulations (July 1, 1995, through December 31, 1995), UIC Update, USEPA Regulations (January 1, 1996, through June 30, 1996), RCRA Update, USEPA Regulations, (January 1, 1996, through June 30, 1996) (Nov. 6, 1997), R96-10/R97-3/R97-5 (consolidated) (called "R96-10/R97-3/R97-5" in this discussion).

The Board ultimately adopted the over-650 pages of amendments in prior docket R96-10/R97-3/R97-5 on November 6, 1997, and filed them with the Secretary of State on December 16, 1997. On April 16, 1998, the Board adopted a second reasons for delay order in this R97-21/R98-3/R98-5 docket, essentially setting forth the same reasons for delay. The second reasons for delay order set forth an extended deadline for adoption of November 15, 1998, which is the present due date for adoption of these R97-21/R98-3/R98-5 amendments. (See 22 Ill. Reg. 7709 (May 1, 1998).)

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

Three separate dockets are involved in this proceeding. R97-21 includes federal RCRA Subtitle C amendments that occurred during the period July 1, 1996, through December 31, 1996. R98-3 includes federal UIC amendments that occurred in the period January 1, 1997, through June 30, 1997. Finally, R98-5 includes the federal RCRA Subtitle C amendments that occurred in the period January 1, 1997, through June 30, 1997. The following briefly summarizes the federal actions that occurred in each of these separate docket numbers. It also states what action is required of the Board as a result of each action.

Docket R97-21: July 1, 1996, through December 31, 1996, RCRA Subtitle C Amendments

USEPA amended the federal RCRA Subtitle C regulations several times during the period July 1, 1996, through December 31, 1996. These are summarized as follows:

Federal Action and Summary

61 Fed. Reg. 34251 (July 1, 1996)

USEPA adopted revisions establishing that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes.

61 Fed. Reg. 36419 (July 10, 1996)

USEPA corrected typographic errors in certain of the April 8, 1996, Phase III land disposal restriction (LDR) amendments.

61 Fed. Reg. 40520 (August 5, 1996)

USEPA authorized additional segments of the Illinois RCRA Subtitle C hazardous waste program.

61 Fed. Reg. 43927 (August 26, 1996)

USEPA adopted emergency amendments to the April 8, 1996, Phase III land disposal restrictions (LDR) treatment standards for carbamate wastes due to analytical problems with those wastes.

61 Fed. Reg. 56631 (November 4, 1996)

USEPA published a correction to the text of its rules in the Code of Federal Regulations (40 C.F.R. 266.100(c)(3)(i)) due to the fact that segments were missing from the text.

61 Fed. Reg. 59931 (November 25, 1996)

USEPA adopted "final" organic air emission standards for tanks, surface impoundments, and containers (the "Subpart CC" rules).

The Board has taken or will not need to take action based on some of the federal RCRA Subtitle C amendments that occurred during the period of July 1, 1996, through December 31, 1996. The Board dealt with the federal actions of July 10, 1996, August 26, 1996, and November 25, 1996, in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, adopted on November 6, 1997, and filed with the Secretary of State to become effective on December 16, 1997. Consolidated docket R96-10/R97-3/R97-5 adopted the Phase III LDRs, and the Board included the later corrections of July 10, 1996, and August 26, 1996. Similarly, the Board included the federal “final” Subpart CC amendments of November 25, 1996, because other amendments to Subpart CC were involved in docket R96-10/R97-3/R97-5. The August 5, 1996, federal authorization of additional elements of the Illinois RCRA Subtitle C hazardous waste program will not require the Board to take any action. Rather, the Board notes the federal action, and we add this authorization to the listing of federal approvals that appears in this and future RCRA Subtitle C opinions. Similarly, the federal C.F.R. correction of November 4, 1996, requires no Board action, since the Board based its rules on the *Federal Register* and never incorporated the errors in the C.F.R..

In summary, with regard to the docket R97-21 segment of this proceeding, the Board will need to take action only on the federal action of July 1, 1996. The Board is taking action to make corresponding amendments to the Illinois RCRA Subtitle C regulations under this consolidated docket.

Docket R98-5: January 1, 1997, through June 30, 1997, RCRA Subtitle C
Amendments

USEPA amended its RCRA Subtitle C regulations several more times during the six-month time period of docket R98-5. The federal actions during this period of January 1, 1997, through June 30, 1997, are summarized as follows:

Federal Action and Summary

62 Fed. Reg. 1678 (January 13, 1997)

USEPA adopted a change in name and ownership of Envirite Corp.

62 Fed. Reg. 1834 (January 14, 1997)

USEPA amended the addresses for its Region V headquarters.

62 Fed. Reg. 1991 (January 14, 1997)

USEPA extended the national capacity variance for spent potliners from primary aluminum production (K088 waste) for 6 months.

62 Fed. Reg. 6621 (February 12, 1997)

USEPA amended various parts of the rules to identify when conventional and chemical military munitions become hazardous waste under RCRA.

62 Fed. Reg. 7502 (February 19, 1997)

USEPA adopted technical amendments to the tables in the Phase III land disposal restriction rule.

62 Fed. Reg. 25998 (May 12, 1997)

USEPA adopted the Phase IV land disposal restriction amendments for hazardous waste generated from wood processing operations.

62 Fed. Reg. 32452 (June 13, 1997)

USEPA amended the hazardous waste testing and monitoring regulations.

62 Fed. Reg. 32974 (June 17, 1997)

USEPA amended to hazardous waste regulations regarding delisting of carbamate waste as hazardous under RCRA.

As with the previous docket, the Board will not need to act in docket R98-5 based on some of the January 1, 1997, through June 30, 1997, federal RCRA Subtitle C amendments. In In the Matter of: Petition of Enviro Corp. for an Adjusted Standard from 35 Ill. Adm. Code 720.Subprt D: List of Hazardous Substances (December 14, 1994) AS 94-10, the Board expressly superseded the former federally-derived hazardous waste delisting for Enviro, so the Board repealed the former identical-in-substance delisting in In the Matter of: RCRA Update, USEPA Regulations (July 1, 1994, through December 31, 1994), UIC Update, USEPA Regulations (January 1, 1994, through June 30, 1996) (June 1, 1995), R95-6/R95-4 (called "R95-4/R95-6" in this discussion), filed with the Secretary of State and effective on June 27, 1995. Therefore, the Board need not take any further action on the January 13, 1997, federal change in the Enviro hazardous waste delisting. The Board dealt with the January 14, 1997, emergency extension of the national capacity variance of K088 waste, the federal Phase III amendments of February 19, 1997, and the carbamate rule amendments of June 17, 1997, in the prior update docket R96-10/R97-3/R97-5. Therefore, no regulatory amendments are necessary based on these USEPA actions.

The Board will need to act with regard to the rest of the federal actions involved in the R98-5 segment of this consolidated docket—*i.e.*, those of January 14, 1997, February 12, 1997, May 12, 1997, and June 13, 1997. The Board is taking action to make corresponding amendments to the Illinois RCRA Subtitle C regulations under this consolidated docket.

Docket R98-3: January 1, 1997, through June 30, 1997, UIC Amendments

Federal Action and Summary

62 Fed. Reg. 1834 (January 14, 1997)

Amendments to USEPA addresses.

62 Fed. Reg. 25998 (May 12, 1997)

Phase IV land disposal restriction amendments for hazardous waste generated from wood processing operations.

The Board will not need to act in docket R98-3 based on one of the January 1, 1997, through June 30, 1997, federal RCRA Subtitle C amendments. The January 14, 1997, action to change the address for USEPA Region V did not affect any UIC rule that the Board has incorporated into the Illinois UIC regulations.

On the other hand, as discussed above in relation with the docket R98-5 segments of this consolidated rulemaking, the Board is acting under docket R98-3 with regard to the described USEPA May 12, 1997, Phase IV LDR amendments. The May 12, 1997, Phase IV LDRs are the sole set of amendments in this consolidated docket that will prompt amendment of the Illinois UIC rules.

Summary List of Federal Actions Forming the Basis of the Board's Actions in
this Docket

Five federal actions form the basis for Board action in this consolidated docket. Those five actions are the following:

61 Fed. Reg. 34251 (July 1, 1996)

Revisions establishing that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive CESQG hazardous wastes. (RCRA only)

62 Fed. Reg. 1834 (January 14, 1997)

Amendments to USEPA addresses. (RCRA only)

62 Fed. Reg. 6621 (February 12, 1997)

Amendments to segments of the rules that identify when conventional and chemical military munitions become hazardous waste under RCRA. (RCRA only)

62 Fed. Reg. 25998 (May 12, 1997)

Phase IV land disposal restriction amendments for hazardous waste generated from wood processing operations. (RCRA and UIC)

62 Fed. Reg. 32452 (June 13, 1997)

Amendments to the hazardous waste testing and monitoring regulations. (RCRA only)

PUBLIC COMMENTS

The Board will receive public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*. After that time, the Board will immediately consider adoption of the amendments, making any necessary changes made evident through the public comments. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow additional time for USEPA to review the adopted

amendments before they are filed and become effective. The complete text of the proposed amendments appears in a separate order adopted this day.

Prior to adopting a proposal for public comment, the Board received two public comments on the amendments. Those comments are as follows:

- PC 1 Copy of March 31, 1998, letter from William C. Child, Chief, Illinois Environmental Protection Agency (Agency), Bureau of Land, to Susan Mooney, USEPA Region V (received April 3, 1998).
- PC 2 Letter of April 13, 1998, letter from Michael F. Nechvatal, Acting Manager, Illinois EPA, Division of Land Pollution Control (received April 16, 1998).

In PC 1, the Agency's March 31, 1998, letter to USEPA, explains the current regulatory status of CESQG waste in Illinois. It explains that disposal of hazardous waste is currently prohibited under the Illinois RCRA Subtitle D municipal solid waste landfill (MSWLF) regulations (35 Ill. Adm. Code 811). PC 1 states that the Agency is considering proposing to the Board amendments to the MSWLF rules that would allow the disposal of CESQG waste in Subtitle D facilities. PC 1 concludes that it would submit an application for federal primacy review of any such amendments to the Illinois MSWLF rules.

In PC 2, the Agency directs the Board's attention to the fact that the Illinois MSWLF rules prohibit the disposal of hazardous waste in a RCRA Subtitle D facility. The Agency notes that if the Board incorporates the federal CESQG waste into the Illinois regulatory scheme, there are certain dangers the Board must bear in mind. First, if the CESQG waste requirements are read to include facilities regulated under the unpermitted landfill requirements of 35 Ill. Adm. Code 815 or the steel and foundry waste landfill requirements of 35 Ill. Adm. Code 817, the inclusion of these unpermitted facilities could jeopardize federal authorization of the Illinois RCRA Subtitle D program. Second, the Board could inadvertently repeal or create confusion over the continued applicability of prohibitions in the Illinois MSWLF rules against depositing hazardous waste at RCRA Subtitle D facilities. Finally, the Agency highlights that allowing the disposal of hazardous waste at MSWLF facilities could 1) raise certain ancillary issues, such as the need for prior local siting approval under Section 39.2 of the Act, and 2) affect the statutory tipping fee structure. (Compare 415 ILCS 5/22.15-22.16a (1996) with 415 ILCS 5/22.2 & 22.8 (1996).)

The Board addresses the Agency's concerns expressed in PC 1 and PC 2 in the detailed discussion of the July 1, 1996, federal CESQG waste amendments, beginning below on page 30 of this opinion.

DISCUSSION

The federal actions that underlie this proceeding require amendment of the Illinois RCRA Subtitle C and UIC regulations. This discussion briefly focuses on each by subject matter, indicating the specific details of the actions taken by the Board where pertinent.

General Revisions and Deviations from the Federal Text

In incorporating the federal rules into the Illinois system, some minimal deviation from the federal text was unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. Sometimes the federal text uses flawed language or lacks consistency and clarity. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors that we see in the text as we engage in these routine update rulemakings.

The Board substituted “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, and cross-reference format throughout the opened text. We changed “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred was not necessarily a natural person, or to “he or she,” where a natural person was evident; changed “which” to “that” for restrictive relative clauses; substituted “shall” for “will;” capitalized the section headings and corrected their format where necessary; and corrected punctuation within sentences.

In addition to the amendments derived from federal amendments, the Board has altered the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the Illinois Administrative Code.

The Board has also made a number of nonsubstantive corrective and stylistic revisions. A number of these are routine and do not warrant further elaboration, such as updating the citations to the Code of Federal Regulations to the 1997 version. Some amendments are also prompted by a series of requests by JCAR staff that the Board make corrections to the rules adopted in the prior consolidated update docket R96-10/R97-3/R97-5. We have incorporated the JCAR-requested corrections in this docket with two exceptions: (1) the Board did not make the requested changes where there were no federal amendments prompting amendment to the pertinent Part, and (2) the Board did not make the requested changes where the federal amendments involved in this proceeding required deletion of the text in question.

The Board has engaged in an ongoing effort to change its method of referring to the United States Environmental Protection Agency in the hazardous waste and other regulations through the course of the last several update proceedings. Subsequent to the Board’s final opinion and order in the next preceding update, R95-4/R95-6 dated June 1, 1995, JCAR requested that the Board adopt the same usage throughout all of our bodies of regulations—*i.e.*, air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board included the Agency in our discussion of whether “USEPA” or “U.S. EPA” would become the chosen

form. The Agency’s Bureau of Air pressed for uniformity in favor of the “USEPA” usage. For this reason, the Board continues the process of reversing the prior unifying amendments in the provisions that are open in this docket. We will now refer to “USEPA.” We will continue this conversion in future rulemakings as additional sections otherwise become open to amendment.

Although there are no conversions of “U.S. EPA” to “USEPA” in this immediate proceeding, there remain some references to “U.S. EPA” in the existing text of the RCRA Subtitle C rules that have not yet come under amendment. When those provisions are otherwise opened for amendments, the Board will make the conversions at that time. In the present update docket, the only related amendments are a number of conversions of “EPA” from federal text to “USEPA,” where USEPA is clearly intended. Where the Agency would be intended in the Illinois regulatory scheme, the Board has substituted “Agency.”

The Board has assembled the following tables to aid location of those alterations and to briefly outline their intended purpose. The tables set forth the miscellaneous deviations from the federal text and corrections to the pre-amended base text of the rules in detail. There is no further discussion of most of the deviations and revisions elsewhere in this opinion. Some alterations, on the other hand, are more significant, and substantive discussion is warranted for those. Those more significant discussions are set forth in the topical discussions that follow the tables.

In the following three tables, the Board indicates the location and nature of the three kinds of amendments involved in this proceeding. The first table includes deviations from the verbatim text of the federal amendments that are driving this docket. The second table indicates corrections and clarifications that the Board has discovered and decided to make. The third table indicates corrections made at the request of JCAR. In the second and third tables, an asterisk (*) before the section number involved indicates a provision open for the purposes of correction, in which no federally-derived amendments are involved. An obelisk or dagger (†) before an entry in the second table indicates that the section is open solely for the purpose of making a Board-initiated amendment, and none of the amendments to the Section are federally- or JCAR-initiated.¹ Some of the entries in the second and third tables are discussed further beginning on page 41 of this opinion.

Deviations from the Text of the Federal Amendments

Illinois Section	40 C.F.R. Section	Revision(s)
703.124(c)	270.1(c)(3)(iii)	Used singular “emergency response;” changed “must” to “shall;” added “after the date of the

¹ The Board would not include amendments to a Section not otherwise affected by underlying federal amendments if the Part were not already opened to make various federally-derived amendments. JCAR staff has advised the Board that the inclusion of the proposed corrective amendments under these circumstances is acceptable. The Board will withdraw the corrective amendments to any of the affected Sections in their entirety if JCAR staff requests that we do so prior to adoption of these amendments.

		response;" changed "identifying" to "that identify;" added "the following" and colon; used singular "date;" changed "its disposition" to "the disposition of the material"
703.280(h)(1)	270.42(h)(1)	Removed unnecessary commas (twice) for enhanced clarity
720.110 "explosives or munitions emergency"	260.10	Quotation marks added to defined term
720.110 "explosives or munitions emergency response"	260.10	Quotation marks added to defined term; comma added to offset last element of a series
720.110 "explosives or munitions emergency response specialist"	260.10	Quotation marks added to defined term; "U.S." added to "Department of Defense"; removed one semicolon and one comma separating elements of two-element series; added "U.S." to "U.S. DOD" (twice); used lower case for "federal" and "state"; added "who are" to clause
720.110 "military munitions"	260.10	Quotation marks added to defined term; added "U.S." to "U.S. Department of Defense," "U.S. DOE," and "U.S. DOD" (twice); "of these items and devices" used in place of "thereof" (twice); "all required sanitization operations under the Atomic Energy Act of 1954" changed to "all sanitization operations required under the Atomic Energy Act of 1954"
720.111(a) ATPI	260.11(a)	Retained ATPI as a source for "APTI Course 415"; retained the more recent and available method version "ASTM D 93-85" rather than "D 93-79" and "D 93-80"
720.111(a) ASTM	260.11(a)(2)	Retained the more recent and more readily available method versions "D 93-85," "D 1946-90," and "D 2382-80," rather than use older versions "D 93-79 or D 93-80", "D 1946-82," and "D 2382-83," respectively
720.111(a) NFPA	260.11(a)(10)	Retained the more recent and more readily available method version of 1987, rather than use the older versions of 1977 or 1981
720.111(a) U.S. DOD	266.103(c)	Formally incorporated the documents from the DOD by reference, since the military waste rule seems to mandate compliance with their contents
720.111(a) U.S. GSA	266.103(c)	Formally incorporated the document from the GSA by reference, since the military waste rule seems to mandate compliance with its contents
721.101(c)(10)	261.1(c)(10)	Changed "which" to "that" (twice); added comma to offset parenthetical "but is not limited to;" removed unnecessary comma from before "fines"

721.101(c)(11)	261.1(c)(11)	Added comma to separate elements of a series
721.101(c)(12)	261.1(c)(12)	Added comma to separate elements of a series; added "it" for enhanced clarity; added "metal" for enhanced clarity
721.104(a)(14)	261.4(a)(14)	Added comma to offset proviso; added "meet the following conditions" to grammatically complete the structure
721.104(a)(14)(A)	261.4(a)(14)(i)	Added "the circuit boards are" to complete the structure and add clarity
721.104(a)(14)(B)	261.4(a)(14)(ii)	Added "the circuit boards are" to complete the structure and add clarity
721.105(f)(3)(E)	261.5(f)(3)(v)	Deleted language, "after January 1, 1998," which related to a past effective date
721.105(f)(3)(E) Board Note	None	Explanation added that subsections (D) and (E) do not themselves authorize any disposal of hazardous waste in a landfill
721.105(f)(3)(F)	261.5(f)(3)(vi)	Render "a facility which" as "the facility is one that"
721.105(g)(3)(E)	261.5(g)(3)(v)	Deleted language, "after January 1, 1998," which related to a past effective date
721.105(g)(3)(E) Board Note	None	Explanation added that subsections (D) and (E) do not themselves authorize any disposal of hazardous waste in a landfill
721.105(g)(3)(F)	261.5(g)(3)(vi)	Render "a facility which" as "the facility is one that"
722.110(i)	262.10(i)	Changed "persons . . . are" to singular "a person . . . is;" removed comma separating a two-element series
722.120(f)	262(f)	Used "shall" in place of "must"
724.101(g)(8)(A)(iii)	264.1(g)(8)(i)(C)	Removed unnecessary comma from before prepositional phrase
724.101(g)(8)(D)	264.1(g)(8)(iv)	Rendered "federal" and "state" in lower case; removed references to "tribal or local" officials; removed commas from before and after second element of a series; used "USEPA identification numbers;" used "shall" in place of "must"
724.170	264.70	Changed "and" to "nor do they apply" for enhanced clarity
724.1200 Board Note	264.1200 Note	Used lower case for "see"
724.1201(a)	264.1201(a)	Changed "hazardous waste munitions and explosives storage units must be designed and operated" to singular, personal, active "an owner or operator of a hazardous waste munitions and explosives storage unit shall design and operate;"

		added “fulfill each of the following requirements” for grammatical completeness
724.1201(a)(1)	264.1201(a)(1)	Added “the owner or operator” and changed to singular “minimizes” for enhanced clarity and grammatical completeness; removed comma from before prepositional phrase “to the soil . . .”
724.1201(a)(2)	264.1201(a)(2)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness
724.1201(a)(3)	264.1201(a)(3)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness
724.1201(a)(4)	264.1201(a)(4)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness; removed commas separating elements of two-element series (twice)
724.1201(a)(5)	264.1201(a)(5)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness
724.1201(b)(1)	264.1201(b)(1)	Changed “earth-covered magazines must be” to singular, personal, active “an owner or operator of an earth-covered magazine shall;” added “fulfill each of the following requirements” for grammatical completeness
724.1201(b)(1)(A)	264.1201(b)(1)(i)	Added to “the magazine is” for grammatical completeness
724.1201(b)(1)(B)	264.1201(b)(1)(ii)	Added to “the magazine is so” and “that it fulfills each of the following” for grammatical completeness
724.1201(b)(1)(B)(i)	264.1201(b)(1)-(ii)(A)	Added to “the magazine is” for grammatical completeness
724.1201(b)(1)(B)(ii)	264.1201(b)(1)-(ii)(B)	Changed “provide” to “the magazine provides” for grammatical completeness
724.1201(b)(1)(B)-(iii)	264.1201(b)(1)(ii)-(C)	Added to “the magazine can” for grammatical completeness
724.1201(b)(1)(C)	264.1201(b)(1)(iii)	Added to “the magazine is” for grammatical completeness
724.1201(c)	264.1201(c)	Changed “hazardous waste munitions and explosives must be stored” to active “an owner or operator shall store hazardous waste munitions and explosives” for enhanced clarity; changed “specifying procedures to ensure” to more direct “that specifies procedures which;” changed “these procedures will” to “the Standard Operating Procedure may” for enhanced clarity

724.1201(d)	264.1201(d)	Changed “hazardous waste munitions and explosives must be packaged” to active “an owner or operator shall package hazardous waste munitions and explosives” for enhanced clarity
724.1201(e)	264.1201(e)	Changed “hazardous waste munitions and explosives must be inventoried” to active “an owner or operator shall inventory hazardous waste munitions and explosives” for enhanced clarity
724.1201(f)	264.1201(f)	Changed “hazardous waste munitions and explosives and their storage units must be inspected and monitored” to active “an owner or operator shall inspect hazardous waste munitions and explosives and their storage units” for enhanced clarity
724.1202(a)	264.1202(a)	Changed “must” to “shall;” deleted comma separating elements of two-element series
724.1202(b)	264.1202(b)	Changed “he or she must” to “the owner or operator shall;” used lower case for “see”
724.Appendix I(e)	264, appendix IX	Changed “promulgated methods through” to “in;” split run-on sentence, adding “however” and removing “has;” spelled out “gas chromatography”
725.101(c)(11)(A)(iv)	264.1(c)(11)(i)(D)	Removed unnecessary comma before prepositional phrase
725.101(g)(8)(D)	265.1(g)(8)(iv)	Rendered “federal” and “state” in lower case; removed references to “tribal or local” officials; removed commas from before and after second element of a series; used “USEPA identification numbers;” used “shall” in place of “must”
725.170	265.70	Changed “and” to “nor do they apply” for enhanced clarity
725.1200 Board Note	265.1200 Note	Used lower case for “see”
725.1201(a)	265.1201(a)	Changed “hazardous waste munitions and explosives storage units must be designed and operated” to singular and active voice “an owner or operator of a hazardous waste munitions and explosives storage unit shall design and operate;” added “fulfill each of the following requirements” for grammatical completeness
725.1201(a)(1)	265.1201(a)(1)	Added “the owner or operator” and changed to singular “minimizes” for enhanced clarity and grammatical completeness; removed comma from before prepositional phrase “to the soil . . .”
725.1201(a)(2)	265.1201(a)(2)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and

		grammatical completeness
725.1201(a)(3)	265.1201(a)(3)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness
725.1201(a)(4)	265.1201(a)(4)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness; removed commas separating elements of two-element series (twice)
725.1201(a)(5)	265.1201(a)(5)	Added “the owner or operator” and changed to singular “provides” for enhanced clarity and grammatical completeness
725.1201(b)(1)	265.1201(b)(1)	Changed “earth-covered magazines must be” to singular, personal, active “an owner or operator of an earth-covered magazine shall;” added “fulfill each of the following requirements” for grammatical completeness
725.1201(b)(1)(A)	265.1201(b)(1)(i)	Added “the magazine is” for grammatical completeness
725.1201(b)(1)(B)	265.1201(b)(1)(ii)	Added “the magazine is so” and “that it fulfills each of the following” for grammatical completeness
725.1201(b)(1)(B)(i)	265.1201(b)(1)-(ii)(A)	Added “the magazine is” for grammatical completeness
725.1201(b)(1)(B)(ii)	265.1201(b)(1)-(ii)(B)	Changed “provide” to “the magazine provides” for grammatical completeness
725.1201(b)(1)(B)-(iii)	265.1201(b)(1)(ii)-(C)	Added “the magazine can” for grammatical completeness
725.1201(b)(1)(C)	265.1201(b)(1)(iii)	Added “the magazine is” for grammatical completeness
725.1201(c)	265.1201(c)	Changed “hazardous waste munitions and explosives must be stored” to active “an owner or operator shall store hazardous waste munitions and explosives” for enhanced clarity; used lower case for “standard operating procedure;” changed “specifying procedures to ensure” to more direct “that specifies procedures which;” changed “these procedures will” to “the standard operating procedure may” for enhanced clarity
725.1201(d)	265.1201(d)	Changed “hazardous waste munitions and explosives must be packaged” to active “an owner or operator shall package hazardous waste munitions and explosives” for enhanced clarity
725.1201(e)	265.1201(e)	Changed “hazardous waste munitions and explosives must be inventoried” to active “an owner or operator shall inventory hazardous waste

		munitions and explosives” for enhanced clarity
725.1201(f)	265.1201(f)	Changed “hazardous waste munitions and explosives and their storage units must be inspected and monitored” to active “an owner or operator shall inspect hazardous waste munitions and explosives and their storage units” for enhanced clarity
725.1202(a)	265.1202(a)	Changed “must” to “shall;” deleted comma separating elements of two-element series
725.1202(b)	265.1202(b)	Changed “he or she must” to “the owner or operator shall;” used lower case for “see”
726.207(f)	266.107(f)	Retained words “chlorine gas”, placing the empirical formula “Cl ₂ ” in parentheses; added “US” to informal document name
726.301	266.201	Placed all defined terms in quotation marks
726.301 “chemical agents and munitions”	266.201	Formally incorporated 50 U.S.C. 1521(j)(1) by reference; added act title
726.301 “inactive range”	266.201	Removed unnecessary commas (twice); changed “that” to “which” (twice) for subsequent restrictive relative clauses
726.301 “military”	266.201	Added “United States (U.S.);” removed unnecessary commas (twice)
726.301 “military range”	266.201	Added “that are” and “which are set aside, managed, and used” for grammatical correctness; removed comma from between dependent clauses of sentence
726.301 “unexploded ordnance”	266.201	Removed parentheses from defined term “UXO;” removed comma from between dependent clauses of sentence; changed “that” to “which” for subsequent restrictive relative clause
726.302(a)	266.202(a)	Added “any of the following situations describes the munition” for enhanced clarity and grammatical completeness
726.302(a)(1)	266.202(a)(1)	Added “it is” and “any of the following uses” for enhanced clarity and grammatical completeness
726.302(a)(1)(A)	266.202(a)(1)(i)	Deleted ending conjunction “or”
726.302(a)(2)	266.202(a)(2)	Added “it is” (twice) for enhanced clarity and grammatical completeness; added commas before and after parentheticals “as defined . . .;” replaced gerund “burning” with verb “burned”
726.302(b)(1)	266.202(b)(1)	Deleted ending conjunction “or”
726.302(b)(2)	266.202(b)(2)	Deleted ending conjunction “or”
726.302(c)	266.202(c)	Added “when either of the following activities

		occurs with regard to the munition”
726.302(c)(1)	266.202(c)(1)	Replaced “when” with “the munition is;” hyphenated “off-range;” removed commas from parenthetical “where the site of use is not a range” and placed it in parentheses for enhanced clarity
726.302(c)(2)	266.202(c)(2)	Replaced “if” with “the munition is;” removed comma separating members of a two-element series
726.302(d)	266.202(d)	Added United States Code citations for federal statutory citations; added “to” before “imminent;” deleted unnecessary comma from before “if;” used “or” in place of “and/or;” used “shall” in place of “must” (twice)
726.303(a)(1)	266.202(a)(1)	Changed “that” to “which” (twice) for subsequent restrictive relative clauses; removed unnecessary comma separating the subject and verb of the sentence; removed words “listed or identified as a hazardous waste (and thus are;” removed closing parentheses; changed passive “unless all the following conditions are met” to active “unless the munitions meet all the following conditions”
726.303(a)(1)(B)	266.203(a)(1)(ii)	Changed “must be” to “are”
726.303(a)(1)(C)	266.203(a)(1)(iii)	Changed “must be” to “are;” hyphenated “military-owned”
726.303(a)(1)(D)	266.203(a)(1)(iv)	Changed “must” to “shall;” substituted “the Agency” for “the Director;” altered conditional statement “from the time . . . , or” to read “from the time when either . . . or when . . . occurs” for enhanced clarity; changed “health or the environment” phrase of art “human health or the environment;” rendered numeral as “five;” changed “or any failure to meet” to read “or when any failure to meet . . . occurs”
726.303(a)(2)	266.203(a)(2)	Changed “must” to “shall;” substituted “the Agency” for “the Director;” rendered numeral as “five”
726.303(a)(3)	266.203(a)(3)	Added “conditional;” moved prepositional phrase “from regulation as hazardous waste” for enhanced clarity; added comma to separate elements of a series
726.303(b)	266.203(b)	Changed passive “an application may be filed” to active “the transporter may file;” dropped words “the Director” for enhanced clarity; substituted “the Agency” for “the Director” (six times)
726.303(c)	266.203(c)	Formally incorporated all federal forms and

		documents by reference; capitalized title of the “Requisition Tracking Form” and placed the form number in parentheses; placed language relating to future amendments into a Board Note, observing the need for regulatory amendment in Illinois to incorporate future versions of the documents
726.305(a)(1)(A)	266.205(a)(1)(i)	Changed end punctuation from a period to a semicolon
726.305(a)(1)(B)	266.205(a)(1)(ii)	Changed end punctuation from a period to a semicolon
726.305(a)(1)(C)	266.205(a)(1)(iii)	Changed end punctuation from a period to a semicolon
726.305(a)(1)(D)	266.205(a)(1)(iv)	Dropped past date, associated conjunction, and “whichever is later;” changed “must” to “shall;” substituted “the Agency” for “the Director;” changed end punctuation from a period to a semicolon
726.305(a)(1)(E)	266.205(a)(1)(v)	Changed “must” to “shall;” substituted “the Agency” for “the Director;” rendered numeral as “five;” changed end punctuation from a period to a semicolon
726.305(a)(1)(F)	266.205(a)(1)(vi)	Changed “must” to “shall;” changed end punctuation from a period to a semicolon and added conjunction “and”
726.305(b)	266.205(b)	Changed “must” to “shall;” substituted “the Agency” for “the Director”
726.305(c)	266.205(c)	Substituted “the Agency” for “the Director”
726.303(e)	266.203(e)	Formally incorporated the federal document by reference; placed language relating to future amendments into a Board Note, observing the need for regulatory amendment in Illinois to incorporate future versions of the document
728.107(a)(1)	268.7(a)(1)	Deleted entire unnecessary opening clause up to words “as follows;” changed “must” to “shall” (twice); deleted unnecessary opening clause “if the generator of the waste;” changed “testing would normally determine” to “testing determines;” changed “would have to be” to “shall be;” added missing adverb “that” (twice); changed “they are” to “it is” to correspond with singular “generator;” changed “they” to “generator”
728.107(a)(2)	268.7(a)(2)	Changed “must” to “shall;” changed to singular “change”
728.107(a)(3)(A)	268.7(a)(3)(i)	Changed “must” to “shall;” changed “the” to “its own” for enhanced clarity

728.107(a)(3)(B)	268.7(a)(3)(ii)	Changed “must” to “shall;” changed “their files” to “its file” for consistency
728.107(a)(4)	268.7(a)(4)	Added comma to offset parenthetical; changed “must” to “shall” (twice); codified table as Section 728.Table I;” changed “their files” to “its file” for consistency
728.107(a)(5)	268.7(a)(5)	Changed “must” to “shall;” changed “they” to “it”
728.107(a)(5)(A)	268.7(a)(5)(i)	Used “wastes” in place of “waste(s);” changed end punctuation from a period to a semicolon
728.107(a)(5)(B)	268.7(a)(5)(ii)	Changed end punctuation from a period to a semicolon and added conjunction “and”
728.107(a)(6)	268.7(a)(6)	Changed “his” to “its;” changed “as referenced” to standardized usage “incorporated by reference”
728.107(a)(7)	268.7(a)(7)	Changed “he” to “it;” added “that are” and “which;” removed use of full title in favor of abbreviation “CWA;” changed “he” to “the generator;” changed “must” to “shall;” added “generating”
728.107(a)(8)	268.7(a)(8)	Substituted singular “a generator;” changed “must” to “shall;” moved “on-site;” added “RCRA” before “Subtitle C”
728.109(a)(9)	268.7(a)(9)	Added comma and “the generator shall fulfill the following conditions” for enhanced clarity
728.107(a)(9)(A)	268.7(a)(9)(i)	Changed “must” to “shall;” changed cross-reference to reflect the codification of the table at 40 C.F.R. 268.7(a)(4) as Section 728.Table I
728.107(a)(9)(B)	268.7(a)(9)(ii)	Changed “that” to “as”
728.107(a)(9)(D)	268.7(a)(9)(iv)	Changed “must” to “shall”
728.107(a)(10)	268.7(a)(10)	Changed “must” to “shall” (twice)
728.107(b)(1)	268.7(b)(1)	Added “US” to informal reference designation; added comma before “incorporated” to set off parenthetical
728.107(b)(3)(A)	268.7(b)(3)(i)	Corrected to singular “changes”
728.107(b)(3)(B)	268.7(b)(3)(ii)	Changed “requirements” to “the requirements indicated in the following table;” used “USEPA” in place of “EPA” in table; removed use of full title in favor of abbreviation “CWA” in the table
728.107(b)(4)	268.7(b)(4)	Changed “the treatment facility must” to “the owner or operator of a treatment facility shall;” added “as follows” at end
728.107(b)(4)(A)	268.7(b)(4)(i)	Added “treatment facility’s”
728.107(b)(4)(B)	268.7(b)(4)(ii)	Changed “provided by” to “listed in;” substituted “the Agency” for “the Director”

728.107(b)(4)(C)	268.7(b)(4)(iii)	Changed “the certification, signed by an authorized representative, must” to “must be signed by an authorized representative and must”
728.107(c)(2)	268.7(c)(2)	Added comma before “incorporated” to set off parenthetical
728.109(a)	268.9(a)	Changed “must” to “shall”
728.130(a)	268.30(a)	Omitted past effective date; added “US” to and removed capitals from “USEPA hazardous waste number”
728.130(b)	268.30(b)	Added “the wastes specified in 35 Ill. Adm. Code 721 as” for enhanced clarity and uniformity in language; added “US” to and removed capitals from “USEPA hazardous waste number”
728.130(c)	268.30(c)	Substituted “until” for past effective date and “between;” added “the wastes specified in 35 Ill. Adm. Code 721 as USEPA hazardous waste numbers” and “USEPA hazardous waste numbers” for enhanced clarity and uniformity in language
728.130(d)(4)	268.30(d)(4)	Added parenthetical citation to parallel Illinois provision “(see Section 728.105)”
728.130(e)	268.30(e)	Changed “must” to “shall;” used lower case for “universal treatment standard levels”
728.Appendix F	268, appendix VI	Dropped the word “table,” added a comma, and used full title of table “Treatment Standards for Hazardous Waste,” placing it in quotation marks; changed “deactivation and meet UTS” to “DEACT and meet Section 728.148 standards,” which is actually used in the table; substituted abbreviated title “CWA;”
728.Appendix G, Table 1	268, appendix VII, table 1	Added “adopted by USEPA at” to federal citation; added citation to Board adoption in footnote “b;” added “at” to federal citation; added citation to Board adoption in footnote “c;” added citation to Board adoption in footnote “b;” added “which USEPA adopted at” to federal citations; added citations to Board adoption in footnotes “d” and “e”
728.Appendix H	268, appendix VIII	moved entry for “F001-F005” wastes to proper alphanumeric order location; did not duplicate entries for “K011” waste; cited “35 Ill. Adm. Code 730.105(e)” in footnote “c” to correspond with 40 C.F.R. 144.6(e), but could find no counterpart for 40 C.F.R. 14.6(e), which appears in error; removed comma from before “that” ,

		which set of a restrictive relative clause
728.Table I	268.7(a)(4)	Added heading for columns two through five; changed “section” to “subsection;” added Board note citing the table to 40 C.F.R. 268.7(a)(4) as the source of this table
728.Table T “F032”	268.40, table	Deleted unnecessary conjunction “and” from before “where”
728.Table T “F034”	268.40, table	Used “or” in place of “and/or”
728.Table T “F035”	268.40, table	Deleted duplicate “processes;” added “that are” for enhanced grammatical precision; used “or” in place of “and/or”
728.Table T note 7	268.40, table	Added “any of the following;” changed “which” to “that” for restrictive relative clause; moved words “[that] have obtained a determination of equivalent treatment under Section 728.142(b)”
738.118	148.18	Capitalized “Listed” in the heading
738.118(a)	148.18(a)	Added “US;” changed to lower case “hazardous”
738.118(b)	148.18(b)	Added “US;” changed to lower case “hazardous”

Board Amendments Not Federally-Derived

Section	Revision(s)
703.124(a)(3)	Corrected ending punctuation
703.124 Board Note	Updated Note format; added date to C.F.R. citation
* 703.213 Board Note	Updated C.F.R. citation
* 703.232(b)(1)	Changed “the Agency shall establish in the Pretrial Burn Period of the permit conditions, including but not limited to . . .” to read “the Agency shall establish permit conditions in the Pretrial Burn Period, including but not limited to . . .”
* 703.232(c)(2)(A)	Corrected “as” to “and”
* 703.232(f)(2)(C)	Added missing text “destruction and removal efficiency”
* 703.232(f)(4)	Added comma to separate elements of a series
703.280(d)(2)	Corrected “a” to “as”
703.280(d)(2)(A)	Corrected to plural “modifications”
703.280 Board Note	Updated Note format; updated C.F.R. citation
720.110 “boiler”	Removed capitals from “section” (five times)
720.110 “containment building”	Removed capitals from “building”
720.110 “EPA identification number”	Added “US” to “USEPA”
720.110 “existing hazardous waste management facility”	Added comma to separate elements of a series; corrected use of em dashes
720.110 “existing tank	Removed capitalization of “state;” added comma to separate elements

system”	of a series; corrected use of em dashes
720.110 “hazardous waste constituent”	Removed “of”
720.110 “incompatible waste”	Changed “suitable” to “unsuitable”
720.110 “United States”	Removed capitalization of “states”
720.111(a)	Added “for the purposes of this Part and 35 Ill. Adm. Code 703 through 705, 721 through 726, 728, 730, 731, 733, 738, and 739” to parallel the federal text and set forth the scope and applicability for the incorporations
720.111(a) ASTM	Removed duplicate entry for older version of method “D2879-86”
720.111(a) NACE	corrected document number to “RP-02-85”
720.111(a) NTIS	Corrected “Guidance on Air Quality Models” to “Guideline on Air Quality Models”; added statement of alternative availability as 40 C.F.R. 51, appendix W
720.111(b)	Corrected “40 C.F.R. 51, subpart W” to “40 C.F.R. 51, appendix W”
720.111(c)	Incorporated 50 U.S.C. § 1521(j)(1) by reference; added bill title and Public Act number
721.101(a)	Added abbreviated name “RCRA” in parentheses
721.101(b)(1)	Used abbreviated name “RCRA” in place of full name
721.101(c)(8)	Corrected use of em-dashes by removing spaces before and after dashes; moved punctuation to within parentheses
721.101(d)	Used abbreviated name “RCRA” in place of full name
721.102(a)(2)(B)	Removed ending conjunction “or”
721.102(c)(2)(A)(i)	Capitalized “burned”
721.102(c)(3)	Added definite article “the;” corrected cross reference format to “Section 721.Appendix Z”
721.102(d)(2)	Corrected “721.Subparts C or D” to “Subpart C or D of this Part”
721.102(f)	Used abbreviated name “RCRA” in place of full name
721.104(a)(2)	Added full name “National Pollutant Discharge Elimination System” and put abbreviated name in parentheses
721.104(a)(6)	Changed to plural “black liquors”
721.104(b)(1)(B) Board note	Added full citations for Supreme Court decision in <u>City of Chicago v. Environmental Defense Fund, Inc.</u> case
721.104(b)(12)	Changed to plural “use”
721.104(e)(1)	Changed to singular “is”
† 721.121(a)(1)	Corrected method number from “D-3228” to “D-3828”
* 721.132 “K149”	Changed “alpha” to “α” to follow standard technical usage
* 721.132 “K150”	Changed “alpha” to “α” to follow standard technical usage
* 721.132 “K151”	Changed “alpha” to “α” to follow standard technical usage
* 721.133(e) “P046”	Changed “alpha” to “α” (twice each for two entries) to follow

	standard technical usage
* 721.133(e) "P004"	Changed "alpha" to "α" (four times) and "beta" to "β" (twice) to follow standard technical usage
* 721.133(e) "P037"	Changed "alpha" to "α" (four times) and "beta" to "β" (four times) to follow standard technical usage
* 721.133(e) "P051"	Changed "alpha" to "α" (four times) and "beta" to "β" (four times) to follow standard technical usage
* 721.133(e) "P072"	Changed "alpha" to "α" to follow standard technical usage
* 721.133(f) "U010"	Changed "alpha" to "α" (three times) and "beta" to "β" to follow standard technical usage
* 721.133(f) "U038"	Changed "alpha" to "α" (twice) to follow standard technical usage
* 721.133(f) "U143"	Changed "alpha" to "α" (twice) to follow standard technical usage
* 721.133(f) "U036"	Changed "alpha" to "α" and "gamma" to "γ" to follow standard technical usage
* 721.133(f) "U047"	Changed "beta" to "β" to follow standard technical usage
* 721.133(f) "U129"	Changed "alpha" to "α" (four times) and "beta" to "β" (twice) to follow standard technical usage
* 721.133(f) "U096"	Changed "alpha" to "α" (twice) to follow standard technical usage
* 721.133(f) "U059"	Changed "alpha" to "α" to follow standard technical usage
* 721.133(f) "U167"	Changed "alpha" to "α" to follow standard technical usage
* 721.133(f) "U168"	Changed "beta" to "β" to follow standard technical usage
* 721.133(f) "U200"	Changed "alpha" to "α" (twice) and "beta" to "β" (three times) to follow standard technical usage
* 721.Appendix H aldrin	Changed "alpha" to "α" (four times) and "beta" to "β" (twice) to follow standard technical usage
* 721.Appendix H chlordane	Changed "alpha" to "α" and "gamma" to "γ" to follow standard technical usage
* 721.Appendix H chlorobenzilate	Changed "alpha" to "α" (twice) to follow standard technical usage
* 721.Appendix H β-chloronaphthalene	Changed "beta" to "β" to follow standard technical usage
* 721.Appendix H cycasin	Changed "beta" to "β" to follow standard technical usage
* 721.Appendix H daunomycin	Changed "alpha" to "α" to follow standard technical usage
* 721.Appendix H dieldrin	Changed "alpha" to "α" (four times) and "beta" to "β" (four times) to follow standard technical usage
* 721.Appendix H α,α-Dimethylphenethylamine	Changed "alpha" to "α" (four times) to follow standard technical usage
* 721.Appendix H endrin	Changed "alpha" to "α" (four times) and "beta" to "β" (four times) to follow standard technical usage
* 721.Appendix H	Changed "alpha" to "α" (four times) and "beta" to "β" (three times)

heptachlor epoxide	to follow standard technical usage
* 721.Appendix H heptachlor epoxide	Changed “alpha” to “ α ,” “beta” to “ β ,” and “gamma” to “ γ ” to follow standard technical usage
* 721.Appendix H isodrin	Changed “alpha” to “ α ” (twice) and “beta” to “ β ” (four times) to follow standard technical usage
* 721.Appendix H lasiocarpine	Changed “alpha” to “ α ” (twice) to follow standard technical usage
* 721.Appendix H lindane	Changed “alpha” to “ α ” (four times) and “beta” to “ β ” (twice) to follow standard technical usage
* 721.Appendix H mitomycin C	Changed “alpha” to “ α ” (three times) and “beta” to “ β ” to follow standard technical usage
* 721.Appendix H α -naphthylamine	Changed “alpha” to “ α ” to follow standard technical usage
* 721.Appendix H β -naphthylamine	Changed “beta” to “ β ” to follow standard technical usage
* 721.Appendix H α -naphthylthiourea	Changed “alpha” to “ α ” to follow standard technical usage
* 721.Appendix H respirine	Changed “alpha” to “ α ” (twice) and “beta” to “ β ” (three times) to follow standard technical usage
721.Appendix Z Board Note	Added reference to definitions of terms that appears in the federal text
722. Source Note	Corrected Illinois Register citation in entry for R96-10/R97-3/R97-5
722.110(e)	Added explanatory paragraph in location parallel to federal language that the Board chose not to adopt in R81-22
722.110(f)	Renumbered to correspond more closely with federal provision 40 C.F.R. 262.10(f)
722.110(g)	Renumbered to correspond more closely with federal provision 40 C.F.R. 262.10(g)
722.110(h)	Renumbered to correspond more closely with federal provision 40 C.F.R. 262.10(h)
723. Source Note	Corrected Illinois Register citation in entry for R96-10/R97-3/R97-5
724. Table of Contents	Capitalized headings of Sections 724.933 and 724.934
724.101(g)(8)(A)(iii)	Changed ending punctuation from a period to semicolon; added “or”
† 724.298(b)	Added method number “NFPA 30” to reference
724.933	Capitalized the Section heading
724.934	Capitalized the Section heading
724.934(f)	Corrected “must” to permissive “may” to agree with corresponding federal text
724.963(h)	Corrected method from “ASTM D 2879-86” to “ASTM D 2879-92” to agree with version incorporated by reference
* 724.990(c)	Added comma before parenthetical “as provided . . .”
724.Appendix I (a)	Corrected cross-reference to “subsections (e) and (f) of this Section”
724.Appendix I (e)	Added method number “SW-846” to reference

724.Appendix I aldrin	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I α -BHC	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I β -BHC	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I δ -BHC	Changed “alpha” to “ α ,” “beta” to “ β ,” and “delta” to “ δ ” to follow standard technical usage
724.Appendix I γ -BHC	Changed “alpha” to “ α ,” “beta” to “ β ,” and “gamma” to “ γ ” to follow standard technical usage
724.Appendix I Chlorobenzilate	Changed “alpha” to “ α ” to follow standard technical usage
724.Appendix I dieldrin	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I α,α -dimethylphenethylamine	changed “alpha” to “ α ” to follow standard technical usage
724.Appendix I endosulfan I	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I endosulfan II	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I endrin	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I endrin aldehyde	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I heptachlor epoxide	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
724.Appendix I isodrin	Changed “alpha” to “ α ” and “beta” to “ β ” to follow standard technical usage
725. Table of Contents	Changed the Section 725.301 heading to “Generators of 100 to 1000 Kilograms of Hazardous Waste Per Month;” capitalized headings of Sections 725.933 and 725.988
725.101(c)(2)	Added explanatory paragraph in location parallel to federal language that the Board chose not to adopt in R81-22
725.101(c)(3) Board Note	Corrected cross reference to “subsections (c)(1) through (c)(3)” to read “subsections (c)(1) and (c)(3)” to reflect the substantive absence of subsection (c)(2)
725.101(c)(4)	Added explanatory paragraph in location parallel to federal language that the Board chose not to adopt in R81-22
725.101(c)(11)(A)(iii)	Changed ending punctuation to a semicolon; added “or”
725.101(g)	Renumbered state-only provision to reflect the addition of subsection (f)
* 725.112(b)	Changed “also” to lower case

† 725.298(b)	Added method number “NFPA 30” to reference
† 725.301	Changed the Section heading to “Generators of 100 to 1000 Kilograms of Hazardous Waste Per Month”
† 725.301(e)(2)	Added method number “NFPA 30” to reference
725.914	Changed to singular “liquid”
725.933	Capitalized the Section heading
725.963(h)	Changed method designation “ASTM D 2879-86” to “ASTM D 2879-92” to agree with version incorporated by reference
* 725.964(b)(1)(E)	Added comma after “e.g.”
* 725.964(b)(1)(F)	Added comma after “e.g.”
725.988	Capitalized the Section heading
* 725.990(e)(1)(D)	Corrected cross reference from “40 C.F.R. 265.1035(c)(1) and Section 725.935(c)(2)” to “Section 725.935(c)(1) and (c)(2)”
† 725.Appendix F γ -naphthol	Changed “gamma” to “ γ ” to follow standard technical usage
† 725.Appendix F α -naphthol	Changed “alpha” to “ α ” to follow standard technical usage
† 725.Appendix F β -naphthol	Changed “beta” to “ β ” to follow standard technical usage
† 725.Appendix F α -naphthylamine	Changed “alpha” to “ α ” to follow standard technical usage
† 725.Appendix F β -naphthylamine	Changed “beta” to “ β ” to follow standard technical usage
† 725.Appendix F α -picoline	Changed “alpha” to “ α ” to follow standard technical usage
† 725.Appendix F β -propiolactone	Changed “beta” to “ β ” to follow standard technical usage
726. Source Note	Corrected Illinois Register citation in entry for R96-10/R97-3/R97-5
726.204(e)(1)	Removed parenthetical abbreviation “(PCDDs)” that does not appear in the corresponding text of federal 40 C.F.R. 266.4(e)(1); added quotation marks to the proper document title; added “US” to informal reference designation
726.206(d)(3)	Deleted surplus formula expression “ $\text{SUM}(\text{Pi}/\text{Ri}) \leq 1.0;$ ” corrected “S” to “ Σ ”
726.206(g)(1)	Added quotation marks to the proper document title; added “US” to informal reference designation
726.206(g)(2)	Added quotation marks to the proper document title; added “US” to informal reference designation
726.Appendix I	Moved actual location of incorporation by reference to 35 Ill. Adm. Code 720.111; deleted limiting language as to future editions that already appears in 35 Ill. Adm. Code 720.111
728. Table of Contents	Revised format of heading for Section 728.133 to agree with nearby Section headings
728.101(c)(4)	Added abbreviation “CWA” in parentheses

728.101(e)(1)	Changed to singular “waste”
728.101(e)(2)	Changed to singular “waste”
728.101(e)(3)	Changed to singular “waste” and corresponding “prohibition” and “standard”; added indefinite article “a” before “prohibition”
728.101(e)(5)	Corrected to plural “headworks”
728.104(a)(4)	Corrected cross reference format to “subsection (a)(3) of this Section”
728.104(a)(2)(D)	Changed “sampling and testing and recordkeeping” to “sampling, testing, and recordkeeping”
728.107(b)	Changed “treatment facilities shall test their” to “the owner or operator of a treatment facility shall test its;” changed “their” to “its;” changed to singular “plan”
728.107(c)(1)	Changed “have” to “maintain in its files;” changed to plural “certifications”
728.107(c)(2)	Changed “the test method” to “Test Method”
728.107(d)(2)	Corrected cross reference from “721.2(d)(1)” to “721.102(e)(1)”
728.109(d)(1)(A)	Deleted language not present in corresponding 40 C.F.R. 268.9(d)(1)(i)
728.138 Section Heading	Revised format of heading to agree with nearby Section headings
728.144(a) Board Note	Added “of this Section” to cross reference
728.144(e)	Added ILCS citation to statutory quote
728.144(i)	Corrected cross reference format to “720.120(b)(1) through (b)(4)”
728.144(o)	Corrected cross reference format to “Section 728.Table H” and “728.Table B”
728.Appendix G, Table 1	Corrected footnote format throughout to parallel corresponding 40 C.F.R. 268, appendix VII more closely; repositioned entry for “D004” waste to parallel federal text; corrected format of chemical name “1,1,2-trichloroethane” in entry for “F002” waste
728.Appendix G, Table 1 note b	Changed “has been” to “was”
728.Appendix H	Added “see note” at top; revised footnote format throughout to parallel corresponding 40 C.F.R. 268, appendix VIII more closely;
728.Table C “PRECIP”	Added closing parenthesis to entry (1)
728.Table C Board Note	Added Board Note citation to 40 C.F.R. 268.42, Table 1 as the source of this table
728.Table H Board Note	Added Board Note citation to the table to 40 C.F.R. 268.44(o) as the source of this table
728.Table T “D013”	Changed “alpha” to “ α ,” “beta” to “ β ,” “delta” to “ δ ,” and “gamma” to “ γ ” to follow standard technical usage
728.Table T “D020”	Changed “alpha” to “ α ” and “gamma” to “ γ ” to follow standard technical usage
728.Table T “F039”	Changed “alpha” to “ α ,” “beta” to “ β ,” “delta” to “ δ ,” and “gamma” to “ γ ” to follow standard technical usage

728.Table T “K032”	Changed “alpha” to “ α ” and “gamma” to “ γ ” to follow standard technical usage
728.Table T “K097”	Changed “alpha” to “ α ” and “gamma” to “ γ ” to follow standard technical usage
728.Table T “K149”	Changed “alpha” to “ α ” to follow standard technical usage
728.Table T “K150”	Changed “alpha” to “ α ” to follow standard technical usage
728.Table T “K151”	Changed “alpha” to “ α ” to follow standard technical usage
728.Table T “P046”	Changed “alpha” to “ α ” to follow standard technical usage
728.Table T “U036”	Changed “alpha” to “ α ” and “gamma” to “ γ ” to follow standard technical usage
728.Table T “U096”	Changed “alpha” to “ α ” to follow standard technical usage
728.Table T “U129”	Changed “alpha” to “ α ,” “beta” to “ β ,” “delta” to “ δ ,” and “gamma” to “ γ ” to follow standard technical usage
728.Table T note 4	Retained explanatory language that missing from the corresponding federal text of 40 C.F.R. 268.40; corrected position of comma; corrected spelling of “treatment”
728.Table T note 7	Deleted unnecessary “as”
728.Table T Board Note	Added Board Note citation to the table to 40 C.F.R. 268.40 as the source of this table
* 728.Table U “ α -BHC”	Changed “alpha” to “ α ” to follow standard technical usage
* 728.Table U “ β -BHC”	Changed “beta” to “ β ” to follow standard technical usage
* 728.Table U “ δ -BHC”	Changed “delta” to “ δ ” to follow standard technical usage
* 728.Table U “ γ -BHC”	Changed “gamma” to “ γ ” to follow standard technical usage
* 728.Table U “chlordanne”	Changed “alpha” to “ α ” and “gamma” to “ γ ” to follow standard technical usage
* 728.Table U Board Note	Added Board Note citation to the table to 40 C.F.R. 268.48 as the source of this table
738. Source Note	Corrected Illinois Register citation in entry for R96-10/R97-3/R97-5

JCAR-Requested Amendments Correcting the Text from R96-10/R97-3/R97-5

Section	Revision(s)
* 703.213(d)	Corrected cross-reference to “35 Ill. Adm. Code 724.985(c)(1)”
* 703.232(c)(2)(C)	Removed duplicated words and punctuation: “an analysis of the material with which the hazardous waste prior to blending,”
720.111(a) ASTM D1946-90	Removed capitalization from “approved”
721. Source Note	Corrected format of references to R81-22 and R95-20
721.102(a)(2)(C)	Removed ending conjunction “or”

721.105(f)(3)	Removed extra comma and space not deleted in prior amendments
* 721.132 K101	Added hyphen to “organo-arsenic”
* 721.133(e) P060	Deleted hyphen from “dimethanonaphthalene”
* 721.133(f) U002	Corrected “UOO2” to U002”
* 721.133(f) U003	Corrected “UOO3” to U003”
* 721.133(f) U036	Added comma and space to “chlordan, alpha”
* 721.Appendix H 2-Acetylaminofluorene	Corrected “UOO5” to “U005”
* 721.Appendix H Arsenic pentoxide	Corrected “PO11” to “P011”
* 721.Appendix H Hydrogen sulfide	Corrected “H2S” to “H ₂ S”
722.110(e)	Corrected cross reference from “Section 722.151” to “Section 722.170”
* 722.158(a)	Changed cross reference format from “722.Subpart H” to “Subpart H of this Part” (twice)
* 722.180(a)	Replaced comma with “or”
* 722.184(a)	Corrected cross reference format from “Section 262.184 (a)(1) and (a)(2)” to “subsections (a)(1) and (a)(2) of this Section”
* 722.184(b)(6)	Placed quotation mark before “name” in form
* 722.187(a)	Corrected Illinois EPA’s Zip Code to “62794”
* 724.933(e)(2)	Corrected spelling of “corresponding;” corrected “S” to “Σ”
* 724.933(e)(4)	Corrected error of adding parentheses without underlining by removing them
* 724.933(l)(1)(A)	Corrected “500 ppmv of this Section” to “500 ppmv above”
* 724.950(f)	Corrected “than” to “that”
* 724.964(b)(2)	Corrected “than” to “that”
* 724.980(a)	Corrected “724.Subparts I, J, or K” to “724.Subpart I, J, or K”
* 724.980(a) Board Note	Corrected “that” to “than”
* 724.984(c)(2)(B)	Corrected “section” to lower case
* 724.984(e)(1)(B)(ii)	Corrected “one of this Section the other” to “one above the other”
* 724.990(b)	Added preposition “of”
* 724.990(c)	Corrected “excepted” to “except”
* 725.112(b)	Removed “40” from citation; added ending parenthesis mark
* 725.113(b)(8)(B)	Corrected “form” to “from”
* 725.171(a)(4)	Removed “each of”
* 725.414(f)	Added definite article “the” before “Board”
* 725.933(d)	Added ending period
* 725.933(e)(2)	Added definite article “the” before “standard temperature” and “is” before “20° C;” corrected “S” to “Σ”
* 725.933(e)(4)	Changed to lower case “log ₁₀ ”
* 725.933(j)	Hyphenated “closed-vent”

725.934(a)	Added ending period
725.934(c)(1)(D)	Corrected factor “10 ⁶ ” to “10 ⁻⁶ ”
* 725.964(b)(2)	Corrected “than” to “that”
* 725.964(j)(1)	Corrected “Section” to “Sections”
* 725.964(k)(2)	Corrected “Sections” to “Section”
* 725.981 “volatile organic concentration”	Hyphenated to correct “mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase” to “mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase”
* 725.985(b)(1)(A)(iii)	Deleted “is”
* 725.985(c)(2)(B)	Changed to lower case for “section”
* 725.985(c)(4)(A)	Changed to lower case for “sections”
* 725.985(e)	Removed hyphenation from “fixed roof”
* 725.985(e)(1)(B)(ii)	Corrected “of this Section” to “above”
* 725.985(f)(3)(B)(i)	Corrected “of this Section” to “below”
* 725.985(f)(3)(D)(iv)	Removed unnecessary “are”
* 725.986(c)(1)(D)	Moved “that”
* 725.988(c)(7)	Corrected cross references from “Section 725.1033” to “Section 725.933” (twice)
* 725.989(b)	Corrected cross reference from “Section 265.115” to “Section 725.115”
* 725.990(a)	Corrected cross reference from “Sections 264.984 through 264.987” to “Sections 724.984 through 724.987”
* 725.990(e)(1)(B)	Corrected cross references from “Section 725.1035” to “Section 725.935” (twice)
* 725.990(e)(1)(C)	Corrected cross reference from “Section 265.935” to “Section 725.935”
728.101(f)	Corrected cross-reference to “Sections 728.107 and 728.150”
728.107(b)(6)	Added comma after “e.g.”
728.107(d)(2)	Added “under” before cross reference
728.Table C “CMBST”	Amended text to follow that of corresponding 40 C.F.R. 268.42, table 1
728.Table C “PRECIP”	Added closing parenthesis to entry (2)
728.Table C “RECORR”	Deleted ending em-dash from entry (5)
728.Table T “F039”	Corrected “or” to “of” in entry for xylenes
728.Table T “U190”	Retained parenthetical “(measured as Phthalic acid or Terephthalic acid)” erroneously added in the prior docket without underlining
728.Table T “U227”	Corrected spelling of chemical name “1,1,2-trichloroethane”
* 728.Table U “fluoride”	Retained footnote marking “ ⁵ ” erroneously added in the prior docket without underlining
738. Table of Contents	Added commas to separate the elements of the series in the heading for Section 738.101
* 738.101	Added commas to separate the elements of the series in the heading

738.118(e)	Deleted past effective date
738.118(f)	Deleted past effective date

Discussions of Particular Federal Actions

Conditionally Exempt Small Quantity Generator Waste Exclusion—Section 721.105

USEPA amended its solid and hazardous waste regulations relating to hazardous waste that is conditionally exempt from regulation as hazardous waste because it is generated by what is called a “small quantity generator.” This is called CESQG waste. USEPA is requiring that this waste be disposed of in a facility that meets certain minimum national standards, rather than allowing its burial in unregulated facilities. In order for the small quantity generator exclusion to apply, the generator now has limited options in choosing a disposal facility. The disposal facility must comply with one of three alternative bodies of regulations: (1) the hazardous waste treatment, storage, and disposal (T/S/D) facility standards of 40 C.F.R. 264 or 265 (corresponding with 35 Ill. Adm. Code 724 or 725); (2) the municipal solid waste regulations of 40 C.F.R. 258 (corresponding with 35 Ill. Adm. Code 810 through 813); or (3) the new standards of 40 C.F.R. 257, Subpart B for disposal of conditionally-exempt small quantity generator waste.

The Board incorporated the amendments to 40 C.F.R. 261.5 into corresponding 35 Ill. Adm. Code 721.105 with minimal deviation from the federal text. The Board deleted the “January 1, 1998” effective date language from the text of subsections (f)(3)(E) and (g)(3)(E) because that date is already past. Illinois law provides that regulatory amendments can go into effect only after filing with the Secretary of State or at a later date stated in the rule. (415 ILCS 100/5-40(d) (1997)). This means that the use of an earlier effective date is not permissible. With regard to the federal references to the RCRA Subtitle D MSWLF rules of 40 C.F.R. 258, we referred to the Illinois MSWLF rules of 35 Ill. Adm. Code 810 through 814 or the federal 40 C.F.R. 258 rules. The Board added the references to 40 C.F.R. 258 to avoid a situation where an Illinois generator is prohibited from disposing of its CESQG waste in an out-of-state RCRA Subtitle D facility that is not regulated under Parts 810 through 814 of the Illinois rules. We have also retained references to 40 C.F.R. 257 in the text.

The Board added Board notes at subsections (f)(3)(E) and (g)(3)(E) in response to the Agency’s concerns expressed in PC 2 over the prohibitions in 35 Ill. Adm. Code 811 through 813 against disposing hazardous waste at solid waste landfills. The Board notes observe that the Illinois solid waste landfill rules prohibit the disposal of hazardous waste in those facilities. The notes state that subsections (f)(3)(E) and (g)(3)(E) incorporate federal requirements relating to CESQG waste and that the Board does not intend them to be read as authorizing the disposal of hazardous waste in solid waste landfills.

Illinois does not currently have regulations comparable to 40 C.F.R. 257 relating to non-Subtitle D solid waste disposal facilities. This is because USEPA adopted part 257 in 1979, 44 Fed. Reg. 53460 (Sep. 13, 1979) to further the purposes of RCRA Subtitle D and provide guidance as to whether a site is an illegal “open dump” or a legal “landfill.” See

RCRA, section 4004, 42 U.S.C. § 6944 (1996); 40 C.F.R. 257.1(a) (1997). The counterpart in Illinois law to this older segment of 40 C.F.R. 257 is Sections 3.24 and 21(a) of the Act, which define and prohibit “open dumping” in Illinois.

Recently added subpart B to 40 C.F.R. 257 actually sets forth substantive facility management standards for landfills receiving CESQG waste. See 40 C.F.R. 257.5-257.30. We do not believe that our authority under Sections 7.1 and 22.4 of the Act would allow us to use the identical-in-substance procedure to adopt any such rules, since they are not part of the federal RCRA Subtitle C program. The Board further does not believe that the federal rules fall within the scope of our Section 22.40 MSWLF mandate, since the Part 257 facilities are not municipal solid waste landfills. Thus, we believe that incorporation of the federal standards for facilities that dispose of CESQG waste into the Illinois regulations would require a general rulemaking under Section 27 or 28.2 of the Act. If the Agency or some other interested person concludes that such an action is desirable, they could file an appropriate rulemaking petition before the Board relating to incorporating such regulations.

Since there are no Illinois counterpart regulations to 40 C.F.R. 257, subpart B, the Board retained references to 40 C.F.R. 257.5 through 257.3 at subsections (f)(3)(F) and (g)(3)(F). Subsections (f)(3)(F) and (g)(3)(F) state the scope of the CESQG waste exemption—*i.e.*, the CESQG waste generator must submit the waste for disposal only at a compliant facility, assuming it does not send it to a RCRA Subtitle C hazardous waste facility or a RCRA Subtitle D MSWLF facility. Since the requirements of these subsections are imposing a requirement on the CESQG waste generator, we do not perceive that these subsections directly require compliance with any of the hazardous waste or non-hazardous solid waste landfill facility requirements in any way. Thus, the Board has not incorporated the 40 C.F.R. 257, subpart B requirements by reference.

The Board requests public comment on our approach to the federal CESQG waste amendments. We specifically request comment as to whether the parallel reference in subsections (f)(3)(E) and (g)(3)(E) to 40 C.F.R. 258 are necessary. The Board requests comment on the Board notes added after subsections (f)(3)(E) and (g)(3)(E), which clarify that the CESQG waste requirements do not authorize the disposal of hazardous waste in solid waste facilities where such disposal is prohibited. We further specifically request comment on our handling of the new 40 C.F.R. 257 requirements, including our reference to them without incorporation by reference.

Amendments to USEPA Addresses—Section 720.111

USEPA adopted technical amendments on January 14, 1997, to change the address for its Region V offices. Illinois is within USEPA Region V. Among the various regulations amended were hazardous waste and UIC rules. The hazardous waste rules amended were 40 C.F.R. 262, appendix, and a 40 C.F.R. 272 provision relating to authorization of state RCRA Subtitle C programs. The two amended UIC provisions of 40 C.F.R. 147 pertain only to authorization of state programs. There are no counterparts in the Illinois rules to the federal authorization requirements, since those are requirements imposed on the state program itself,

and they have no direct applicability to the regulated community. 40 C.F.R. 262, appendix, on the other hand, is incorporated by reference in 35 Ill. Adm. Code 722.Appendix A.

To revise the Illinois regulations to incorporate the federal change of address, the Board updated the incorporation of 40 C.F.R. 262, appendix in 35 Ill. Adm. Code 722.Appendix A to the 1997 edition of the C.F.R., which reflects the January 14, 1997, federal technical amendments. The Board requests public comment on the change of address for USEPA Region V.

The Military Munitions Rule—Parts 703 and 720 through 726

One of the most significant areas of federal amendments included in this consolidated docket involves the regulation of waste military munitions that are hazardous waste. USEPA adopted the military munitions rule on February 12, 1997. The rule defines when conventional and chemical military munitions become hazardous waste and set forth requirements for the proper management of this waste. Included are amendments that affect activities beyond those involving only military munitions. First are amendments relating to emergency responses involving military and non-military munitions and explosives. Second is an exemption from the hazardous waste manifesting requirements for all generators and transporters that transport hazardous waste along a highway or public right-of-way between contiguous properties owned by the same person.

In adopting the rule, USEPA explained that the most significantly affected entities under the military munitions rule are the U.S. Departments of Defense, Energy, and Transportation (the U.S. Coast Guard) and the National Guard. Major segments of the military munitions rule apply directly to these entities. USEPA explained, however, that the emergency response segments of the rule would also impact civilian munitions and explosives and that the 40 C.F.R. 264 and 265, subpart EE T/S/D facility management standards for waste munitions and explosives would be “available for use” by both military and non-military entities. The revised hazardous waste manifesting requirement applicable to transportation between contiguous properties along a public right-of-way is not limited in application either to the military or to explosives and munitions.

The Board refers interested persons to the preamble discussion of the rule beginning at 62 Fed. Reg. 6622 (Feb. 12, 1997) for a detailed consideration of the federal rule. We also direct attention to the above table “Deviations from the Text of the Federal Amendments” (beginning on page 10 of this opinion) for indication of minor revisions to the text of the federal rules on which the Board will not elaborate in this opinion. The Board will instead focus on the major issues raised in the rule in incorporating its requirements into the Illinois regulatory scheme.

The federal military munitions shipping requirements of new 40 C.F.R. 266.203(a)(1)(ii) correspond with 35 Ill. Adm. Code 726.303(a)(1)(B). They require compliance by transporters of waste military munitions with “Department of Defense shipping controls.” Those controls are noted in 40 C.F.R. 266.203(c) as the following documents: “DOD Ammunition and Explosive Safety Standards” (DOD 6055.9-STD), the “Motor Vehicle

Inspection Report” (DD Form 626), the “Requisition Tracking Form” (DD Form 1348), the “Signature and Talley Record” (DD Form 1907), “Special Instructions for Motor Vehicle Drivers” (DD Form 836), and the “Government Bill of Lading” (GSA Standard Form 1109). 40 C.F.R. 266.203(c) states that it is the version of these documents in effect on November 8, 1995, that are intended, but it further provides that future editions of these documents become effective on the date of a *Federal Register* notice of their amendment.

The “exemption from regulation” provisions of 40 C.F.R. 266.203(a)(1) present potential problems in Illinois. The potential problems arise through the mechanisms for reinstatement by default and subsequent rescission of the exemption in 40 C.F.R. 266.203(b). Although the Board has proposed codification using the federal language for corresponding 35 Ill. Adm. Code 726.303(b), we believe that some modification of the federal language may be necessary before the Board finally adopts these amendments.

Under the federal scheme of regulation, waste military munitions in transportation are subject to full regulation as hazardous waste, unless certain conditions are fulfilled with regard to non-chemical munitions. The rules call this an “exemption from regulation,” and the exemption is lost when any of the conditions are no longer fulfilled. (40 C.F.R. 266.203(a).) This in itself presents no problem under the Illinois scheme of regulation.

However, the mechanism for reinstatement of the exemption could give rise to problems under Illinois law. The federal rules provide that a transporter may apply to USEPA and seek reinstatement of the exemption. The Director may reinstate the exemption based on the application. This is no problem in Illinois if the Board substitutes “the Agency” in place of “the Director.” It is arguably similar to a permit application and decision to grant that permit. The federal rules further provide, however, that if the Director of USEPA does not act on the application for reinstatement within 60 days, the reinstatement is deemed granted. (40 C.F.R. 266.203(b).) Although this mechanism for reinstatement would be unique in the Illinois rules, it is arguably similar to the provision under existing law for an application for permit with the addition of the addition of the 60-day default provision. But, the Board has some reservations on this point, noting that the legislature has specifically eliminated permit issuance “by operation of law” for all other aspects of the RCRA Subtitle C program in Sections 39 and 40 of the Act.

More significant problems arise with the mechanism for rescission of a default-granted exemption. The federal rules provide that USEPA may rescind an exemption deemed granted by default if USEPA finds “that reinstatement is inappropriate based on factors such as the transporter’s failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur.” (40 C.F.R. 266.203(b).) This presents two problems that the Board might have trouble curing. First, the usual mechanism for rescinding an Agency-granted permit in Illinois is in a proceeding before the Board pursuant to Title VIII of the Act. Section 39 of the Act allows the Agency to grant a permit, deny a permit, or grant a permit with conditions; it nowhere authorizes the Agency to rescind a permit once granted. Second, the bases for rescission set forth in the rule arguably

do not provide sufficient standards for an Agency decision to rescind the exemption. See Granite City Division of National Steel Co. v. PCB, 155 Ill. 2d 149, 613 N.E.2d 719 (1993).

Again, in this proposal the Board has used the federal language at proposed Section 726.303 with minimum deviation for the purposes of public comment. The Board requests public comments on the “exemption from regulation” provisions in the rules for transportation for military munitions. The Board specifically requests comments on the mechanism for reinstatement and the mechanism for rescission of reinstatement of the exemption. The Board requests that commenters suggest any alternative draft regulatory language, keeping in mind the following questions:

1. Should the Board split subsection (b) into three separate subsections? Subsection (b)(1) could provide for express reinstatement of the exemption by the Agency, including that final segment of 40 C.F.R. 266.203(b) relating to specification of additional conditions. Subsection (b)(2) could set forth the “deemed-granted” default provision. Subsection (b)(3) could provide for rescission of a default restoration of the exemption.
2. Should the Board allow for Agency reinstatement of a lost exemption? If so, under what circumstances should the Agency make its decision, and should that decision be appealable to the Board? If no, should an exemption become completely unavailable once lost, or should it be capable of reinstatement only by the Board, for example, in an adjusted standard proceeding?
3. If a person is allowed to apply to either the Agency or the Board for reinstatement, can the Board adopt the 60-day default “deemed-approved” provision, or should the Board adopt it as a deemed-denied provision?
4. Once an exemption is reinstated, can it be rescinded by the Agency? If yes, under what criteria should the Agency make its decision, and should the decision be appealable to the Board? If no, can the Board rescind the reinstatement, and if so, how?

40 C.F.R. 266.205(a)(2)(iii) (corresponding with 35 Ill. Adm. Code 726.306(a)(2)(C)) similarly incorporates the requirements of the document entitled “DOD Ammunition and Explosive Safety Standards” (DOD 6055.9-STD). 40 C.F.R. 266.205(e) refers to the November 8, 1995, version and states that future amendments will become effective upon publication of a *Federal Register* notice.

Since these various documents apparently contain requirements that USEPA is imposing on the regulated entities, the Board formally incorporates the documents by reference in 35 Ill. Adm. Code 720.111, the centralized incorporations provision for the hazardous waste regulations. The incorporation of future amendments is problematic. Section 5-75 of the Administrative Procedure Act [5 ILCS 100/5-75] (APA) prohibits the incorporation of later amendments and editions by reference. Thus, Illinois law requires that the Board limit the incorporations to the version of each that is available at the time we adopt the rules into

which they are incorporated. If future amendments or editions occur, the Board must then update the incorporation by regulatory amendment. This could be accomplished in a routine RCRA Subtitle C update, so long as the Board somehow becomes aware of the later amendment or edition when it occurs. This could prove problematic because the documents incorporated are not codified, and they are documents used by segments of the federal government with which the Board does not have regular contact.

Another aspect of the incorporation of these federal documents by reference relates to their immediate availability to the Board. Section 5-75 of the APA further requires that the Board maintain a copy of each incorporated document in its files and make them available for public inspection and copying. The Board has tried to contact USEPA to obtain copies of these military and federal government forms, but we have not yet been successful. The Board must have possession of the copies before we adopt the military munitions rule in order to comply with Illinois law.

The Board has incorporated the November 8, 1995, versions of each of the federal documents cited in 40 C.F.R. 266.203 and 266.205 by reference. We added Board notes to corresponding 35 Ill. Adm. Code 726.303 and 305 that explain the limitations on the incorporation of future editions and revisions of these documents by reference. The Board requests public comment on this incorporation, especially on the issues of how we might reliably become aware of future amendments to these documents for the purposes of future amendment of the Illinois regulations. The Board will continue to try to obtain copies of these documents, but we request the assistance of the Agency and members of the regulated community, as well as USEPA, in obtaining these copies.

Another document incorporated by reference is a provision of the Department of Defense Authorization Act of 1986. This provision is the basis for the definition of “chemical agent and munition” at Section 726.301 (derived from 40 C.F.R. 266.201). The Board could not locate this provision, 50 U.S.C. § 1521(j)(1), in West’s *United States Code Annotated* (1998 Supp.), so we are placing a copy of the document in our files for public inspection and copying, as located at the U.S. Government Printing Office site on the World-Wide Web² and printed.

In adapting the federal military munitions rule requirements to the Illinois regulatory scheme, the Board notes that several provisions in 40 C.F.R. 266.203 and 266.205 require notices be sent to “the Director.” In adapting these requirements, the Board requires that notice be sent to “the Agency,” according to our usual custom. It is apparent, based on the preamble discussion of the rule in the *Federal Register* (63 Fed. Reg. at 6625, 6648-49), that USEPA intends the states to implement the military munitions rule, even if the persons regulated are the military and entities of the federal government. Some of the notice provisions require oral notices. (See 40 C.F.R. 266.205(a)(1)(v) (corresponding with 35 Ill. Adm. Code 726.305(a)(1)(E)), where oral notice is required within 24 hours in the case of a loss of military munitions or where any breach of any provision that could result in an

² Internet address: <http://www.access.gpo.gov/congress/cong013.html>.

imminent threat to human life.) The Board has not substantively deviated from the federal notice provisions. However, in its final adoption of these rules, the Board would like to add some indications as to exactly how and where members of the regulated community must submit the required notices, and solicits comment on this point.

40 C.F.R. 266.203(b) and 266.205(c) (corresponding with 35 Ill. Adm. Code 726.303(b) and 726.303(c)) provide for reinstatement of an exemption from regulation as hazardous waste to which we direct specific attention. 40 C.F.R. 266.203(b) and 266.205(c) each provide that a request for reinstatement of the exemption from regulation as hazardous waste is deemed granted retroactively when there was no action on the application for reinstatement within 60 days of its submittal. The Board has proposed these reinstatement provisions as written by USEPA. Although Section 40(a)(1) of the Act generally imposes a 90-day limitation on the time for Agency decision on a permit application, that provision excludes Agency decisions on RCRA permits. The Board sees no immediate statutory impediment to implementation of the federal “deemed approved” language.

The Board requests public comment on the notice and reinstatement provisions. The Board is particularly interested in comments on any issues that might arise through submittal of federal notifications to the Agency. Is there any need to retain any requirement to notify USEPA? The Board would like the Agency to comment particularly as to how and where it would like members of the regulated community to submit the required oral and written notices. Does the Agency want the notices to be sent to its headquarters in Springfield or to its various regional offices? Will the Agency accept notices by e-mail in place of either oral or written notices? In addition to these issues, the Board would like interested persons to comment on any potential problems that might arise from the “deemed approved” provisions relating to reinstatement of the exemptions.

Phase IV Land Disposal Restrictions—Parts 721, 728, and 738

USEPA adopted its Phase IV land disposal restrictions on May 12, 1997. The Phase IV LDRs established treatment standards for wood preserving wastes. Included were conforming amendments to the F024 wastes from production of chlorinated aliphatic hydrocarbons, certain amendments intended to reduce the amount of paperwork generated by regulated entities, and amendments intended to clarify an exception from the LDR requirements for *de minimis* amounts of characteristic wastewaters. USEPA further adopted polymerization as a treatment alternative for certain ignitable wastes; excluded processed circuit boards and scrap metal from RCRA regulation, in order to encourage recycling; and decided not to classify certain wastes as “nonamenable,” which would have resulted in their ban from biological treatment.

As with the preceding discussion of the military munitions rule, the Board focuses here on discussion of substantive issues encountered in adapting the substance of the federal amendments into the Illinois regulations. We direct interested persons to the preamble discussion beginning at 62 Fed. Reg. 25998 (May 12, 1997) for a detailed consideration of the federal rule. The Board also directs attention to the table “Deviations from the Text of the

Federal Amendments” (beginning on page 10 of this opinion) for a listing of minor revisions to the text of the federal rules on which the Board will not elaborate in this opinion.

The Board encountered no problems in adapting the substance of the federal Phase IV LDRs into the Illinois rules, once we determined which rules had actually been revised in the May 12, 1997, USEPA action. USEPA adopted the rules in such a way that it is difficult to find some of the segments of federal text that have been revised. As the Board has observed in the past, *e.g.*, In the Matter of: RCRA Update, USEPA Regulations (July 1, 1995, through December 31, 1995), UIC Update, USEPA Regulations (January 1, 1996, through June 30, 1996), RCRA Update, USEPA Regulations, (January 1, 1996, through June 30, 1996) (November 6, 1997), R96-10/R97-3/R97-5 (consolidated), at page 43, it is very difficult to filter through dozens of *Federal Register* pages of text to find amendments without some indication as to the location of isolated amendments. USEPA does not use underlining and strike-through to indicate amendments. Although it is common practice for USEPA to reproduce only those segments of text under amendment in a particular *Federal Register* notice, USEPA did not do even this to aid the reader with regard to major portions of the Phase IV LDR amendments.

For example, when USEPA did this for its amendments to 40 C.F.R. 268, appendix VII (corresponding with 35 Ill. Adm. Code 728.Appendix G), it forced Board staff to compare 13 pages of *Federal Register* text word-by-word against the prior version in the *Code of Federal Regulations* to locate the amendments. Only a small number of the existing entries in the table had been amended. USEPA did the same for 40 C.F.R. 268, appendix VIII (corresponding with 35 Ill. Adm. Code 728.Appendix H), but that was only slightly more than two *Federal Register* pages long. The Board urges USEPA to develop some method of highlighting the changes it is making to its rules in any particular rulemaking, for the benefit not only of the Board but the regulated community as well.

The Board notes that we adopted minor segments of the Phase IV rules in the prior update docket R96-10/R97-3/R97-5. One segment of the Phase IV LDRs revised the required frequency of submission of documentation of shipments. Rather than requiring forwarding of the papers with each shipment sent to a treatment, storage, or disposal facility, the rules now require forwarding them on a one-time basis unless certain events occurred that would necessitate sending new documentation. The Board received a request that we expedite our consideration of this narrow aspect of the Phase IV LDR rules, so the Board included that limited action in the prior docket as requested. These were amendments to 35 Ill. Adm. Code 728.107(a)(1) through (a)(3) and (b)(4) based on segments of the May 12, 1997, federal amendments to 40 C.F.R. 268.7(a)(1) through (a)(3) and (b)(4).

In incorporating the remainder of the federal Phase IV LDR amendments, the Board observed that locating certain segments of text in the Illinois regulations is not as easy as usual. There is a near-linear structural relationship between most of the Illinois hazardous waste rules and their federal counterparts. Generally, adding 460.100 to the federal section number (after converting the one- and two-digit federal numbers to three-digit numbers) gives the Illinois section number. There are a few exceptions to this scheme, but those are usually equally easy

to convert (e.g., 40 C.F.R. 264.1080 correlates with 35 Ill. Adm. Code 724.980, and 40 C.F.R. 265.1101 correlates with 35 Ill. Adm. Code 725.1101). In Part 728, however, there are more exceptions that are not so easy to translate. USEPA codified major tables at 40 C.F.R. 268.7(a)(4), 268.40, 268.42, 268.44(o), and 268.48(a) that the Board has codified as 35 Ill. Adm. Code 728.Table I, 728.Table T, 728.Table C, 728.Table H, and 728.Table U, primarily to comport with *Illinois Administrative Code* format requirements. The relationships of these tables to their federal counterparts is less readily apparent. The Board used this opportunity to add a Board note at the end of each stating the federal provision from which it derives. We hope this change makes the tables a little easier to use.

The Board requests public comment on our adaptation of the federal Phase IV amendments into the Illinois regulations. We also request comment on the Board notes added to aid in correlating the Illinois tables with their federal counterparts.

Update to Analytical Methods (SW-846)—Section 720.111 and Parts 724 through 726

USEPA amended its references to incorporate Update III to the Third Edition of “Test Methods for Evaluating Solid Waste,” SW-846, on June 13, 1997, 62 Fed. Reg. 32452. As with the other amendments included in this docket, the Board directs interested persons to the preamble discussion in the *Federal Register* for the details surrounding the federal action. We direct attention to the table beginning on page 10 of this opinion for indication of deviations from the text of the federal amendments.

The principal incorporation of SW-846 by reference in the Illinois rules appears at 35 Ill. Adm. Code 720.111, which corresponds with 40 C.F.R. 260.11. USEPA amended 40 C.F.R. 260.11(a) in such a way that the federal analytical methods amendments prompted a plenary review of the documents incorporated by reference in 35 Ill. Adm. Code 720.111(a). The Board checked the appearance of every document incorporated at that section throughout the existing text of Parts 703 through 705, 720 through 726, 728, 730, 731, 733, 738, and 739. Although some of the documents that are incorporated by reference in 35 Ill. Adm. Code 720.111(a) are not also incorporated in corresponding 40 C.F.R. 260.11(a), the Board retained those references that are cited in segments of the substantive regulations. The Board is deleting those references that are no longer cited anywhere in the Illinois regulations. The references that appear in 35 Ill. Adm. Code 720.111(a) that do not also appear in corresponding 40 C.F.R. 260.11(a), but which are referenced in substantive regulations (*i.e.*, those retained), are the following:

References Retained That Do Not Appear at 40 C.F.R. 260.11(a) (Indicating the Locations in the Illinois Rules Where They Are Referenced)

Reference	Sections Where Referenced
ACI 318-83	724.673(a)(5) and 725.543(a)(5)
ANSI B31.3 and B31.4	724.292(e) and 725.292(e)
API Recommended Practice 1632	724.292(a)(3)(B)(iii), 724.295(c)(2), 725.292(a)(3)(B)(iii), and 725.295(c)(2)

API "Guide for Inspection of Refinery Equipment"	724.291(b)(5)(B), 724.293(i)(3), 725.291(b)(5)(B), and 725.293(i)(2)
API Recommended Practice 1615	724.292(e) and 715.292(e)
ASTM C 94-90	724.673(a)(5) and 725.453(a)(5)
ASTM D 88-87	726.200(g)
ASTM D 2161-87	726.200(g)
ASTM D 2267-88	724.963(d)(1) and 725.963(d)(1)
ASTM G 21-70	724.414(e)(2)(A) and 725.414(f)(2)(A)
ASTM G 22-76	724.414(e)(2)(B) and 725.414(f)(2)(B)
GPO "Standard Industrial Classification Manual"	702.110, 721.103(e)(2)(A), 721.104(a)-(12), 721.132, 728.Table T, and 739.100
NACE Recommended Practice RP0285-85	724.292(a)(3)(B)(iii), 724.295(c)(2), 725.292(a)(3)(B)(iii), 725.295(c)(2)
NTIS PB88-170766	728.106(b)(2) and (b)(4)
NTIS PB86-245-248 and PB88-150-958	726.206(h)
NTIS PB84-128677	725.192(a)(4)
NTIS PB91-120-006	726.Appendix I
NTIS PB93-169 365	720.122(a)(2), (c)(2), (e)(2), and (l)
NTIS EPA-450/R-92-019	726.206(h)

The references that do not appear in 40 C.F.R. 260.11(a) and which are not referenced in the existing regulations are the following: "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analysis of Metals, Bomb-Acid Digestion Method," E 926-88 C (available through the ASTM) and "Procedures Manual for Ground Water Monitoring at Solid Waste Disposal Facilities," EPA-530/SW-611, 1977 (available through the NTIS as document number PB 84-174820). The Board has deleted these two references.

The Board made several additional observations in reviewing the analytical and testing procedures incorporated by reference. First, USEPA uses the wrong method number for "Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester." USEPA uses "D-3278" for this ASTM method, when it is actually method number "D 3828." We also note that the Board has incorporated different versions of some methods than those cited by USEPA. This was because Section 5-45 of the APA requires the Board to maintain copies of all documents incorporated by reference, and the only versions of these methods available to the Board are later versions than those cited by USEPA. Thus, the Board has incorporated ASTM methods D 93-85, D 1946-90, D2382-88, and D 3828-87, while USEPA cites versions D 93-79 or D 93-80, D 1946-82, D 2382-83, and D 3828-78³. For the same reasons, the Board has retained the 1987 version of NFPA 30 (available through the NFPA), whereas USEPA cites the 1977 or 1981 versions of this document. Finally, the Board observed that we cited two versions of one ASTM method: D 2879-86 and D2879-92. We deleted the older version.

³ Note: USEPA actually cites the wrong method number, "D-3278-78," as noted in the foregoing discussion.

Other amendments constitute corrections to document incorporations or minor deviations from the way the methods appear in the corresponding federal text. At Section 720.111(a), we corrected the document number of the NACE document to “RP-02-85.” In the same section, under NTIS, we corrected the title of “Guideline on Air Quality Models” and added a statement of alternative availability as 40 C.F.R. 51, appendix W. In Section 720.111(b), the Board corrected the *Code of Federal Regulations* citation to “40 C.F.R. 51, appendix W.” We note that USEPA states that APTI Course 415 is available through the NTIS, stating nothing of its availability through APTI. We added this document to the list of those available through the NTIS, but the Board retained APTI as an alternative source for this reference.

In checking the occurrence of the references, the Board observed that commonly-used short-names for methods were sometimes missing. For example, the document entitled “Test Methods for Evaluating Solid Waste” is commonly referred to by its federal document number, “SW-846.” Thus, for enhanced ease in using the regulations and increased clarity, the Board opened Section 724.Appendix I to include the designation “SW-846” to the reference. Similarly, opened Sections 724.298(b), 725.298(b), and 725.301(e)(2) to add “NFPA 30” as a designation.

The Board invites public comment on how we updated the methods incorporated by reference in 35 Ill. Adm. Code 720.111 and throughout the existing text of the Illinois RCRA Subtitle C hazardous waste regulations. We are particularly interested in comments on the actions undertaken to correct or modify existing text. Thus, the Board specifically desires comment on the methods retained that do not also appear at 40 C.F.R. 260.11(a), the methods deleted because there are no active references to them anywhere in the substantive regulations, and on our use of later versions of some methods than the versions referred to by USEPA.

Discussions of Miscellaneous Other Amendments not Federally Driven

The tables on pages 20 through 29 of this opinion list numerous corrections and amendments that are not based on current federal amendments. Those tables indicate the amendments made with a brief explanation. Most of those amendments do not need further explanation, but the Board believes that there is benefit to discussion of a small number of them. The Board invites public comment on any of the issues raised by these actions.

Scope of Incorporations by Reference—Section 720.111(a)

Section 720.111 is the centralized listing of all documents incorporated by reference. Although Section 720.111 was originally modeled after 40 C.F.R. 260.11, it has become a little broader in scope. As the foregoing discussion of the analytical methods amendments indicates, 35 Ill. Adm. Code 720.111 includes many incorporated documents that are not similarly listed in 40 C.F.R. 260.11. The documents listed are incorporated for the purposes of all of the Illinois RCRA Subtitle C and UIC regulations, including that narrow portion of the underground storage tank (UST) regulations that is codified as 35 Ill. Adm. Code 731.

The Board added a statement to the preamble segment of Section 720.111(a) that indicates that the documents are incorporated by reference for the purposes of all the Parts of our regulations that constitute the RCRA Subtitle C, UIC, and federally-derived UST rules.⁴ The Board requests public comment on the addition of scope language for the incorporations by reference listing in 35 Ill. Adm. Code 720.111(a). Particularly, we request comment on whether we should include Part 731, the federally-derived UST rules, in the statement of scope, and whether the statement of scope should be broadened to embrace subsections (b) and (c) of this section.

Use of Greek Letters in Chemical Names—Sections 721.132, 721.133, 721.Appendix H, 724.Appendix I, 725.Appendix F, 728.Table T, and 728.Table U

It is common among chemists to indicate chemical structure or isomer by use of Greek letters. For example, “ α , α -dimethylphenylamine” indicates the points of substitution for two methyl groups; “ β -BHC” distinguishes the “ β ” isomer. This is the standard notation format. The Board’s rules, however, currently follow the federal text in using “alpha” for “ α ,” “beta” for “ β ,” “gamma” for “ γ ,” and “delta” for “ δ .” This leads to confusion when a name is encountered which uses multiple designations for a single substitution, such as “2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1a alpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-,” which is more clearly written as “2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1a α ,2 β ,2a β ,3 α ,6 α ,6a β ,7 β ,7a α)-.”

As part of our ongoing effort to include in our rules equations and formulae in the terms that are most clearly understood by the regulated community, in this instance chemists, the Board has substituted the Greek letters for their English-language names in this docket. The affected chemical names appear in various sections of the rules. The Board requests public comment on our substitution of the applicable Greek letters for their English-language names in 35 Ill. Adm. Code 721.132, 721.133, 721.Appendix H, 724.Appendix I, 725.Appendix F, 728.Table T, and 728.Table U.

Maintaining Parity with the Federal Rules—Sections 722.110 and 725.101

The Board structured the Illinois hazardous waste rules to be parallel with their federal RCRA Subtitle C counterparts. As stated earlier in this opinion (above at page 38), generally adding 460.100 to the federal section number gives the Illinois provision number. The Board has further tried to maintain parity within each provision, so that the subsection numbers also correspond between the two sets of rules. Of course, this is not always easily possible, such as when USEPA marks a provision “reserved” or subdivides a section into five “indent levels” of subsections. Under the required *Illinois Administrative Code* format, “reserved” sections and subsections are not allowed, only up to four “indent levels” are permissible, and subsections

⁴ 35 Ill. Adm. Code 732 includes state-derived underground storage tank regulations that we did not include in this citation.

must be numbered sequentially. (See 1 Ill. Adm. Code 100.340 (Secretary of State codification requirement).)

The Board believes that trying to maintain structural parity with corresponding federal rules is important for a variety of reasons. Chief among these reasons are that the parity aids members of the regulated community in following the Illinois rules. It also facilitates future amendments to the rules by easing location of amended provisions and easing translation of internal cross-references within the rules.

The Board sometimes uses “filler” devices to maintain structural parity with the federal regulations. Two “parity problems” arose in this proceeding, and the Board has used our devices to deal with each.

First, 40 C.F.R. 262.10(e) is a “federal only” provision that the Board need not adopt to maintain the state hazardous waste program. 40 C.F.R. 262.10(f) through (h), on the other hand, are compulsory provisions required as part of a state program. The Board never adopted a counterpart to 40 C.F.R. 262.10(e), so that 40 C.F.R. 262.10(f) through (h) formerly appeared as 35 Ill. Adm. Code 722.110(e) through (g), which breached structural parity with the federal rules. The addition of 40 C.F.R. 262.10(i) highlighted this fact. The Board restored parity in this proceeding by adding “filler” language at 35 Ill. Adm. Code 722.110(e) that explains the nature of the corresponding federal provision and why the Board did not adopt a similar provision. We then renumbered 722.110(e) through (g) to 722.110(f) through (h) and added new subsection (i) based on 40 C.F.R. 262.10(i).

Second, 40 C.F.R. 265.1(c)(2) is marked “reserved” by USEPA, and 40 C.F.R. 265.1(c)(2) is another provision that the Board does not need to adopt. The Board never adopted a corresponding 35 Ill. Adm. Code 725.101(c)(2) and (c)(4). Rather, the subsection numbering in Section 725.101 jumped from subsection (c)(1) to (c)(3) to (c)(5). To correct this, we have added “filler” language at subsections (c)(2) and (c)(4) in this proceeding to avoid renumbering subsections (c)(3) through (c)(14) as subsections (c)(2) through (c)(12) and losing structural parity with the corresponding federal regulations.

The Board requests public comment on our addition of “filler” language at 35 Ill. Adm. Code 722.110(e) and 725.101(c)(2) and (c)(4) to maintain structural parity with the corresponding federal regulations.

HISTORY OF RCRA SUBTITLE C, UST AND UIC ADOPTION
AGENCY OR BOARD ACTION?
EDITORIAL CONVENTIONS

The Board appends the following three routine discussions to this opinion. The first is a summary history of the Illinois RCRA Subtitle C and UIC programs. It lists all Board actions taken to adopt and maintain these programs since their inceptions. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all USEPA program authorizations issued to date. The second is a

discussion of how the Board codifies requirements that call for state determinations, such as for exemptions, exceptions, etc. The third discussion relates to our use of language in the codification of identical-in-substance rules. We intend these as reference aids for interested persons in the regulated community.

History of RCRA Subtitle C and UIC Adoption

The Illinois UIC (Underground Injection Control) and RCRA (Resource Conservation and Recovery Act) Subtitle C regulations, together with more stringent state regulations particularly applicable to hazardous waste, include the following Parts of Title 35 of the Illinois Administrative Code:

700	Outline of Waste Disposal Regulations (Repealed)
702	RCRA Subtitle C and UIC Permit Programs
703	RCRA Subtitle C Permit Program
704	UIC Permit Program
705	Procedures for Permit Issuance
709	Wastestream Authorizations
720	General
721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management Facilities
728	USEPA Land Disposal Restrictions
729	Landfills: Prohibited Wastes
730	UIC Operating Requirements
731	Underground Storage Tanks
732	Petroleum Underground Storage Tanks
733	Standards for Universal Waste Management
738	Hazardous Waste Injection Restrictions
739	Standards for the Management of Used Oil

Special provisions for RCRA Subtitle C cases are included in Parts 102, 103, 104, and 106 of the Board's procedural rules.

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA Subtitle C regulations. The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. USEPA reviewed and authorized the Illinois Phase I and Phase II regulations. The entire listing of all RCRA Subtitle C identical-in-substance rulemakings follows (with the period of corresponding

federal revisions indicated in parentheses). A listing of federal authorizations of the Illinois program to date, as noticed in the *Federal Register*, appears at the end of this historical summary of the Illinois hazardous waste program.

- R81-22 45 PCB 317, September 16, 1981 and February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)
- R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R82-19⁴ 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)
- R83-24⁵ 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)
- R84-9 64 PCB 427 and 521, June 13 and 27, 1985; 9 Ill. Reg. 11964, August 2, 1985, effective July 8 and 24, 1985. (1/19/83 through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)
- R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)
- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 and 12, 1987. (10/1/86 through 12/31/86)

⁵ On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. Commonwealth Edison Co. v. PCB, 127 Ill. App. 3d 446; 468 N.E.2d 1339 (3d Dist. 1984).

- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)
- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)
- R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)
- R90-17 Delisting Procedures (See below)
- R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)
- R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)
- R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)
- R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg. 17636, effective November 6, 1992. (7/1/91 through 12/31/91)
- R92-10 138 PCB 549, January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)
- R93-4 September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)

- R93-16 March 17, 1994, Supplemental opinion and order on April 21, 1994. (1/1/93 through 6/30/93)
- R94-7 June 23, 1994; 18 Ill. Reg. 12160, effective July 29, 1994. (7/1/93 through 12/31/93)
- R94-17 October 20, 1994; 18 Ill. Reg. 17480, effective November 23, 1994. (1/1/94 through 6/30/94)
- R95-6 June 1 and 15, 1995; 19 Ill. Reg. 9501, effective June 27, 1995. (Consolidated with R95-4, UIC Update.) (7/1/94 through 12/31/94)
- R95-20 June 20, 1996; 20 Ill. Reg. 10929, effective August 1, 1996. (1/1/95 through 6/30/95)
- R96-10 November 6, 1997, 22 Ill. Reg. 256, effective December 16, 1997. (Consolidated with R97-3, UIC Update, and R97-5, RCRA Subtitle C update.) (7/1/95 through 12/31/95)
- R97-5 November 6, 1997, 22 Ill. Reg. 256, effective December 16, 1997. (Consolidated with R96-10, RCRA Subtitle C update, and R97-3, UIC Update.) (1/1/96 through 6/30/96)
- R97-21 This docket. (Consolidated with R98-5, RCRA Subtitle C update, and R98-3, UIC Update.) (7/1/96 through 12/31/96)
- R98-5 This docket. (Consolidated with R97-21, RCRA Subtitle C update, and R98-3, UIC Update.) (1/1/97 through 6/30/97)
- R98-21 Next docket. (7/1/97 through 12/21/97)

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

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

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted USEPA delistings at the request of Amoco, Envirite, USX, and CSI (the date of the corresponding federal action is included in parentheses):

- R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, May 16, 1986, effective May 2, 1986. (Amoco Corp.)
- R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (Envirite Corp.)
- R91-12 128 PCB 369, December 19, 1991; 16 Ill. Reg. 2155, effective January 27, 1992. (USX Corp.)
- R95-20 June 20, 1996; 20 Ill. Reg. 10929, effective August 1, 1996. (1/1/95 through 6/30/95) (CSI)

Subsequently, upon the April 30, 1990, federal authorization of Illinois granting waste delistings, USEPA transferred pending delisting petitions to the Board. The Board docketed these as site-specific rulemaking proceedings (the name of the petitioner waste generator appears in parentheses):

- R90-18 Dismissed at 123 PCB 65, June 6, 1991. (USX Corp., South Works)
- R90-19 Dismissed at 116 PCB 199, November 8, 1990. (Woodward Governor Co.)
- R90-23 Dismissed at 124 PCB 149, July 11, 1991. (Keystone Steel & Wire Co.)

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

- R90-17 119 PCB 181, February 28, 1991; 15 Ill. Reg. 7934, effective May 9, 1991.

Waste generators have filed Part 106 adjusted standard petitions for solid waste determinations with the Board pursuant to Section 720.130 (generator name in parentheses):

- AS89-4 Dismissed at 105 PCB 269, November 15, 1989. (Safety-Kleen Corp.)
- AS89-5 Dismissed at 113 PCB 111, July 3, 1990. (Safety-Kleen Corp.)
- AS90-7 Dismissed at 124 PCB 125, July 11, 1991. (Quantum Chemical Co.)

Waste generators have filed Part 106 adjusted standard petitions for hazardous waste delistings with the Board pursuant to Section 720.122 (generator name in parentheses):

- AS91-1 Granted at 130 PCB 113, February 6, 1992, and modified at 133 PCB 189, April 23, 1992. (Keystone Steel & Wire Co.)

AS91-3 Granted at 139 PCB 121, February 4, 1993; opinion issued at 140 PCB 105, March 11, 1993. (Peoria Disposal Co.)

AS93-7 Granted February 17, 1994. (Keystone Steel & Wire Co.)

AS94-10 Granted December 14, 1994. (Envirite Corporation.)

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

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

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

One Part 106 adjusted standard proceeding filed pursuant to 728.106 sought relief from a prohibition against land disposal (petitioner's name in parentheses):

AS90-6 Dismissed at 136 PCB 93, September 17, 1992. (Marathon Petroleum Co.)

Other adjusted standard proceedings sought relief from aspects of the land disposal unit closure and post-closure care requirements (petitioners' names in parentheses):

AS90-8 130 PCB 349, February 27, 1992. (Olin Corp.)

AS91-4 131 PCB 43, March 11, 1992. (Amoco Oil Co.)

One adjusted standard proceeding sought relief from a RCRA Subtitle C land disposal restriction (petitioner's name in parentheses):

AS90-6 136 PCB 6, September 17, 1992. (Marathon Petroleum Co.)

Still another adjusted standard proceeding relates to substantive treatment, storage, and disposal facility requirements of the RCRA Subtitle C regulations (petitioner's name and requirements involved in parentheses):

AS91-10 Dismissed May 19, 1994. (Cabot Corp.; secondary containment for tanks)

In another regulatory proceeding, the Board has considered granting temporary relief from the termination of an exclusion of a hazardous waste listing in the form of an emergency rule (Petitioner's name in parentheses):

R91-11 Dismissed at 125 PCB 295, August 8, 1991. (Big River Zinc Corp.)

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

R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 14, 1984, effective December 4, 1984.

R83-28 68 PCB 295, February 26, 1986; 10 Ill. Reg. 4875, March 21, 1986, effective March 7, 1986.

R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, November 21, 1986, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed by the First District Court of Appeals. (Citizens for a Better Environment v. PCB, 152 Ill. App. 3d 105, 504 N.E.2d 166 (1st Dist. 1987).)

Public Act 90-502, eff. Aug. 19, 1997, amended Section 22.23a of the Act to require the Board to designate high intensity discharge lamps and fluorescent lamps as a category of universal waste based on a proposal to be filed by the Agency. The Board adopted such amendments to the Illinois hazardous waste rules on April 2, 1998, effective April 15, 1998. (In The Matter of: Amendments of 35 Ill. Adm. Code 703, 720, 721, 724, 725, 728, and 733 (Standards For Universal Waste Management) (Apr. 2, 1998), R98-12.)

USEPA periodically reviews the Illinois hazardous waste program as it evolves to incorporate more recent federal amendments. As a result of these reviews, USEPA has granted Illinois a number authorizations. The *Federal Register* citations for the authorizations are listed as follows:

47 Fed. Reg. 21043 (May 17, 1982) (Phase I authorization).

51 Fed. Reg. 3778 (Jan. 30, 1986) (Phase II authorization), effective January 31, 1986.

53 Fed. Reg. 126 (Jan. 5, 1988) (partial HSWA authorization), effective March 5, 1988.

54 Fed. Reg. 37649 (Sep. 12, 1989) (approvals codified as 40 C.F.R. 272.700 and 272.701), effective November 13, 1989

55 Fed. Reg. 7320 (Mar. 1, 1990), effective April 30, 1990

56 Fed. Reg. 13595 (Apr. 3, 1991), effective June 3, 1991

57 Fed. Reg. 3731 (Jan. 31, 1992), effective March 31, 1992

59 Fed. Reg. 30525 (June 14, 1994), effective August 14, 1994

61 Fed. Reg. 10684 (Mar. 15, 1996), effective May 14, 1996

61 Fed. Reg. 40520 (Aug. 5, 1996), effective October 4, 1996

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA Subtitle C docket. The entire listing of all UIC rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- | | |
|--------|--|
| R81-32 | 47 PCB 93, May 13, 1982; 6 Ill. Reg. 12479, October 15, 1982, effective February 1, 1984. (7/7/81 through 11/23/81) |
| R82-18 | 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82) |
| R83-39 | 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983, effective December 19, 1983. (4/1/83) |
| R85-23 | 70 PCB 311 and 71 PCB 108, June 20 and July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 and 29, 1986. (5/11/84 through 11/15/84) |
| R86-27 | Dismissed at 77 PCB 234, April 16, 1987. (No USEPA amendments through 12/31/86). |
| R87-29 | 85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87) |
| R88-2 | 90 PCB 679, June 30, 1988; 12 Ill. Reg. 13700, August 26, 1988, effective August 16, 1988. (7/1/87 through 12/31/87) |
| R88-17 | 94 PCB 227, December 15, 1988; 13 Ill. Reg. 478, January 13, 1989, effective December 30, 1988. (1/1/88 through 6/30/88) |

- R89-2 107 PCB 369, January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11 111 PCB 489, May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5 Dismissed at 109 PCB 627, March 22, 1990. (No USEPA amendments 12/1/89 through 12/31/89)
- R90-14 122 PCB 335, May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991. (1/1/90 through 6/30/90)
- R91-4 Dismissed at 119 PCB 219, February 28, 1991. (No USEPA amendments 9/1/90 through 12/31/90)
- R91-16 Dismissed at 128 PCB 229, December 6, 1991. (No USEPA amendments 1/1/90 through 6/30/91)
- R92-4 Dismissed at 133 PCB 107, April 9, 1992. (No USEPA amendments 7/1/91 through 12/31/91)
- R92-13 139 PCB 361, February 4, 1993; 17 Ill. Reg. 6190, effective April 5, 1993. (1/1/92 through 6/30/92)
- R93-6 August 5, 1993; 17 Ill. Reg. 15641, effective September 14, 1993. (7/1/92 through 12/31/92)
- R93-17 Dismissed at September 23, 1993. (No USEPA amendments 1/1/93 through 6/30/93)
- R94-5 November 3, 1994; 18 Ill. Reg. 18244, effective December 20, 1994. (7/1/93 through 12/31/93)
- R94-24 October 6, 1994. (USEPA amendments 7/1/93 through 12/31/94 included in RCRA Subtitle C docket R94-17)
- R95-4 June 1 and 15, 1995; 19 Ill. Reg. 9501, effective June 27, 1995. (Consolidated with R95-6, RCRA Subtitle C Update.) (7/1/94 through 12/31/94)
- R95-18 Dismissed October 5, 1995. (No USEPA amendments 1/1/95 through 6/30/95)
- R96-8 Dismissed February 15, 1996. (No USEPA amendments 7/1/95 through 12/31/95)

- R97-3 November 6, 1997, 22 Ill. Reg. 256, effective December 16, 1997. (Consolidated with R96-10 and R97-5, RCRA Subtitle C updates.) (1/1/96 through 6/30/96)
- R97-19 Dismissed May 1, 1997. (No USEPA amendments 7/1/96 through 12/31/96)
- R98-3 This docket. (Consolidated with R97-21 and R98-5 RCRA Subtitle C updates.) (1/1/97 through 6/30/97)
- R98-19 Dismissed February 19, 1998. (No USEPA amendments 7/1/97 through 12/31/97)

In one proceeding filed, the Board granted an adjusted standard from a UIC land disposal restriction, pursuant to the procedures outlined above with respect to the RCRA Subtitle C program (petitioner name in parentheses):

- AS92-8 Granted February 17, 1994. (Cabot Corp.; no migration exception)

USEPA authorized the Illinois UIC program on March 3, 1984, at 49 Fed. Reg. 3991 (Feb. 1, 1984); codified that approval as 40 C.F.R. 147, Subpart O, at 49 Fed. Reg. 20197 (May 11, 1984); and amended the authorization at 53 Fed. Reg. 43087 (Oct. 25, 1988) and 56 Fed. Reg. 9414 (Mar. 6, 1991).

Agency or Board Action?

Section 7.2(a)(5) of the Act requires the Board to specify which decisions USEPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced "Regional Administrator" with USEPA, so as to avoid specifying which office within USEPA is to make a decision.

In a few instances in identical-in-substance rules, decisions are not appropriate for Agency action pursuant to a permit application. Among the considerations in determining the general division of authority between the Agency and the Board are:

1. Is the person making the decision applying a Board regulation, or taking action contrary to ("waiving") a Board regulation? It generally takes some form of Board action to "waive" a Board regulation.
2. Is there a clear standard for action such that the Board can give meaningful review to an Agency decision?

3. Does the action result in exemption from the permit requirement itself? If so, Board action is generally required.
4. Does the decision amount to “determining, defining or implementing environmental control standards” within the meaning of Section 5(b) of the Act? If so, it must be made by the Board.

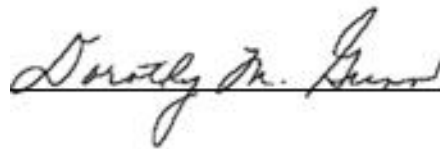
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note that there often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

Editorial Conventions

As a final note, the federal rules have been edited to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may” - “shall” is used when the subject of a sentence has to do something. “Must” is used when someone has to do something, but that someone is not the subject of the sentence. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either.”..”or” denotes “one but not both.” “And” denotes “both.”

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion was adopted on the 21st day of May 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board