

ILLINOIS POLLUTION CONTROL BOARD
October 23, 1986

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R86-19
(1-31-86 THROUGH 3-31-86))

FINAL ORDER, ADOPTED RULE.

FINAL 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 May 22, 1986, the Board opened this docket for the purpose of updating the RCRA rules to agree with recent USEPA amendments. On July 11, 1986, the Board adopted a proposed Opinion and Order providing for publication of the text of proposed rules and allowing public comment.

Section 22.4(a) of the Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par 1022.4(a)) 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 federal amendments adopted from February 1 through March 31, 1986. The Federal Registers utilized are as follows:

February 13, 1986; 51 Fed. Reg. 5327 - 5331
February 25, 1986; 51 Fed. Reg. 6537 - 6542
March 24, 1986; 51 Fed. Reg. 10145 - 10178

On September 18, 1986, the Board received codification comments from the Administrative Code Unit.

The Board appreciates the assistance of Morton Dorothy, 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.

PUBLIC COMMENT

The proposal appeared at 10 Ill. Reg. 13500, August 15, 1986. The Board received the following public comment:

PC#1 USEPA, August 21, 1986
PC#2 Chemical Waste Management, Inc., September 29, 1986

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; October 15, 1982, 6 Ill. Reg. 12479.

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 19, 1986; 10 Ill. Reg. 13274, August 8, 1986.

R86-27 Opened July 11, 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 (Third Dist. 1984).)

The Board updated the RCRA rules to correspond with USEPA amendments in several 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.

R86-1 July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986.

R86-19 Proposed July 11, 1986; 10 Ill. Reg. 13500, August 15, 1986.

R86-28 Opened July 11, 1986.

Illinois received final authorization for the RCRA program effective January 31, 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 November 21, 1984, 61 PCB 247; 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 has adopted procedures to be followed in cases before it involving the RCRA rules:

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

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

R81-25 October 25, 1984, 60 PCB 381; 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, 1986, and June 11, 1986.)

DETAILED DISCUSSION

The USEPA amendments involved in this update are summarized as follows:

51 Fed. Reg. 5330 Listing of wastes produced from the manufacture of ethylene dibromide.

51 Fed. Reg. 6541 Listing of solvent wastes from use of 1,1,2-trichloroethane, benzene, 2-ethoxyethanol and nitropropane.

51 Fed. Reg. 10174 Regulation of generators between 100 and 1000 kg per month

Section 703.124

This Section is drawn from 40 CFR 270.1, which was amended at 51 Fed. Reg. 10174. Paragraph (a) has been amended to remove the reference to the 90 day accumulation period. Instead, the time periods of Section 722.134 are referenced generally, since they will no longer be 90 days in all cases.

Section 703.150

This Section is drawn from 40 CFR 270.10(e), which was amended at 51 Fed. Reg. 10174. It was also recently amended in

R86-1. Paragraph (d) has been added. This will require small quantity generators above 100 kg per month which dispose of hazardous waste on-site to apply for permits by March 24, 1987.
Section 720.110

This Section is drawn from 40 CFR 260.1, which was amended at 51 Fed. Reg. 10174. "Small quantity generator" has been defined as a person who generates less than 1000 kg in a calendar month. Note that this includes persons who generate less than 100 kg per month.

Section 721.101

This Section is drawn from 40 CFR 261.1, which was amended at 51 Fed. Reg. 10174. Paragraph (a)(1) has been amended to reference "conditionally exempt" small quantity generators, which is defined in Section 721.105. A reference to Part 726 has also been added, and the terminology referencing recycled waste has been updated.

Section 721.105

This Section is drawn from 40 CFR 261.5, which was amended at 51 Fed. Reg. 10174. It was also recently amended in R86-1. This Section defines "conditionally exempt" small quantity generators. Paragraph (g) specifies the conditions for exemption of a small quantity generator under 100 kg per month.

Section 721.131

This Section is drawn from 40 CFR 261.31, which was amended at 51 Fed. Reg. 6541. It was also recently amended in R86-1.

The amendments add to the solvent listings F002 and F005. 1,1,2-trichloroethane has been added for F002, and benzene, 2-ethoxyethanol and 2-nitropropane have been added to F005.

Section 721.132

This Section is drawn from 40 CFR 261.32, which was amended at 51 Fed. Reg. 5330. It was also recently amended in R86-1.

The amendments add generic wastes K117, K118 and K136. These are wastes from the production of ethylene dibromide by bromination of ethene.

Section 721.133

This Section is drawn from 40 CFR 261.33, which was amended at 51 Fed. Reg. 6541 and 10174. It was also recently amended in R86-1.

The amendments derived from 51 Fed. Reg. 6541 identify 2-nitropropane as toxic as well as flammable, and add U359, 2-ethoxyethanol, to the list of toxic wastes.

The amendments derived from 51 Fed. Reg. 10174 change the introductory language to Section 721.133(f) to reference the revised small quantity generator exclusion rule of Section 721.105(a) and (g).

Section 721.Appendix C

This Section is drawn from 40 CFR 261, Appendix III, which was amended at 51 Fed. Reg. 5330 and 6541. It was also recently amended in R86-1. The amendments specify analytical techniques for ethylene dibromide, 2-ethoxyethanol and 2-nitropropane. The Board has updated the incorporation by reference of this table.

Section 721.Appendix G

This Section is drawn from 40 CFR 261, Appendix VII, which was amended at 51 Fed. Reg. 5330 and 6541. It was also recently amended in R86-1.

The amendments derived from 51 Fed. Reg. 5330 list ethylene dibromide as the constituent which caused K117, K118 and K136 to be listed. The amendments at 51 Fed. Reg. 6541 identify 1,1,2-trichloroethane as a constituent which caused F002 to be listed, and 2-ethoxyethanol, benzene and 2-nitropropane as constituents which caused F005 to be listed.

Section 721. Appendix H

This Section is drawn from 40 CFR 261, Appendix VIII, which was amended at 51 Fed. Reg. 6541. It was also recently amended in R86-1. The amendments add 2-ethoxyethanol and 2-nitropropane to the list of hazardous constituents.

Section 722.120

This Section is drawn from 40 CFR 262.20, which was amended at 51 Fed. Reg. 10174. This Section creates an exemption from the manifest requirements for small quantity generators above 100 kg per month which have with a reclaimer a contract which specifies the type and frequency of shipments, which must be made on the recycler's vehicles. The generator is required to maintain a copy of the reclamation agreement for at least three years after its expiration. This is similar to the "Safety-Kleen" exemption from the Part 809 manifest requirement. (Safety-Kleen v. IEPA PCB 80-12; 39 PCB 38, July 10, 1980; Supreme Court Rule 23 Order, 2d District, September 18, 1981.)

Section 722.134

This Section is drawn from 40 CFR 262.34, which was amended at 51 Fed. Reg. 10174. Paragraphs (d), (e) and (f) add accumulation times applicable to small quantity generators over 100 kg per month.

The small quantity generator is allowed to accumulate hazardous waste for up to 180 days, provided the total never exceeds 6000 kg. The generator has to comply with the usual storage, dating and labeling requirements for the accumulated waste, except that the small quantity generator must follow certain specified emergency procedures, instead of having to prepare a plan pursuant to Part 725. The small quantity generator has to name an emergency coordinator, train employees and take certain actions in the event of a spill or fire.

Paragraph (e) allows the small quantity generator to accumulate waste for up to 270 days if the generator has to transport the waste more than 200 miles for off-site management. The same quantity limits and requirements apply to such a generator.

Paragraph (f), as proposed provided that the small quantity generator which exceeds the accumulation amounts or times is subject to the RCRA hazardous waste management permit requirements. However, the Agency was authorized to extend the time limitations for up to 30 days at its discretion, "due to unforeseen, temporary and uncontrollable circumstances."

Chemical Waste Management objected to the extension provision on the basis that it was a variance provision which could only be acted on by the Board. (PC#2).

The Board agrees with Chemical Waste Management that this provision as well as a similar provision in paragraph (b) must be changed a) to comport with the bifurcated Illinois system, b) to remove the discretionary authority (i.e. unappealable) language, and c) because such determinations have the major effect of placing the generator in or out of the Board permit system.

Therefore, the language in both paragraphs (b) and (f) has been changed to utilize the provisional variance/variance routes, with the restrictions that no variance can exceed 30 days and that the arbitrary or unreasonable hardship showing is confined only to that which is due to a combination of "unforeseen, temporary and uncontrollable circumstances".

Section 722.144

This new Section is drawn from 40 CFR 262.44, which was amended at 51 Fed. Reg. 10174. The small quantity generator above 100 kg per month is exempt from recordkeeping and reporting requirements except as specifically provided. The small quantity

generator above 100 kg per month must keep records concerning accumulation times and quantities in the preceding Section. Such generators must also keep copies of manifests and test results as specified in Section 722.140, and retain records for longer periods if instructed to do so.


Section 723.120

This Section is drawn from 40 CFR 263.20, which was amended at 51 Fed. Reg. 10174. This Section complements Section 722.120(e). It exempts a recycler from the transporter requirements when the recycler is carrying waste from a small quantity generator above 100 kg per month pursuant to a reclamation agreement. The recycler has to carry a shipping paper with the manifest information on it, and retain records for at least three years.

This Final Opinion supports the Board's Order amending the RCRA rules of this same day.

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 23rd day of October, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board