

ILLINOIS POLLUTION CONTROL BOARD
October 2, 1986

IN THE MATTER OF:)
)
HAZARDOUS WASTE PROHIBITIONS) R 86-9, Docket A
)

PROPOSED EMERGENCY RULE.

PROPOSED OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

At today's meeting the Board adopted a proposed opinion and order allowing for public comments to be submitted on or before October 16, 1986. The Board also directed that significant changes be made to the draft opinion and order it had before it at the time of the vote. The Board specifically directed the following:

- 1) The definition of "Land Disposal Unit" contained in Section 709.110 be amended to state as follows: "As used in this Part, a 'land disposal unit' means any landfill," which would become subsection (a), subsuming subsection (a)(1).
- 2) Subsection (a)(2), regarding surface impoundments and waste piles would be added as new subsection (b)(5) and subsection (a)(3), regarding land treatment units, would become new subsection (b)(6). Thus, these subsections would become exclusions from the "land disposal unit" definition.
- 3) Other sections of the proposed rules which are impacted by the change should be amended to ensure that no substantive changes are made to the scope of the halogenated solvents rules and the liquid hazardous waste rules which have been integrated with the Section 39(h) rules as explained below.
- 4) Make any necessary changes to the proposed opinion.

Given the complexity of the third and fourth directions and the short period of time allowed for public comment, instead of setting forth the particular language changes to the opinion and order which have been directed, the Board is simply issuing the agreed upon opinion and order absent those changes noted above in conjunction with this statement of intent.

Docket R86-9 was established by order of February 26, 1986, in order to consider the implementation of rules pursuant to Section 39(h) of the Illinois Environmental Protection Act (Act)

which prohibits the deposit of all hazardous wastestreams in a permitted hazardous waste site commencing January 1, 1987, "unless specific authorization is obtained from the [Illinois Environmental Protection Agency] by the generator and the disposal site owner and operator." On June 11, 1986, the Board proposed rules to implement that program. Four days of hearings were held to consider that proposal on August 13 and September 3 through 5, 1986. Several post-hearing comments have been filed.

At hearing the Board raised the possibility of proceeding to an emergency rulemaking prior to adoption of final, permanent rules. Since the Board has decided to adopt such rules, the Board will open a new docket, R86-9, Docket A, for that purpose. The record will include all materials presently part of R86-9, which are hereby incorporated by reference. The materials will remain part of the general rulemaking as well, which will become Docket B.

Some question has been raised by Citizens for a Better Environment (CBE) regarding the Board's authority to adopt emergency rules in this matter. (P. C. No. 4, pp. 3-5). CBE correctly points out that in adopting an emergency rule the Board must find that an "emergency" ("a situation which ...reasonably constitutes a threat to the public interest, safety or welfare") exists which "requires the adoption of a rule upon fewer days than is required by Section 5.01" of the Administrative Procedure Act (APA), citing Section 5.02 of the APA. CBE argues that these criteria have not been met. The Board disagrees.

It is already impossible for the Board to adopt rules consistent with the usual APA procedures prior to the effective date of Section 39(h). Furthermore, presuming a 90-day period for the Agency to take final action on wastestream applications, in order for an applicant to be assured that it will receive a timely wastestream authorization, the application would have had to be filed on or before approximately October 1, 1986. Thus, to the extent that these rules govern the necessity for, or content of, applications, in a practical sense they are already too late.

The Board fully understands that there may be little effect on the public safety caused by the adoption of these emergency rules. However, these rules are expected to have a substantial impact on the regulated community and the functions of the Agency regarding the wastestream authorization process itself. As pointed out by the Illinois Environmental Regulatory Group (IERG) "exercise of the Board's rule making authority under Section 27 of the Act is here particularly appropriate in order to properly guide the implementation of ... the 'ambiguous provisions of Section 39(h).' ...IERG believes that a basic framework setting forth the concepts of Section 39(h) is needed to (1) define the scope of Section 39(h) and (2) fix the parameters of Agency discretion in issuing waste stream authorizations." (Ex. 3, p. 4). Finally, IERG concludes that "absent a Board rule making,

the only avenue available to those who do not understand or disagree with the Agency's position would be to seek a judicial determination of the meaning of Section 39(h), or possibly hundreds of individual challenges of Agency authorization decisions." (Ex. 3, pp 7-8).

The Board regrets the position in which it now finds itself. Rules should have been adopted at least a year before now to ensure an orderly implementation of Section 39(h), but neither the regulated community nor the Agency came forth with any proposal for consideration.

Clearly, the Agency has no authority under Section 39(h) to adopt substantive rules to implement it. While the Agency has issued a memorandum (see Ex. 11) setting forth its interpretation of Section 39(h), those interpretations are not binding and at best provide an indication of how the Agency intends to deal with the Section 39(h) process in the absence of Board rules or case law.

Furthermore, the only public hearings which have been held to date are those which were held in this proceeding, and now the regulated community, the Agency and the Board are faced with the unfortunate task of implementation of a generally worded statute without having resolved several important questions regarding that implementation. To the extent that the Board can clarify those issues, especially regarding the scope of Section 39(h) and the extent of Agency discretion, uncertainty can be minimized. In turn, the regulated community will be better able to determine under what circumstances a wastestream authorization is required and to support its requests, the Agency will be better guided in making its determinations regarding those requests, and, hopefully, fewer appeals to the Board will be necessary. Such a situation is much preferable to either judicial or case-by-case determinations of the meaning of Section 39(h), which would be wasteful of both the state's resources and those of the regulated community, and delay in addressing these uncertainties can undermine timely enforcement.

Furthermore, the Board anticipates the adoption of final rules during 1987. Those rules will likely differ significantly from the "guidelines" under which the Agency intends to operate in the absence of rules, but will probably not differ as greatly from the emergency rules which are today being proposed. Thus, the adoption of these rules should serve to ease the transition period when final rules are adopted.

Finally, the Board notes that an argument can be made that Section 39(h) is not self-effectuating and will not become effective in the absence of Board rules. The adoption of emergency rules would remove this argument and assure that the legislative intent that Section 39(h) become effective on January 1, 1987, will be fulfilled.

For all of the foregoing reasons the Board finds that an emergency exists which reasonably threatens the public interest and welfare and which requires the adoption of rules upon fewer days than would be required by Section 5.01 of the APA.

Obviously, in proposing these emergency rules, the Agency, the public, the regulated community and the Board would all be best served if a complete set of rules could be adopted which the Board could be reasonably confident were in a form which would likely be adopted as final rules. Unfortunately, that is not possible at this time. The implementation of Section 39(h) is complex and the present record does not contain sufficient information to support a comprehensive regulation. Thus, the Board will simply propose those rules which it believes are adequately supported and which it believes are likely to remain in substantially the same form in final rules.

In general, the Board has decided to adopt rules in a form similar to that which were proposed on June 11, 1986. That format allows the integration of the halogenated solvents rules (R81-25), the liquid hazardous waste rules (R83-28C) and the Section 39(h) rules. In proposing these emergency rules the Board does not intend to cause any substantive change to the liquids or solvent rules (except for Section 709.501, discussed below).

Since the June 11, 1986 Opinion discusses each of the proposed rules, the Board will not repeat those justifications. Rather, the Board will discuss the changes made to that proposal and respond to arguments which have been raised during the course of this proceeding.

Section 703.142: This section has been deleted. In Public Comment No. 1 the United States Environmental Protection Agency (USEPA) has stated that the RCRA permit by rule which would have been allowed by this section would conflict with federal requirements of the Resource Conservation and Recovery Act (RCRA). Thus, it would conflict with Section 20(b) of the Act which requires the Board to adopt rules consistent with RCRA. The Board has attempted to accomplish the stated purpose of this section through the adoption of Section 729.122(g)(5) which is discussed below.

Section 709.100: Unchanged.

Section 709.102: The Board has modified the definitions of "Original Generator" and "Wastestream" in order to delete the concept that a waste ceases to exist for purposes of Section 39(h). That concept, which has caused considerable confusion, was proposed in order to lessen the burden on the Agency in processing wastestream authorizations. The duplicative process of requiring authorizations to be obtained by both the original generator and the treater appeared to result in little potential

for greater environmental protection. However, even the Agency has recommended that the cease to exist concept be dropped, and a literal reading of Section 39(h) does not appear to authorize such an exemption.

Section 709.106: This is a new section, which addresses the request of IERG that the Board articulate the effect that both Section 39(a) of the Act and Section 16(b) of the Administrative Procedures Act (APA) have on the application.

Section 39(h) does not by its terms incorporate Section 39(a); it does, however, incorporate Section 40(a) which in turn back-references Section 39. The Agency's testimony is replete with references to the 90 day time constraints of Section 39(a) (see, e.g. R.501, 526, 527-528), and no other hearing participants challenged the interpretation of the Agency. The Agency also has, of necessity, tied the wastestream authorization process to the supplemental permit system, a system clearly subject to Section 39(a). The Board notes that the issuance of a wastestream authorization by default is very remote, given the experience with the default mechanism as applied to other Section 39(a) permits.

As to the APA, in addition to reciting the unchallenged applicability of Section 16(b), the rule includes a construction of the words "timely" filed. This construction has no effect on the Agency's decision time frame under Section 39(h); decision on an application filed November 1st remains due on or about February 1. Agency forms have been available for only a month, and only today is the scope of the information to be considered being articulated. Therefore, under all these circumstances, the Board believes that it is reasonable to construe prompt application, within the month, timely filing, for APA purposes only.

Section 709.110: The Board has retained the concept of a land disposal unit in order to integrate the various disposal prohibitions. IERG has stated its belief that this new terminology "invites unintended mischief." (Ex. 3, p. 8). The Agency, even less kindly, states that "the new term is obviously necessary to circumvent the statutorily-fixed terms 'disposal' and 'hazardous waste disposal site.'" It is axiomatic that the new term and definition are contrary to law." (P. C. No. 3, pp. 3-4). The Board, obviously, does not agree. As stated above, the reason for the term is to integrate the various disposal programs without altering the present scope of the liquids or solvents rules and without contravening Section 39(h). Even without resort to this new term, the Board would have made the same decisions regarding the scope of Section 39(h).

Considerable testimony was presented at hearing regarding the various exclusions under Section 709.110(b) centering on the proper interpretation of the words "deposit" and "disposal" in

Section 39(h). That section states that "a hazardous waste stream may not be deposited ... unless specific authorization is obtained from the Agency and the disposal site owner and operator for the deposit of that specific hazardous waste stream. the Agency may grant specific authorization for disposal of hazardous waste streams only after" the requisite demonstrations have been made (underlining added).

IERG argues that the use of the term deposit is narrower than disposal pursuant to the definition of disposal in Section 3(e) of the Act which states: "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste ..." (underlining added). (Ex. 3, p. 9). Since the legislature could have easily used the term "disposal" rather than "deposit" as the key term in Section 39(h), a narrow definition which distinguishes deposit from injection or discharge must have been intended.

The Agency and CBE on the other hand argue that the legislature uses the words "deposit" and "disposal" interchangeably and in fact used both terms in Section 39(h) such that no such conclusion can be reached and the statute should be construed broadly. (P. C. No. 3, pp. 3-5 and P. C. No. 4, pp. 7-9).

The Board finds that the use of the word deposit in the operative language establishing the prohibition was meant to be construed narrowly as distinguished from disposal. The legislature could easily have used the words "dispose" or "disposal" throughout if the general meaning had been intended. This finding is further supported by the legislative history of the provision which focuses on landfilling. (See Exs. 5 and 6). Nowhere in the legislative debates is underground injection or discharge to a sewer discussed. Furthermore, the General Assembly has adopted Section 6.2 of the Act which requires the Department of Energy and Natural Resources to conduct a study of the underground injection of hazardous waste leading toward a recommendation "as to whether ...other technologies pose less risk to the public health and safety ... and whether additional restrictions should be imposed." This legislation, which was adopted subsequent to Section 39(h), indicates that the General Assembly had not at that time determined whether underground injection should be encouraged or discouraged. If the Board were to construe Section 39(h) to apply to underground injection wells it would be making that decision for the legislature without allowing it to consider the results of that study and to reach its own conclusions.

The Board realizes that thus issue is not clear cut. However, if the Board is construing the provision too narrowly, the legislature can certainly amend the statute to clarify the intended scope of Section 39(h).

Minor wording changes were made to subsection (a) for purposes of clarity and proposed subsection (b)(2) was deleted consistent with the decision to drop the cease to exist concept, and the remaining subsections were renumbered.

Section 709.200: Unchanged.

Section 709.201: Subsection (c) was amended to exclude surface impoundments and land treatment units from the liquid hazardous wastes rules to maintain consistency with the existing rules.

Section 709.202: The citation in subsection (a) to Section 22.1 of the Act has been corrected to Section 22.7. Language has been added to subsection (b) to exempt spill responses by the Agency pursuant to Section 4(s) of the Act from the wastestream authorization process.

Section 709.301: The proposed amendments have been deleted to avoid the conflict between this rule and the Agency's application form. The section will remain applicable to liquid hazardous waste applications.

Section 709.310: Subsections (c) and (d) have been added for clarity. The language is drawn from Section 807.205.

Section 709.311: Deleted since this section applies only to liquid hazardous waste applications which the Board does not intend to change at this time.

Section 709.312: Deleted at this time as unnecessary. It was simply proposed to restate the law for purposes of notice.

Section 709.400: Unchanged.

Section 709.401: Unchanged.

Section 709.402: Unchanged.

Section 709.403: This incorporates the "reasons for denial" requirement of Section 39(a), in language which is drawn from the statute.

Section 709.404: This language is drawn nearly verbatim from that of Section 807.205, and has not been rephrased for the sake of procedural conformity of the wastestream authorization system with existing systems. Among other things, the rule allows, and specifies the time frames, for Agency determination to an applicant that a permit is incomplete, and provides for appeal of such determination. It also provides that, as in land permit situations, the appeal period starts with the date of mailing rather than the date of receipt.

Section 709.501: This section has been modified to remove the minimum duration of any wastestream authorization. This is the only change to the rules applicable to prohibitions other than pursuant to Section 39(h). Since proposed Section 729.122(g) allows the Agency to impose temporary conditions which may be of a duration of less than one year regarding a Section 39(h) wastestream authorization, such a minimum period would be inappropriate. Further, since the wastestream authorization process has been integrated into a single process, it is appropriate to have this change applicable to non-39(h) authorizations as well.

Section 709.510: Unchanged.

Section 709.520: The amendment has been deleted. Thus, this section remains in its present form.

Section 729.100: Unchanged.

Section 729.102: The numbering has been corrected from 729.103 and the same changes have been made for the same reasons as those made to 709.102.

Section 729.110: The language of subsection (b)(1) has been changed to specifically reference Sections 729.111 and 729.112 which are the only technical standards which the Board is proposing at this time. The proposed Subpart D technical standards have been deleted from this proposal as noted below and should not be referenced.

Section 729.112: Subsection (b) has been reworded as suggested at hearing to more clearly reflect the intent of the rule. As previously drafted, this showing would be virtually impossible to make.

Sections 729.120 and 729.121: These sections have been deleted from the proposal. The Board does not believe that the present record contains adequate information to support the adoption of the ratio test for economic reasonability previously proposed as Section 729.122(a). Since Sections 729.120 and 729.121 define the denominator (baseline management option) and the numerator (waste management alternative) for that ratio test, they are not needed at this time.

Section 729.122: This section has been amended significantly from the proposal. First, as noted above, the ratio test has been dropped. Thus, the focus of the rule has changed. The present proposal simply sets forth those factors which the Board has determined that the Agency may or may not properly consider when making a determination of economic reasonableness.

The Board has added a provision that the Agency shall not consider process substitutions or waste minimization. This

concept was discussed at length at hearing, and the Board finds that Section 39(h) is directed toward what can or cannot be done with regard to wastestreams which result at the end of a process and not whether the process can be changed to result in less waste or less hazardous waste. Nowhere in Section 39(h) is either process substitution or waste minimization discussed. Further, to require applicants to detail all potential process changes and the various factors (many of which will not be environmental) which are involved in determining what process will be used would be onerous and would require the Agency to make determinations which extend well beyond its areas of expertise. Finally, under the RCRA rules, generators are already required to consider and implement reasonable waste reduction process changes.

Considerable testimony was presented regarding whether the agency can require partial treatment of a wastestream such that the wastestream is rendered less hazardous, but not nonhazardous. The statute specifically directs the Agency to consider whether the wastestream can be rendered nonhazardous which could be construed to limit the Agency to that consideration as IERG contends. (Ex. 3, p. 20). However, the Agency is also empowered to "impose such conditions as may be necessary to accomplish the purposes of the Act," and the Board believes that the intent of the Act is to require treatment where treatment can be accomplished in an economically reasonable and technically feasible manner.

Such a view should not result in "treatment for treatment's sake" as IERG fears. Under proposed Section 729.123(b) treatment cannot be required unless the risk to the public health and environment is decreased through such treatment. Thus, the only treatment which could be required by the Agency is that which is economically reasonable and which benefits the public, which certainly does not constitute "treatment for treatment's sake."

The Board has also disallowed the Agency from considering unrelated information regarding the applicant's other permits. This provision has been added at the request of the IERG to ensure that the wastestream authorization requirement cannot be used as an enforcement tool against a generator who may be in violation of unrelated permit requirements. Certainly, Section 39(h) was never intended to be used in that manner. However, the suggested language has been modified to ensure that the Agency can take into consideration relevant information which it has received in connection with other permits.

The Board has added a provision at 729.122(g)(5) in an attempt to achieve the goal of previously proposed Section 703.142 which has been deleted as noted above. Subsection (g) allows the Agency to impose conditions based on temporary factors, one of which is the need to obtain RCRA permits to install or operate any treatment or storage units which may be

necessary to implement an otherwise economically reasonable disposal alternative. For example, if there is a known economically reasonable treatment alternative but the equipment cannot be constructed or operated solely because the applicant does not have the necessary RCRA permits, the Agency may grant a wastestream authorization for a period of time which is calculated to allow for the procurement of the necessary permits and the construction of the equipment.

The other factors of this section remain largely unchanged.

Section 729.123: This section has been modified to state that a waste management alternative is technologically feasible only if the alternative has been demonstrated in actual operation rather than on a pilot scale. Under subsection (c), however, if the Agency has reason to believe that an alternative will become technologically feasible at some future time, the wastestream authorization may be limited in duration until such time as the alternative is likely to become feasible.

Section 729.124: This section has been deleted. While the Board believes that the proposed rule is a good first attempt at defining the phrase "cannot be recycled for reuse," the record points out some of the shortcomings of this probably overly simplistic rule. Unfortunately, the record is insufficient to support any alternative rule at this time. This question will, therefore, be dealt with at a later time.

Sections 729.200, 729.203, 729.204, 729.220, 729.240, 729.241, 729.242, 729.301, 729.310, 729.311 and 729.313: These sections are all unchanged except that Section 729.303 was corrected to 729.203 and 729.310(d) has been modified consistent with the modification of Section 709.201.

Sections 729.400, 729.410 and 729.411: Each of these sections has been deleted because the present record does not contain sufficient support for these technical standards for residuals from treatment. The Board does, however, hope that such technical standards can be developed during the course of Docket B in that such standards could greatly clarify and simplify the wastestream authorization process for a significant number of generators.

ORDER

The Board hereby proposes the following emergency rules for public comments which must be filed on or before October 16, 1986:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 709
WASTESTREAM AUTHORIZATIONS

SUBPART A: GENERAL PROVISIONS

Section	
<u>709.100</u>	<u>Purpose, Scope and Applicability</u>
<u>709.102</u>	<u>Definitions</u>
<u>709.103</u>	<u>Deemed-issued Wastestream Authorizations</u>
<u>709.104</u>	<u>Expiration of Supplemental Permits</u>
<u>709.105</u>	<u>Severability</u>
<u>709.106</u>	<u>Deemed-Issued Wastestream Authorization Pursuant to 35 Ill. Adm. Code 709.200</u>
<u>709.110</u>	<u>Land Disposal Unit</u>

SUBPART B: PROHIBITIONS

Section	
<u>709.200</u>	<u>Hazardous Waste Authorization</u>
<u>709.201</u>	<u>Liquid Hazardous Waste Authorization</u>
<u>709.202</u>	<u>Exemptions</u>

SUBPART C: APPLICATIONS

Section	
<u>709.301</u>	<u>General Application for Liquid Hazardous Waste</u>
<u>709.302</u>	<u>Signatures</u>
<u>709.310</u>	<u>General Hazardous Waste Application</u>
<u>709.311</u>	<u>Liquid Hazardous Waste Application</u>
<u>709.312</u>	<u>Other Prohibitions</u>

SUBPART D: REVIEW OF WASTESTREAMS

Section	
<u>709.400</u>	<u>General Standard for Issuance</u>
<u>709.401</u>	<u>Standard for Issuance for Liquid Hazardous Waste</u>
<u>709.402</u>	<u>Negative Finding</u>
<u>709.403</u>	<u>Denial of Wastestream Authorization</u>
<u>709.404</u>	<u>Time Requirements for Agency Action</u>

SUBPART E: CONDITIONS OF
WASTESTREAM AUTHORIZATIONS

Section
709.501 Duration
709.510 General Conditions
709.520 Authorized Methods of Disposal

SUBPART F: MODIFICATION,
REVOCATION AND APPEAL

Section
709.601 Modification
709.602 Revocation
709.603 Appeal

AUTHORITY: Implementing Sections 22.6 and 39(h) of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.6 and 1039(h)) and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 1027).

SOURCE: Emergency rule adopted in R83-28A at 8 Ill. Reg. 12678, effective July 5, 1984, for a maximum of 150 days; adopted in R83-28B at 9 Ill. Reg. 730, effective January 3, 1985; amended in R83-28C at 10 Ill. Reg 4875, effective March 7, 1986; amended in R86-9 at 10 Ill. Reg , effective

NOTE: Capitalization is used to indicate that the language quotes or paraphrases a statute.

SUBPART A: GENERAL PROVISIONS

Section 709.100 Purpose, Scope and Applicability

- a) This Part provides for the issuance by the Environmental Protection Agency of wastestream authorizations required by Sections 22.6 and 39(h) of the Environmental Protection Act (Act).
- b) This Part applies to generators of hazardous waste as specified in Subpart B.
- c) 35 Ill. Adm. Code 729 contains technical standards which are to be used to determine in what manner a waste can be managed.

(Source: Added at 10 Ill. Reg. , effective)

Section 709.102 Definitions

The following definitions of 35 Ill. Adm. Code 729.301 apply to this Part, in addition to the following terms:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001).

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

"Generator" is as defined in 35 Ill. Adm. Code 720.110.

"Hazardous Waste" is a hazardous waste as defined at 35 Ill. Adm. Code 721.103.

"Hazardous wastestream" means a "wastestream" which includes a "hazardous waste."

"Land disposal unit" is as defined in Section 709.110.

"Liquid hazardous waste" is as defined in 35 Ill. Adm. Code 729.301.

"Original generator" is a person who generates hazardous waste as a result of an activity or production process other than the treatment of hazardous waste.

"Residual" is any material other than a gas which remains after, or is generated by, the treatment of a hazardous waste. A "residual" may itself be a "hazardous waste."

"Treater" is a person who engages in treatment of hazardous waste. A "treater" may be a "generator," but not the "original generator."

"Treatment" is as defined in 35 Ill. Adm. Code 720.110.

"Wastestream" means a "solid waste" as defined in 35 Ill. Adm. Code 721, which is routinely or periodically produced by a certain generator as a result of a certain activity, production process or treatment process. The Agency may issue multiple wastestream authorizations for a single wastestream, each identifying a different disposer or disposal method. The Agency may allow the combination of wastestreams into a single wastestream if such combination does not limit the possibilities for treatment, recycling or disposal of the wastes.

(Source: Amended at 10 Ill. Reg. , effective)

Section 709.106 Deemed-Issued Wastestream Authorizations
Pursuant to 35 Ill. Adm. Code 709.200.

- 1) Wastestream authorizations shall be deemed issued if the Agency fails to act within 90 days of the filing of the wastestream application as required by 35 Ill. Adm. Code 709.404. The wastestream authorization shall be deemed issued for the same time period as a permit deemed issued pursuant to Section 39(a) of the Act.
- 2) Wastestream authorizations shall be deemed issued under the circumstances and for the time periods specified in Section 16(b) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1016(b)), if a timely and sufficient application has been filed. Applications filed with the Agency on or before November 1, 1986 shall be deemed timely filed for the purposes of this subsection.
- 3) Upon written request by the applicant, the Agency shall issue a statement that a wastestream authorization has been deemed issued pursuant to subsections 1) or 2), above.

Section 709.110 Land Disposal Unit

- a) As used in this Part, a "land disposal unit" means any "hazardous waste management unit" as defined in 35 Ill. Adm Code 720.110, unless that unit is specifically excluded under subsection (b). Without limiting the generality of this definition, the following are examples of land disposal units:
 - 1) A landfill;
 - 2) A surface impoundment or waste pile, unless the owner or operator demonstrates, by way of a closure plan pursuant to 35 Ill. Adm. Code 724.212 or 725.212, that all wastes and waste residues will be removed from the unit prior to or upon closure;
 - 3) A land treatment unit, unless the owner or operator demonstrates, pursuant to 35 Ill. Adm. Code 724.372, that the hazardous constituents in the waste can be completely degraded, transformed or immobilized in the treatment zone.

b) Specific exclusions. The following hazardous waste management units are not land disposal units:

- 1) A storage or treatment unit, including an incinerator, for which the owner or operator demonstrates, through a closure plan pursuant to 35 Ill. Adm. Code 724.212 or 725.212, that all wastes and waste residues will be removed from the unit prior to or upon closure;
- 2) A discharge of water from a treatment unit to a publicly owned treatment works (POTW), provided the discharge is in compliance with applicable pretreatment requirements imposed by the POTW.
- 3) A discharge of water from a treatment unit to waters of the State, provided such discharge is authorized by an NPDES permit issued pursuant to Section 39(b) of the Act and 35 Ill. Adm. Code 309.
- 4) An underground injection well for which the Agency has issued a UIC permit pursuant to Section 39(e) of the Act and 35 Ill. Adm. Code 704.

(Source: Added at 10 Ill. Reg. , effective)

SUBPART B: PROHIBITIONS

Section 709.200 Hazardous Waste Authorization

- a) Hazardous wastes. NO HAZARDOUS WASTESTREAM MAY BE DEPOSITED IN ANY PERMITTED LAND DISPOSAL UNIT OF A TYPE IDENTIFIED IN SUBSECTION (c) UNLESS A WASTESTREAM AUTHORIZATION HAS BEEN ISSUED FOR THE DEPOSIT OF THAT WASTESTREAM (Section 39(h) of the Act).
- b) Residuals. No person shall engage in the treatment of a hazardous wastestream and cause, threaten or allow the deposit of any residual from such treatment in any land disposal unit of a type identified in Subsection (c) unless the Agency has issued a wastestream authorization for that wastestream.
- c) This Section applies to all land disposal units as defined in Section 709.110.

(Source: Added at 10 Ill. Reg. , effective)

Section 709.201 Liquid Hazardous Waste Authorization

- a) Liquids: NO PERSON SHALL CAUSE, THREATEN OR ALLOW THE DISPOSAL IN ANY LANDFILL LAND DISPOSAL UNIT OF A TYPE IDENTIFIED IN SUBSECTION (c) OF ANY LIQUID HAZARDOUS WASTE UNLESS THE AGENCY HAS ISSUED A WASTESTREAM AUTHORIZATION FOR THAT WASTESTREAM. (Section 22-6(a) of the Act).
- b) Residuals: No person shall engage in the treatment of a liquid hazardous waste and cause, threaten or allow the disposal in any landfill land disposal unit of a type identified in subsection (c) of any residual from such treatment unless the Agency has issued a wastestream authorization for that wastestream.
- c) This Section applies to all types of land disposal units identified in Section 709.110, except surface impoundments and land treatment units.

(Source: Amended at 10 Ill. Reg. , effective)

Section 709.202 Exemptions

The wastestream authorization requirement does not apply to:

- a) The Agency or its contractors with respect to management of wastes generated as a result of remedial action pursuant to Section 22.7 of the Act; and,
- b) The Agency, the United States Environmental Protection Agency or their contractors with respect to wastes generated as a result of remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and spill responses pursuant to Section 4 (s) of the Act.

(Source: Added at 10 Ill. Reg. , effective)

SUBPART C: APPLICATIONS

Section 709.310 General Hazardous Waste Application

- a) If the applicant seeks an authorization to deposit a hazardous wastestream in a permitted land disposal unit, the applicant must provide, by way of narrative description and supporting evidence, proof that the waste meets the standard of Section 709.400(a) and 35 Ill. Adm. Code 729.110(a).
- b) If the applicant seeks to deposit a residual from the treatment of a hazardous wastestream in a land disposal unit the applicant may provide proof that the residual meets one of the standards of Section 709.400(b), and 35 Ill. Adm. Code 729.110(b), instead of proof pursuant to subsection (a).

- c) The Agency may prescribe the form in which all information required under this Section shall be submitted.
- d) All permit applications shall be mailed or delivered to the appropriate address designated by the Agency, and shall be sent by registered or certified mail, return receipt requested or delivered in person. Applications which are hand-delivered shall be delivered to and receipted for by the Manager of the Agency's Division of Land Pollution Control or his designee.

(Source: Added at 10 Ill. Reg. , effective)

SUBPART D: REVIEW OF WASTESTREAMS

Section 709.400 General Standard for Issuance

- a) THE AGENCY SHALL ISSUE A WASTESTREAM AUTHORIZATION FOR THE DISPOSAL OF A HAZARDOUS WASTESTREAM IN A PERMITTED LAND DISPOSAL UNIT ONLY AFTER THE GENERATOR HAS REASONABLY DEMONSTRATED THAT THE WASTESTREAM MEETS THE STANDARD OF 35 ILL. ADM. CODE 729.110(a), AND THAT LAND DISPOSAL IS NOT PROHIBITED OR LIMITED BY BOARD REGULATIONS. (Section 39(h) of the Act).
- b) Residuals. The Agency shall issue a wastestream authorization for the disposal of a residual from the treatment of hazardous waste if the original generator or treater demonstrates that the residual either meets the standard of subsection (a), or:
 - 1) Is a residual for which the Board has promulgated a technical standard under 35 Ill. Adm. Code 729; and,
 - 2) Will be managed as provided in that technical standard; and,
 - 3) Meets the technical standard; and,
 - 4) Is not otherwise restricted.

(Source: Added at 10 Ill. Reg. , effective)

Section 709.401 Standard for Issuance for Liquid Hazardous Waste

- a) Liquids: THE AGENCY SHALL ISSUE A WASTESTREAM AUTHORIZATION FOR THE LAND DISPOSAL OF A LIQUID

HAZARDOUS WASTE ONLY AFTER THE GENERATOR HAS REASONABLY DEMONSTRATED THAT THE WASTESTREAM MEETS THE STANDARD OF 35 ILL. ADM. CODE 729.310(a), AND THAT LAND DISPOSAL IS NOT PROHIBITED OR LIMITED BY BOARD REGULATIONS. (Section 22.6(c) of the Act).

- b) Residuals: The Agency shall issue a wastestream authorization for the land disposal of the residual from the treatment of a liquid hazardous waste if **and only if** the original generator or treater demonstrates that the residual either meets the standard of subsection (a) or meets one of the standards of 35 Ill. Adm. Code 729.310(b), and that land disposal is not prohibited or limited by Board regulations.
- c) Negative Finding: For wastes which are neither a liquid hazardous waste nor a residual from the treatment of a liquid hazardous waste, the Agency may issue a wastestream authorization upon a finding that the wastestream is not subject to any other landfilling prohibition.

(Source: Amended at 10 Ill. Reg. , effective)

Section 709.402 Negative Finding

If, after reviewing an application for a wastestream authorization, the Agency determines that the waste is not subject to the requirement to obtain a wastestream authorization, the Agency shall, upon request by the applicant, issue a wastestream authorization including such determination. Such an authorization shall include such conditions as are necessary to ensure that the person continues to be not subject to the wastestream authorization requirement, and defining the methods of managing the waste so as to avoid the requirement.

(Source: Added at 10 Ill. Reg. , effective)

Section 709.403 Denial of Wastestream Authorization

If the Agency denies any wastestream authorization required by 35 Ill. Adm. Code 709.201, the Agency shall transmit to the applicant specific, detailed statements as to the reasons the wastestream authorization was denied. Such statements shall include the factors enumerated in Section 39(a)(1-4) of the Act.

Section 709.404 Time Requirements for Agency Action

- a) An application wastestream authorization shall not be deemed filed until the Agency has received, at the designated address, all information, documents, and authorization in the form and with the content required by this Part. However, if the Agency fails to notify the

applicant within 30 days after the receipt of an application that the application is incomplete, and of the reasons, the application shall be deemed to have been filed on the date received by the Agency. An applicant may deem the Agency's notification that the application is incomplete as a denial of the wastestream authorization for purposes of review pursuant to 35 Ill. Adm. Code 709.603.

- b) If the Agency fails to take final action on the application within 90 days from the filing thereof, the applicant may deem the wastestream authorization granted on the 91st day after the application was filed.
- c) Any applicant may waive the requirement that the Agency shall take actions within the time periods of this Section.
- d) The Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action shall be deemed to have taken place on the date that such notice is mailed for the purposes of computing the 35 day appeal period pursuant to Section 40 (a) of the Act.

SUBPART E: CONDITIONS OF WASTESTREAM AUTHORIZATIONS

Section 709.501 Duration

A wastestream authorization shall be valid for a period of not ~~less than or nor~~ more than three years.

(Source: Amended at 10 Ill. Reg. , effective).

Section 709.510 General Conditions

IN GRANTING A WASTESTREAM AUTHORIZATION THE AGENCY MAY IMPOSE SUCH CONDITIONS AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THE ACT AND WHICH ARE CONSISTENT WITH BOARD REGULATIONS, including requirements for the periodic testing of the wastestream to verify that it continues to meet one of the standards of 35 Ill. Adm. Code 729-~~310~~. (Section 22.6(c) and 39(h) of the Act).

(Source: Amended at 10 Ill. Reg. , effective)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE
OPERATING REQUIREMENTS

PART 729

~~LANDFILLS~~ PROHIBITED HAZARDOUS WASTES IN LAND DISPOSAL UNITS

SUBPART A: GENERAL HAZARDOUS WASTE RESTRICTION

Section

- 729.100 Purpose, Scope and Applicability
- 729.101 Severability
- 729.102 Definitions
- 729.110 Hazardous Waste Restriction
- 729.111 Nonhazardous Residuals
- 729.112 Residuals from Generic Hazardous Waste
- 729.122 Economic Reasonableness
- 729.123 Technical Feasibility

SUBPART B: HALOGENATED SOLVENTS

Section

- 729.200 Purpose, Scope and Applicability
- 729.201 No Circumvention
- 729.202 Incorporations by Reference
- 729.203 Waste Analysis Plan
- 729.204 Land Treatment Demonstration (Repealed)
- 729.205 Effect on Wastestream Authorizations and Supplemental Permits (Repealed)
- 729.220 Definitions
- 729.221 Halogenated Compound--Definition
- 729.222 Halogenated Solvent--Definition
- 729.223 Halogen Content Presumption
- 729.224 Partition Presumption
- 729.240 Non-aqueous Liquid Phases which are Halogenated Solvents
- 729.241 Aqueous Solutions of Halogenated Compounds
- 729.242 Solids Containing Halogenated Compounds
- 729.262 Recycling Residues
- 729.263 Small Quantity Generators

SUBPART C: LIQUID HAZARDOUS WASTES

Section

- 729.301 Definitions
- 729.302 Waste Analysis Plan
- 729.303 Incorporations by Reference
- 729.310 Liquid Hazardous Waste Restriction
- 729.311 Prohibition of Non-hazardous Liquids in Hazardous Waste Landfills
- 729.312 Labpacks
- 729.313 Biodegradable Absorbents

729.320 Test for Liquids
729.321 Load-bearing Capacity Test

AUTHORITY: Implementing Sections 22(g), 22.4(b), 22.6 and 39(h) of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars 1022(g), 1022.4(b), 1022.6 and 1039(h)) and authorized by Sections 22.6 and 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.6 and 1027.

SOURCE: Emergency rule adopted in R83-28A at 8 Ill. Reg. 12668, effective July 5, 1984 for a maximum of 150 days; adopted in R81-25 at 8 Ill. Reg. 24124, effective December 4, 1984; amended in R83-28B at 9 Ill. Reg. 718, effective January 3, 1985; amended in R83-28C at 10 Ill. Reg. 4864, effective March 7, 1986; amended in R86-9 at 10 Ill. Reg. , effective

NOTE: Capitalization is used to indicate that the language quotes or paraphrases a statute.

SUBPART A: GENERAL

Section 729.100 Purpose, Scope and Applicability

- a) The purpose of this Part is to prohibit the disposal of certain hazardous wastes in ~~landfills~~ land disposal units. "Hazardous waste" is as defined in 35 Ill. Adm. Code 721. "Land Disposal Unit" is defined in 35 Ill. Adm. Code 709.110. 35 Ill. Adm. Code 709 requires wastestream authorizations for certain wastestreams.
- b) ~~Unless otherwise indicated, the requirements of this Part apply to all landfills, or "sanitary landfills" as defined in the Environmental Protection Act (Act) (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001 et seq-). Landfills include both non-hazardous and hazardous waste landfills permitted under Sections 21(d) or 21(f) of the Act. Unless otherwise indicated, "landfills" includes surface impoundments and waste piles in which waste residues are expected to remain after closure, and land application.~~
- eb) The provisions of 35 Ill. Adm. Code 721.105 notwithstanding, the ~~landfilling~~ prohibitions of this Part apply to all persons, including small quantity generators, unless otherwise indicated in this Part.
- dc) The ~~landfilling~~ prohibitions of this Part do not apply to residues of hazardous waste in containers, or empty liners removed from containers, as defined in 35 Ill. Adm. Code 721.107.

- ed) The provisions of this Part are intended to supplement the requirements of 35 Ill. Adm. Code 722, 723, 724, 725, 807 and 809. No provisions of those regulations should be read as permitting the disposal of any hazardous waste in any manner prohibited under this Part.
- fe) The provisions of this Part are intended to proscribe any conduct by generators, transporters, treaters or disposers of waste which results in placement of a prohibited waste in a ~~landfill~~ land disposal unit.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.102 Definitions

The following definitions apply to this Part, except as modified in individual Subparts:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001)

"Agency" means the Illinois Environmental Protection Agency

"Board" means the Illinois Pollution Control Board

"Generator" is as defined in 35 Ill. Adm. Code 720.110

"Hazardous Waste" is a hazardous waste as defined at 35 Ill. Adm. Code 721.103

"Hazardous wastestream" means a "wastestream" which includes a "hazardous waste"

"Land disposal unit" is as defined in 35 Ill. Adm. Code 709.110.

"Liquid hazardous waste" is as defined in Section 729.301.

"Original generator" is a person who generates hazardous waste as a result of an activity or production process other than the treatment of hazardous waste.

"Residual" is any material other than a gas which remains after, or is generated by, the treatment of a hazardous waste. A "residual" may itself be a "hazardous waste".

"Treater" is a person who engages in treatment of hazardous waste. A "treater" may be a "generator", but not the "original generator."

"Treatment" is as defined in 35 Ill. Adm. Code 720.110.

"Wastestream" means a "solid waste" as defined in 35 Ill. Adm. Code 721, which is routinely or periodically produced by a certain generator as a result of a certain activity, production process or treatment process. The Agency may issue multiple wastestream authorizations for a single wastestream, each identifying a different disposer or disposal method. The Agency may allow the combination of wastestreams into a single wastestream if such combination does not limit the possibilities for treatment, recycling or disposal of the wastes.

(Source: Added at 10 Ill. Reg. , effective)

Section 729.110 Hazardous Waste Restriction

- a) Except as provided in subsection (b), NO PERSON SHALL DEPOSIT A HAZARDOUS WASTESTREAM IN A PERMITTED HAZARDOUS WASTE LAND DISPOSAL UNIT OF A TYPE IDENTIFIED IN SUBSECTION (c) UNLESS THE GENERATOR HAS REASONABLY DEMONSTRATED THAT, CONSIDERING TECHNOLOGICAL FEASIBILITY AND ECONOMIC REASONABLENESS, THE HAZARDOUS WASTE CANNOT BE REASONABLY RECYCLED FOR REUSE, NOR INCINERATED OR CHEMICALLY, PHYSICALLY OR BIOLOGICALLY TREATED SO AS TO NEUTRALIZE THE HAZARDOUS WASTE AND RENDER IT NONHAZARDOUS. (Section 39(h) of the Act.)
- b) Residuals. Paragraph (a) notwithstanding, a person may deposit a residual from the treatment of a hazardous waste in a land disposal unit if:
- 1) The Board has adopted technical standards at Section 729.111 and 729.112 which are applicable to the waste;
 - 2) The person will manage the waste in a manner authorized by the technical standard;
 - 3) The waste meets the technical standard; and,
 - 4) The waste is not otherwise restricted or prohibited.
- c) This Section applies to all types of land disposal units identified in 35 Ill. Adm. Code 709.110

(Source: Added at 10 Ill. Reg. , effective)

Section 729.111 Nonhazardous Residuals

A person may deposit a residual from the treatment of a hazardous waste in a land disposal unit if the person demonstrates that the residual is not a hazardous waste.

(Source: Added at 10 Ill. Reg. , effective)

Section 729.112 Residuals from Generic Hazardous Waste

a) This Section applies to residuals from the treatment of generic hazardous waste.

1) A "generic hazardous waste" is a hazardous waste which is listed in 35 Ill. Adm. Code 721.131 or 721.132.

2) To conduct "treatment" of hazardous waste, a person must have a RCRA permit or interim status pursuant to 35 Ill. Adm. Code 703, except insofar as treatment without a permit is authorized by 35 Ill. Adm. Code 702-726.

b) A person may deposit a residual from the treatment of a generic hazardous waste in a land disposal unit if the person demonstrates that the waste could be delisted pursuant to 35 Ill. Adm. Code 720.122.

(Source: Added at 10 Ill. Reg. , effective)

Section 729.122 Economic Reasonableness

In making an ERTF determination the Agency shall consider all facts and circumstances bearing upon the economic reasonableness of recycling, reusing, incinerating, or chemically, physically or biologically neutralizing the hazardous waste and rendering it non-hazardous. In this regard, the Agency:

a) Shall not consider process substitutions or waste minimization;

b) Shall not consider the profitability of the generator. Generators may, however, request variances pursuant to 35 Ill. Adm. Code 104 based on a showing of arbitrary or unreasonable hardship;

c) Shall consider the cost to transport the waste to the nearest available treatment or land disposal unit, including units located outside the state;

- d) Shall consider both the cost of conducting treatment at the site of generation and off-site;
- e) Shall consider whether treatment alternatives can render the hazardous waste stream non-hazardous. For purposes of this Subsection, "to render a hazardous waste stream non-hazardous" means that such waste stream, after treatment, would no longer be identified or characterized as a hazardous waste under Part 721. Unless the treatment alternative can render a hazardous waste stream non-hazardous, that alternative shall not be considered as a viable option for purposes of granting or denying a waste stream authorization pursuant to Section 729.410(a);
- f) Shall not consider unrelated information regarding the applicant's other permits; and
- g) If a waste management alternative is not economically reasonable because of temporary factors, the Agency shall provide that the authorization will expire at such time as the Agency expects the temporary factor to change. Temporary factors include, but are not limited to, the following;
 - 1) High costs due to lack of capacity;
 - 2) High transportation costs due to lack of local capacity;
 - 3) Variable cost factors due to fluctuating demand for a product which is resold;
 - 4) Seasonal cost factors; and
 - 5) The applicant's need to obtain any RCRA permits to install or operate any treatment or storage units which may be necessary in order to implement an otherwise economically reasonable alternative to disposal in a land disposal unit, the time it may take to obtain such permits and the time which may be required to install such unit.

(Source: Added at 10 Ill. Reg. , effective)

Section 729.123 Technical Feasibility

This Section defines "technologically feasible" for purposes of application of Sections 22.6 and 39(h) of the Act and Sections 729.110 and 729.310.

- a) A waste management alternative is technologically feasible if the alternative has been demonstrated in an actual operation.

- b) A waste management alternative is not technologically feasible if it would result in as much or more risk to public health and the environment when compared to land disposal of the waste.
- c) If the Agency determines that an alternative is not technologically feasible, it shall provide that the authorization will expire at a time at which a technologically feasible alternative is likely to exist.

(Source: Added at 10 Ill. Reg. , effective)

SUBPART B: HALOGENATED SOLVENTS

Section 729.200 Purpose, Scope and Applicability

- a) This Subpart prohibits the ~~landfilling~~ deposit in a land disposal unit of wastes containing halogenated compounds. Rules are included to differentiate these from other wastes.
- b) Halogenated compounds are a class of organic solvents. As a class halogenated compounds are not very soluble in water; therefore, in a complex system, they will be found in a non-aqueous phase associated with any other organic solvents present. This Subpart assumes that any halogenated compounds present will be more concentrated in any non-aqueous liquid phase. The halogen concentration in the non-aqueous liquid phase is used to determine whether the phase should be regulated as an halogenated solvent or as an organic solvent.
- c) Organic solvent phases, whether they include halogenated compounds or not, pose a threat to the impermeability of clay and synthetic ~~landfill~~ liners.
- d) Aqueous solutions of halogenated compounds placed directly into the ~~landfill~~ land disposal unit, could damage synthetic liners and move into groundwater.
- e) Because of their differing impacts on ~~landfills~~ land disposal units, the Board intends to encourage the separation prior to disposal of phases in multiphase wastes, and intends to encourage the separation of wastestreams during generation to avoid the formation of multiphase wastes.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.203 Waste Analysis Plan

The owner or operator of a land disposal unit ~~landfill~~ disposing of hazardous waste must, within thirty days after the effective date of this section, develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to ensure that the facility complies with the prohibition stated in this Subpart. The owner or operator must keep this plan at the facility. A copy of the plan shall be submitted to the Agency within thirty days after the effective date of this section.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.204 Land Treatment Demonstration (Repealed)

This Subpart shall not bar the issuance of a RCRA permit pursuant to Section 21(f) of the Act and 35 Ill. Adm. Code 703 for land treatment of hazardous waste if the owner or operator demonstrates, pursuant to 35 Ill. Adm. Code 703-206, 703-230 and 724-372, that any halogenated compounds in the waste will be completely degraded, transformed or immobilized in the treatment zone.

(Source: Repealed at 10 Ill. Reg. , effective)

Section 729.220 Definitions

In addition to the definitions of Section 729.102, as As used in this Subpart, terms have the following meanings:

Aqueous phase: A "phase" in which water is the solvent, constituting more than 500 g/kg.

Component: An element or compound present in a "phase" or "system".

Emulsion: A "system", including two or more liquid "phases", which is not separated into layers. For purposes of this Subpart, an emulsion which does not form layers within one hour is one phase.

Liquid: A waste, or part of a waste, which yields any fluid when subjected to the paint filter test described in Section 729.320.

Non-aqueous phase: A "phase" which contains 500 g/kg or less of water.

One-phase system: A "system" with one and only one "phase".

Phase: A physically distinct portion of a dispersion or solution which at least in principle could be mechanically separated from the remainder of the material. For purposes of this Subpart, a container is not a phase, nor is a vapor above a waste. Emulsions and suspensions are a single phase if they do not form layers within one hour.

Solid: A waste, or part of a waste, which contains no free liquid as determined from the paint filter test described in Section 729.320.

Suspension: A "system", including a "solid" phase and a "liquid" phase, which is not separated into layers. For purposes of this Subpart, a suspension which does not form layers within one hour is one phase.

System: A single isolated "phase" or a set of two or more "phases" which are in physical contact.

TOX test: Either of the tests for total organic halogen incorporated by reference in Section 729.202, ASTM D2361-66 (Reapproved 1978) or ASTM E442-74 (Reapproved 1981).

Two-phase system: A "system" with two "phases".

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.240 Non-aqueous Liquid Phases which are Halogenated Solvents

No person shall cause or allow any hazardous waste containing a non-aqueous liquid phase which is an halogenated solvent to be placed in any land disposal unit ~~landfill~~.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.241 Aqueous Solutions of Halogenated Compounds

- a) No person shall cause or allow to be placed in any land disposal unit ~~landfill~~ any hazardous waste containing an aqueous liquid phase containing more than 14,000 mg of halogenated compounds in any 1 kg.
- b) An aqueous liquid phase containing more than 10,000 mg of total organic halogen, as measured by the TOX test, in any 1 kg is assumed to contain more than 14,000 mg of halogenated compounds per kilogram, unless the contrary is shown by a more definitive test whose validity is demonstrated to the Agency.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.242 Solids Containing Halogenated Compounds

- a) No person shall cause or allow any hazardous waste which is a solid to be placed in any land disposal unit ~~landfill~~ if the waste forms a non-aqueous liquid phase which is an halogenated solvent when a representative sample of the waste is mixed with water.
- b) The prohibition of paragraph (a) shall become effective on July 1, 1986.

(Source: Amended at 10 Ill. Reg. , effective)

SUBPART C: LIQUID HAZARDOUS WASTES

Section 729.301 Definitions

The following definitions apply to this Subpart, in addition to the definitions of Section 729.103:

"Act" means the Environmental Protection Act (~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001 et seq.~~)

"Agency" means the Illinois Environmental Protection Agency

"Board" means the Illinois Pollution Control Board

"Generator" is as defined in 35 Ill. Adm. Code 720.110

"Hazardous Waste" is a hazardous waste as defined at 35 Ill. Adm. Code 721.103

"Labwaste" is a liquid hazardous waste generated by an activity in a laboratory engaged in teaching, testing or research, in a quantity totaling less than 100 kg per month for the activity. Wastes which are periodically produced as a result of a production process are not "labwaste".

"LANDFILL" IS A DISPOSAL UNIT OR PART OF A FACILITY WHERE HAZARDOUS WASTE IS PLACED IN OR ON LAND AND WHICH IS NOT A LAND TREATMENT UNIT, A SURFACE IMPOUNDMENT OR AN UNDERGROUND INJECTION WELL. (Section 22.6(d) of the Act). As used in this Subpart, a "landfill" is a "land disposal unit" as defined 35 Ill. Adm. Code 709.110.

"Liquid hazardous waste" is a hazardous waste which yields any fluid when subjected to the test procedure described in Section 729.320.

"Non-periodic waste" is a liquid hazardous waste in a quantity of less than 100 kg which will not be generated again by that generator.

"Original generator" is a person who generates hazardous waste as a result of an activity or production process other than the treatment of hazardous waste.

"Residual" is any material other than a gas which remains after, or is generated by, the treatment of a liquid hazardous waste. A "residual" may itself be a "liquid hazardous waste".

"Treater" is a person who engages in treatment of hazardous waste. A "treater" may be a "generator", but may not be the "original generator".

"Treatment" is treatment as defined at 35 Ill. Adm. Code 720.110. 35 Ill. Adm. Code 703.123(h) and 724.101(g) (10) notwithstanding, as used in this Subpart, "treatment" specifically includes the addition of absorbent materials to a liquid hazardous waste or vice versa. Provided, however, that "treatment" shall not include those activities carried out to immediately contain or treat a spill of a liquid hazardous waste or a material which, when spilled, becomes a liquid hazardous waste, to the extent such treatment meets the exemption of 35 Ill. Adm. Code 724.101(g)(8) or 725.101(c)(11), whichever is applicable.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.310 Liquid Hazardous Waste Restriction

- a) Liquids: NO PERSON SHALL CAUSE, THREATEN OR ALLOW THE DISPOSAL IN A LAND DISPOSAL UNIT OF A TYPE IDENTIFIED IN SUBSECTION (d) LANDFILL OF ANY LIQUID HAZARDOUS WASTE, UNLESS THE GENERATOR HAS DEMONSTRATED THAT, CONSIDERING CURRENT TECHNOLOGICAL FEASIBILITY AND ECONOMIC REASONABLENESS, THE HAZARDOUS WASTE CANNOT BE REASONABLY SOLIDIFIED, STABILIZED OR RECYCLED FOR REUSE, NOR INCINERATED OR CHEMICALLY, PHYSICALLY OR BIOLOGICALLY TREATED SO AS TO NEUTRALIZE THE HAZARDOUS WASTE AND RENDER IT NONHAZARDOUS. (Sections 22.6(a) and 22.6(c) of the Act)
- b) Residuals: No person shall engage in the treatment of a liquid hazardous waste and cause, threaten or allow the disposal in a land disposal unit of a type identified in subsection (d) landfill of a residual

from such treatment unless the residual meets one of the following standards.

- 1) Non-hazardous Residuals: The residual may be deposited in a land disposal unit ~~landfilled~~ if it no longer meets the definition of "hazardous waste".
 - 2) Liquid Removal: For wastes in which treatment is accomplished only through extraction, volatilization, evaporation, thermal destruction or other removal of liquids, the residual may be deposited in a land disposal unit ~~landfilled~~ if it no longer meets the definition of "liquid hazardous waste".
 - 3) Solidification: The residual may be deposited in a land disposal unit ~~landfilled~~ if it no longer meets the definition of "liquid hazardous waste" and possesses a load-bearing capacity of at least 2.0 tons per square foot as determined by application of the test procedure described in Section 729.321.
- c) No person shall cause, threaten or allow the disposal in a land disposal unit of a type identified in subsection (d) ~~landfill~~ of a residual from the treatment of a liquid hazardous waste which does not meet one of the standards of paragraph (b), and for which the Agency has not issued a wastestream authorization pursuant to 35 Ill. Adm. Code 709.401(a). Reasonable reliance on a generator's description of the waste shall be a complete defense to violation of this paragraph.
- d) This Section applies to all types of land disposal units identified in 35 Ill. Adm. Code 709.110, except surface impoundments and land treatment units.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.311 Prohibition of Non-hazardous Liquids in Hazardous Waste Landfills

No person shall cause, threaten or allow the placement into any land disposal unit ~~a landfill~~ permitted to receive hazardous waste of any non-hazardous waste which yields any fluids when subjected to the test procedure described in Section 729.320.

(Source: Amended at 10 Ill. Reg. , effective)

Section 729.313 Biodegradable Absorbents

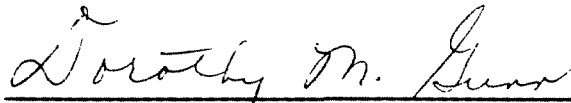
No person shall cause, threaten or allow the disposal in any land disposal unit landfill of any liquid hazardous waste containing an absorbent material which, because of microbial action, will degrade faster than the waste.

(Source: Amended at 10 Ill. Reg. , effective)

IT IS SO ORDERED.

Board Members B. Forcade and R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion and Order was adopted on the 2nd day of October, 1986 by a vote of 4-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board