

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1986

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R86-1
(7/1/85 THROUGH 1/31/86))

FINAL ORDER. ADOPTED RULES.

OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 22.4(a) of the Environmental Protection Act (Act), the Board is amending the RCRA regulations.

On January 9, 1986 the Board opened this docket for the purpose of updating the RCRA rules to agree with recent USEPA amendments.

Section 22.4(a) of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Neither Title VII of the Act nor Section 5 of the Administrative Procedure Act applies to rules adopted under Section 22.4(a). Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270, and 280. This rulemaking updates Illinois' RCRA rules to correspond with United States Environmental Protection Agency (USEPA) amendments adopted from July 1, 1986, through January 31, 1986. The Federal Registers utilized are as follows:

50 Fed. Reg. 28742,	July 15, 1985
50 Fed. Reg. 33542,	August 20, 1985
50 Fed. Reg. 34692,	August 27, 1985
50 Fed. Reg. 37370,	September 13, 1985
50 Fed. Reg. 42942,	October 23, 1985
50 Fed. Reg. 48910,	November 27, 1985
50 Fed. Reg. 49202,	November 29, 1985
50 Fed. Reg. 53319,	December 31, 1985

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The Board appreciates the assistances of Morton Dorothy, a member of the Board's Scientific/Technical staff, in the preparation of the drafts in this proceeding, and of Kathleen Crowley, administrative assistant, in the coordination and oversight process.

51 Fed. Reg. 1254, January 10, 1986
51 Fed. Reg. 2702, January 21, 1986

PUBLIC COMMENTS

The proposal appeared on May 23, 1986, at 10 Ill. Reg. 8256. The Board received the following public comment:

PC#1 USEPA, June 6, 1986
PC#2 Illinois Environmental Protection Agency
 (Agency), July 9, 1986

On July 1, 1986, the Board received codification comments from the Administrative Code Unit.

HISTORY OF RCRA and UIC ADOPTION

The Illinois RCRA and UIC (Underground Injection Control) rules, together with more stringent state rules 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
729 Landfills: Prohibited Wastes
730 UIC Operating Requirements
731 Underground Storage Tanks

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

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

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

The UIC rules were amended in R82-18, which is referenced above. The UIC rules 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 recently updated the UIC rules:

R85-23 June 20 and July 11, 1986

The Board has opened docket R86-27 to update the UIC rules from July 1, 1985 through June 30, 1986.

The Phase II RCRA rules included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II rules 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).

The Board updated the RCRA rules to correspond with USEPA amendments in two dockets:

R84-9 June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985.

R85-22 December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986.

Illinois received final authorization for the RCRA program effective January 31, 1986. The Board has opened docket R86-19 to update the RCRA rules from February 1 through March 31, 1986, and docket R86-28 to update from April 1 through June 30, 1986.

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 effectively repealed by R85-22, which included adoption of USEPA's dioxin listings.

The Board adopted procedures to be followed in cases before it involving the RCRA rules:

R84-10 62 PCB 87 and 349, December 20, 1984 and January 10, 1985; 9 Ill. Reg 1409, 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, which is listed above.

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

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.

The Board has opened two new dockets dealing with restrictions on landfilling liquid hazardous waste. R86-9 concerns implementation of Section 39(h) of the Act, while R86-11 concerns the relationship of the liquid hazardous waste ban to the USEPA liquid hazardous waste bans. (Orders of February 26 and June 11, 1986).

CORRESPONDENCE TABLES

The RCRA and UIC programs were originally derived from 40 CFR 122, which also included the NPDES and other major federal programs. The Board adopted the programs as Parts 702, 703 and 704. Part 702 included material in common between the RCRA and UIC programs; while Parts 703 and 704 included, respectively, specific RCRA and UIC material. A major reason for structuring the rules in this manner was to aid in future comparison with the federal rules. However, USEPA has now deconsolidated its permit rules, placing the UIC program in 40 CFR 144 and the RCRA program in 40 CFR 270. This has made it very difficult to compare the Board's rules with USEPA's rules. The Board will therefore place correspondence tables into this Opinion to aid future review of these rules.

The correspondence tables represent the rules as amended by this action, which involves some renumbering and additions to the existing language.

There are two tables: one to find the source of an Illinois Section, the other to find the disposition of a USEPA provision. A reference to 40 CFR 144 (UIC) is included for rules which are in common between the RCRA and UIC program

The conversion table from the Illinois Administrative Code to the CFR is as follows:

TABLE 1

35 Ill. Adm. Code	40 CFR (RCRA) Code	40 CFR (UIC)
702.103	270.12	144.5
702.104	270.6	-----
702.110	270.2	-----
702.120	270.10(a)	144.31(a)
702.121	270.10(b)	144.31(b)
702.122	270.10(c)	144.31(d)
702.123	270.10(d)	144.31(e)
702.124	270.10(i)	144.31(f)
702.125	270.51	144.37
702.126	270.11	-----
702.126	270.32	144.32
702.140	270.30	144.52(c)
702.141	270.30(a)	144.51(a)
702.142	270.30(b)	144.51(b)
702.143	270.30(c)	144.51(c)
702.144	270.30(d)	144.51(d)
702.145	270.30(e)	144.51(e)
702.146	270.30(f)	144.51(f)
702.147	270.30(g)	144.51(g)
702.148	270.30(h)	144.51(h)
702.149	270.30(i)	144.51(i)
702.150(a)	270.30(j)(1)	144.51(j)(1)
702.150(b)	270.30(j)(2)	144.51(j)(2)(i)
702.150(c)	270.30(j)(3)	144.51(j)(3)
702.151	270.30(k)	144.51(k)
702.152	270.30(l)	144.51(l)
702.160(a)	270.32(a)	144.52(a)
702.160(b)(1)	270.32(b)	144.52(b)
702.160(b)(2)	270.32(c)	144.52(b)
702.160(b)(3)	270.32(d)	144.52(b)
702.160(c)	270.32(e)	144.51
702.161	270.50	144.36
702.162	270.33(a)	144.53(a)
702.163	270.33(b)	144.53(b)
702.164	270.31	144.54
702.181	270.4	144.35
702.182	270.40	144.38
702.183	270.41	144.39
702.184	270.41	144.39

702.185	270.41(c)	144.39(c)
702.186	270.43	144.40
702.187	270.42	144.41
702.241(b)	270.32	-----
703.123	270.1(c)(1)	
703.124	270.1(c)(2)	
703.125	270.1(c)(3)	
703.126	270.10(h)	
703.127	270.10(f)	
703.140	-----	
703.141	270.60	
703.150	270.10(e)	
703.151	270.10(f)	
703.152	270.10(g)	
703.153	270.70	
703.154	270.71(a)	
703.155	270.72	
703.156	270.71(b)	
703.157	270.10(e)(5)	
703.157	270.73	
703.158	270.1(c)(4)	
703.180	-----	
703.181	270.13	
703.182	270.14(a)	
703.183	270.14(b)	
703.184	270.14(b)(11)	
703.185	270.14(c)	
703.186	270.10(j)	
703.200	-----	
703.201	270.15	
703.202	270.16	
703.203	270.17	
703.204	270.18	
703.205	270.19	
703.206	270.20	
703.207	270.21	
703.221	270.61	
703.222	270.62(a)	
703.223	270.62(b)	
703.224	270.62(c)	
703.225	270.62(d)	
703.230	270.63	
703.231	270.65	
703.241(a)	270.32(b)	
703.242	270.30(a)	
703.243	270.30(j)(2)	
703.244	270.30(k)	
703.245	270.30(l)(6)	
703.246(a)	270.30(l)(7)	
703.246(b)	270.30(l)(8)	
703.246(c)	270.30(l)(9)	

TABLE 2

40 CFR (RCRA)	35 Ill. Adm. Code	40 CFR (UIC)
270.1(c)(1)	703.123	
270.1(c)(2)	703.124	
270.1(c)(3)	703.125	
270.1(c)(4)	703.158	
270.2	702.110	
270.3	-----	
270.4	702.181	144.35
270.5	-----	
270.6	702.104	
270.10(a)	702.120	
270.10(b)	702.121	144.31(a)
270.10(c)	702.122	144.31(b)
270.10(d)	702.123	144.31(d)
270.10(e)	703.150	144.31(e)
270.10(e)(5)	703.157	
270.10(f)	703.127	
270.10(f)	703.151	
270.10(g)	703.152	
270.10(h)	703.126	
270.10(i)	702.124	
270.10(j)	703.186	144.41(f)
270.11	702.126	
270.12	702.103	144.5
270.13	703.181	
270.14(a)	703.182	
270.14(b)	703.183	
270.14(b)(11)	703.184	
270.14(c)	703.185	
270.15	703.201	
270.16	703.202	
270.17	703.203	
270.18	703.204	
270.19	703.205	
270.20	703.206	
270.21	703.207	
270.30	702.140	144.52(c)
270.30(a)	702.141	144.51(a)
270.30(a)	702.142	
270.30(b)	702.143	
270.30(c)	702.144	
270.30(d)	702.145	144.51(b)
270.30(e)	702.146	144.51(c)
270.30(f)	702.147	144.51(d)
270.30(g)	702.148	144.51(e)
270.30(h)	702.149	144.51(f)
270.30(i)	702.150(a)	144.51(g)
270.30(j)(1)	702.150(b)	144.51(h)
270.30(j)(2)	703.243	144.51(i)
270.30(j)(2)	702.150(c)	
270.30(j)(3)	702.151	144.51(j)(3)

270.30(k)	702.244	144.51(k)
270.30(k)	703.244	
270.30(l)	702.152	144.51(l)
270.30(l)(6)	703.245	
270.30(l)(7)	703.246(a)	
270.30(l)(8)	703.246(b)	
270.30(l)(9)	703.246(c)	
270.31	702.164	144.54
270.32	702.126	144.32
270.32	702.241(b)	
270.32(a)	702.160(a)	144.52(a)
270.32(a)	703.241(a)	
270.32(b)	702.160(b)(1)	144.52(b)
270.32(c)	702.160(b)(2)	144.52(b)
270.32(d)	702.160(b)(3)	144.52(b)
270.32(e)	702.160(c)	144.51
270.33(a)	702.162	144.53(a)
270.33(b)	702.163	144.53(b)
270.40	702.182	144.38
270.41	702.183	144.39
270.41	702.184	144.39
270.41(c)	702.185	144.39(c)
270.42	702.187	144.41
270.43	702.186	144.40
270.50	702.161	144.36
270.51	702.125	144.37
270.60	703.141	
270.61	703.221	
270.62(a)	703.222	
270.62(b)	703.223	
270.62(c)	703.224	
270.62(d)	703.225	
270.63	703.230	
270.65	703.231	
270.70	703.153	
270.71(a)	703.154	
270.71(b)	703.156	
270.72	703.155	
270.73	703.157	

DETAILED DISCUSSION

Section 702.120

This Section is drawn from 40 CFR 144.31(a) and 270.10(a). The RCRA provision was amended at 50 Fed. Reg. 28742 to add a reference to new language, found at Section 703.231, concerning experimental permits.

Section 702.122

This Section is drawn from 40 CFR 144.31(d) and 270.10(c). The RCRA language was amended at 50 Fed. Reg. 28742 to change

existing language on completeness. Failure to submit the exposure information, found at Section 703.186, does not render the Part B application incomplete.

The Board has retained a reference to the completeness review process of Section 705.122, even though the comparable federal reference has been dropped. Also, the existing federal language contains a reference to applications for permits by rule which is unnecessary, and which the Board will not add to this Section.

Section 702.150 (not amended)

This Section is drawn from 40 CFR 144.51(j) and 270.30(j). The RCRA provision was amended at 50 Fed. Reg. 28742. The Board will address this amendment below in connection with the related Section 703.243.

Section 702.150(b) contained RCRA-only language which the Board recently amended in R85-23, in order to remove it from the UIC program.

Section 702.160

This Section is drawn from 40 CFR 144.51, 144.52 and 270.32. The RCRA provision was amended at 50 Fed. Reg. 28742. These amendments will be dealt with in connection with the related Section 703.241, below.

This Section was amended in R85-23, which has not yet been filed or published in the Illinois Register. The base text for this Section which appears in the Order has been modified to reflect the amendments already adopted in R85-23. In the event R85-23 and R86-1 are ready for publication in the Illinois Register at the same time, a combined version of these actions will be prepared for publication.

Section 702.161

This Section is drawn from 40 CFR 144.36 and 270.50. The RCRA provision was amended at 50 Fed. Reg. 28742 to add a requirement for a review of RCRA permits for land disposal every five years. This has been added as Section 702.161(d). The paragraphs have been relettered so they will more closely parallel Section 270.50.

Section 702.184

This Section is drawn from 40 CFR 144.39 and 270.41. The RCRA provision was amended at 50 Fed. Reg. 28742 to make the 5 year review of land disposal permits a cause for modification, and to provide for modification to assure compliance with new regulations. The new language is in Section 702.184(a)(6). The

paragraphs have been relettered to more closely parallel Section 270.41.

In R85-23 the Agency noted that the Board had eliminated the "revoke and reissue" mechanism from Section 702.182, but had retained it in Section 702.182. Because this Section had been proposed for amendment in R86-1, but not R85-23, the Board deferred action on the comment to this docket. For the reasons outlined in the June 20, 1986, Opinion in R85-23, the Board has changed the name of this mechanism to "reissuance," but has retained the mechanism. This affects the introductory language to paragraphs (a) and (b) as renumbered.

Section 703.141

This Section is drawn from 40 CFR 270.60, which was amended at 50 Fed. Reg. 28742. Sections 703.141(b)(3) and 703.141(c)(3)(G) add references to Section 724.201 to the conditions for authorization by rule for holders of UIC and NPDES permits.

Section 703.150

This Section is drawn from 40 CFR 270.10(e), which was amended at 50 Fed. Reg. 28742 to specify application dates for facilities which came under the RCRA program because of regulatory or statutory modification, and to reference new application dates which are found in Section 703.157 below.

Section 270.10(e)(5) was adopted by the Board as Section 703.157(b), instead of in this Section. The Board has added Section 703.150(e) to reference Section 703.157(b).

Section 703.151

This Section is drawn from 40 CFR 270.10(f), which was amended at 50 Fed. Reg. 28742. Existing Section 703.151(c) authorized construction, pursuant to a Part A application, of certain facilities for which no standards exist. This has been replaced with a provision allowing only construction of PCB incinerators approved under TSCA without a Part B application.

Section 703.153

This Section is drawn from 40 CFR 270.70, which was amended at 50 Fed. Reg. 28742. The amendments extend interim status to facilities which fall under the permit requirement because of statutory or regulatory changes, and denies interim status to facilities which have previously lost interim status. The Board has relettered this Section to more closely conform with Section 270.70.

Section 703.157

This Section is drawn from 40 CFR 270.73, which was amended at 50 Fed. Reg. 28742 to add specific dates for termination of interim status unless a Part B application is received. Land disposal facilities must submit applications by November 8, 1985 or within 12 months after becoming subject to the permit requirement, and certify that they are in compliance with groundwater monitoring and financial assurance requirements. The Board has adopted this retroactive date, which was contained in the corresponding USEPA rule. Incinerator operators must submit applications by November 8, 1986, and all others by November 8, 1988.

Section 703.157(b) is drawn from Section 270.10(e)(5). As discussed above in connection with Section 703.150(e), the Board has added a cross reference to this Section. When this Section was originally adopted, there was an error in the federal regulation (R82-19, July 26, 1983, 53 PCB 131, 160). Also, the Board clarified an ambiguous reference to the procedures for permit issuance. The result of this is that the federal rules will contain the standard in one section and a reference in the other, while the Board rules will be the opposite. However, there is no substantive difference.

Section 703.182

This Section contains a menu summarizing the Part B application, the contents of which have been broken into several Sections. Paragraph (d) has been added to reflect new Section 703.186, discussed below.

Section 703.186

This new Section is drawn from 40 CFR 270.10(j), which was added at 50 Fed. Reg. 28742. It requires operators of surface impoundments and landfills to include information on the potential exposure of the public to hazardous constituents. In the federal regulations it is placed with the general application requirements such as signature requirements. This placement is awkward in the Board rules since it would result in a RCRA-specific rule in Part 702. The Board has therefore placed this provision with the general information requirements for the Part B application, making it parallel to the groundwater protection information requirement.

Due to a typographical error, paragraphs (a)(2) and (3) were combined in the proposal. This has been corrected. (PC#2).

Section 703.203

This Section is drawn from 40 CFR 270.17, which was amended at 50 Fed. Reg. 28742. Paragraph (c) has been deleted and the paragraphs relettered. Paragraph (c) required an engineering

report for persons seeking an exemption from groundwater monitoring requirements for a surface impoundment. The exemption is repealed below.

Section 703.204

This Section is drawn from 40 CFR 270.18, which was amended at 50 Fed. Reg. 28742. Paragraph (d) has been deleted, and relettered paragraph (d) amended, to remove the provisions relating to exemption from groundwater monitoring for waste piles. A reference to the new procedures of Section 724.190(b)(2) has been added to paragraph (b).

Section 703.207

This Section is drawn from 40 CFR 270.21, which was amended at 50 Fed. Reg. 28742 to insert the May 8, 1985 date for the federal restriction on landfilling liquids. The Board will not adopt this amendment for the reasons discussed in connection with Section 724.414, below.

Section 703.231

This new Section is drawn from 40 CFR 270.65, which was added at 50 Fed. Reg. 28742, to add a procedure for research and demonstration permits, not to exceed one year. Paragraph (c) of the USEPA rule allows USEPA to "order an immediate termination of all operations" as necessary to protect human health and the environment. The Board has implemented this Section by allowing the Agency to take action pursuant to the provisions of Section 34 of the Act.

The Agency is not certain that referencing Section 34 of the Act is appropriate because that section appears to require a finding of an emergency condition, whereas the federal rule Section 270.65 does not contain such a requirement. The Agency also noted that Section 34 also appears to authorize only the sealing of the site, whereas the federal rule Section 270.65 does not appear to be so limited. (PC#2) The USEPA did not comment on this aspect of the proposal.

Keeping in mind that this section authorizes fast track, short term, permits to test innovative technologies and experimental processes, a situation may arise where a permit conditions no longer assure protection of human health or the environment. In this context, such a situation can indeed be construed as akin to an episode or emergency condition pursuant to Section 34, particularly when viewed in conjunction with the Board's "identical substance" mandate in Section 22.4. In a similar manner, when the power to seal is exercised, it effects a termination of operations by precluding lawful operations. The Board finds that its utilization of Section 34 is appropriate to fulfill its mandate in Section 22.4.

Section 703.241

This Section is drawn from 40 CFR 270.32(b), which was amended at 50 Fed. Reg. 28742. The amendments are reflected in new Section 703.241(a)(2), which requires that RCRA permits contain terms and conditions which the Agency determines to be necessary to protect human health and the environment. Also, Part 726 has been added as a source of conditions in RCRA permits.

As suggested by the Agency, the Board has referenced Section 39(d) of the Act as the authority for issuance of RCRA permits, instead of Section 21(f) which requires the permit. (PC#2).

Section 703.241(b) is a grouping Section which no longer has a counterpart in the federal rules. However, it remains necessary under the Board's codification of the rules.

Section 703.243

This Section is drawn from 40 CFR 270.30(j)(2), which was amended at 50 Fed. Reg. 28742. This Section adds, for RCRA, to the list of records which must be maintained under Section 702.150. The operator must maintain, for 3 years, the waste minimization certification required under Section 724.173, which is discussed below.

When read in conjunction with Section 702.150 this Section is equivalent to 40 CFR 270.30(j)(2). (PC#2).

Section 720.122

As adopted in R81-22 (February 4, 1982, 45 PCB 317, 345), this Section incorporated 40 CFR 260.22 by reference instead of setting forth the details of the waste delisting process. The Section mainly concerns how the delisting process fits into the Illinois regulatory scheme.

Three delisting petitions have come before the Board (R85-2, R86-5, R86-6). R85-2 was adopted following USEPA action. (April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986). R86-6 was dismissed at the request of the petitioner. (March 14, 1986). R86-5 is still pending. (PC#2).

USEPA has modified 40 CFR 260.22 at 50 Fed. Reg. 28742, to require a demonstration that a generic hazardous waste has no hazardous characteristics, in addition to a showing that it does not have the characteristic which caused it to be listed. The Board has updated the incorporation. Because the Board's review of delisting petitions is presently subsequent to USEPA's review of the same petition, the Board sees no need to adopt the actual text at the present time. The Board will continue to incorporate the USEPA rules by reference, and to require a copy of the delisting petition which is provided to USEPA.

The Board has adopted a number of changes to the text of Section 720.122. The first is to Section 720.122(b). With no final resolution of the question of its delisting authority, the Board has modified this provision to state its present practice: the Board will determine whether it has authority to delist on a case-by-case basis with each petition filed.

The second change is to paragraph (c). The Board has added a phrase to make it clear that the Agency's determination that a waste is not hazardous is to be based on the Board's regulatory definition of "hazardous".

The third change is to Section 720.122(d). The Board will not automatically adopt site-specific delistings as they appear in the Federal Register. Some person will have to petition the Board to adopt the delisting, and demonstrate some need for adoption of the delisting in Illinois. There is no need to adopt delistings for wastes which are not generated or managed in Illinois. (PC#2).

The fourth change is to paragraph (f). This recognizes that USEPA will administer the RCRA Program in some states, such as Iowa.

Section 721.102

This Section is drawn from 40 CFR 261.2, which was amended at 50 Fed. Reg. 33542 to clarify the definition of solid waste.

Section 721.103

This Section is drawn from 40 CFR 261.3, which was amended at 50 Fed. Reg. 49202 to add a cross reference establishing new exclusions for recyclable materials.

Section 721.104

This Section is drawn from 40 CFR 261.4, which was amended at 50 Fed. Reg. 28742 to clarify the exclusion for household waste.

Section 721.105

This Section is drawn from 40 CFR 261.5, which was amended at 50 Fed. Reg. 28742 and 49202. These amendments modify the requirements for small quantity generators.

Paragraphs (f)(3), (g)(3) and (h)(4), set forth licensing requirements for facilities which receive hazardous waste from small quantity generators. If the facility is in Illinois, it would have to be permitted under Part 807, with a supplemental wastestream permit issued under that Part. The waste would have to be transported pursuant to a manifest by a special waste

hauler permitted under Part 809, unless the shipment fell under one of the exemptions stated in that Part.

As proposed, paragraph (h)(3) referenced the USEPA manifest form. This has been replaced by a reference to Section 722.120, which specifies when the USEPA and Illinois manifest forms must be used. (PC#2).

Section 721.106

This Section is drawn from 40 CFR 261.6, which was amended at 50 Fed. Reg. 33542 and 49202 to state new exemptions for recyclable materials.

Section 721.106(a)(3)(C) exempts used oil which is recycled in some manner other than being burned for energy recovery. The Agency has stated its opposition to incorporation of this provision, although it acknowledges the accuracy of the rendition of the federal language. (PC#2). The Agency is free to propose deletion of this provision pursuant to Section 22.4(b) of the Act.

Section 721.131

This Section is drawn from 40 CFR 261.31, which was amended at 50 Fed. Reg. 53319, and corrected at 51 Fed. Reg. 2702. The amendments set a 10% by volume standard for the solvents listed in F001 through F006.

Section 721.132

This Section is drawn from 40 CFR 261.32, which was amended at 50 Fed. Reg. 42942 to add listings for wastes from the production of toluene diisocyanate. (K111-K116)

Section 721.133

This Section is drawn from 40 CFR 261.33, which was amended at 50 Fed. Reg. 28742 and 42942. The first amendment modifies the introductory language concerning mixing waste chemicals with waste oil. The second amendment adds toluidine to the "U list" of toxic chemicals.

Section 721.App.C

The Board has incorporated 40 CFR 261, Appendix III by reference. The USEPA rule was amended at 50 Fed. Reg. 42942, to add test methods for constituents related to toluene diisocyanate production. The Board has updated the incorporation.

Section 721.App.G

This is drawn from 40 CFR 261, App. VII, which was amended at 50 Fed. Reg. 42942 to add the basis for listing for K111-K116, added to Section 721.132 above.

Section 721.App.H

This is drawn from 40 CFR 261, App. VIII, which was amended at 50 Fed. Reg. 42942, to add constituents related to toluene diisocyanate production.

Section 721.App.I

40 CFR 261, App. IX will contain waste delistings. USEPA has adopted several at 50 Fed. Reg. 34692, 37370 and 48910, and 51 Fed. Reg. 1254. As was discussed in connection with Section 720.122 above, the Board will not adopt these in the absence of a petition and a showing of need for their adoption in Illinois. Of the wastes involved in the USEPA amendments, only one appears to involve Illinois, the Amoco delisting adopted by the Board in R85-2.

Section 721.App.J

This Section incorporates by reference the USEPA dioxin test methods of 40 CFR 261, App. X. These were inadvertently omitted from, R85-22, which replaced the Illinois dioxin listings with the USEPA.

Section 722.141

This Section is drawn from 40 CFR 262.41, which was amended at 50 Fed. Reg. 28742, to add requirements relating to reporting on waste minimization programs.

40 CFR 262.41 requires a biennial report, while Section 722.141 requires an annual report. In R84-9 the Board declined to modify its rule to require a biennial report. (June 13, 1985)

Section 722.150

This Section is drawn from 40 CFR 262.50, which was amended at 50 Fed. Reg. 28742 to add a requirement of annual reporting of waste exports. The Board has required that this report be sent to USEPA as well as the Agency, as is the case with the other provisions concerning international shipments.

Section 722.App.A

The Appendix to 40 CFR 262 was amended at 50 Fed. Reg. 28742 to change the uniform hazardous waste manifest form. The Board will not adopt these changes. Rather, the Agency will make the necessary changes to the forms it distributes. The use of the Agency's forms is governed by Section 722.120, as amended in R84-9. (June 13, 1985)

Section 724.101 (not amended)

This Section is drawn from 40 CFR 264.1, which was amended at 50 Fed. Reg. 28742. Section 264.1(f)(3) has been added to state the applicability of the Part 264 standards in states which have not yet received full RCRA authorization.

None of the other provisions of 40 CFR 264.1(f) have been adopted as Illinois rules, because they relate only to USEPA-administered programs. Section 724.101(f) if drawn from 40 CFR 264.1(g), rather than paragraph (f).

The new paragraph, 40 CFR 264.1(f)(3), is relevant to Illinois, in that, because Illinois has not received full HSWA authorization, facilities must comply with some provisions of 40 CFR 264 instead of Part 724. However, the exact language would not be appropriate as an Illinois rule, since it is written from USEPA's administrative perspective. The Board has therefore adopted no amendments to this Section.

Section 724.118

This Section is drawn from 40 CFR 264.18, which was amended at 50 Fed. Reg. 28742, to prohibit liquid hazardous waste from salt domes and mines. The Board has adopted this amendment, except for an exception located outside Illinois.

Section 724.170

This Section is drawn from 40 CFR 264.70, which was amended at 50 Fed. Reg. 28742, to state the duties of an on-site operator with respect to manifests, recordkeeping and reporting.

Section 724.173

This Section is drawn from 40 CFR 264.73, which was amended at 50 Fed. Reg. 28742, to add a requirement for an annual certification of waste minimization. The federal language is ambiguous. The Board has inserted a colon after "annually", and a "that" after the semicolon to attempt to state the apparent intent. Also, the Board has removed some excess verbiage and rearranged the commas.

Section 724.190

This Section is drawn from 40 CFR 264.90, which was amended at 50 Fed. Reg. 28742, to change the name of the Subpart concerning groundwater protection, to expand the Subpart to apply to all solid waste management units at a regulated facility, and to state a modified exemption for units with leak detection systems.

Section 724.321

This Section is drawn from 40 CFR 264.221, which was amended at 50 Fed. Reg. 28742. All new or expanded surface impoundments are now required to have double liners and a leachate collection system, with two new exceptions. Section 724.321(e) allows the Agency to waive the double liner requirement for certain foundry wastes. Section 724.321(d) allows the Agency to waive the requirement on a showing that an alternative design is at least as effective as the double liner. The double liner no longer creates an exemption from groundwater monitoring.

Existing Section 724.321(b) allows an exemption from the basic liner requirement on a demonstration to the Board that alternative design and operating practices will prevent the migration of hazardous constituents at any future time. The adopted rule will allow the Agency to make certain determinations with respect to the exemptions from the new double liner requirement. Except for paragraph (c)(2)(B), the new exemptions involve a choice between single and double liner design, with no possibility of complete exemption from the liner requirement of paragraph (a), and include standards which are simple technical findings, which should be made by the Agency. Paragraph (e)(2)(B) is the paragraph (b) showing, which must be made to the Board.

Section 724.322

This Section is drawn from 40 CFR 264.222, which was repealed at 50 Fed. Reg. 28742. This Section is replaced by the amendments to Section 724.321, above.

Section 724.326

This Section is drawn from 40 CFR 264.226, which was amended at 50 Fed. Reg. 28742. The requirement to inspect leak detection systems has been removed from paragraph (b)(3).

Section 724.327 (not amended)

This Section is drawn from 40 CFR 264.227, which was amended at 50 Fed. Reg. 28742. The amendment removes a cross reference from 40 CFR 264.227(d)(2)(i). However, the reference does not exist in the July 1, 1985 edition of 40 CFR 264, or in Section 724.327(d)(2)(A). The Board has adopted no change.

Section 724.328

This Section is drawn from 40 CFR 264.228, which was amended at 50 Fed. Reg. 28742, to remove paragraphs (b)(2) and (d), which concern leak detection systems.

Section 724.352

This Section is drawn from 40 CFR 264.252, which was repealed at 50 Fed. Reg. 28742, thus removing the exemption from the groundwater monitoring requirements for waste piles with double liners and leak detection systems.

Section 724.353

This Section is drawn from 40 CFR 264.253, which was repealed at 50 Fed. Reg. 28742, thus removing the exemption from groundwater monitoring for waste piles with liners which are periodically cleared for inspection.

Section 724.354

This Section is drawn from 40 CFR 264.254, which was amended at 50 Fed. Reg. 28742, to remove paragraph (b)(2), which required inspection of leak detection systems under piles.

Section 724.401

This Section is drawn from 40 CFR 264.301, which was amended at 50 Fed. Reg. 28742 to require double liners and a leachate collection system for all landfills. This is very similar to Section 724.321, concerning surface impoundments.

Section 724.402

This Section is drawn from 40 CFR 264.402, which was repealed at 50 Fed. Reg. 28742, thus removing the exemption from the groundwater monitoring requirements for double-lined landfills.

Section 724.403

This Section is drawn from 40 CFR 264.303, which was amended at 50 Fed. Reg. 28742, to remove paragraph (b)(2), which required inspection for liquids in a leak detection system in a landfill.

Section 724.410

This Section is drawn from 40 CFR 264.310, which was amended at 50 Fed. Reg. 28742, to remove paragraphs (b)(2) and (c), which referenced monitoring of a leak detection system in a landfill during closure and post-closure care.

Section 724.414

This Section is drawn from 40 CFR 264.314, which was amended at 50 Fed. Reg. 28742. The amendments prohibit the placement of bulk liquids or non-hazardous liquids, effective May 5, 1985.

Section 22.6 of the Act restricted the landfilling of liquids, effective July 1, 1984. In R83-28(A), the Board adopted emergency rules effecting this restriction, effective July 5, 1984. The final Opinion and Order in R83-28(C) was adopted on February 26, 1986. The Board determined that, as of the date of adoption, the liquids restriction was a consistent, more stringent requirement pursuant to Section 22.4(b) of the Act (Opinion, p. 6). The Board has opened Docket R86-11 to address the relationship of the Illinois liquids ban to the USEPA HSWA amendments, which include this Section. (Order of February 26, 1986).

In the federal rule the prohibition on bulk liquids has been split into paragraphs (a) and (b), with the former containing the old rule applicable prior to May 5, 1985, and the latter containing the ban which became effective on that date. Paragraph (a) is not necessary, since the Board rule which was in effect on the date remains enforceable for any violations which may have occurred. Paragraph (a) would be misleading as an Illinois rule, since bulk liquids were actually banned at an earlier date in Illinois. The Board has therefore deleted paragraph (a) altogether. However, the Board will reserve paragraph (a) to maintain consistency with the federal lettering of the subsections, thereby avoiding the necessity of extensive checking of cross references. (PC#1)

40 CFR 264.314(e) prohibits non-hazardous liquids from hazardous waste landfills, effective May 5, 1985, unless a special showing is made. Again, this would be misleading as an Illinois rule, since non-hazardous liquids were prohibited from hazardous waste landfills in Illinois without exception as of January, 1985 (R83-28B). The Board has therefore deleted the date and the exception language, and inserted a reference to Section 729.311, which contains the Board's ban.

The Board has relettered paragraph (d) as (f). This includes a general reference to the wastestream authorization process of Part 709. This paragraph was added in R84-9, and has no federal equivalent.

Section 724.440

This Section is drawn from 40 CFR 264.340, which was amended at 50 Fed. Reg. 49202. Paragraph (a)(2) is amended to allow operators recycling wastes in boilers and industrial furnaces to elect to be regulated as incinerators.

Section 725.101 (not amended)

This Section is drawn from 40 CFR 265.1, which was amended at 50 Fed. Reg. 28742. The USEPA amendments modify paragraph (c)(4), which has not been adopted by Illinois. The amendments set forth the effect of interim status in states which have received partial interim authorization. Although this rule

affects Illinois, it is worded from a federal administrative perspective, which does not allow it to be adopted verbatim. The Board has therefore adopted no amendment to this Section.

Section 725.321

This Section is drawn from 40 CFR 265.221, added at 50 Fed. Reg. 28742. It is a complement to Section 724.321, discussed above. The operator of a surface impoundment with interim status must install a double liner and leachate collection with respect to any new or expanded unit, and with respect to waste received after November 8, 1985. The operator must notify the Agency and file a Part B application within 6 months.

The interim status operator is allowed, in paragraphs (c) and (d), two exemptions from the double liner requirement. These are similar to the exemptions in Section 724.321(d) and (e). The adopted rule will allow these demonstrations to be made to the Agency, except for the showing in paragraph (d)(2)(B). The showing of "no migration ...at any future time" must be made to the Board, for the reasons discussed in connection with Section 724.321.

The Part 725 exemptions raise an additional question as to the procedural context of the demonstrations to the Agency by an interim status operator seeking an exemption from the double liner requirement. The rule clearly contemplates a prior demonstration to, and approval by, the Agency. The Board will leave it to the Agency to specify the administrative process for making this determination. The Board has adopted paragraph (f), which provides that any final Agency determination may be appealed to the Board.

Paragraph (e) specifies the circumstances under which the Agency can require the installation of a new liner when finally acting on the Part B application. The Board has changed "has reason to believe" that a liner is leaking to "finds". The Board believes that this is poor drafting, rather than a deliberate intent by USEPA to specify a lower standard of proof for this permit action.

Section 725.354

This Section is drawn from 40 CFR 265.254, added at 50 Fed. Reg. 28742. It requires a double liner and leachate collection under new or expanded piles, or piles receiving waste after May 8, 1985.

Section 725.401

This Section is drawn from 40 CFR 265.301, added at 50 Fed. Reg. 28742. This requires a double liner and leachate collection for new interim status landfill units, or for those which receive

waste after May 8, 1985. The issues are similar to Section 725.321, discussed above.

Section 725.414

This Section is drawn from 40 CFR 265.314, which was amended at 50 Fed. Reg. 28742 to state new rules for interim status landfills receiving liquids. This is similar to Section 724.414, discussed above.

Paragraphs (a) and (b) of the USEPA rules govern bulk liquids before and after May 8, 1985. For the reasons discussed above, the Board is adopting only paragraph (b), with no date specified. Paragraph (a) is reserved to avoid the necessity of extensive cross checking of references. (PC#1).

Old paragraph (b) is relettered to (c). This states the rule on liquids in containers, which remains unchanged for the present.

USEPA has relettered (c) as (e), and then "revised" it so that it deals with a completely different subject. Old paragraph (c) contained the USEPA paint filter test. Its equivalent was retained in Section 724.414. It is unclear how the liquids ban would function without the test. The Board therefore concludes that this was a codification error in the USEPA rules. The Board will retain the old paragraph as (e).

As "revised", relettered paragraph (e) states the past compliance dates for the USEPA liquid bans. The Board has not adopted this provision, because inclusion of the past dates is not necessary for enforcement, and because the dates would be misleading in the context of the Illinois liquid ban.

Paragraph (f) prohibits the placement of non-hazardous liquids in hazardous waste landfills. The Board has referenced the Part 729 rule, for the reasons discussed above in connection with Section 724.414.

Paragraph (d) has been renumbered as (g). This has no federal equivalent, but references the Part 709 wastestream authorization process.

Section 725.440

This Section is drawn from 40 CFR 265.340, which was amended at 50 Fed. Reg. 49202, to allow operators to elect to be regulated as incinerators instead of boilers or furnaces. This is similar to Section 724.440 above.

Section 726.123

This Section was drawn from 40 CFR 266.23, which was amended at 50 Fed. Reg. 28442, to prohibit the use of hazardous waste oil for dust suppression or road treatment.

Section 726.130

This Section is drawn from 40 CFR 266.30, which was amended at 50 Fed. Reg. 49202. The amendments expand the definition of "hazardous waste fuel", and replace specific exclusions with references to Section 721.106.

A correction appearing at 50 Fed. Reg. 33542 does not affect the text of the rules.

Section 726.131

This Section is drawn from 40 CFR 266.31, which was amended at 50 Fed. Reg. 28742 and 49202. The latter amendment supplants the former.

The amendments replace general language adopted in R85-22 with specific prohibitions. Hazardous waste fuel can be marketed only to people with a USEPA identification number, and can be burned only in certain specified industrial furnaces or boilers. Cement kilns in large municipalities are regulated as incinerators if they use hazardous waste fuel.

The Board has added a reference to the USEPA identification number requirement in Section 722.112.

Section 726.132

This Section is drawn from 40 CFR 266.32, which was amended at 50 Fed. Reg. 49202, to clarify the duties of generators of hazardous waste which is used as, or to produce, a fuel.

Section 726.133

This Section is drawn from 40 CFR 266.33, which was amended at 50 Fed. Reg. 49202, to simplify the transporter's duties with respect to hazardous waste fuel.

Section 726.134

This Section is drawn from 40 CFR 266.34, which was amended at 50 Fed. Reg. 28742 and 49202. The latter amendments supplant the former.

These provisions specify the duties of a person who markets hazardous waste fuel which that person generates or blends.

Section 726.140 et seq.

Subpart E is drawn from 40 CFR 266.40 et seq., added at 50 Fed. Reg. 49202. This Subpart regulates "used oil" burned for energy recovery, in contrast with Subpart D, which regulates hazardous waste burned for energy recovery. Used oil with more than 1000 ppm total halogens is presumed to be a hazardous waste, and is subject to Subpart D instead.

Subpart E further divides used oil into two categories, depending on whether it meets certain specifications for concentrations of metals, halogens and flash point. The Subpart regulates the marketing and burning of the off-specification oil, and the process of deciding whether the oil meets the specifications.

Section 731.101 et seq.

This Part is drawn from 40 CFR 280, adopted at 50 Fed. Reg. 28742, July 15, 1985. The interim rules establish a program regulating underground storage tanks (UST). USEPA was required to adopt these rules as a part of the HSWA amendments to RCRA.

P. A. 84-1072 added Sections 22.4(e) and 22.12 to the Act. These Sections require the Board to adopt "fast track" regulations which are no less stringent than USEPA regulations implementing the UST program, and require the Agency and State Fire Marshall to coordinate in the administration of the UST program. Section 22.4(e) requires the Board to adopt regulations within 180 days after adoption by USEPA; however, Section 22.4(e) itself did not become effective until July 1, 1986.

The UST program applies to underground tanks which store petroleum products or substances regulated under CERCLA, excluding hazardous wastes. Storage tanks containing hazardous waste are regulated under RCRA (Section 724.290 et seq.). UST's must prevent releases due to corrosion or structural failure for the operational life of the tank. They must be cathodically protected or constructed of non-corrosive material, which must be compatible with the substance to be stored. Corrosion protection is not required if soil resistivity is "12,000 ohm-cm or more".

There are a number of problems associated with the soil resistivity test. First, the Board has added Section 731.900, containing information necessary to incorporate ASTM G57-78 by reference under the Administrative Procedure Act. Second, the Board has deleted the provisions from Section 731.102 concerning alternative resistivity standards. The first is unacceptable under Illinois law unless some rule is specified under which the Agency decides whether to allow use of the alternative standard. The second is unnecessary. If USEPA promulgates an alternative standard, the Board will adopt it.

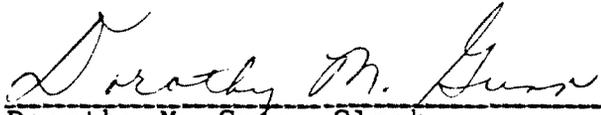
Section 731.101(d)(7) excludes pipelines regulated under the Illinois Gas Pipeline Safety Act. This appears to be the only Illinois regulatory program which meets the generic language of 40 CFR 280.1(g).

CONCLUSION

This Opinion supports the Board's Order of this same day adopting final amendments. The Board will withhold filing of these amendments until July 21, 1986, to allow final review by those entities involved in the RCRA authorization process. The Board authorizes consolidation of these rules with those adopted in R85-23 for publication in the Illinois Register if it appears to be efficient to do so.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 17th day of July, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board