

ILLINOIS POLLUTION CONTROL BOARD  
September 16, 1981

IN THE MATTER OF: )  
 ) R81-22  
PROPOSED REGULATIONS FOR RCRA )

PRELIMINARY OPINION AND ORDER OF THE BOARD (by D. Anderson):

On July 22, 1981 the Illinois Environmental Protection Agency (Agency) filed a proposal to adopt regulations identical in substance with 40 CFR Parts 260, 261, 262, 263 and 265. The proposal took the form of a table indicating suggested amendments. The Board had adopted regulations similar to the proposal.

The Board has taken this action pursuant to P.A. 82-380 (SB 875) which requires the Board to adopt regulations which are identical in substance with federal hazardous waste regulations in order for Illinois to obtain authorization for a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act (RCRA).

This legislation allows the Board to adopt regulations without resort to §5 of the Administrative Procedure Act and Title VII of the Environmental Protection Act. The Board will submit the adopted rules to the Secretary of State for filing and for publication in the Illinois Register.

These regulations will become effective upon receipt of Phase I interim authorization by the Agency [§3006(c) of RCRA]. The Board anticipates that this will take several months. The Board proposes to modify these regulations approximately 60 days from the date of this Order. Persons desiring to comment on the regulations adopted this day should do so within 45 days of the date of this Order. The Board will do this to insure that the public is informed of its action and that a complete record of Board regulatory actions is in the Illinois Register index system.

This proposal was developed by the Board staff based on the table contained in the Agency's proposal. An informal draft was circulated to the Agency, the United States Environmental Protection Agency (USEPA) and the Illinois Attorney General. The informal draft was modified in part pursuant to comments from the Agency and USEPA. Everyone will be afforded an opportunity to comment following adoption of the rules.

40 CFR Parts 260 through 265 have been amended several times since the interim final rules of May 19, 1981 (45 FR 33,066). The text of Parts 720 through 725 reflects amendments through July, 1981. In the case of Parts 720, 722 and 723, the Board has relied on texts of amended federal rules provided by USEPA. For Parts 721 and 725, the Board has developed a federal text based on Agency's tabular proposal. The following tables present the sources of these Parts:

Part 721 (40 CFR Part 261)

45 FR 33,119	May 19, 1980	45 FR 80,287	December 4, 1980
47,833	July 16, 1980	46 FR 4,617	January 16, 1981
72,028	October 30, 1980	27,476	May 20, 1981
74,890	November 12, 1980	29,708	June 3, 1981
76,620	November 19, 1980	34,587	July 2, 1981
78,529	November 25, 1980	35,247	July 7, 1981

Part 725 (40 CFR Part 265)

45 FR 33,233	May 19, 1980	46 FR 8,395	January 26, 1981
76,074	November 17, 1980	13,492	February 20, 1981
76,618	November 19, 1980	16,897	March 16, 1981
78,524	November 25, 1980	27,119	May 18, 1981
86,966	December 31, 1980	27,473	May 20, 1981
46 FR 2,802	January 12, 1981	33,502	June 29, 1981
7,666	January 23, 1981	35,249	July 7, 1981

The federal regulations contain many appendices. The Board is not at this time adopting the text of these, but will consider adopting some or all at a later date. The appendices to the federal rules are incorporated into the text by reference.

These regulations are adopted in a format intended to comply with the Secretary of State's codification scheme. The Board will not however submit these rules to the State Library for review of format prior to publication. However, the Board will submit a copy of the adopted rules to the State Library and will make any necessary format changes approximately 60 days from the date of this Order.

The codification rules require a format very similar to the Code of Federal Regulations. For this reason it is simpler to go directly to a codified format, rather than going first to the Board's old format, to be followed by codification at some later date.

Most of the regulations repeat the federal regulations verbatim. It has been necessary to change the numbers of the rules to conform with codification rules and with other format

conventions previously agreed to by the Board. The algorithm for section numbers is as follows:

1. Start with the federal section number §261.3
2. Insert sufficient zeros to the right of the decimal point to make 3 digits to the right of the decimal point §261.003
3. Add 0.100 §261.103
4. Add 460.000 to get the Board's section number §721.103

The Illinois format requires that subsections be numbered as follows: §721.103(a)(1)(C)(i). The federal format is inconsistent, but frequently looks like this: §261.3(a)(1)(iii)(A). The federal **subsections** have been renumbered to conform with the Illinois system.

The federal sections at several places break totally out of any outline structure, with unnumbered subparagraphs in the midst of numbered subparagraphs. It is difficult to cite to these "hanging" paragraphs and they do not conform with codification requirements. Where these occur it was necessary to rearrange the sections.

Cross references within the federal rules have been renumbered according to the algorithms for changing section and subsection numbers. These have been checked to determine whether there is a section by that number. There probably are references which now go to a rule which is not the equivalent of the federal rule, either because of a typographical error or because the section had to be rearranged. The Board asks the public to check the cross references in the sections affecting them and to comment on any apparent errors.

In addition to regulations equivalent to federal regulations, the Board has adopted Part 700: Outline of Waste Disposal Regulations. Adoption of the federal rules without further explanation could produce confusion because the Board already has a hazardous waste program in effect. The intent is that a person familiar with the federal rules should be able to understand the essential peculiarities of the Illinois system by reading only Part 700.

Under the existing system, the public must comply with both a state and federal hazardous waste program which are both presently administered separately by the Agency. Presently the RCRA program is managed under contract. Certain accommodations have been reached. Part 700 seeks to preserve the status quo. Authority to adopt regulations reconciling the new rules

with the old is inherent in the grant of authority to adopt regulations identical in substance.

The following are areas where modifications in the federal system have been made:

Part 724: The Board is not adopting the equivalent of 40 CFR Part 264 at this time. These rules will be adopted in the future as part of a Phase II application.

References in the federal text to Part 264 have been changed to Part 724. In place of Part 724, a rule has been inserted which states that such references are inoperative. This avoids the alternative of editing the text to remove the references, only to be followed by reinsertion of the references in the near future.

Interim Status: Part 725 has been made directly applicable to all HWM owners and operators regardless of permits or interim status requirements [§725.101(b)]. This eliminates a loophole which would develop if 40 CFR Part 265 were adopted without Parts 122, 123 and 264.

Deemed issued permits: §21(f)(1) of the Act as amended by P.A. 82-380 (SB 875) imposes an immediate RCRA permit requirement for hazardous waste storage, treatment and disposal facilities. The federal regulations provided a "deemed issued" permit for interim status facilities (40 CFR §122.23, 45 FR 33,434). The Board will follow this approach in order to avoid closing down existing facilities during the period before a permit program is in effect. Section 700.106 tracks 40 CFR §122.23 very closely.

Identification Numbers: Chapter 9 requires "Agency identification numbers" of special waste transporters. The RCRA rules require "EPA identification numbers" of generators, transporters and HWM owners or operators. The Board intends to continue both sets of numbers. The term "USEPA identification number" has been used in the headings of the RCRA rules to avoid confusion. However, it is better to leave the term as "EPA" in the text to preserve the federal terminology (§§722.112, 723.111, 725.111).

Transporter Permits: The RCRA rules do not require EPA identification numbers of transporters who haul only hazardous waste covered by a small quantity exemption (§722.111). On the other hand Rule 201 of Chapter 9 requires permits of haulers "unless the hauler is exempt from the special waste hauling permit requirements under this Part". The exemptions are in Rules 210 and 211. The latter contains exemptions for special waste haulers by type of hauler. The former is the small

quantity exemption. It exempts "Any person who generates a total quantity...". It does not apply to transporters, except those who are also generators [§700.404(b)].

Federal regulations previously adopted: The Board has recently adopted by reference certain of the federal rules which are identical in substance to those adopted today. Part XV of Chapter 9 references 40 CFR Part 265, Subparts G and H, Closure and Post Closure and Financial Requirements (R81-14, 5 Ill. Reg. 5719, May 29, 1979). Part XV will become unnecessary and will be repealed upon the effective date of Part 725.

The Board also adopted by reference the similar requirements of 40 CFR Part 264, Subparts G and H. These are unnecessary for the same reasons the Board is not adopting Part 264. Therefore Part XIV of Chapter 9 will also be repealed.

Listings: P.A. 82-380 (SB 875) withdraws the Agency's authority to list hazardous waste. This leaves a potential gap in Chapters 7 and 9. Although the Act and Chapter 9 reference USEPA listings into the definition of hazardous, the Board will make its listings effective immediately in order to provide a basis in Illinois law for enforcement under existing provisions of Chapters 7 and 9 as applicable to listed waste (§700.107).

Rulemaking Petitions: 40 CFR Part 260, Subpart C has not been adopted. Modification of the hazardous waste rules adopted by the Board must proceed pursuant to Part II of the Procedural Rules (§720.120).

Equivalent Testing Methods: 40 CFR §260.21 provides for petitions for equivalent testing methods. §720.120 provides that alternate equivalent testing methods require a variance or site-specific rule from the Board.

Amendment of Post Closure Plan: 40 CFR §265.118 provides a method for amendment of the post closure plan on the petition of either the operator or public. These procedures applied to the Illinois context appear to contemplate the grant of variances or site-specific regulations. These powers are reserved to the Board, while permits are issued by the Agency. The Board has therefore added to the federal text §725.218(g). This provides that these procedures are in the nature of permit modification only and require a separate proceeding before the Board if a variance or rule change is required.

Manifest requirements: Federal rules impose a duty on the waste generator to report lost loads. Illinois has no

such duty, but requires copies of the manifest from the generator and HWM owner or operator. These are computer matched and the state assumes the burden of tracking missing loads. The proposal combines these systems (§§700.303, 700.403, 700.503; §722.120; §723.120; §725.170).

Unmanifested Waste Report: Chapter 9 apparently contains an absolute rule against acceptance of unmanifested waste, unless a manifest is not required (Rules 210, 211 and 501 of Chapter 9). This poses questions as to how the operator knows whether a load is exempt and what happens to a load that is turned away. The federal rules provide for a certification that a generator is exempt and an unmanifested waste report to be filed by the operator. The Board has extended these to Chapter 9 waste [§700.503(e)].

Retroactive Effective Dates: Most of the rules go into effect upon Phase I authorization, or as specified in the rules. The rules themselves mostly specify various dates between May 19, 1980 and November 19, 1981. These dates are taken from the federal rules, although descriptions have been changed to actual dates (i.e. "Six months after" has been changed to "November 19, 1980").

The Board intends Parts 700, 722, 723 and 725 to be of no effect until Phase I authorization. At that time the rules will go into effect. These rules will specify dates which appear to be retroactive. These dates are being left in the body of the rules to keep them as nearly identical to the federal rules as possible. However, in the event an enforcement action is filed, violation of federal rules must be alleged up to the date of Phase I authorization.

The present system is not altogether satisfactory. There is however a question as to how far the Board can go in modifying its existing rules and the RCRA rules without resorting to full rulemaking. The Board offers the following suggestions for comment and solicits additional suggestions for eventual modification of the Illinois hazardous waste program.

1. The small quantity exemption of Part 721 could be adjusted to 100 from 1000 kg. This would bring all regulated hazardous waste under the RCRA rules (Rule 210 of Chapter 9 and §721.105). The hazardous waste rules would then be far simpler. Chapter 9 could be replaced with modified requirements for persons handling large quantities of non-hazardous special waste.
2. Hazardous waste incinerators are presently subject to Chapter 2: Air Pollution. Should hazardous waste incinerators be required to meet the same emission limitations

as other facilities with respect to conventional air pollutants such as particulates, carbon monoxide and sulfur dioxide? Could this be replaced with relaxed emission limitations or a requirement that the incinerator be operated efficiently and obtain complete destruction of hazardous materials?

3. Should the requirement of a variance for open burning of explosive waste be replaced with a permit requirement (Rule 505 of Chapter 2)?
4. Can the regulations be modified to reduce the regulatory burden on legitimate recycling? Do the regulations provide adequate protection against abuses by persons purporting to be recyclers?
5. Are the operating requirements of Chapter 7 necessary in the context of a hazardous waste landfill? Would the RCRA requirements be sufficient in the absence of Chapter 7?
6. 40 CFR §260.21 provides for alternate equivalent testing methods. Testing methods are relevant in three contexts: determining whether a waste should be listed in a rule-making; determining whether a given waste is hazardous; and, determining whether a given waste conforms to the description in the manifest. Are the regulations sufficiently flexible on approval of alternate equivalent testing methods?
7. The Board has provided that an unmanifested waste report may be filed by an HWM owner or operator receiving waste requiring a manifest under Chapter 9. Should that Chapter be amended to provide a defense for an operator accepting unmanifested waste?

The record will be held open for 45 days for comment. The adoption of the rules which appear below, which is supported by the above Preliminary Opinion, is not a final action of the Board. These rules are subject to modification in a future Board order. This Order will, however, become final and appealable when and if Parts 700, 722, 723 and 725 take effect pursuant to §700.106 prior to entry of a modifying Order.

The Board will adopt the rules which will appear in the Illinois Register.

ORDER

The Board hereby adopts Parts 700, 720, 721, 722, 723, and 725, and the reservation of Part 724, pursuant to §22.4 of the Illinois Environmental Protection Act as amended by P.A. 82-380 (SB 875). The Clerk is directed to file the text with the Secretary of State and to prepare a notice of adopted rules for publication in the Illinois Register. Parts XIV and XV of Chapter 9: Special Waste Hauling Regulations are hereby appealed, effective on the date Illinois receives Phase I interim authorization from USEPA.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16<sup>th</sup> day of September, 1981 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board