

Therriault, John

PC# 2

From: McCambridge, Michael
Sent: Tuesday, December 30, 2014 5:49 PM
To: 'Eastvold, Jonathan C.'
Cc: Burke, Jennifer; Glosser, Deanna; Therriault, John; Tipsord, Marie; Robertson, Daniel; Miller, Nancy
Subject: RE: Quick question about Part 724 (and 725)
Attachments: r89-04fop (7-27-88).pdf; r89-01fop (RCRA-C).pdf; r15-1 Adopted (12-18-14).pdf; 40cfr264-13.pdf; 40cfr280-13.pdf

You mean the Board notes appended to definitions in 35 Ill. Adm. Code 724.241(g).

Since the citations relate exclusively to source of derivation of the pertinent definitions and those definitions provide definition of the terms without substantive reliance on any document of Insurance Services Office, Inc., the definitions to not rely on the cited source of the definitions. Thus, I do not believe incorporation by reference in necessary.

As is explained on page 17 of the Board's current opinion and order, the Board found it necessary to deviate from the federal definitions in the original adoption in 1989. The deviations follow similar deviations in the definitions of financial assurance terms in the original UST rules. The Board cites the 1989 RCRA Subtitle C rulemaking and the 1989 UST rulemaking that it followed.

On pages 12 and 13 of the July 27, 1989 UST rulemaking, the Board explained that USEPA opted not to rely on the ISO definitions. Instead, USEPA defined the terms "bodily injury" and "property damage" in terms of state law in the federal UST rules at 40 C.F.R. 280.91. (The federal UST rules do not define "environmental damage," "pollutants," and "pollution incident.") The federal rules at 40 C.F.R. 264.141 do not include definitions of any of the terms "bodily injury," "environmental damage," "pollutants," "pollution incident," and "property damage." Thus, the Board found necessary and added definitions to ensure clarity of the rules. The Board followed the approach taken in the UST rules for definition of these terms.

I hope this explanation provides the answers you seek. If you need more, please ask.

I attach copies of the Board opinions and orders and pertinent federal regulations for your reference.

John T.: Please enter this e-mail into docket R15-1 as a public comment. Replace my earlier e-mail with this one, since this includes all of the material included in that earlier e-mail.

From: Eastvold, Jonathan C. [<mailto:JonathanE@ilga.gov>]
Sent: Tuesday, December 30, 2014 1:58 PM
To: McCambridge, Michael
Subject: RE: Quick question about Part 724 (and 725)

Also...what answer—other than an appeal to *stare decisis* and the dangers of upsetting that much established law—should I give to questions regarding why you deviated from the federal definitions of these terms?

From: Eastvold, Jonathan C.
Sent: Tuesday, December 30, 2014 12:07 PM
To: McCambridge, Michael
Subject: Quick question about Part 724

In 724.171(g)'s board notes, do you need to do a formal incorporation by reference of the Insurance Services Office, Inc. definitions?

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