

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
	)	R06-16
UIC UPDATE, USEPA AMENDMENTS	)	(Identical-in-Substance
(July 1, 2005 through December 31, 2005)	)	Rulemaking-Land)
RCRA SUBTITLE D UPDATE, USEPA	)	R06-17
AMENDMENTS (July 1, 2005 through	)	(Identical-in-Substance
December 31, 2005)	)	Rulemaking-Land)
RCRA SUBTITLE C UPDATE, USEPA	)	R06-18
AMENDMENTS (July 1, 2005 through	)	(Identical-in-Substance
December 31, 2005 and March 23, 2006)	)	Rulemaking-Land)
	)	(Consolidated)

NOTICE

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via Clerk's Online-COOL)

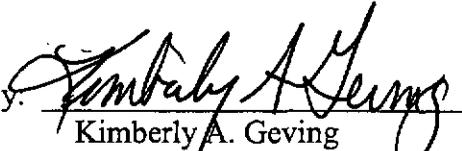
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois EPA's **COMMENTS**, a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
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Assistant Counsel

Division of Legal Counsel

DATE: June 30, 2006

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THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
UIC UPDATE, USEPA AMENDMENTS	)	R06-16
BOARD'S SPECIAL WASTE	)	(Identical-in-Substance
	)	Rulemaking –Land)
)	
RCRA SUBTITLE D UPDATE, USEPA	)	R06-17
AMENDMENTS (July 1, 2005 through	)	(Identical-in-Substance
December 31, 2005)	)	Rulemaking –Land)
)	
RCRA SUBTITLE C UPDATE, USEPA	)	R06-18
AMENDMENTS (July 1, 2005 through	)	(Identical-in-Substance
December 31, 2005 and March 23, 2006)	)	Rulemaking –Land)
	)	(Consolidated)

COMMENTS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through one of its attorneys, Kimberly Geving, and submits its COMMENTS in the above-captioned matter to the Illinois Pollution Control Board (“Board”). The comments have been broken out into different types. The first section, General Comments, consists mainly of typographical errors, although there are also some substantive comments. The second section consists solely of comments on the financial assurance requirements for standardized permits. The third section consists of comments on the RCRA Subtitle D Updates. The fourth section consists of comments on the RCRA Subtitle C Updates. The fifth section consists of a response to the Board’s direct request for comment on certain topics in its Opinion dated April 6, 2006.

The Illinois EPA submits the following comments in response to the above-captioned matter:

A. General Comments (all three dockets)

1. Throughout the proposal, the word "subpart" was in lower case when the first letter should be capitalized. We suggest doing a word search throughout all three dockets to correct the typographical error.
2. Section 703.Appendix A, beginning on page 121 and continuing through page 136, has numbers and asterisks in the left margin. The Illinois EPA does not understand the significance of these markings.
3. In Section 705.302(b)(11), the word "Section" is misspelled.
4. In Section 705.302(c)(1)(D), delete the word "an" in the first line and delete the duplicate word "Section" in the second line.
5. In Section 726.200(b)(3), the word "requirements" is misspelled.
6. In the new Part 727 Table of Contents and body of the rule there are no separate subparts. The Board has combined all sections together, even though the numbering has a 100 series, 200 series, and a 900 series. This does not follow the typical drafting standards, and it makes the rule very difficult to follow. The Illinois EPA believes there should be separate subparts, each dealing with their own topics.
7. Throughout Part 727 there are exceptions that direct the reader to Section 727.100(a)(2). Are these exceptions intended to require the reader to follow Part 721 and Section 724.101(f) and (g)?
8. In Section 727.170(d)(2)(I), we believe that the "and" at the end of the paragraph should be deleted and reinserted at the end of subsection (K). Additionally, there should be a semicolon at the end of subsection (J) instead of a period.
9. In Section 727.170(f)(2)(C), we believe the word "Information" should be inserted at the beginning of that sentence.
10. In Section 727.210(b)(2), add the word "and" at the end of the paragraph.
11. In Section 727.210(c)(4)(C), the word "section" should have a capital s. This is a common typographical error throughout the Part 727 and should be corrected.
12. In Section 727.210(e), there is a reference to subsection (b). Should this actually be subsection (e)?
13. In Section 727.240(d), the word "Agency" is duplicated in the third line up from the bottom, and there should be either a "may" or "must" inserted after the word "Agency."

14. In Section 727.290(g)(3), the word "requirements" is misspelled. Additionally, should there be semicolons after subsections (A) and (B)?
15. In Section 727.Appendix A, Illustration A at page 661, the sentence in the middle of the page has a grammatical error. The word "undertaken" should be changed to "taken" since the word is followed by "under."
16. In Section 730.101(b), the Board has changed "which" to "that." This should be corrected throughout all the parts.
17. In Section 730.113(a)(1), the new words "must that" in the second line should be reversed to read "that must."
18. In Section 730.133(b), should the reference to subsection (b)(5) actually be (b)(6) since the section contains six rather than five subsections?
19. In Section 730.172(d), there is a typographical error in the first full line of the new text. The "ro" should be changed to an "or."
20. In Section 733.113(c)(1), the word "excape" should be changed to "escape."

B. Comments on Financial Assurance Requirements for Standardized Permits

As a general comment, the Code of Federal Regulations is easier to read because it lists the financial requirements as a Subpart to Part 267 instead of attempting to fit the regulations into a single section (727.240) as was done in the proposed regulations in the Illinois Administrative Code. Because the Illinois Administrative Code reduces 40 CFR 267, Subpart H into a single section, it was necessary for the Board to breakup the Sections in 40 CFR 267, Subpart H into their own subsections at the end of Section 727.240 to comport with indent level codification requirements. Reading Section 727.240 can be confusing due to this method of formatting the rules:

Specific Comments:

1. Page 617, 727.240(c)(1)(B) – The word "onsite" should be a hyphenated word "on-site."
2. Page 617, 727.240(c)(2) – The reference to "subsection (d)(6)(B)(iii) of this Section" should read "subsection (n)(3) of this Section."

3. Page 619, 727.240(d)(1)(E) – “The facility owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1), incorporated by reference in 35 Ill. Adm. Code ‘720.111(b).’” Instead of 720.111(b) it should read “724.251.”
4. Page 619, 727.240(d)(2) – “720.111(b)” change to “724.251.”
5. Page 620, 727.240(d)(3) – “720.111(b)” change to “724.251.”
6. Page 620, 727.240(d)(4) – “letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust....” Add “incorporated by reference in 35 Ill. Adm. Code 724.251,” after 40 CFR 264.151(d).
7. Page 620, 727.240(d)(5) – “720.111(b)” change to “724.251.”
8. Page 621, 727.240(d)(7)(A) – “720.111(b)” change to “724.251.”
9. Page 621, 727.240(d)(7)(B) – “subsection (d)(6)(B)(i) of this Section” change to “subsection (n)(1) of this Section.”
10. Page 626, 727.240(h)(7)(A) – “a facility owner or operator may meet the requirements of this Section” change to “a facility owner or operator may meet the requirements of subsection (h) of this Section.”
11. Page 626, 727.240(h)(7)(A) – “ in subsections (h)(6)(A) through (h)(6)(C) of this Section.” There is no (h)(6)(C); change to “in subsections (h)(6)(A) through (h)(6)(B) of this Section.”
12. Page 626, 727.240(h)(7)(A) – “720.111(b)” change to “724.251.”
13. Page 626, 727.240(h)(7)(A) – “Regional Administrator” change to “Agency.”
14. Page 627, 727.240(i)(1) – “720.111(b)” change to “724.251.”
15. Page 629, 727.240(l)(2) – “The letter must be worded as set forth in Appendix A, Illustration A of this Part.” Change Illustration “A” to “B.”
16. Page 630, 727.240(n)(1)(A)(i) – “BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vii) as subsection (n)(1)(E) through (n)(1)(E)(vi) of this Section....” Change “40 CFR 267.143(f)(2)(i)(A)(I)” to “40 CFR 267.143(f)(2)(i)(A)(I)(i).” Change “(n)(1)(E)” to “(n)(1)(E)(i).” Change “(n)(1)(E)(vi)” to “(n)(1)(E)(vii).”
17. Page 632, 727.240(n)(1)(E)(vii) – “BOARD NOTES: Subsections (n)(1)(E) through (n)(1)(E)(vi) of this Section is derived from 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vi).” Change “(n)(1)(E)” to “(n)(1)(E)(i).” Change “(n)(1)(E)(vi)” to

- “(n)(1)(E)(vii).” Change “40 CFR 267.143(f)(2)(i)(A)(I)” to “40 CFR 267.143(f)(2)(i)(A)(I)(i).” Change to “(f)(2)(i)(A)(I)(vi)” to “(f)(2)(i)(A)(I)(vii).”
18. Page 633, 727.240(n)(4)(B) – Change “Regional Administrator” to “Agency.”
 19. Page 633, 727.240(n)(5) – “An owner or operator who no longer meets the requirements of paragraph (f)(1). . . .” Change “paragraph (f)(1)” to “subsection (m).”
 20. Page 633, 727.240(n)(5)(A) - Change “Regional Administrator” to “Agency.”
 21. Page 634, 727.240(p) – “p) Recordkeeping and reporting requirements. See subsection (p) of this Section.” Delete “See subsection (p) of this Section.” since this is subsection (p).
 22. Page 636, 727.240(p)(4)(B) – Change “(h)(10)” to “(d)(10).”
 23. Page 637, 727.240(p)(6) – “the owner or operator must provide alternate financial assurance that meets the requirements of this Section.” Change “this Section” to “subsection (h) of this Section.”
 24. Page 637, 727.240(q)(1) – Change “720.111(b)” to “724.251.”
 25. Page 637, 727.240(q)(2) – Replace language in (q)(2) with the language from 35 Ill. Adm. Code, 724.247(g)(2) and (3). This change will make it specific to the State of Illinois.
 26. Page 660, 727.Appendix A. Illustration A – In the paragraph after “[Complete the following calculations:],” “close of the owner or operator’s fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.” Change the first mention of owner to it possessive form “owner’s or operator’s fiscal year.” Change “meets the requirements of this section” to “meets the requirements of subsection (d) of this Section.”
 27. Page 662, 727.Appendix A. Illustration A – In the paragraph after the signature, name, title, and date, it says: “After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located.” Change “permitting authority of the state or territory where the facility is located” to the “Agency.”
 28. Page 663, 727.Appendix A. Illustration B – “This firm [insert the appropriate of the following statements. . . .” Should be a new paragraph.
 29. Page 663, 727.Appendix A. Illustration B – Just before the signature, name, title, and date, “727.240(l)” should be changed to “727.Appendix A, Illustration B.”

30. Page 664, 727. Appendix A. Illustration B - In the paragraph after the signature, name, title, and date, it says: "After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located." Change "permitting authority of the state or territory where the facility is located" to the "Agency."

C. RCRA Subtitle D Update (R06-17)

1. Sections 811.326(d) and (d)(1)

At Sections 811.326 (d) and 811.326 (d)(1) the Board proposed the following:

d) All solid wastes that are managed pursuant to a remedy required ~~under~~ pursuant to Section 811.325, or pursuant to an interim measure required ~~under~~ pursuant to subsection (a)(3), ~~shall~~ must be managed by the owner or operator in a manner that fulfills the following requirements:

- 1) ~~That is protective of~~ adequately protects human health and the environment; and
- 2) ~~That~~ It complies with applicable requirements of Part 811.

The Illinois EPA suggests instead the following underlined changes to Sections 811.326 (d) and 811.326 (d)(1). The Illinois EPA suggested language eliminates the need for four phrases of "pursuant to" in one sentence. The language is still consistent with the meaning and intent of the regulation, but simplifies the sentence for better understanding. The addition of the phrase "of this Section" is compatible with changes the Board has made in the remaining regulations. Also, the suggested language for (d)(1) is to match the beginning language of (d)(1) with (d)(2):

d) All solid wastes that are managed pursuant to ~~a remedy required under~~ Section 811.325, or ~~pursuant to an interim measure required under~~ subsection (a)(3) of this Section, ~~shall~~ must be managed by the owner or operator in a manner that fulfills the following requirements:

- 1) ~~That is protective of~~ It adequately protects human health and the environment; and
- 2) ~~That~~ It complies with applicable requirements of Part 811.

2. Section 811.326(e)(2)(A)

At Section 811.326 (e)(2)(A) the Board proposed the following:

A) The extent and concentration of the ~~release(s)~~ releases;

The Illinois EPA believes the original language was correct and suggests that no change be made to Section 811.326(e)(2)(A). The Board's change to the plural form of release only describes multiple source release and/or a continuous single source release. However, groundwater contamination may be the result of a single and non-continuous release (e.g., spill from a tank). Therefore, the original language was appropriate.

D. RCRA Subtitle C Update (R06-18)

In order to facilitate future discussions on R06-18, these comments are broken up into three groups:

- Group 1: General Comments;
- Group 2: State regulations differ from the federal regulations; and
- Group 3: Federal (and State) regulations may be incorrect or should be revised

The group number is identified in [brackets] at the end of each comment.

1. **Page 18, Section 702.110: Definitions:** The definition of "RCRA Standardized Permit" refers to Subpart G of 35 Ill. Adm. Code 702. Section 702 does not include a Subpart G. The correct reference appears to be Subpart G of 705. [1]
2. **Page 18, Section 702.110: Definitions:** The definition of "RCRA Standardized Permit" refers to a uniform portion (of the permit) that is "issued in all cases." This is consistent with the federal regulation at 40 CFR 124.2. However, in order to clarify that a permit may not be issued in "all cases," it may be preferable revise this sentence to read, "a uniform portion issued for all standardized permits . . ." [3]
3. **Page 22, Section 702.120(b)(3)** describes what an applicant must do if they are required to have a permit (including new applicants or permittees with expiring permits). The federal equivalent at 40 CFR 270.10(a)(3) states that an application for new or expiring permits must meet the requirements of this section and 270.70 through 270.73. The following comments pertain to the State regulations at Section 702.120(b)(3) and its federal equivalent:
 - a. The federal regulation 40 CFR 270.10(a)(3) says an applicant must comply with the requirements of sections 270.70 through 270.73. These regulations are in 40 CFR 270 Subpart G, and pertain solely to facilities with Interim Status. However, the federal regulations (revised by FR Vol. 70, No. 173, page 53474, Sept. 8, 2005) would apply these standards to facilities applying for a new permit, or sites with an expiring permit. It appears that the requirement to comply with the interim status standards (270.70 - 270.73) may be more appropriate under 270.10(a)(2) since this section specifically refers to a facility with interim status that is applying for a permit. Of course, this begs the question of what information should be provided in an application for a new facility or an existing facility that wants to renew an expiring RCRA permit (see comment (c) below). [3]

- b. The State regulation 35 Ill. Adm. Code 702.120(b)(3) also requires new facilities or those with expiring permits to comply with the interim status requirements at 35 Ill. Adm. Code 703.153 – 703.157 (the State equivalent to 40 CFR 270.70 - 270.73). However, it also requires these facilities to comply with Sections 702.120 thru 702.124, 703.125, 703.126, 703.150, 703.151, 703.152, 703.186, and 703.188. These regulations are not specifically cited in 40 CFR 270.10(a)(3). Therefore, even if the equivalent federal regulation (40 CFR 270.10(a)(3)) is fundamentally flawed (because a new facility or one with an expiring permit would not follow the interim status requirements), the Illinois equivalent is not consistent with it. [2]
- c. As proposed, 35 Ill. Adm. Code 702.120(b)(3) leaves out a significant amount of critical information that needs to be provided in an application for a new or expiring permit. 702.120(b)(3) should be revised to require the applicant to address the requirements in 35 Ill. Adm. Code 702 Subpart B: Permit Applications and 35 Ill. Adm. Code 703 Subpart D: Applications, not just portions of Parts 702 and 703. A similar revision should be made to 40 CFR 270.10(a)(3). [3]
4. **Pages 46, Subpart C:** Page 46 indicates that Subpart C of 35 Ill. Adm. Code Part 703 has been renamed “Special Forms of Permits.” However, page 69 also indicates that Subpart E of 35 Ill. Adm. Code Part 703 has been renamed “Special Forms of Permits.” This later change (the renaming of Subpart E) is consistent with the equivalent federal regulations (see page 53475) and the Table of Contents for Part 703. It is suggested that Subpart C of Part 703 NOT be renamed as proposed on page 46. [2]
5. **Page 46, Section 703.144:** It appears that the contents of Section 703.144 were inserted into the wrong part of the State regulations. Page 53475 of FR Vol. 70, No. 173, Sept. 8, 2005 indicates a new section, 40 CFR 270.67, was added to Subpart F of 270. The equivalent section of the State regulations is Subpart E of 703 (newly renamed “Special Forms of Permits”). However, the wording in 40 CFR 270.67 was inserted into Subpart C of 703 as 35 Ill. Adm. Code 703.144. In order to be consistent with the federal regulations, the wording in Section 703.144 should be deleted, and moved to Subpart E of Part 703. [NOTE: See comment regarding Page 110, Section 703.350(c)(6).] [2]
6. **Page 51, Section 703.191(a):** R06-18 proposes to add several sentences to the end of this section. The last sentence in the proposed addition to 703.191(a) is a duplication of the sentence before the proposed addition: “The requirements of this section do not apply to . . .” This is not consistent with the equivalent regulation at 40 CFR 124.31(a). One of these sentences should be omitted from Section 703.191(a), probably the one that appears first. [2]
7. **Page 59, Section 703.208:** This section makes a reference to Section 703.310(a)(1)(A). The proposal does not have a Section 703.310, nor do the existing regulations. [3]
8. **Page 70, Section 703.221:** This section also makes a reference to Section 703.310(a)(1)(A). Please see comment number 7 immediately above. [3]
9. **Page 71, Section 703.232:** Same comment as numbers 7 and 8 above. The correct citation

may actually be to Section 703.320(a)(1)(A). At the end of the opening paragraph there is a new reference to 270.10(1). Should this actually be 270.10(a)(1) or some other subsection?
 [3]

10. **Page 84, Section 703.272(c)** refers to Section 705.301(b)(2). However, Section 705.301(b) does not include a subsection (b)(2). The equivalent federal regulation 40 CFR 270.41(b)(3) refers to 124.202(b). In order to be consistent with the federal regulations, Section 703.272(c) should be revised to reference Section 705.301(a)(2). [2]

11. **Page 109, Section 703.350(c)** states, "The following provisions of this part 270 and 35 Ill. Adm. Code 702 apply to a RCRA Standardized Permit." The reference to the federal regulation 40 CFR 270 should be deleted and replaced with a reference to the appropriate section of the State regulations, (35 Ill. Adm. Code 703). [2]

12. **Page 109, Section 703.350(c)(1), General Information:** The equivalent federal regulation at 40 CFR 270.260(a) states, "Subpart A – General Information: All sections" (apply to Standardized Permits). However, Section 703.350(c)(1) references a number of the State regulations that are not consistent with the corresponding federal regulations at 40 CFR 270 Subpart A (Subpart A includes 270.1, thru 270.6). When these federal regulations were compared to the Illinois regulations cited in Section 703.350(c)(1), the correlations in the following table were identified. In order to be consistent with the federal regulations, 35 Ill. Adm. Code 703.350(c)(1) should be revised to identify the regulations in the table below.
 [2]

40 CFR	35 IAC
270.1	703.121, 703.122, 703.123, 703.124, 703.158, 703.159, 703.160, 703.161(a)
270.2	702.110
270.3	Non Delegable (compliance with other federal laws)
270.4	702.181
270.5	? See Memorandum of Agreement (MOA)
270.6	702.104, 703.110

35 Ill. Adm. Code 703.350(c)(1) also referenced additional regulations that do not have equivalent regulations in Subpart A of 40 CFR 270. Therefore, in order to be consistent with the federal regulations, the following references should be removed from Section 703.350(c)(1):

- The reference to "Subpart B of this Part." Only Sections 703.121 through 703.124 in Subpart B of 703 correspond to 40 CFR 270.1.
- The reference to Sections 703.153 through 703.160. As noted in the above table, only Sections 703.158, 703.159, and 703.160 correspond to a federal regulation in Subpart A of 270; in this case 40 CFR 270.1. **Note:** the Interim Status requirements at Sections 703.153 – 703.157 are specifically addressed in Section 703.350(c)(7); therefore, it is not clear why these requirements would also be included in Section 703.350(c)(1).

- The reference to Subpart A of 35 Ill. Adm. Code 702. Only Sections 702.104 and 702.110 in Subpart A of 35 Ill. Adm. Code 702 correspond to an equivalent federal regulation in Subpart A of 40 CFR 270. [2]

13. **Page 109, Section 703.350(c)(3), Permit Conditions:** The equivalent federal regulation at 40 CFR 270.260(c) states, "Subpart C – Permit Conditions: All sections" (apply to Standardized Permits). When these federal regulations were compared to the Illinois regulations cited in Section 703.350(c)(3), the correlations in the following table were identified. This comparison showed that in order to be consistent with the federal regulations, 35 Ill. Adm. Code 703.350(c)(3) should be revised to include a reference to 702.164. [2]

40 CFR	35 IAC
270.30	702.140, 702.141, 702.142, 702.143, 702.144, 702.145, 702.146, 702.147, 702.148, 702.149, 702.150, 702.151, 702.152, 703.242, 703.243, 703.244, 703.245, 703.246, 703.247, 703.248
270.31	702.164
270.32	702.160, 703.241
270.33	702.162, 702.163

14. **Page 110, Section 703.350(c)(5)** refers to Subpart 35 IAC 703.125 and 703.161. The correct references are 702.125 and 702.161. [2]
15. **Page 110, Section 703.350(c)(6)** states that it is derived from 40 CFR 270 Subpart F – Special Forms of Permits: Section 270.67. 35 IAC 703.350(c)(6) then refers to 703.233 as the corollary to 40 CFR 270.67. However, section 703.233 does not exist. It appears that the wording in 703.144 was meant to be inserted as 703.233. [NOTE: See comment regarding Page 46, 703.144.] [2]
16. **Page 110, Section 703.350(c)(8)** states that no provisions derived from Subpart H of 40 CFR 270 apply. But it then goes on to reference Subpart H (RAPPs) of 35 IAC 703. This is confusing and should be revised to read "... No provisions from Subpart H of 35 IAC 703 apply." [2]
17. **Page 110, Section 703.350(c)(9)** states all provisions derived from Subpart J of 40 CFR 270 apply. Section 703.350(c)(9) is consistent with the federal equivalent at 40 CFR 270.260(i). Still, it is confusing why Subpart J of 35 IAC 703 (40 CFR 270) is referenced in this section when 35 IAC 703.350 (40 CFR 270.260) is in Subpart J. [3]
18. **Page 110, Section 703.351(a):** This section states that the owner/operator may apply for a standardized permit by following the procedures in Subpart G of 35 Ill. Adm. Code 705. The equivalent federal regulation at 40 CFR 270.270 says you may apply for a standardized permit by following the procedures in 124 and Subpart G of this Subpart (40 CFR 270). Two comments are offered here:

- a. It is not clear if this section is consistent with the federal regulations because the federal regulations refer to two Subparts, 124 and Subpart G of 270, while Section 703.351(a) only refers to one Subpart, Subpart G of 705. Are the applicable portions of 40 CFR 124 and Subpart G of 270 both incorporated into Subpart G of 35 Ill. Adm. Code 705, or should portions of Parts 702 and 703 also be referenced here?
[2]
 - b. The federal equivalent of Section 703.351(a) at 40 CFR 270.270 refers to Subpart G of 40 CFR 270 as the procedures for applying for a standardized permit. However, Subpart G in Part 270 pertains to Interim Status. Though apparently inconsistent with the federal regulations, the State regulations (correctly) do not refer to the equivalent interim status regulations at Sections 703.153 thru 703.157. It appears the correct reference in 40 CFR 270.270 would be to Subpart J of 40 CFR 270. [2,3]
19. **Page 111, Section 703.351(b)(6):** This State regulation refers to the federal regulations at 40 CFR Parts 270.280 and 267. The Illinois equivalent regulations need to be cited here. It appears that Section 703.351(b)(6) should be revised to reference Section 703.351(c) and Part 727.
 20. **Page 111, Section 703.351(b)(7)** refers to the federal regulations 40 CFR Part 267 Subpart G. There is no Subpart G in the corresponding Illinois regulation (Part 727). It appears that Section 703.351(b)(7) should be revised to reference 35 Ill. Adm. Code 727.210.
 21. **Page 114, Section 703.352(a)(12)** requires the facility to keep a description of how the personnel training program meets the requirements of 35 Ill. Adm. Code 727.110(g)(1)(C). The corresponding federal regulation 40 CFR 270.290(l) refers to 267.16(a)(3). However, neither 40 CFR 267.16(a)(3) or 35 Ill. Adm. Code 727.110(g)(1)(C) actually exist. Using the personnel training requirements in 35 Ill. Adm. Code 724.116(a)(3) as a guide (as it appears Part 727 does), 40 CFR 270.290(l) and 35 Ill. Adm. Code 703.352(a)(12) should be revised to reference 40 CFR 267.16(a)(2), and 35 Ill. Adm. Code 727.110(g)(1)(B). [3]
 22. **Page 120, Section 703.353** refers to 35 Ill. Adm. Code 704.304 as the procedures for modifying a standardized permit. However, Part 704 does not include a Section 704.304. Based on the equivalent federal regulations at 40 CFR 270.320, which references 124.211 – 124.214, Section 703.353 should be revised to reference Section 705.304. [2]
 23. **Page 225, Section 705.128(c)(1):** The last sentence refers to Subpart G of 35 Ill. Adm. Code 702. However, Part 702 does not include a Subpart G. Based on the equivalent federal regulations at 40 CFR 124.5, which references 40 CFR 124 Subpart G, Section 705.128(c) should be revised to reference Subpart G of 35 Ill. Adm. Code 705. [2]
 24. **Page 225, Section 705.128(c)(1)**, as currently written, is confusing and not consistent with the corresponding federal regulation at 40 CFR 124.5. More specifically, the last sentence in Section 705.128(c)(1) implies that the Agency and permittee must comply with certain standardized permits requirements for **all** reissued permits. In order to make Section 705.128(c)(1) consistent with the federal regulations, it is recommended that the reference to

Section 703.272(c) in the first sentence of Section 703.128(c)(1) be deleted, and the last sentence be revised to read “In the case of permits reissued pursuant to 35 Ill. Adm. Code 703.272(c), the Agency and permittee must comply with the appropriate requirements in Subpart G of 35 Ill. Adm. Code 705 for a RCRA standardized permit.” [2]

25. **Page 227, Section 705.300(a)(2)(A)** refers to 35 Ill. Adm. Code 727.201. Part 727 does not include a Section 727.201. Based on the equivalent federal regulations at 40 124.200, which references 40 CFR 267.110, Section 705.300(a)(2)(A) should be revised to reference 35 Ill. Adm. Code 727.190. [2]
26. **Page 229, Section 705.301(b)**: This section currently reads “Switching from **my** individual RCRA permit to a RCRA standardized permit.” It is recommended that the word “my” be replaced with “an” individual RCRA permit. [1]
27. **Page 229, Section 705.301(b): Switching to a standardized permit.** This section states that where all units in the RCRA permit are eligible for a standardized permit, the owner/operator may request the Agency to reissue its individual permit as a standardized permit in accordance with Section 705.128. However, Section 705.128(a) has limitations on the reasons a permit may be modified or reissued, and it does not include a reference to the procedures for switching to a standardized permit in Section 705.301(b). To address this issue, two options are offered:
 - a. Revise Section 705.128(a) to include a reference to Section 705.301(b); or
 - b. Move Section 705.301(b) to Part 703 Subpart G: Changes to Permits (possibly in Section 703.272(c)) and replace it with a brief reference to the proper section of Part 703. If this option is followed, it will be necessary to make sure the new location is referenced in Section 705.128. [2,3]
28. **Page 229, Section 705.301(b): Switching to a standardized permit.** The federal equivalent at 40 CFR 124.203 states that when all of the units in a RCRA permit are transferred to a standardized permit, the individual permit is revoked and reissued. However, Section 705.301(b) does not include wording stating that the initial permit is “revoked.” Therefore, it is not consistent with the equivalent federal regulation. It is recommended that this section be revised to indicate how the initial RCRA permit should be handled in this situation and reference the regulation that pertains to the revocation, termination, or ending of a permit. [2]
29. **Page 229, Section 705.301(b): Switching to a standardized permit.** This section states that where only some of the units in a permit are eligible for the RCRA standardized permit, the owner/operator may request that the Agency modify its individual permit to no longer include those units and issue a standardized permit for those units in accordance with Section 705.302(a). This raises two issues:
 - a. What procedures should be followed to modify the initial permit? For example, should Section 705.128 be referenced here? [2,3]
 - b. The reference to the procedures at Section 705.302(a) (Agency preparation for a draft standardized permit) does not appear to be correct. The reference to 705.302(a) is

consistent with the equivalent federal regulation 40 CFR 124.203, which refers to 124.204. However, the more appropriate reference appears to be 40 CFR 124.202 and 35 Ill. Adm. Code 705.301(a). For example, could the Agency simply issue a draft standardized permit upon a request from an owner/operator without first receiving a permit application that is accompanied by all of the required information?
[3]

30. **Page 231, Section 705.302(a)(4)(I)** indicates that all subsections of Section 705.144 (Administrative Record for Draft Permits or Notices of Intent to Deny) apply. However, the corresponding federal regulation at 40 CFR 124.204(d)(9) states, "All paragraphs (of 40 CFR 124.9) apply; however, in the context of RCRA standardized permits, the reference to draft permits is 40 CFR 124.204(c) instead of 124.6." Therefore, this subsection of the State regulation is not identical in substance to the equivalent federal regulation and should be revised accordingly. NOTE: This type of "exception statement" for a standardized permit is made in the preceding Section 705.302(a)(4)(H) (40 CFR 124.204(d)(8)). [2]
31. **Page 231, Section 705.302(a)(4)(J)** states only Sections 705.163(a)(2) and 705.163(a)(4) apply to the RCRA standardized permit. The equivalent federal regulation 40 CFR 124.204(d)(10) refers to 40 CFR 124.10(c)(1)(ix) and (c)(1)(x)A. These federal sections correspond to the State regulations in Sections 705.163(a)(4) and 705.163(a)(5)(A). Therefore, Section 705.302(a)(4)(J) should be revised to reference Sections 705.163(a)(4) and 705.163(a)(5)(A) in order to make it consistent with the federal regulations. [2]
32. **Page 232, Section 705.302(b)(6)** refers to Sections 705.183, 705.183(b)(3), and 705.183(c). The corresponding federal regulation at 40 CFR 124.205(f) references several subsections of 40 CFR 124.14. The equivalent State regulations to 124.14 are 35 Ill. Adm. Code 705.184. Therefore, Section 705.302(b)(6) should be revised to reference Sections 705.184, 705.184(b)(1), 705.184(b)(3) and 705.184(c) in order to make it consistent with the federal regulations. [2]
33. **Page 232, Section 705.302(b)(6)**. Although this section is consistent with the corresponding federal regulations, it is difficult to follow. Also, when it states "the reference in Section 705.183(b)(3) to reopening the comment period is Section 705.303(b)," it does not indicate what Section 705.303(b) is used instead of like the other portions of this regulation do. It is also recommended that this paragraph be broken down into an outline format (b)(6)(i), (b)(6)(ii), etc. to clarify its intent. [3]
34. **Page 232, Section 705.302(b)(8)** states that all subsections of Section 705.183 apply. The corresponding federal regulation at 40 CFR 124.205(h) states all sections of 40 CFR 124.16 apply. The equivalent State regulation to 40 CFR 124.16 is 35 Ill. Adm. Code 705.202. Therefore, Section 705.302(b)(8) should be revised to reference 705.202 in order to make it consistent with the federal regulations. [2]
35. **Page 233, Section 705.302(c)(3)** refers to "this subsection (b)(3)." The correct reference is (c)(3). [1]

36. **Page 237, Section 705.304** is titled "Maintaining a RCRA Standardized Permit." This section is consistent with the equivalent federal regulation at 40 CFR 124.211. However, this section clearly discusses the requirements for modifying a standardized permit, not maintaining one. In order to more easily identify the correct section of the regulations when searching for the procedures to modify a permit, it is recommended the title of Section 705.304 be revised to read, "Modifying a RCRA Standardized Permit." [3]
37. **Page 240:** The Table of Contents for 35 Ill. Adm. Code 720 does not include the new Section 720.104, Electronic Document Filing. [1]
38. **Page 271, Section 720.111:** The citation for NFPA is incorrect. Our current version of Section 720.111 references the July 18, 2003 version. Furthermore, the proposed version appears to limit NFPA to certain sections. Section 724.276 should be included if this is the way the Board wishes to proceed. [1,3]
39. **Page 585, Section 727.100(b)** references 35 Ill. Adm. Code 703.151. However, the corresponding federal regulation at 40 CFR 267.2 refers to 40 CFR 270.70. The equivalent State regulation to 270.70 is 35 Ill. Adm. Code 703.153. Therefore, Section 727.100(b) should be revised to reference 35 Ill. Adm. Code 703.153 in order to make it consistent with the federal regulations. [2]
40. **Page 585, Section 727.100(b)** refers to 40 CFR Part 265. It appears this subsection should reference the State regulations at 35 Ill. Adm. Code Part 725. [1]
41. **Page 585, Section 727.100(b):** States that a facility with interim status must comply with the requirements of 35 Ill. Adm. Code 725 instead of 727 . . . **except as provided in Subpart S of 35 Ill. Adm. Code 724.** This is consistent with the corresponding federal regulation at 40 CFR 267.2. However, it is unclear why a regulation directed at a facility with interim status (Section 727.100(b)) would refer to the Special Provisions for Cleanup (the regulations for CAMUs, temporary units, etc.) in Subpart S of Part 724 (or 40 CFR 264). Neither Subpart S of Part 724 nor Section 725.101 (Purpose, Scope, and Applicability) make any reference to an exception to the interim status standards in Subpart S of Part 724. [3]
42. **Page 589, Section 727.110(f)(1)(B):** The second sentence in this subsection states, "The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health and the environment." This is consistent with the corresponding federal regulation at 40 CFR 267.15. However, it is clear from reading this regulation, that the frequency of inspections (e.g. often enough to identify problems in time to correct them before. . .) referenced in subsection (f)(1)(B) applies to all of Section 727.110(f)(1), not just subsection (B). Therefore, it is recommended that the last sentence in (f)(1)(B) either be included in Section (f)(1) or made into a new paragraph after (B) in order to clarify that it applies to both (A) & (B). [3]
43. **Page 593, Section 727.130(b):** The last sentence in this subsection states ". . . human health and the environment." The corresponding federal regulation at 40 CFR 267.31 reads ". . . human health or the environment." As currently written, Section 727.130(b) is not consistent

with the federal regulations, and could be considered to be less stringent than the federal equivalent. The last sentence in Section 727.130(b) should be revised to read “human health or the environment.” Note: the corresponding regulation for other permitted facilities at 40 CFR 264.31 (35 Ill. Adm. Code 724.131) also reads “or” in this requirement. [2]

44. **Page 596, Section 727.150(b)(1) & (2):** These subsections both state “. . . human health **and** the environment.” The corresponding federal regulations at 40 CFR 267.51(a) & (b) read “. . . human health or the environment.” Subsections 727.150(b)(1) & (2) should be revised to read “. . . human health or the environment.” in order to make them consistent with the federal regulations. [2]
45. **Page 599, Section 727.150(g)(3):** This subsection states “If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten a **violation of the Act or Board regulations . . .**” The corresponding federal regulation at 40 CFR 267.56(c) reads “. . . which could threaten human health or the environment. . .” It is not clear why this revision was made to this particular subsection, or whether it is less stringent than the federal equivalent. It is recommended that subsection 727.150(g)(3) be revised to read “. . . which could threaten human health or the environment. . .” in order to make it consistent with the federal regulations. [2]
46. **Page 606, Section 727.170(f)(1), Biennial Report:** This subsection states, “The report must cover facility activities during the previous calendar year and must include the following information:” This is consistent with the equivalent federal regulation at 40 CFR 267.75(a). Thus, as written, the Agency (and/or USEPA) would only receive information regarding facility activities for every other year.

The federal regulations for other permitted facilities at 40 CFR 270.30(l)(9) and 264.75 require a **biennial** report. However, the State equivalents at 35 Ill. Adm. Code 703.246(c) and 724.175 require an **annual** report be provided. Therefore, in order to be consistent with the existing State regulations for other permitted facilities, and in order to receive information regarding facility activities for each year, Section 727.170(f)(1) should be reworded to specify that an annual report must be provided. [2]

47. **Page 607, Section 727.190(b) thru (k), Reserved Sections:** The State regulations spend an entire page stating that subsections (b) thru (k) are reserved and that this statement maintains structural consistency with the corresponding federal rules. However, the equivalent federal regulation simply reads “40 CFR 267.91 – 267.100 [Reserved].” It is recommended that the State equivalent be simplified to read similar to the federal equivalent. [1]
48. **Page 608, Section 727.190(l)(2) and (4):** These subsections reference subsection (m). However, this section does not include a subsection (m). The equivalent federal regulation simply refers to “this section.” It is recommended that Sections 727.190(l)(2) and (4) be revised to reference “this Section” (instead of subsection (m)) in order to make them consistent with the equivalent federal regulation. [2]

49. **Page 611, Section 727.210(c)(3) & ((3)(B)):** These subsections refer to the applicable permit modification requirements at 705.304(a). This is consistent with the equivalent federal regulation at 40 CFR 267.112(c), which references 40 CFR 124.211. However, Sections 705.304(a) and 40 CFR 124.211 are the definitions of the types of standardized permit modifications, NOT the procedures for modifying a permit. It is recommended that Section 727.210(c) be revised to reference 705.304. The equivalent reference in the federal regulations appears to be 40 CFR 124.212. [3]

50. **Page 614, Section 727.210(h):** This section is consistent with the equivalent federal regulation at 40 CFR 267.117. However, the last sentence of this section is confusing. It states that the owner/operator must furnish documentation in support of the independent PE's certification upon request until the Agency releases the owner/operator from the financial assurance requirements for closure.

A better way to say this could be: "the owner/operator must provide documentation in support of the independent PE's certification to the Agency when the certification of closure is submitted. If the certification of closure is acceptable, the Agency will release the facility from the financial assurance requirements under Section 727.240(d)(10)." [3]

51. **Page 614, Section 727.210(h):** The last sentence of this section refers to Section 727.240(d)(9) as the procedures for the releasing the facility's financial assurance. This is consistent with the equivalent federal regulation at 40 CFR 267.117, which references 40 CFR 267.143(i). However, Sections 727.240(d)(9) and 40 CFR 267.143(i) pertain to financial assurance for multiple facilities rather than procedures for releasing a facility's financial assurance. It is recommended that Section 727.210(h) be revised to reference Section 727.240(d)(10). The equivalent reference in the federal regulations appears to be 40 CFR 267.143(j). [3]

52. **Page 640, Section 727.270(e):** The last sentence of this section requires the owner/operator of a facility that stores or treats ignitable or reactive waste in containers to follow the general requirements for ignitable or reactive wastes at Section 727.110(h)(1). This is consistent with the federal regulation 40 CFR 267.174 that refers to 267.17(a). However, subsection 727.110(h)(2) [40 CFR 267.17(b)] also includes general requirements for the management of ignitable and reactive wastes. Furthermore, Section 727.110(h)(3) [40 CFR 267.17(c)] requires the facility to document compliance with the previous two paragraphs in this section. That is, what is commonly referred to as the "general requirements for ignitable or reactive wastes" comprise all of Section 727.110(h) [40 CFR 267.17], not just the first subsection. Therefore, it is recommended that Section 727.270(e) be revised to refer to Section 727.110(h), not just a portion of subsection (h). [3]

53. **Page 650, Section 727.290(k)(5)(A):** This subsection references subsections (k)(5)(B) or (k)(5)(C). The equivalent federal regulation at 40 CFR 267.200(e)(1) references the corresponding paragraphs (e)(2) and (e)(3). Therefore, Section 727.290(k)(5)(A) should be revised to reference subsections (k)(5)(B) and (k)(5)(C) in order to make it consistent with the federal regulations. [2]

54. **Page 650, Section 727.290(k)(5)(C):** The end of this subsection includes the word “and,” inferring that the next subsection (6) is tied to it. The equivalent federal regulation at 40 CFR 267.200(e)(3) does not include the word “and” at the end of the section. Therefore, the word “and” should be deleted from the end of Section 727.290(k)(5)(C) in order to make it consistent with the federal regulations. [2]
55. **Page 651, Section 727.290(m)(1):** States “the owner/operator may not place ignitable or reactive waste in tank systems unless **any of the following three conditions are fulfilled.**” The equivalent federal regulation at 40 CFR 267.202 ends after the word “unless,” and includes the word “or” after each of the first two options. The way Section 727.290(m)(1) is written, and the use of the word “any” in it makes it more confusing than the equivalent federal regulation. [2]
56. **Page 656, Section 727.900(e):** subsection (e) contains the alternate secondary containment requirements for containment buildings. It states, “the Agency **must**, in writing, allow the use of alternatives to the requirements for secondary containment . . .” The equivalent federal regulation at 40 CFR 267.1104 states, “the Regional Administrator **may** waive the requirements for secondary containment . . .” Therefore, as written, the requirements in 727.900(e) are not consistent and are arguably less stringent than the equivalent federal regulations. Section 727.900(e) should be revised to read, “Agency may waive the requirements for secondary containment . . .” in order to be consistent with the federal regulations. [2]
- Note:** This same issue regarding the use of the words “must” and “may” exists in 35 Ill. Adm. Code 724.1101(e) and the equivalent federal regulation at 40 CFR 264.1101(e). Therefore, it is recommended that the IPCB also investigate the equivalency of the wording at Section 724.1101(e).
57. **Page 658, Section 727.900(h):** Section (h) states “A containment building can serve as an adequate secondary containment system for a tank placed within the building under both of the following conditions.” The wording “**under both of the following conditions:**” is confusing and, as written, subsection (h) is not consistent with the federal regulation at 40 CFR 267.1107. Therefore, Section 727.900(h) should be revised to read, “A containment building can serve as a secondary containment system for a tank placed within the building if both of the following conditions are met:” in order to make it consistent with the federal regulations. [2]
58. **Page 658, Section 727.900(h)(1):** Section (h)(1) states, “The containment building can serve as an external liner system for a tank if it meets the requirements of Section 727.290(g)(1): and” This is consistent with the equivalent federal regulation at 40 CFR 267.1107(a), which refers to 40 CFR 267.196(a). However, the requirements for external liner systems for tanks are found at Section 727.290(g)(2) and 40 CFR 267.196(b). Therefore, it appears 40 CFR 267.1107(a) and Section 727.900(h)(1) reference the wrong subsection of the tank regulations and should be revised to reference 40 CFR 267.196(b) and 35 Ill. Adm. Code 727.290(g)(2), respectively. [3]

59. **Page 658, Section 727.900(h)(2):** subsection (h)(2) states, “The containment building also meets the requirements of Sections 727.290(f)(1), (f)(2)(A), and (f)(2)(B).” This is consistent with the equivalent federal regulation at 40 CFR 267.1107(b), which refers to 40 CFR 267.195(a), (b)(1) & (2). However, section 727.290(f)(2) (and the federal equivalent) states that in order to meet the requirements of (f)(1), **all** of the requirements of (f)(2) (i.e., subsections (f)(2)(A) thru (f)(2)(D)) must be met. The requirements in Section 727.900(h)(2) (and the federal equivalent) are not internally consistent, and appear to contradict themselves. It appears that 40 CFR 267.1107(b) and 35 Ill. Adm. Code 727.900(h)(2) reference the wrong subsections of the secondary containment regulations for tanks. They should be revised to reference 40 CFR 267.195(a) and (b) and 35 Ill. Adm. Code 727.290(f)(1) and (f)(2), respectively.

It should be noted that subsections (C) & (D) of Section 727.290(f)(2) – the requirements that were **not** included in 727.900(h)(2) – describe basic design standards that are included in the secondary containment system requirements for containment buildings at Section 724.1101(b). In addition, the design standards in subsection (D) are also required for container and tank systems in both 724 & 727. Hence, it is unclear why these design requirements would not apply to a containment building functioning as a secondary containment system for a tank system in 727. [3]

60. **General:** As noted in several of the comments above, tracking down the regulations in 35 Ill. Adm. Code that correspond to the various sections of 40 CFR Parts 124, 144, and 270 can be very confusing and time consuming. Therefore, it is recommended that the Board develop and maintain a table that relates the federal requirements to the equivalent state requirements - section by section - so that a direct comparison of the requirements can be made quickly and easily. A table such as this should also be helpful in reviewing future adoptions of USEPA regulations. Perhaps it could be posted on the Board’s webpage. [1]

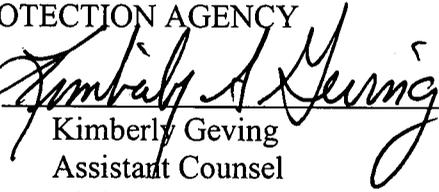
E. Illinois EPA’s Response to the Board’s Request for Comments on Renumbering the Hazardous Waste Regulations

The Illinois EPA does not believe that it would be beneficial to renumber all of the existing hazardous waste regulations. The regulations are already difficult enough to follow due to how differently they are structured compared to the federal requirements. Additionally, the regulated community and the Illinois EPA have become familiar with the existing numbering system and to change it at this juncture could be very confusing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:


Kimberly Geving
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Division of Legal Counsel

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached COMMENTS
upon the persons to whom they are directed, by placing a copy of each in an envelope
addressed to:

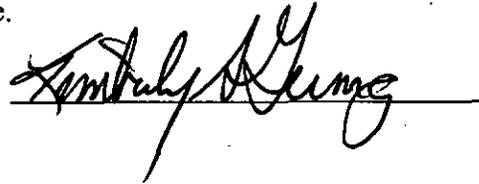
Dorothy Gunn, Clerk
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and mailing them (First Class Mail) from Springfield, Illinois on June 30, 2006, with
sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME

This 30th day of June, 2006.


Notary Public



THIS FILING SUBMITTED ON RECYCLED PAPER