

ILLINOIS POLLUTION CONTROL BOARD
October 5, 1989

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R89-2
(7-1-88 THROUGH 12-31-88))

PROPOSAL FOR PUBLIC COMMENT

PROPOSED OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Sections 22.4(a) and 13.(c) of the Environmental Protection Act (Act), the Board is proposing to amend the Underground Injection Control (UIC) regulations.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Both Sections 22.4(a) and 13(c) provide for quick adoption of regulations which are "identical in substance" to federal regulations. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UIC regulations are found at 40 CFR 144 and 146 (and a new part, 148) This rulemaking updates UIC rules to correspond with federal amendments during the period August 1 through December 31, 1988. The Federal Registers utilized are as follows:

52 Fed. Reg. 46963	December 10, 1987
53 Fed. Reg. 28147	July 26, 1988
53 Fed. Reg. 30918	August 16, 1988
53 Fed. Reg. 34086	September 2, 1988
53 Fed. Reg. 37294	September 26, 1988
53 Fed. Reg. 37410	September 26, 1988
53 Fed. Reg. 37934	September 26, 1988
53 Fed. Reg. 41601	October 24, 1988

Usually, State UIC and RCRA program updates are divided into their traditional parts, UIC in 35 Ill. Adm. Code 704, 730 and now 738 (proposed), and RCRA in 35 Ill. Adm. Code 703, 705, and 720 through 729, with minimal overlap. However, the present UIC and RCRA program updates, involved in R89-1 and this docket, have more overlap than usual. The result is that along with the usual UIC Illinois sections being addressed in this update, this update also addresses the amendments to 35 Ill. Adm. Code 702, 705 and 720. The RCRA update, R89-1, has adopted the July through December 1988 amendments to 35 Ill. Adm. Code 703, 721, 724 through 726, and 728, on September 28, 1989.

Various sections of the federal UIC program were amended to allow Indian Tribes to be treated as states for purposes of

administering an Underground Injection Control Program. There does not appear to be a need to adopt these amendments because there do not appear to be any Indian tribes in Illinois. This conclusion is based on the fact that no Illinois tribes are listed on the Federal recognition list kept by the Secretary of the Interior. Listing on this recognition list is the first of four eligibility criteria under Section 1451 of the SWDA for treatment of Indian Tribes as states. Thus, the Board proposes not to adopt these rules pursuant to Section 7.2(a)(1) of the Act, the inapplicability exemption from the identical in substance rulemaking mandate.

35 Ill. Adm. Code 704 has been amended to include a new Subpart H: ISSUED PERMITS. This Subpart is composed of Sections from 35 Ill. Adm. Code 702.183 through 702.187 (except 702.186), with language applicable only to RCRA permits removed, so that only UIC permits are addressed.

HISTORY OF RCRA, UST and UIC ADOPTION

The Illinois UIC regulations, together with more stringent state regulations particularly applicable to hazardous waste, include the following:

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

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

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

R81-22 45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828,
April 23, 1982.

R82-18 51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

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

The UIC regulations were adopted as follows:

R81-32 47 PCB 93, May 13, 1982; October 15, 1982, 6 Ill. Reg. 12479.

The UIC regulations were amended in R82-18, which is referenced above. The UIC regulations were also amended in R83-39:

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

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

R85-23 70 PCB 311, June 20, 1986; 10 Ill. Reg. 13274, August 8, 1986.

R86-27 Dismissed at 77 PCB 234, April 16, 1987 (No USEPA amendments through 12/31/86).

R87-29 January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988; (1/1/87 through 6/30/87)

R88-2 June 16, 1988; 12 Ill. Reg. 13700, August 26, 1988. (7/1/87 through 12/31/87)

R88-17 December 15, 1988; 13 Ill. Reg. 478, December 30, 1988 (1/1/88 through 6/30/88)

R89-2 This Docket (7/1/88 through 12/31/88)

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

R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.

R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984.

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

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

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985. (through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986. (4/25/84 -- 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)
- R86-46 July 16, 1987; August 14, 1987; 11 Ill. Reg. 13435. (7/1/86 -- 9/30/86)
- R87-5 October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987. (10/1/86 -- 12/31/86)
- R87-26 December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988. (1/1/87 -- 6/30/87)
- R87-32 Correction to R86-1; September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987.
- R87-39 Adopted June 14, 1988; 12 Ill. Reg. 12999, August 12, 1988. (7/1/87 -- 12/31/87)
- R88-16 November 17, 1988; 13 Ill. Reg. 447, December 28, 1988. (1/1/88 -- 7/31/88)
- R89-1 September 28, 1989 (Final Adoption of which is not yet published in the Illinois Register) (8/1/88 -- 12/31/88)

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

The Underground Storage Tank rules were adopted in R86-1 and R86-28, which were RCRA update Dockets discussed above. A major revision was adopted in R88-27. Presently revisions to the program are before the Board in R89-4.

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

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

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

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

R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986.

R87-30 June 30, 1988; 12 Ill. Reg. 12070, effective July 12, 1988.

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

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

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

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

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

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

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

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

GENERAL DISCUSSION

The amendments are discussed in detail below. The following generally describes the USEPA actions encompassed by this rulemaking. The complete Federal Register citations are given above. All dates are 1988 unless otherwise stated.

December 10, 1987	RCRA permits may become UIC permits under certain circumstances.
July 26	Prohibitions of Underground Injection of Hazardous Waste.
August 16	Amends effective dates of mandated prohibitions on the underground injection of wastes from the "California list" wastes and certain wastes from the "First Third" wastes.
September 26	Oxygen Activation (OA) tool to test fluid migration
October 24	Corrects error concerning effective dates prohibiting the injection of certain wastes.

DETAILED DISCUSSION

The proposal has been edited to establish a uniform usage with respect to "shall", "must", "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 to the sentence. "Will" is used when the Board obligates itself to do something. "May" is used when a provision is optional. Some of the USEPA rules have grammatical problems, or appear to say something other than what was intended. Others do not read correctly when the Board or IEPA is substituted into the federal rule. The Board does not intend to make any substantive change in the rules by way of these edits.

PART 702

SUBPART A: GENERAL PROVISIONS

Section 702.104

This Section is drawn from 40 CFR 270.6 which is a short incorporation by reference Section. All but one of these documents is incorporated by reference in Section 720.111. The Board has therefore proposed to consolidate these lists in the latter Section. This will shorten the rules, ease maintenance of the incorporations by reference file, and avoid inconsistencies

as to editions.

Section 702.110

This Section is drawn from 40 CFR 144.3 and 270.2, which was amended at 53 Fed. Reg. 34086 and 37934. These add or modify definitions for "component", "elementary neutralization unit", "facility mailing list", "functionally equivalent component" and "wastewater treatment unit".

The definition of "elementary neutralization unit" has been amended to add "tank system" to the list of possible units. This definition is used in Section 724.101(f)(6), and other places, to state the scope of an exemption from the RCRA permit requirement and standards. The current definition of elementary neutralization unit, as modified by the Federal Register, reads:

...a device which: is used for neutralizing wastes **which are hazardous wastes** -only because they exhibit the corrosivity characteristic ...

This produces a substantive change in the definition which is unrelated to the other change, and which USEPA probably did not intend. Under the new federal definition, a subjective test is introduced: Is that the only reason the operator is neutralizing the waste, or does he have a hidden motive? Furthermore, consider an acidic waste which contains a toxic component which is unaffected by the neutralization process. Under the new language, since neutralization has no effect on the toxic component, the treatment unit would be an elementary neutralization unit, and exempt from the permit. Under the old language, the wastestream would be hazardous both because of corrosivity and the toxic component, so that the treatment unit would not qualify as an elementary neutralization unit. It seems unlikely that USEPA intended this about face on this definition. The Board has proposed to leave the struck language in the definition.

SUBPART C: PERMIT CONDITIONS

Section 702.152

This Section is drawn from 40 CFR 144.51 and 270.30, which was amended at 53 Fed. Reg. 37934. The RCRA only provision has been placed in Section 703.247, discussed below.

Section 702.160

This Section is drawn from 40 CFR 144.52(a) and 270.32(a), the former of which was amended at 53 Fed. Reg. 28147. The amendment requires the Agency to establish UIC permit conditions based on new requirements, included elsewhere in this rulemaking.

SUBPART D: ISSUED PERMITS

Section 702.181

This Section is drawn from 40 CFR 144.35 and 270.40, which was amended at 53 Fed. Reg. 37934. The federal amendment references the new procedures for permit modifications discussed below. The existing federal and State text differ in a substantive way, in that, while a RCRA or UIC permit provides a partial shield against federal enforcement, it provides none under State law. The text has also been modified to reference "reissuance" of permits, which is discussed below in connection with Section 703.270 et seq.

Sections 702.182 through 702.185 and 702.187

These Sections are drawn from 40 CFR 144.38 and 270.40, which were amended at 53 Fed. Reg. 37934. The general and RCRA only provisions in this and the following Sections have been moved to new Sections 703.260 et seq., adopted in R89-1, and the general and UIC only provisions have been moved to Section 704.260 et seq. This format change is necessitated by the extensive amendments to the RCRA permit modification procedures, discussed in R89-1.

Section 702.186

This Section is drawn from 40 CFR 144.40 and 270.43, which are not amended during this update period. It has been included to correct an editorial error noted during review of these Sections. The federal language lists causes for terminating a permit or denying a renewal application. The language adopted in R82-19 changed "terminating" to a reference to revocation by the Board under Title VIII of the Act, but also allowed the Board to "deny" a permit. Only the Agency has this authority under Section 39 of the Act. Accordingly, the Board has proposed to delete the reference to permit denial.

A similar provision stating that the Agency can deny a permit if grounds for revocation exist has been rejected for three reasons. First, this risks blurring the distinction between a permit denial and an enforcement action to revoke the permit. Second, it seems to limit the Agency's authority to deny a permit. Third, the federal language itself may be inconsistent with the post-closure care permit provisions of 40 CFR 270.1(c)(5) et seq. (35 Ill. Adm. Code 703.159). In certain situations, rather than deny an application, the Agency should issue a post-closure care permit. The Board solicits comment on this.

PART 704

SUBPART D: APPLICATION FOR PERMIT

Section 704.161

This Section, drawn from 40 CFR 144.31(a), is amended at 52 Fed. Reg. 46965, December 10, 1987. This amendment was inadvertently omitted from the previous UIC or RCRA update. The amendment to subsection (a) adds that a RCRA permit may constitute a UIC permit for hazardous waste injection wells if the requirements of 35 Ill. Adm. Code 724.Subpart X are met. The Board adopted Subpart X September 28, 1989 in R89-1.

SUBPART E: PERMIT CONDITIONS

Section 704.181

This Section was drawn from 40 CFR 144.51, and amended at 53 Fed. Reg. 28147, July 26, 1988. The amendment to subsection (b) requires permittees to keep records in accord with the new Subpart G, if appropriate. Also, subsections (c)(2) and (d) have been given headings.

SUBPART H: ISSUED PERMITS

This Subpart is composed of recodified Sections from certain Sections of Part 702.Subpart D, absent RCRA only language. Sections 702.182, 702.183, 702.184, 702.185 and 702.187 are proposed for repeal. The Sections correspond as follows:

702.181 (Effect of Permit)	remains 702.181
702.182 (Transfer)	now 704.260
702.183 (Modification)	now 704.261
702.184 (Causes for Modification)	now 704.262
702.185 (Facility Siting)	now 704.263 (Well Siting)
702.186 (Revocation)	remains 702.185
702.187 (Minor Modifications)	now 704.264

One section in this new Subpart, Section 704.262, has also been amended.

Section 704.262

This Section, entitled Causes for Modification, is amended in subsection (a) by deletion of the words, "but not reissuance" in the first sentence. Also, the second sentence now provides that for Classes I and III hazardous waste injection wells, the following may be causes for reissuance and modification. For all other wells, the following may be cause for reissuance and modification upon request or agreement of the permittee. In

subsection (a)(3), not only may just Class III wells be modified during their terms for cause, but now so may Class I hazardous waste injection wells.

Due to the addition of a new paragraph, subsection (b) was divided into a subsections (1) and (2). The new subsection (2) provides that a permittee may request modification of a permit when a determination that the waste being injected is a hazardous waste as defined in 35 Ill. Adm. Code 721.103 either because the definition has been revised, or because a previous determination has been changed.

PART 705

SUBPART B: PERMIT APPLICATIONS

Section 705.128

This Section was drawn from 40 CFR 124.5, amended at 53 Fed. Reg. 37934, September 26, 1988. Subsection (c) has been entitled "Agency Modification Procedures." The substantive amendment to subsection (c)(1) provides that for reissued permits, the Agency shall require the submission of a new application. Also, subsection (c)(3) was amended to exempt Class I and II wells as defined in 35 Ill. Adm. Code 702.110 from the requirements of the Section.

SUBPART D: PUBLIC NOTICE

Section 705.163

This Section was drawn from 40 CFR 124.10(c), amended at 53 Fed. Reg. 28147, July 26, 1988, and 53 Fed. Reg. 37410, September 26, 1988. The first amendment to this Section, made in July, applies to all Class I wells, including injection wastes not yet subject to prohibition, those injecting wastes which meet the treatment standards, and those whose wastes have been banned and which have received an exemption under Part 738. The amendment adds a new subsection (a)(6) which requires that for Class I UIC permits only, public notice must be given to the Illinois Department of Mines and Minerals. The current subsection (a)(6) is redesignated (a)(7).

The September amendment relates to Indian tribes, thus it is not proposed for adoption.

PART 720

SUBPART B: DEFINITIONS

Section 720.110

This Section is drawn from 40 CFR 260.10 which was amended at 52 Fed. Reg. 46963 and 53 Fed. Reg. 34086. These are the definitions applicable to Parts 720 et seq.

In addition to the changes derived from the federal amendments, the Board has proposed a few editorial revisions to these definitions. Several of these concern references to federal rules or statutes. As has been discussed in previous opinions, these are of concern because they may be subject to the APA limitations on incorporations by reference. The Board has attempted either to clearly make each incorporation by reference in compliance with the APA, or to clearly make it not an incorporation by reference. In the latter case, among the options are for the Board to eliminate unnecessary references, to replace federal references with derivative State rules, or to reword provisions so that the rule references federal actions rather than rules.

The Board has proposed to amend the definition of "designated facility" to remove unnecessary federal references. This term refers to the facility listed by the generator on the manifest to receive the hazardous waste shipment. Section 722.120 requires that the generator designate a facility with a RCRA permit or interim status. It is complicated to state this, since the receiving facility could be located out-of-State, and hence have a RCRA permit from USEPA or another authorized state. It is not necessary to repeat the limitation on designated facilities in both the definition and the operative Section.

The definition of "elementary neutralization unit" was amended at 53 Fed. Reg. 34086. The main change appears to be the addition of "tank systems" to the list of units which could be an elementary neutralization unit. See Section 702.110 discussion.

The definition of "landfill" was amended at 52 Fed. Reg. 46963, adding to the list of specific units which are not "landfills".

The definition of "miscellaneous unit" has also added at 52 Fed. Reg. 46963, which added the regulations applicable to miscellaneous units. The Board has added "tank system" to the list of units which are not "miscellaneous units." This change is parallel to the changes made at 53 Fed. Reg. 34086, and probably represents an error made by USEPA because different offices were working with out-of-date copies of the rules.

The definition of "POTW" has been modified to replace federal references with a derivative State definition, adopted with the pretreatment rules in R86-44 in 35 Ill. Adm. Code 310.

The definition of "wastewater treatment unit" was amended at 53 Fed. Reg. 34086. The main change is again to add "tank systems" to the list of units. The Board has also proposed to replace the references to the federal Clean Water Act with references to the derivative State rules in Parts 309 and 310. To be exempt from the hazardous waste rules, a wastewater treatment unit either has to have an NPDES permit under Part 309, or a pretreatment permit or authorization to discharge, issued by the Agency or authorized by POTW, under Part 310.

The USEPA language exempts units "subject to regulation" under the Clean Water Act. This is subject to the interpretation that a facility which is required to, but does not have an NPDES permit would thereby be exempt from the hazardous waste rules. This is probably not what USEPA intends. As proposed by the Board, the exemption would extend only to those units which have required the permits.

Section 720.111

The changes to the incorporations by reference Section are mainly routine updating of documents. As has been discussed in previous Opinions, while USEPA in actual practice regards its incorporations by reference as referring to future editions of documents, the APA requires the Board to cite to a certain edition presently in existence and available to the regulated community. Although USEPA does not routinely update its rules to reflect the editions actually in use, the Board needs to update incorporations by reference to cite the actual edition USEPA is using as new editions come to its attention.

Most of the revisions to the industry standards arose from the UST rules proposed in R88-27. The RCRA hazardous waste storage tank rules in Section 724.290 et seq. reference some of the same industry standards as the UST rules. The Board has updated Section 720.111 to use the current editions of these standards.

The Board has shifted the reference to ANSI/ASME B31.3 and B31.4 from the "ANSI" heading to "ASME", since the latter organization actually provided the current edition to the Board. A cross reference is left, since the standard is referenced as "ANSI" in the body of the rules. The editions have been updated from those cited in the R88-27 proposal, since newer editions have been received since that proposal.

The API, NACE and NFPA references have been changed to the format preferred by those organizations, as discussed in R88-27.

The CFR citations have been routinely updated to reflect the 1988 edition, which includes rules adopted by USEPA through July 1, 1988. The Board is unaware of any and solicits comment as to whether any specific amendments since that date need to be included with these broadside incorporations.

The Board has added a reference to 10 CFR 20, Appendix B, which is the NRC's definition of various types of radioactive material. This is used in existing Section 730.103. The Board has also added a reference to 40 CFR 136, which are USEPA analytic methods cited in various Sections. The Board has also referenced 40 CFR 302.4 through 302.6, which is the USEPA definition of CERCLA "hazardous substance" and reportable quantity rules. These are used in Parts 724 and 725.

PART 730

This Part was drawn from 40 CFR 146, amended by 53 Fed. Reg. 28148 on July 26, 1988. It applies to owners or operators of wells injecting hazardous wastes, including those injecting wastes not yet prohibited, those which meet treatment standards or which have been banned under 35 Ill. Adm. Code 728 or 738. Part 730 differs from the new Part 738 in that Part 730 requirements are necessary to effectively regulate hazardous waste injection which has not been banned and is therefore not subject to Part 738 requirements. Part 730 also assures that USDW's are not endangered from formation fluids.

September 26th Federal Interim Approval amendment, at 53 Fed. Reg. 37294, applying to all injection wells, provides for granting interim approval until October 26, 1990 for use of the Oxygen Activation (OA) tool for test fluid migration adjacent to the injection well bore as an alternative to the tests for mechanical integrity specified in 40 CFR 146.8(c) (Part 730.108(c)). USEPA is still requesting comments and further data on the viability of this alternative. At the end of the two year interim approval, the USEPA will issue a final determination on its use as an alternative to existing tests for demonstrating the absence of fluid movement behind the casing.

It is the Board's opinion that since the USEPA has not yet adopted a final rule, the mandate requiring Illinois to adopt this rule does not apply. Also, Section 730.108(d) currently allows for the possibility of the Oxygen Activation Test if the owner or operator can demonstrate the mechanical integrity of wells for which its use is proposed. For these reasons, the Board is not proposing to amend 35 Ill. Adm. Code 730.108(a) at this time. The Board invites comment.

SUBPART A: GENERAL

Section 730.101

This Section, drawn from 40 CFR 146 generally, is affected by a Federal Extension of Interim Approval a 53 Fed. Reg. 37296, September 26, 1988. The federal extension adds six months, from September 26, 1988 to March 27, 1989, for using alternatives to test the mechanical integrity of an injection wells' tubular goods. Since the six month extension deadlines have passed, this amendment is not proposed for adoption. Another minor amendment was made to replace the language of "On or after the date of approval by the United States Environmental Protection Agency (USEPA) of the Illinois UIC program" to the actual date of approval as published in the Federal Register, February 1, 1984. (See discussion under Section 730.103.)

Section 730.103

Minor changes have been made throughout this definition Section. One notable change is in the definition of "Date of approval by USEPA of the Illinois UIC program." Previously, it has been defined as "the date on which USEPA delegates primacy for the UIC program for Class I, III, IV and V wells to the State of Illinois pursuant to Section 1422 of the SDWA and 40 CFR 123." It has been revised to be defined as February 1, 1984, the date of the Federal Register notice of approval of the Illinois Program. (49 Fed. Reg. 3991). Note, however, that the effective date of the program is listed as March 3, 1984 at 40 CFR 147.700. Subpart O. A similar change was made in the definition of "Effective date of the UIC program". Public comment is solicited on whether the Board should use the February 1 or March 3, 1984 date, and why.

The Board also proposes several editorial revisions. The Board adds the Federal Public Law numbers to the definition of "Act" and removes the parallel definition title "or RCRA." The Board then proposes to delete the present definition of "RCRA" in favor of defining it as "Act". The Board proposes to remove "his" from the definition of "Director" in favor of gender-neutral language. The Board further proposes to add to the definitions of "Radioactive Waste" and "Total Dissolved Solids" two incorporations by reference that refer to 35 Ill. Adm. Code 720.111.

SUBPART B: CRITERIA AND STANDARDS APPLICABLE TO CLASS I WELLS

Section 730.111

This Section is drawn from 40 CFR 146.11, amended by 53 Fed. Reg. 28148, July 26, 1988. The amendment states that Subpart B now applies only to Class I non-hazardous wells. The Subpart

previously applied to all Class I wells. The Board also proposes amending the Subpart heading to include the word non-hazardous.

Section 730.113

Derived from 40 CFR 146.13, this Section is amended by 53 Fed. Reg. 28248, July 26, 1988. This amendment adds a subsection (d) providing for additional monitoring requirements. Specifically, the Agency will require annual pressure decay monitoring of the injection zone. Also, the rules make ambient monitoring requirements site-specific, thus giving the Agency discretion to determine an acceptable ambient monitoring program. These amendments are applicable to all owners and operators of Class I wells, whether hazardous waste injection wells or not. The Board uses the phrase "permit condition" in lieu of "Agency." The Board believes that this more accurately reflects how the Agency grants such approval. The Board proposes similarly amending existing references to Agency approval, at 35 Ill. Adm. Code 730.113(a)(3) and (c)(2).

SUBPART G: CRITERIA AND STANDARDS APPLICABLE TO CLASS I HAZARDOUS WELLS

This Subpart has been proposed in the USEPA format, thus conversion is relatively simple.

Section 730.161

This Section begins the new Subpart G. It is drawn from 53 Fed. Reg. 28148, July 26, 1988. It states the Subpart applies to Class I hazardous waste wells, supplementing the requirements of Subpart A, and applies instead of Subpart B unless otherwise noted. It also states definitions applicable to the Subpart. The Board proposes substituting for the 40 CFR 146.61(b) language "was authorized" in the definition of "existing well" with the more specific language "had a UIC permit or UIC permit by rule." Which are the only two modes of authorization.

Section 730.162

Derived from 40 CFR 146.62, added at 53 Fed. Reg. 28148, July 26, 1988, this Section requires the Agency to site Class I hazardous waste injection wells only in geologically suitable areas and the basis upon which the Agency shall make its decision. Also, 40 CFR 146.62(d)(4) provides for USEPA to grant approvals for sites not shown to meet the general criteria. The Board believes that the Board may more appropriately approve a site which does not meet the stated requirements if the owner makes the required demonstration pursuant to adjusted standard procedures in 35 Ill. Adm. Code 106.

This procedure exists at the federal level, but the

procedural context in unacceptable under Section 7.2(a)(5) of the Illinois Environmental Protection Act. The action would derogate Board rules, rather than implement them. This action involves "determining, defining or implementing environmental control standards" under Section 5(b) of the Act, and there is language in the federal rule which would form the basis a "justification" for an adjusted standard.

Petitioners for an adjusted standard must meet in their petitions for well siting the narrative standard of no endangerment of USDWs. According to USEPA, the most appropriate substantive guidance for making this demonstration is given in the Preamble to Part 730 in the July 26, 1988, Federal Register.

Section 730.163

Derived from 40 CFR 146.63, added at 53 Fed. Reg. 28148, July 26, 1988, this Section states that for Class I hazardous waste wells, the minimum area of review (AOR) is a two (2) mile radius around the well bore, with certain exceptions. For Class I hazardous wells, this local definition of AOR applies instead of the AOR definition stated in Section 730.106. The AOR pertains to the area within which the owner or operator must identify all wells penetrating the confining zone and the injection zone and determine whether they have been properly completed or plugged and abandoned.

In some circumstances, the Agency has the discretion to require a larger area of review. As stated at 53 Fed. Reg. 28135, no guidance for determining the larger area of review is given because no single calculation, or set of calculations, describes the universe of acceptable methods for determining area of review. Also, USEPA believes that prescribing by regulation the appropriate method could preclude permittees from using more sophisticated methods which might become available at some future point.

The Board proposes to amend the 40 CFR 146.63 language to reflect that authorization of a larger area of review occurs "by permit condition." See discussion of Section 730.113. The Board also adds "injection" to make the language appear uniformly throughout as "Class I hazardous waste injection wells" and convey the singular meaning and applicability of these provisions.

Section 730.164

Derived from 40 CFR 146.64, added at 53 Fed. Reg. 28149, July 26, 1988, this Section states that it applies instead of 35 Ill. Adm. Code 704.193 and Section 730.107 for Class I hazardous waste injection wells. This Section is intended to work in connection with 730.170, which outlines the information required

to demonstrate compliance during the the permit process.

This section sets forth requirements for corrective action, by requiring owners and operators to submit a plan outlining the protocol used for various listed activities as part of the application to the Agency. The Agency must review the plan, determine whether it is adequate and approve it, modify it, or deny the application. It also states possible consequences if the Agency finds the permittee's plan inadequate. This section also provides that for a Class I hazardous well requiring corrective action other than pressure limitations, permits issued must include a compliance schedule requiring any corrective action accepted or prescribed under another Section.

The section states the criteria and factors the Agency must consider in determining the adequacy of corrective action proposed by the applicant to prevent fluid movement into and between USDW's.

The Board proposes to substitute the federal "shall apply to the exclusion of" for the simpler and more direct "applies instead of" in the preamble. The Board proposes to add "injection" to the preamble. See discussion of Section 730.163. The Board proposes to add a citation to 35 Ill. Adm. Code 702.162, the provision for compliance schedules, to subsections (d)(1) and (d)(3). The Board has also put the language of the preamble of subsection (e) in the active voice, in order to avoid the convoluted federal language.

Section 730.165

Derived from 40 CFR 146.65, added at 53 Fed. Reg. 28149, July 26, 1988, this Section states construction and completion requirements for all existing and new Class I hazardous waste wells. It attempts to achieve an appropriate balance between specific design standards and more general performance standards. Specifically, the changes in construction requirements include additional criteria in overall performance standards, more explicit compatibility requirements, and certain requirements for owners and operators injecting through a well equipped with fluid seals.

Also, in subsection (c)(1), the amendments more specifically articulate the performance standards outlined in subsection (a).

Guidance to manufacturers as to what are acceptable compatible construction materials is provided in the federal language by reference to American Petroleum Institute standards and from an annual book of standards from the American Society of Testing Materials. The Board is unaware of any such existing standards relating to underground injection. Rather, the Board proposes a reference to an existing USEPA Technical Assistance

Document. The Board specifically invites comment on this, as well as to whether any API or ASTM standards applicable to underground injection wells presently exist.

The Board proposes putting the language of subsection (c)(1) into the active voice for clarity. The Board also proposes substituting "annular" for the federal "annual" in subsection (c)(2). The Board proposes using the language "specified by permit condition" at subsection (d)(1). See discussion of Section 730.113.

Section 730.166

This Section is derived from 40 CFR 146.66, added at 53 Fed. Reg. 28150, July 26, 1988. These requirements pertaining to logging, testing and sampling have been consolidated into this Section from existing Sections 730.112(d) and 730.114(b). The amendments also change these requirements in several ways.

- 1) The establishment of baseline data prior to injection, against which future logging and testing can be reassessed, is an important new use of data. The future utility of many logs is dependent on having base logs against which to compare the data. Thus, the operator's ability to demonstrate compliance at a future date may depend on the logs it ran when the well was first bored.
- 2) Another change is more clearly stating all the listed tests that the owner or operator must conduct, which was less clearly worded in Section 730.112(d).
- 3) By revising language to allow the Agency to approve an equivalent alternative, the use of improved tests may be considered.
- 4) The mechanical integrity requirements in 740.166(d) are revised, so now an initial demonstration of mechanical integrity for new wells must be made as indicated in current 730.166(a)(3).
- 5) There is now a burden on the Agency to require more coring and for the operator to conduct it.
- 6) The Agency may require coring of other formation types.
- 7) Owners and operators must also conduct pump or injectivity tests, in order to identify hydrogeologic properties of the injection zone through the empirical method.

The Board revised the text form 40 CFR 146.66. It proposes

putting the first sentence of the preamble to subsection (a) into the active voice for clarity. The Board also proposes changing the verb, "are" to "is" in subsection (a)(1). The subject of this first sentence of (a)(1) appears to be "a pilot hole," rather than "deviation checks." The Board also proposes repunctuating subsections (a)(2)(A)(ii) and (a)(2)(B)(ii) because subsections (a)(2)(A) and (a)(2)(B) are elements of a series within a larger series, subsection (a)(2), which in turn is an element in the series of subsection (a). The Board believes that this, combined with the overall subsection structure would add clarity. The Board proposes stipulating "by permit condition" in subsections (a)(3)(D) and (a)(3)(E). See discussion of Section 130.113. The Board also proposes adding "not less than" to the federal language corresponding to subsection (f). This would clarify that this is a minimum time requirement. The Board invites comment.

Section 730.167

This Section, derived from 40 CFR 146.67, added at 53 Fed. Reg. 28150, July 26, 1988, restates existing requirements more explicitly, changes some substantively and adds new requirements. This Section also adds a requirement for a waste analysis plan, establishes more precise standards for hydrogeological compatibility determinations, specifies the requirements for the compatibility of well materials and monitoring, revises and strengthens mechanical integrity testing, and establishes more specific ambient monitoring requirements.

Subsection (c) insures that a leak in the tubing would result in annulus fluid moving into the tubing, not in waste moving into the annulus. The language "unless such a requirement might harm the integrity of the well" provides the Agency with discretion and flexibility to permit otherwise when a positive hydrostatic balance across the injection tubing could lead to loss of mechanical integrity.

Specifically, the written waste analysis plan requires a description of how the waste will be analyzed and sampled and how the analysis will assure that the samples will be representative. To assure hydrogeologic compatibility, the operator must submit a plan which identifies anticipated reaction products and demonstrates that neither the waste nor the reaction products would adversely affect the injection or confining zone (satisfy requirements under Section 738.162). This amendment clarifies and adds some specificity to existing regulations in Sections 738.112 and 738.114, but does not substantially alter them.

Current mechanical integrity tests (MITs) require the operator to check for fluid movement behind the casing and for leaks in the tubing, casing, or packer. The proposed amendments

require more frequent annulus pressure tests and require the operator to conduct an annulus radioactive tracer survey for wells injecting hazardous wastes. Also, the use of a tool to evaluate the casing is required before operating the well.

The Board proposes adding "injection" to subsection (e). See discussion of Section 730.163. The Board proposes adding "by permit condition" to subsections (g)(1), (i)(1)(C), and (i)(1)(D). See discussion of Section 730.113. The Board also proposes substituting "without undue delay" for the corresponding federal "as expeditiously as possible" in the preamble to subsection (g). The Board proposes adding specific reference at subsection (h)(5) to Section 730.108, for the mechanical integrity demonstration requirements. Finally, the Board proposes reference to how Agency approval is gained by adding "permit modification" to subsection (j). See discussion of "permit condition" at Section 730.113. The Board invites comment on these revisions.

Section 730.168

This Section is derived from 40 CFR 146.68, added at 53 Fed. Reg. 28151, July 26, 1988. Ambient monitoring requirements are specified in 35 Ill. Adm. Code 730.113, and apply to all owners and operators of all Class I wells, not just hazardous waste injection wells. Subsection (e) restates these requirements which are applicable to only Class I hazardous waste injection wells, for easy reference.

For seismic monitoring, it is believed that the potential for Class I hazardous waste injection inducing tectonic activity is minimized by a number of amendments, e.g. Section 730.162(b) and 730.162(c)(2)(i). However, since circumstances exist under which local seismic monitoring may be foreseeably necessary, Subsection (f) provides the Agency with authority to require seismic monitoring on a case-by-case basis.

The Board proposes using "permit condition" in subsections (a)(3), (c)(2)(C), (d)(5), (e)(2)(A) and (e)(2)(B). See discussion of Section 730.113. Similarly, the Board proposes using "permit" in subsection (d)(4) to show how the Agency "specifies otherwise." The Board also proposes deletion of the "to the satisfaction of..." phrase from subsection (b). The Agency must grant or deny permits within the bounds of Illinois law, and the required informational demonstration will either satisfy or fail to satisfy the Agency in its review. The Board invites comment.

Section 730.169

This Section was derived from 40 CFR 146.69, added at 53 Fed. Reg. 28152, July 26, 1988. It states the minimum reporting

requirements for owners and operators of Class I hazardous waste injection wells. It requires the owners or operators to report changes in the ratio between the injection pressure and the flow rate to evaluate the long term performance of the injection formation. It also adds a new requirement under subsection (a)(3), the new alarm shutdown and resulting response requirements, but its applicability is limited to notification only if a loss of mechanical integrity is expected. Other routine occurrences would be reported with quarterly reports. Also, subsection (a)(5) requires reporting of both annular fluid lost and fluid gained in order to indicate leaks in the well tubing and indicate where injection pressure exceeds annular pressure.

The Board proposes revising the federal language in two regards. The Board believes repunctuation of subsection (a)(7) more clearly indicates that subsections (a) and (b) are dual requirements. The Board proposes using "permit condition" in subsection (b)(2). See discussion of Section 730.113.

Section 730.170

This Section was derived from 40 CFR 146.70, added at 53 Fed. Reg. 28152, July 26, 1988. It sets forth the information which must be evaluated by the Agency in authorizing Class I hazardous waste injection wells. It essentially restates the information of existing Section 730.114.

The Board proposes revising the preambles to subsection (a) and (b) to more direct phrasing. The Board also proposes offsetting the proviso at the end of the subsection (a) preamble with a comma, concluding subsection (a)(8) with a colon (rather than a semicolon) and offsetting the "where necessary" phrase of subsection (b)(7) with commas and removing the comma before "and." The Board proposes retaining the 40 CFR 146.70(d) language, "economically practicable" and "practicable," at subsections (d)(1) and (d)(2) because these appear vital thresholds to a key federal requirement. The Board invites comment.

Section 730.171

This Section was derived from 40 CFR 146.71, added at 53 Fed. Reg. 28153, July 26, 1988. It reorganizes and consolidates existing requirements for closure. Three new requirements for closure include:

- 1) Requiring the owner or operator to observe and record pressure decay for a time specified by permit condition,
- 2) Requiring the demonstration of mechanical integrity prior to plugging, and

- 3) Clarifying that both the owner or operator, as well as a third party, if different, must certify that the facility was closed according to a complaint closure plan.

The Board makes several revisions to the federal text. It proposes using "permit condition" in the subsection (a) preamble. The Board also observes that 40 CFR 146.71(a)(4) reiterates a requirement with identical language at paragraphs (a)(4)(v) and (a)(4)(x). The Board proposes retaining only the first occurrence at subsection (a)(4)(E) and dropping what would have otherwise appeared as (a)(4)(J). The Board also proposes substituting "stop" at subsection (a)(6) and rephrasing this subsection more directly and without gender-based language. The Board proposes adding "otherwise" to subsection (a)(G)(B), and specifying "permit condition" in this subsection and in subsections (d)(1), (d)(2)(D), (d)(5)(D), and (d)(7). See discussion of Section 730.113. To clarify that the informational submissions required under subsections (a)(6) are made as part of the permitting process, the Board addresses an additional subsection (A)(6)(C). The Board proposes language for subsection (a)(7) that would clarify that 30 days is a minimum time for the required notice. The Board also proposes dropping language from subsection (b) that would explicitly allow a shorter time for notice of closure. The Board believes that the Agency has inherent authority to accept shorter notice, and it would serve no purpose for the Board to constrain the Agency or encourage shorter notice. The Board proposes retaining the language and capitalization for the methods names in subsections (d)(5)(A) through (d)(5)(C). Are these industry-wide standard procedures? Are they published in some form? The Board invites comment.

Section 730.172

This Section was derived from 40 CFR 146.72, added at 53 Fed. Reg. 28154, July 26, 1988. This and the following Section mandate post-closure care requirements and associated financial responsibility requirements for hazardous waste injection wells. Although a properly chosen site should contain the waste indefinitely under natural conditions, other man-made conditions may affect containment. Owners or operators must submit a plan outlining the closure and post-closure care requirements. This would become a condition of the permit. These requirements survive permit termination. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. Any modifications of the permit are which might be required could be made using procedures at 35 Ill. Adm. Code 705.128.

Although Section 730.172(c) requires the owner of a Class I

hazardous waste injection well to provide certain information on the deed to the facility property or another instrument which is normally examined during title search, the proposed rule clarifies that this does not exempt the owner from complying with the Illinois Responsible Property Transfer Act of 1988, Ill. Rev. Stat. 1987 ch. 30, par. 901 (P.A. 85-1228, effective 1-1-89). This Section also requires that the owner or operator notify the Ill. Dept. of Mines and Minerals as to the depth and location of the confining zone.

The language of 40 CFR 146.72(b)(5) makes it appear that USEPA intends ultimate disposition of waste records at some central repository. At subsection (b)(5), the Board proposes requiring delivery to the Agency at the conclusion of the retention period.

Section 730.173

This Section was derived from 40 CFR 146.73, added at 53 Fed. Reg. 28154, July 26, 1988. The owner or operator must demonstrate and maintain financial responsibility for post-closure care. The rule is proposed to mirror the requirements of 35 Ill. Adm. Code 725.Subparts G and H. The minimum funds necessary are listed, and the obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

PART 738

A new Part, 738, derived entirely from 40 CFR 148, was added to identify hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells. The Part also defines the circumstances under which wastes otherwise prohibited from injection may be injected. The use of models now forms the basis for "no migration" petitions, versus the previous "4x/10x", because the "4x/10x" concept may not always afford the level of protection that is sought.

All the Sections are numbered from the source USEPA rule according to a simple correspondence:

USEPA Section number	148.1
Insert zeros to right of decimal point so there are 3 digits after decimal	148.001
Add constant	<u>590.100</u>
Section number in 35 Ill. Adm. Code	738.101

ADJUSTED STANDARDS FROM GENERAL PROHIBITIONS

The Federal 40 CFR 148 Rules contemplate that the Administrator of USEPA can grant exemptions to the general prohibitions upon petition and adequate showing of the owner or operator. The Administrator can also modify or terminate the exception under certain circumstances. As drafted by USEPA, this does not directly comport with Illinois law and administrative structure, so the Board proposes adaptation of the substance of the federal scheme to the Illinois system. The Board proposes using its existing adjusted standard procedure of 35 Ill. Adm. Code 106 as the framework for the state to grant the equivalent of a federal "exemption."

The structure of the federal rule presents two problems that the Board seeks to overcome. First, USEPA can require rejustification of the exemption during the course of permit review or on the basis of new information, whereas the Agency cannot review a Board-granted adjusted standard. Further, it is not clear that the Agency can petition for modification of an adjusted standard under the existing Board rules relating to reconsideration of Board orders and adjusted standards. The second, similar problem is that it is not clear that the Agency can petition the Board to terminate an adjusted standard using the existing procedures, absent an enforcement action, as is contemplated by 40 CFR 148.24.

The Board's proposed rule endeavors to solve both problems by opening existing procedures for use under this Part. Under the alternative proposed there is a reverse procedure that the Agency could use to petition for Board reconsideration of an adjusted standard--as sort of a "reverse adjusted standard" procedure. The proposed alternative waives the existing limitation periods for reconsideration of Board orders, in order to allow a more summary procedure. This procedure requires the Agency to initially request that the owner or operator petition the Board for modification of the adjusted standard. If the owner or operator fails to do so, the Agency can file for reconsideration. The Board may conduct a plenary review of the adjusted standard and/or require that the full procedural requirements for a new petition and of 35 Ill. Adm. Code 106. Subpart G apply to the proceeding, with the Agency as petitioner. This method would would contemplate a simultaneous waiver of the permit decision due date by the permittee if that permittee wishes to avoid issuance of "default" permits under subsection 738.123(a)(4).

Further, the proposed rule attempts to clarify that the existence of an adjusted standard does not insulate an owner or operator from enforcement of the Act, Board rules, and other laws. Initially, it requires this as a condition to all adjusted standards granted under this Part. Second, it expressly states

that "any person" may file an enforcement action before the Board under Section 33 of the Act. The rule specifically states that the Board may terminate an adjusted standard (as part of any sanction) for the same reasons that USEPA states its Administrator may terminate any exemption.

Some aspects of these revisions are highlighted below in the section-by-section discussion. The Board invites comment on its proposed adaptation of the federal procedures.

SUBPART A: GENERAL

Section 738.101

This Section was drawn from 40 CFR 148.1, added at 53 Fed. Reg. 28155, July 26, 1988. It generally describes the Part's purpose, scope and applicability. Subsection (c)(3), however, includes a substantive provision that allows continued injection of prohibited wastes under certain circumstances.

The Board, in subsections (c)(2), proposes using the adjusted standard as the means to gaining an exemption. The Board also proposes omitting the 40 CFR 148.1(c)(1) language "with respect to such wastes" and the 148.1(c)(2) language "to allow injection of restricted wastes..." as surplusage. Subsection 738.122(c) explicitly states the limitations of adjusted standards granted for underground injection. The proposal omits 40 CFR 148.1(c)(4) in its entirety because the applicable date is past.

Section 738.104

This Section was drawn from 40 CFR 148.4, added at 53 Fed. Reg. 28155, July 26, 1988. It provides for the possibility for owners or operators of Class I hazardous waste injection wells to apply for an extension of the effective date of any applicable prohibitions under Subpart B by application to USEPA. Granting such extensions is a federal prerogative under Section 3004(h)(3) of RCRA, so the Board does not propose to parallel provision retaining such authority. Rather, 35 Ill. Adm. Code 728.105(b), parenthetically referenced in this provision, provides that USEPA-granted extensions are deemed extensions for the purposes of the parallel Board rule. The Board invites comment.

Section 738.105

This Section was drawn from 40 CFR 148.5, added at 53 Fed. Reg. 28155, July 26, 1988. It requires generators of hazardous wastes that are disposed of into Class I injection wells to comply with applicable requirements of Part 728.107(a) and (b). Also, owners and operators of Class I hazardous waste injection wells must comply with certain requirements of Section 728.107(c).

SUBPART B: PROHIBITIONS ON INJECTION

Section 738.110

This Section was drawn from 40 CFR 148.10, added at 53 Fed. Reg. 28155, July 26, 1988. This Section bans certain spent solvent wastes specified in 35 Ill. Adm. Code 721.131 from underground injection, unless the solvent waste is a solvent-water mixture or solvent containing sludge containing less than one percent total F001 through F005 solvent constituents listed in an included table. A total ban on injecting these wastes takes effect on August 8, 1990 under subsection (b). Subsection (c) states when exemptions from these bans are possible.

The Board has incorporated the table into the body of the proposed section because Illinois' codification scheme does not allow an appendix to an individual section. The Board also proposes to name "1,1,2-Trichloro-1,2,2-trifluoroethane" what appears at Table A to 40 CFR 148.10 as "1,2,2-Trichloro-1,2,2-trifluoroethane." The federally-named compound does not exist, and the Board-proposed name follows standard IUPAC nomenclature for what appears as USEPA's intent.

Subsections (c)(2) and (c)(4) in the proposed language refer to adjusted standards. The Board notes that two types of adjusted standards are contemplated under subsection (c): a 35 Ill. Adm. Code 738.Subpart C Adjusted Standard, discussed above, or a 35 Adm. Code 728.144 adjusted treatment standard.

Section 738.111

This Section was drawn from 40 CFR 148.11, added at 53 Fed. Reg. 28155, July 26, 1988. This Section bans injection of certain dioxin-containing wastes, then states the circumstances under which the ban does not apply.

The proposed language of subsection (a) omits a past effective date from 40 CFR 148.11(a). Subsection (b)(2) refers to a 35 Ill. Adm. Code 738.Subpart C adjusted standard, whereas subsection (b)(4) refers to a 35 Ill. Adm. Code 728.144 adjusted treatment standard.

Section 738.112

This Section was derived from 40 CFR 148.12, added by 53 Fed. Reg. 30918, August 16, 1988. It bans hazardous wastes listed at 35 Ill. Adm. Code 728.132 from underground injection that contain PCBs at concentrations greater than or equal to 55 ppm, or halogenated organic compounds at concentrations greater than or equal to 10,000 mg/kg.

Subsection (b) was further amended by 53 Fed. Reg. 41602, October 24. The amendment corrects an error in the final August 16 rule establishing effective dates prohibiting the injection of "California wastes," and certain "First third" wastes. Specifically, the October amendment clarifies that a two-year capacity variance (to August 8, 1990) has been granted to all injected wastes covered under Section 3004(d) of RCRA, except liquid hazardous wastes containing PCBs equal to or exceeding 50 ppm and hazardous wastes containing HOCs at concentrations equal to or greater than 10,000 mg/kg. These latter wastes were prohibited from disposal in injection wells on August 8, 1988, while the remaining California list wastes will be prohibited on August 8, 1990.

Subsection (c) of Section 738.112 was added at 53 Fed. Reg. 30918, August 16. It states when the bans in the other subsections are not applicable.

The proposed text of subsection (a) omits a past effective date. Subsection (c)(2) refers to a 35 Ill. Adm. Code 738.Subpart C adjusted standard.

Section 738.114

This Section was derived from 40 CFR 148.14, added by 53 Fed. Reg. 30918, August 16, 1988. Effective August 8, 1990, it bans certain of the wastes listed in 35 Ill. Adm. Code 721.132 from underground injection and states when the bans are not applicable.

Subsection (b)(2) refers to 35 Ill. Adm. Code 738.Subpart C adjusted standard.

SUBPART C: PETITION STANDARDS AND PROCEDURES

This entire Subpart is derived from 40 CFR 148.120 through 148.124, added at 53 Fed. Reg. 28155-28167, July 26, 1988. This Subpart defines the circumstances under which a waste otherwise prohibited from injection may be injected: when an applicant has demonstrated to the satisfaction of the Board that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous.

Also, Section 738.104 provides that the owner or operator may, on a case-by-case basis, petition USEPA for an extension to the effective date according to procedures outlined at 35 Ill. Adm. Code 728.105

Section 738.120

This Section states what a petitioner must prove to the Board, pursuant to adjusted standard procedures, to obtain an

exemption from Subpart B. Basically, the applicant may make a demonstration of "no migration" based on either:

- 1) An absence of fluid movement out of the injection zone;
or
- 2) An active process of waste reduction, transformation, or immobilization within the injection zone.

Whereas subsection (a)(1) states the object of the demonstration, subsection (a)(2) imposes informational requirements, as do subsections (b) through (d). Subsection (e) provides for reissuance of adjusted standards to add wastes or modify conditions upon petition and compliance with the subsections (a) through (c) requirements for original issuance. Under subsection (f), the Board may modify the adjusted standard if the owner or operator shows that the new wastes would behave "hydraulically and chemically similar" to the allowed wastes.

The Board proposes rewording 40 CFR 148.20(d)(1) for directness and clarity in subsection (d)(1). The Board observes that subsection 738.120(a)(2)(B), includes the phrase "protocol acceptable to the Board." The Board invites comment as to whether any published resources presently exist for public guidance.

Section 738.121

This section derives from 40 CFR 148.21, as added at 53 Fed. Reg. 28156, July 26, 1988. It outlines the information and quality of information that a petitioner must submit under Section 738.120 for an adjusted standard. Subsection (a) basically outlines the information quality, and subsections (b) and (c) largely outline the informational items required.

The Board-proposed text for subsection (a) deviates slightly from the text of 40 CFR 148.21(a) and is partly fashioned after 35 Ill. Adm. Code 728.106(c)(5). This is largely done for clarity, but with an intent of not increasing the petitioner's burden. It is also to overcome a flaw in the federal language if literally adopted by the Board. Paragraph 40 CFR 148.21(a)(2) requires use of EPA-certified test protocols. The Board is unaware of any such protocols, but, further, it cannot presently impose a requirement not yet in existence. For this reason, the Board proposes, by subsection (a)(2)(B), to require the petitioner to identify any EPA-certified test protocols in existence when the petitioner performed its estimation and monitoring. Although compliance with those protocols is not required by this subsection, knowledge of their existence can help guide the Board in its deliberations. The Board invites comment as to the existence of any EPA-certified test protocols or technical guidelines.

The revision of subsection (a)(2) avoids using the federal "appropriate" at subsection (a)(2)(A), but the Board does not believe that it can similarly avoid using this word in subsection (a)(3). The Board invites comment. The Board corrects the federal "reliant" to "reliable" at subsection (c). This is the apparent intent of USEPA. The Board invites comment.

Section 738.122

This section derives from 40 CFR 148.22, as added at 53 Fed. Reg. 28156, July 26, 1988. Subsection (a) basically imposes additional informational requirements for Section 732.120 petitions for adjusted standards. Subsection (b) sets forth notice requirements. Subsection (c) states that adjusted standards apply only to the wastes and wells stated in the Section 738.120 petition. Finally, subsection (d) requires the Agency to expedite the issuance or reissuance of a permit after an adjusted standard issues. The maximum term of such a permit is ten years.

The proposed rule revised 40 CFR 148.22(a)(3) to more direct language in the active voice in subsection (a)(3). More important are the revisions embodied in subsection (b). 40 CFR 148.22(b) provides that USEPA will publish advanced Federal Register notice of its intent to approve or deny each petition for exemption. The Board's existing adjusted standards rules provide for no similar advanced notice of intent. They provide that the petitioner must publish newspaper notice of having filed a petition for an adjusted standard, 35 Ill. Adm. Code 106.711, that the Board will file a newspaper notice of any hearing on such a petition, 35 Ill. Adm. Code 106.802, and that the Board will annually publish in the Illinois Register and the Environmental Register listings of all adjusted standards granted during the year. 35 Ill. Adm. Code 106.096.

The Board presumes that the federal notice requirement is to allow public comment on the proposed USEPA action. The Board believes that its existing adjusted standards public notice provisions more than adequately address this end. The existing adjusted standards procedures actually give greater opportunity for public participation in the adjusted standard deliberative process than does the corresponding federal rule because that participation would occur prior to any tentative decision on a petition.

The Board has considered and rejected more cumbersome public notice requirements that are not presently a part of existing adjusted standard procedures. One alternative is for the Board to publish notice of its decision on a petition, then hold the time for reconsideration open for a certain time after the date of publication. Another alternative is for the Board to issue public notice of tentative decisions, similar to those use in

rulemaking proceedings. The Board does not believe that either alternative is necessary. Rather, the Board will employ its existing 35 Ill. Adm. Code 106. Subpart G procedures without elaboration or change. The text of proposed subsection (b) reflects this. The Board invites comment.

A final revision over the text of 40 CFR 148.22 is the addition of proposed subsection (e). This clarifies that as a condition to each adjusted standard, the owner or operator is not insulated from an enforcement action for violations of any provisions except those expressly recited in the adjusted standard itself.

Section 738.123

This section derives from 40 CFR 148.23, as added at 53 Fed. Reg. 28157, July 26, 1988. It provides for review of existing adjusted standards for a facility during the course of permit review. It provides that the Board may require a new Section 738.120 demonstration if it determines that the basis for original approval is no longer valid.

The Board has revised the federal rule in adapting its substance to the Illinois Regulatory scheme. The above general discussion of adjusted standards relates to these revisions. Initially, it is the Agency that reviews permits and the Board that approves petitions for adjusted standards. The Agency cannot revise an adjusted standard granted by the Board, and the Board does not conduct permit reviews, except on permit appeal, and does not have direct access to the Agency's permit files. Further complicating this is the fact that no direct "reverse adjusted standard" procedure presently exists by which the Agency may petition for Board review of adjusted standards. Rather, after the Board has issued an adjusted standard, and the time for rehearing and appeal have passed, the Agency can only gain modification of an adjusted standard if a violation is found in the course of an enforcement action to obtain modification. This is problematic for a number of reasons that this opinion will not discuss.

The language of the proposed rule endeavors to correct this. The proposed rule requires the Agency to review any adjusted standards held by the permittee during the course of permit review. If the Agency determines that the basis for the adjusted standard may no longer be valid, it can request in writing that the permittee submit a petition to the Board for modification of the adjusted standard pursuant to Section 738.120(f). If the permittee fails to file such a petition, the Agency may petition the Board for reconsideration of the adjusted standard. This will invoke the Board's jurisdiction, and the Board may then conduct a limited or plenary review of the adjusted standard, using appropriate procedures, as the situation

warrants. The Board has not inserted time deadlines in this provision, although the Board realizes that the Agency must render its permit decisions within a short time. The Board invites comment on this procedure, specifically with regard to its lack of time deadlines.

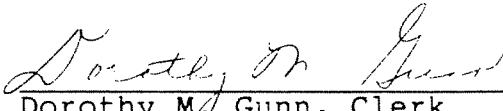
Section 732.124

This section derives from 40 CFR 148.24, as added at 53 Fed. Reg. 28157, July 26, 1988. It is a companion to Section 738.123, in that it provides for reappraisal of granted adjusted standards. It is different, however, in that it provides for their termination. It provides for termination in the event of the owner or operator's noncompliance with its provisions, for the owner or operator's failure to fully disclose all relevant facts or misrepresentation of any relevant facts during the course of Board review of the petition, or if new information shows that the basis for approval is no longer valid or there was migration from the injection zone.

The Board proposes revision to 40 CFR 148.24 in order to adapt this provision to the Illinois scheme. First, the proposed rule expressly states that any person may file an enforcement action against an owner or operator, notwithstanding the existence of an adjusted standard. This further clarifies that an adjusted standard does not insulate the owner or operator from other liability. The rule then reiterates that the Agency may petition for reconsideration of any adjusted standard. The proposed rule then proceeds to enunciate the same bases for termination that are set forth in 40 CFR 148.24. The Board invites comment on this scheme.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 5th day of October, 1989, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board