

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
SPECIAL WASTE) R76-10
HAULING REGULATIONS)

OPINION AND ORDER OF THE BOARD (by Mr. Young) (Proposed Final):

This Opinion concerns the adoption of a proposed Chapter 9: Special Waste Hauling Regulations to the Illinois Pollution Control Board Rules and Regulations. The proposed regulatory change is intended to assure that any special waste generated in Illinois or elsewhere is properly monitored and controlled as it moves from the generator, to the special waste hauler and to its ultimate disposition within the boundaries of Illinois.

The original regulatory proposal was submitted to the Pollution Control Board on April 19, 1976, by the Environmental Protection Agency as the "Petition for Adoption of a New Regulation: Liquid and Hazardous Waste Hauling Regulations of the Pollution Control Board." After numerous revisions, the Agency filed a draft on July 5, 1978, with the proposed heading "Special Waste Hauling Regulations." On November 1, 1978, the Agency submitted a Motion for Leave to File Proposed Clarifying Revisions which the Board accepted on November 2, 1978, as the Agency's final draft to this proceeding.

Notice of the original Agency proposal was published in Environmental Register #124. The Board scheduled public hearings pursuant to Section 28 of the Environmental Protection Act which were held in Chicago, Illinois, on January 15, 1977, on February 2, 1977, in Chicago, Illinois, and on March 23, 1977, in Peoria, Illinois. On October 28, 1977, the Institute for Environmental Quality filed a study with the Board concerning the economic impact of the proposed regulations entitled "Economic Impact of the Proposed Illinois Special Waste Hauling Regulations (R76-10)" IIEQ Document No. 77/26 (Exhibit #16) prepared by Mr. Roger K. Raufer and Mr. Kevin G. Croke. As required by Section 27(b) of the Act, two economic impact hearings were held on January 11, 1978, in Chicago, Illinois, and on January 13, 1978, in Springfield, Illinois.

At the conclusion of the hearings, the record was held open to accumulate materials pertinent to the special waste hauling regulation and to receive a final Brief from the Agency. During this interim, the Hearing Officer collected and received materials concerning state and federal hazardous waste regulatory activities which have been marked for identification and entered into this record.

On September 11, 1978, the Hearing Officer received the final Agency Brief which was preceded by Attachments filed with the Board on August 25, 1978, and admitted them into the record as Group Exhibit #36. After designating the Agency's final draft as Exhibit #37 and receiving it into the record, the Hearing Officer closed the record on November 6, 1978.

PROPOSED RULE

The Illinois Environmental Protection Agency, (with the assistance of the Liquid Waste Control Association, the Illinois Chamber of Commerce and the Illinois Department of Public Health), developed proposed regulations for consideration by the Board for the management of special waste in transit as it passes from delivery until treated, stored or disposed of in Illinois. The essential elements of the proposed management program include the special waste hauling permit requirements and control of the movement of special waste by a manifest system.

Of equal importance to this Chapter is the development of the "special waste" definition which offers a practical alternative to sole reliance on federal "hazardous waste" guidelines. The Agency developed a definition of "special waste" for the purposes of the proposed Chapter which includes three subdivisions: "industrial process effluent," "pollution control residual" and "hazardous waste." When read with other provisions of the proposal, "special waste" is intended to provide a workable format for the special waste management program that is consistent with the numerous requirements and complexities of the Resource Conservation and Recovery Act of 1976 (PL 94-580) and the proposed regulations thereunder.

On October 21, 1976, the Resource Conservation and Recovery Act of 1976 (RCRA) was enacted by Congress to deal with the vast amounts of solid and hazardous waste which has the potential for causing water pollution and other environmental problems. Under Subtitle C, RCRA mandates that hazardous waste be controlled and monitored under a

nationwide program which provides for state participation. To achieve this goal, the U.S. Environmental Protection Agency is required to develop regulations which include the formulation of criteria and listing for "hazardous waste" and the development of comprehensive state programs which include cradle-to-grave regulation of hazardous waste from generation to its ultimate destination (see Exh. #20).

As of the date of this Opinion, the USEPA has published proposed regulations in the Federal Register concerning the "Standards for Hazardous Waste Transporters" pursuant to Section 3003 of RCRA (Exh. #26), "Standards for State Hazardous Waste Management Programs (Section 3006, Exh. #30) and "Notification Requirements under RCRA" (Section 3010, Exh. #31). The USEPA has also circulated draft regulations dealing with "Criteria, Identification and Listing of Hazardous Waste" (Section 3001, Exh. #23 and #24). "Standards for Generators of Hazardous Waste" (Section 3002, Exh. #25) and "Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities" (Section 3004, Exh. #29 and #36, Attach. #10). According to the most recent time schedule, the Subtitle C proposed regulations are due for publication in the Federal Register by January, 1979. The USEPA expects to promulgate these regulations by January, 1980 (see Exh. #32).

In Illinois, existing regulations for control of special waste are largely confined to the supplemental permit requirements of Chapter 7: Solid Waste Regulations which prohibit the disposal of liquid and hazardous waste and sludges in Illinois unless specifically authorized by Agency supplemental permit. Under this limited regulatory approach, great quantities of special waste may have been disposed of outside of the scope of this supplemental permit system. The record in R76-10 indicates that hazardous waste has been discovered deposited in sand and gravel pits, abandoned in drums on agricultural lands and on hills above streams and is discharged into sewers and streams so as to threaten human health and the environment of this State (R. 54-59, Exh. #36, 43-44).

Of the estimated 14.0 million tons generated in Illinois in 1976, 23% of this amount or 3.2 million tons of special waste was hauled by the special waste hauling industry for disposal and recycling of the wastes. The remainder of the special waste is being disposed of, treated or recycled on site by the generator. If the 1976 estimates are correct, 600,000 tons of special waste were probably illegally disposed of by waste haulers without supplemental permits (R. 418-19, Exh. #16, 25-27).

The regulations proposed by the Agency establish much-needed controls, which in addition to the supplemental permit requirements of Chapter 7, are intended to eliminate illegal disposal in this State. Under this Chapter, the generator or deliverer would be prohibited from delivery of special waste for shipment or hauling without providing a signed manifest form with the quantity and composition of the special waste to a properly permitted special waste hauler with the final disposition site listed on the form. The special waste hauler must obtain a special waste hauling permit in a manner prescribed by this Chapter and is required to deliver the special waste to the predetermined site. Failure to comply with the provisions of this proposed Chapter, Chapter 7 or Title V of the Act are subject to penalties of \$10,000 for each violation and a maximum of \$1,000 per day of violation.

The Agency asserts that the final draft is not in conflict with federal and state laws and regulations and that the Chapter is drafted in a manner which is consistent with the applicable USEPA guidelines proposed pursuant to the Resource Conservation and Recovery Act of 1976 (see Exh. 36, Parts II & V).

SPECIAL WASTE

Essential to the development of a workable special waste program is the formulation of a practicable definition for special waste. For a number of years difficulties have been encountered in defining what wastes are hazardous and thereby require supplemental controls. On October 1, 1975, the Illinois General Assembly enacted Public Act 79-762, an amendment to Section 21(e) which included a definition of "hazardous refuse." The definition is as follows:

For the purposes of this Section [Section 21 of the Environmental Protection Act], "hazardous refuse" shall mean refuse with inherent properties which make such refuse difficult or dangerous to manage by normal means including but not limited to chemicals, explosives, pathological wastes, and wastes likely to cause fire.

On April 4, 1972, the Agency proposed nearly identical language for the identification of "hazardous waste" in regulatory proceeding R72-5, Chapter 7: Solid Waste Rules and Regulations. The proposed definition was adopted by the Board on July 19, 1973, and was incorporated into the Rule 104 definitions

of that Chapter. Since then, the Agency has found the "hazardous refuse" definition extremely broad and all-inclusive. For this reason, the Agency has had continuing difficulty in developing policy for interpreting what liquid and hazardous waste and sludges pursuant to Rule 310 (b) of Chapter 7 require supplemental permits. In this proposal, the Agency has taken a different approach for the identification of "hazardous refuse" or "hazardous waste" by developing the definition of "special waste" (R. 43-44, 315).

As proposed, "special waste" includes three subdivisions:

Industrial Process Effluent (IPE),
Pollution Control Residual (PCR), and
Hazardous Waste.

"Industrial process effluent" and "pollution control residual" were intended to include nearly all the "special waste" while the definition of "hazardous waste" will be restricted to wastes which are particularly hazardous when criteria and listing are promulgated by the USEPA. The Agency claims that the simplified description and illustrations of IPE and PCR provide the breadth necessary to include the diversity of waste effluents and residuals generated by industry and municipalities. The definitions were also intended to allow for identification of special waste by Agency field personnel at the industrial or municipal facility without cumbersome procedures or the need for sophisticated field detection devices (R. 43-46).

While the IPE and the PCR definitions have merit in simplifying Agency field operations and identification procedures, the definitions are too broad for the purposes of this Chapter. Instead of "industrial process effluent" and "pollution control residual," "industrial process waste" and "pollution control wastes" shall be incorporated into this Chapter to define those effluents and residuals generated and not pretreated or discharged to a sanitary sewer system by industrial and municipal concerns which pose present and potential threat to human health and to the environment. This matter will be developed more fully in latter parts of this Opinion.

NEED FOR THE REGULATION

Until the enactment of the Environmental Protection Act, little, if any, attention was devoted to the disposal of liquid, sludge or hazardous wastes in landfills in Illinois. The Illinois Department of Public Health adopted Refuse Disposal Rules in 1966 which allowed disposal of these wastes in landfills on written approval of the IDPH, but policy at that time discouraged landfilling of such wastes. That policy, which carried over into the Agency, was modified in 1972 and 36 permits for the disposal of liquids, sludge and hazardous waste were issued by the Agency during that year (Exh. #36, 3; R. 36).

On realization that large quantities of such wastes were being handled in a potentially unsafe and environmentally unsound manner, the Agency began in 1974 to encourage the disposal of special wastes at selected landfills capable of handling such material. In 1975, the Agency issued over 800 supplemental permits allowing landfill disposal of 2.4 million tons of liquids, sludges and hazardous, or potentially hazardous, wastes. Based on current figures, the Agency estimates that about 2,000 supplemental permits will be issued in calendar year 1978 controlling the land disposal of about 2.75 million tons of special wastes in 47 properly permitted landfills (Exh. #16, 25-27; Exh. #36, 3-4; R. 36, 483).

Despite the noticeable improvements in the special waste disposal practices in this State, the Agency, and ETA Engineering, Inc. in its Economic Impact Study, report that large quantities of special waste generated in Illinois are not accounted for. The ETA Economic Impact Study estimates that approximately 600,000 tons of special waste annually is illegally disposed of in Illinois with projected increases of 10% per year (Exh. #16, 25-27).

According to Agency witnesses, improper disposal practices have caused death and threatened the environment. In September, 1975, a compactor at a sanitary landfill located in Cook County blew up, setting the landfill on fire and killing an employee. Investigations that followed indicated that drums containing explosives, hidden under refuse, escaped the attention of landfill employees until one of the drums exploded (R. 25-30).

Agency personnel testified that the Agency has virtually no knowledge of the individual disposal practices of the metal plating waste generators. In an industry with wastes containing high concentrations of heavy metals and cyanide, the Agency can identify the waste streams of fewer than twelve of

the 105 metal platers. According to Agency and other reports, clandestine dumps have been discovered in this State in sensitive areas where the potential for environmental damage is most acute; in gravel pits, quarries and on flood plains (R. 39-41). In Byron, Illinois, liquid waste with heavy metal and cyanide components were dumped above a water-bearing rock formation which caused death to livestock and disrupted the water supply of dozens of private well owners. In Rockford, Illinois, nine wells were abandoned due to ground water contamination from Rockford's Peoples Avenue Landfill which had received residential, commercial and industrial wastes in a former sand and gravel pit over a 25-year period (R. 39-41; Exh. #19, 5-20).

Under the supplementary permit system, Rules 210 and 310(b) in Chapter 7 many generators have initiated good faith efforts to properly dispose of their waste with reputable haulers. However, others apparently have found it more economical not to comply with supplemental disposal requirements. In some instances, waste haulers have been known to haul liquid waste for 2 cents per gallon where legal disposal costs of the wastes are at least 3 cents per gallon. Moreover, the Agency has discovered through unannounced inspections of landfill sites and other methods, illegal disposal practices including puncturing of liquid waste drums with picks and disposal of special wastes without the necessary permits (R. 39-41, 196-98). City of Peru, PCB 76-18, 21 PCB 451 (May 20, 1976); Consolidated Freightways et al, PCB 76-107 (October 4, 1978).

Without the proper safeguards, manufacturers claim that they have no guarantee that their wastes will reach the intended disposal site. Reputable disposal sites often incur the expense of procuring supplemental permits for the generator without ever receiving the waste. Liquid waste haulers are forced to compete with scavengers who resort to illegal practices. The Agency testified that 3 million gallons per month of permitted industrial waste was not being delivered for disposal (R. 37, 39-41, 212-15).

PERMIT, MANIFEST, RECORDKEEPING AND REPORTING REQUIREMENTS

Subtitle C of the Resource Conservation and Recovery Act of 1976 mandates a national hazardous waste management program which provides for state administration of a hazardous waste program after the state has received interim or full authorization pursuant to Section 3006. Among the requirements for interim authorization, the state must demonstrate to the USEPA:

1. An existing state hazardous waste management program;
2. Substantial equivalence of the state program to the federal program requirements;
3. An authorization plan showing how the state authority necessary for full federal authorization will be developed.

The Agency is seeking interim authorization under Section 3006 of the Federal Act.

Section 22 of the Environmental Protection Act provides the Board with the authority to adopt regulations under Title V of the Act which prescribe the following:

"Standards for the dumping of any refuse, and standards for the handling, storing, processing, transporting and disposal of any hazardous refuse. For the purposes of this Section, 'hazardous refuse' shall mean refuse with inherent properties which make such refuse difficult or dangerous to manage by normal means including but not limited to chemicals, explosives, pathological wastes, and wastes likely to cause fire."

Under these provisions of Section 22, it is clear that the Board has broad discretion in its choice of methods to promote the purposes of the Act. The regulation as proposed by the Agency is intended to identify the movement of special waste in Illinois under a cradle-to-grave tracking system to ensure that special waste reaches its intended destination in Illinois.

While the USEPA has announced no intention of requiring a transporter permit program pursuant to Section 3003 of RCRA, the Agency believes that a special waste hauling permit system is necessary to ensure that only reputable haulers transport special waste. According to the Agency, it is not the object of such a provision to control the transportation of special waste per se, but to identify the special waste haulers to assure that management of special waste from generation to receptor site is properly monitored and controlled to eliminate improper disposal. Other states with similar concerns have established permit requirements for waste haulers. The record indicates that Indiana, Wisconsin and New Jersey require special waste haulers to be licensed before transporting liquid, hazardous or special wastes within their respective states (Exh. 28, 36; Att. #5 and #6).

The Board agrees that a special waste hauling permit program is an essential link in the development of a comprehensive special waste program. It is necessary for the Agency to identify and to collect data on special waste transporters in this state and, when necessary, to file complaints before the Board to revoke the hauling permit in the event of serious misconduct.

The Agency believes that Rules 501(A) through (G) establish a manifest system which with a permit requirement will provide a comprehensive system for controlling the movement of special waste in this state. Since there is no economic incentive to transport or properly dispose of special waste, the Agency has found it necessary to devise a special waste manifest system consistent with the requirements of RCRA which requires the participation of the generator or deliverer of the special waste, the hauler and the receiver.

The Agency believes and the Board agrees that a comprehensive cradle-to-grave system is necessary to check the vast amounts of illegally disposed special waste.

FEDERAL PREEMPTION

During the January 19, 1977, hearing, Mr. Fred Uhlig, Chief of the Bureau of Legislation of the Illinois Department of Transportation, testified that certain rules in this Chapter, specifically the special waste hauling permit requirements in Part II are preempted by the Hazardous Material Transportation Act (HMTA) (P.L. 93-633) and the Resource Conservation and Recovery Act (RCRA). According to the IDOT, liquid and hazardous waste (special waste) regulated by this Chapter is currently included in the definition of "hazardous materials" under HMTA and the mandate of RCRA is limited to providing a system which does not interfere with the transportation of the waste (Conference Committee Report House Report No. 94-1491). Mr. Uhlig also stated that Section 3005 of RCRA provides for hazardous waste disposal, treatment and storage but does not include transportation of hazardous waste (R. 62-67).

At the state level, Mr. Uhlig cited laws passed by the General Assembly including P.A. 79-1443 and P.A. 79-1442 which respectively requires the IDOT to regulate transportation of "hazardous materials" and authorizes the same to control hazardous material emergency response accidents.

In determining whether a state or local law or regulation is preempted by federal action, the U.S. Supreme Court has required a finding of (1) a "clear and manifest" Congressional purpose for total federal preemption; or (2) whether the state law or regulation stands as an obstacle to the accomplishment and execution of the full intent of Congress. Kelly v. Washington, 302 U.S. 1, 10 (1937); Hines v. Davidowitz, 312 U.S. 52, 67 (1941); Florida Lime and Avocado Growers Inc. v. Paul, 373 U.S. 132, 141 (1963); Kewanee Oil v. Bicron, 416 U.S. 470 (1974).

In this matter, the IDOT conceded that the HMTA did not preempt Section 22(c) of the Act per se, only the standards pursuant to the Act which are inconsistent with the HMTA (R. 83). The IDOT stated that under Section 105, the Secretary of Transportation is authorized to adopt "rules and regulations governing the transportation of hazardous materials." Section 103 of the HMTA defines hazardous materials in a manner which IDOT claims includes "hazardous waste" as "a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce." 49 USC 1802(2).

According to the IDOT, the HMTA empowers the Secretary of Transportation to regulate all aspects of transportation and provides the authority to preempt inconsistent state regulations (R. 76-78). The IDOT further claims that under Section 112(a), the USDOT may preempt any state "requirement ... which is inconsistent with any requirement set forth in this Chapter (HMTA) or in a regulation issued under this Chapter." 49 USC 1811(a).

However, given the entire record, the HMTA and its legislative history, the Board must conclude that Congress had no intention of providing such comprehensive authority over hazardous materials to the U.S. Department of Transportation. According to Conference Committee Report No. 93-1083, the Committee rejected the House of Representatives' version which intended to provide control over all aspects of hazardous material transportation and adopted a Senate amendment which limited the authority of the Secretary of Transportation to regulations for the safe transportation of hazardous materials in commerce:

(I)ncluding but not limited to the packing, repacking, handling, labeling, making (sic), placarding and routing of hazardous materials (in cooperation) with the ICC before issuing such regulations (Exh. #34, 7687).

Furthermore, other aspects of the HMTA provide for adoption, in lieu of preemption, of state requirements which are inconsistent with the HMTA. Section 112(b) states in pertinent part:

Any requirement of a State ... which is not consistent with any requirement set forth in this chapter or in a regulation issued under this chapter, is not preempted if upon the application of an appropriate State agency, the Secretary determines ... that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

Since Section 112(k) makes provision for state laws and regulations which are inconsistent with the HMTA or regulations thereunder, it is clear that Congressional purpose harbored no "clear and manifest" intent in favor of total and exclusive federal control of the HMTA subject matter and, therefore, preemption pursuant to the first test of the U.S. Supreme Court is not in issue. For inconsistent state regulations to be preempted under the HMTA, the Board finds that pursuant to the Supreme Court's second test, there must be direct and positive conflict between the provision of this Chapter and the HMTA or regulations thereunder which would not meet the waiver requirements under Section 112(b) of the HMTA.

Since the hearings have concluded on this matter, the USEPA and the USDOT have published regulations concerning hazardous wastes transportation requirements. On April 28, 1978, the USEPA proposed "Standards for Hazardous Waste Transporters" (43 FR 18506, Exh. #26), and the USDOT published amendments to Title 49 for the "Transportation of Hazardous Waste" (43 FR 22626, Exh. #27). Afterward, the USEPA and the USDOT met to work out possible preemption problems which may exist between the two proposals, and as of this date, both parties have expressed the intention to jointly promulgate the entire set of transportation regulations by the spring of 1979 (Exh. #28). While we hope that problems over the interpretation of RCRA and the HMTA would be resolved at the

federal level by next spring, the Board cannot afford to suspend decision on this Chapter until then.

Under Section 22(c) of the Environmental Protection Act, the Board is authorized to set standards "for the handling, storing, processing, transporting and disposal of any hazardous refuse." (emphasis added). The proposed regulations before us include rules applying to generators or deliverers and receivers of special waste and special waste haulers. In Part IV of this proposed Chapter, the Agency has proposed vehicle numbers and special waste symbols which are intended to incorporate the regulations promulgated by the IDOT and the USDOT. Part V of the proposal establishes a six-part manifest form which the Agency maintains simultaneously meets the requirements of the USEPA for manifests and the USDOT-IDOT for shipping papers (Exh. #28, 36).

The special waste management system established by this Chapter includes provisions which address the problems peculiar to special waste. Unlike the "hazardous material" definition, "special waste" is so difficult to describe that it warrants supplemental definitions and criteria for identification purposes in addition to tables and listings. Special waste is also unique in that it provides no economic incentive for the generator, hauler or receiver of special waste to dispose of it properly or transport it to the designated disposal, treatment or storage facility. The record indicates that the participants resort to less expensive measures which may threaten human health or the environment. It is imperative, therefore, that the agency which operates the special waste management program monitor the movement of special waste in the hands of the generator, hauler and the receiver of special waste and maintain an inventory of the special waste as it passes through the system. In this regulatory proceeding, the special waste hauling permit of Part II and the manifest requirements of Part V are essential components, not for transportation safety, but for comprehensive control of special waste.

On May 25, 1978, the USDOT published regulatory amendments for the inclusion of "hazardous waste" as a hazardous material in Title 49. While the USDOT sought to align regulations with USEPA transportation proposals for hazardous waste, the proposed amendments made no provisions for the specific problems which are addressed in this Chapter. The Board, therefore, believes that this Chapter will provide protection from the human health or environmental problems of special waste without being an unreasonable burden to commerce or in conflict with state or federal transportation laws and regulations.

EMERGENCY CONTINGENCY REQUIREMENTS

In considering the scope of this Chapter in light of the "special waste" definition, the Board has found that the manifest and the permit requirements of this Chapter and the supplemental permit requirements of Chapter 7 would apply to any accidental discharges which generate special waste and thereby pose a present or potential threat to human health or to the environment.

Where spills require immediate removal, the USEPA has proposed regulations pursuant to Section 3003 of RCRA that the requirements for generators, transportation and disposal, treatment or storage be suspended for more flexible standards which focus particularly on neutralizing and removing the waste generated by the spill with a minimum amount of delay (Exh. #26).

In this regard, the Board will adopt Rule 801 which allows the Agency to exempt those persons involved in the clean up, transportation, disposal, treatment or storage of the special waste generated by the spill. The Board will require the Agency to transmit a written memorandum of waiver to the person involved in the spill of those requirements, which based on the particular spill conditions, would impede the safe removal or ultimate disposition of the waste generated by the spill. The Agency shall also communicate, where applicable, alternative transportation methods and the listing of sites provided by the Agency for safe disposal, treatment or storage of the waste generated by the spill.

The Board will direct the Agency to adopt guidelines for emergency contingency procedures which are consistent with regulations to be promulgated under Section 3003 of RCRA.

ECONOMIC IMPACT

Pursuant to Sections 6(b) and (d) of the Act, the Institute of Environmental Quality filed an economic impact study of the proposed regulation. This study, entitled "Economic Impact of the Proposed Illinois Special Waste Hauling Regulations (R76-10)," IIEQ Doc. No. 77/26, was admitted into the record as Exhibit #16. Hearings on the economic impact of the proposed regulations were held on January 11, 1978, in Chicago, Illinois, and on January 13, 1978, in Springfield, Illinois.

Mr. Roger K. Raufer testified regarding the study and conclusions. Costs of the regulation were quantified in some detail; benefits were discussed in a more qualitative manner.

A summary of the calculated annual costs, both private and public, appears in Table 4.6 of the study (Exh. #16, 53) and is reproduced below:

Table 4.6
(Exhibit 16, page 53)

Summary of Annual Private and Public Costs

<u>Annual Private Costs</u>	<u>Generator</u>	<u>Hauler</u>	<u>Receiver</u>	<u>Total</u>
1. Permit application		3,000		3,000
2. Truck lettering		1,700		1,700
3. Reporting to IEPA	47,500	25,500	24,500	97,500
4. Returning manifest to generator		3,800		3,800
5. Record keeping	337,900	288,000	276,500	902,400
6. Additional supplemental permits			9,100	9,100
7. Filling out manifest	506,900			506,900
8. Chemical analyses for additional supplemental permits	33,250			33,250
9. Additional disposal costs	2,657,000			<u>2,657,000</u>
				\$4,214,650

Annual Public Costs

Illinois EPA

1. Haulers permit	1,600
2. Manifest development and training	3,300
3. Computer program	10,400
4. Manifest operation	111,800
5. Enforcement	52,400
6. Supplemental permits	8,300
7. Printing	<u>7,500</u>
	\$195,300

The total annual private costs as estimated above are \$4,214,650; this total was broken down into estimates of costs to individual industries (Exh. #16, xiii). These estimates on an industry basis are as follows:

Table 4.
(Exhibit 16, page xiii)

	<u>Total Costs</u> (dollars)
Metals	\$ 675,000
Chemicals	395,800
Chem. Specialty	698,800
Food	853,000
Manufacture	538,200
Mining	-
Service	44,300
Utilities	1,001,400
Retail-Wholesale	<u>7,200</u>
Total	\$4,214,650

Several assumptions which are inherent in these study estimates deserve note. First, the amount of special waste disposed of illegally is estimated to be 600,000 tons/year (Exh. #16, 27). Second, the study estimated that 191,700 shipments of special waste annually will come under the manifest system (Exh. #16, 29). Third, increased disposal costs to generators are included in the estimated costs. (These increases are derived from estimates of the differential cost between legal and illegal disposal.) (Exh. #16, pp. 41-42.) All three of these assumptions were disputed by the Agency.

The Agency contended that the 600,000 tons/year estimate was too high (R. 483), although indicating that there probably were in excess of 300,000 tons/year of special waste disposed of illegally. The number of manifests which would result was estimated by the Agency to be 150,000/year (R. 484-5). Finally, the Agency vigorously asserted that generators' increased disposal costs were not properly attributable to this regulation (R. 407; 505). Other testimony indicated a view that attribution of costs should consider that RCRA will require a manifest system (R. 513).

While the Board concedes that the best estimate in the record for the annual amount of illegally disposed special waste is derived by the economic impact study from 1976 data, we cannot allow the study to suggest that the cost of this special waste hauling program should include the assessment for the legal disposal of 600,000 tons/year special waste. We find that a more accurate estimate of the costs would reflect the costs for implementing the permit and manifest system proposed or \$1.557 million.

Table 4.6 of Exhibit 16 indicates costs of considerable magnitude for recordkeeping. It was noted that, "A cost savings in the range of \$500,000 may be possible, however, if a copy of the manifest could be used for recordkeeping." (Exh. #16, 78.) The final draft of the Agency's proposal filed November 1, 1978, specifies that a copy of the manifest should be so used; thus the reduced estimate of recordkeeping cost would appear more nearly correct.

The employment impact of the proposed regulations was called "negligible." (Exh. #16, xii.) Price impacts are of two types, direct and indirect. Direct price impacts are the increased prices a generator must pay to legally dispose of wastes. Indirect price impacts are those increases in the price of a generator's final product which are due to increased disposal costs. Direct price impacts, when compared to industry sales, were found to be "minimal." (Exh. #16, xiii; R. 396.) Indirect price impacts were found to be "negligible." (Exh. #16, xiii; R. 396.)

Benefits of the proposed regulation were analyzed in a more qualitative manner than were costs. Quantification of benefits in this case was hindered by lack of data on the magnitude and frequency of illegal disposal and by the diverse characteristics of the illegally dumped special waste and the areas in which they are dumped (R. 397-8). Non-quantified benefits include improved capability to enforce existing regulations and increased accountability of special waste streams (R. 398; Exh. #16, pp. 63-4). Benefits were also discussed in terms of actual damages from prior incidents that might have been prevented had the proposed regulation been in effect. Examples of avoidable incidents included an explosion at a landfill (Exh. #16, 68); contamination of private wells (Exh. #16, 69; 71-72); and fish kills (Exh. #16, pp. 75-6). The probability of future incidents of these types occurring is certainly less with the manifest system than without such a system.

One benefit of the proposed regulation for which a numerical estimate was made was reduced damages related to water hardness. The reduction in such damages in Illinois as a result of the proposed regulations was estimated to be approximately \$1,000,000 (Exh. #16, 74-75).

The nature of the benefits analysis decreases the value of a straight cost-benefit analysis. Cost-benefit ratios cannot be developed. There will be increased costs due to the manifest system; this may be termed an adverse economic impact. However, the qualitative benefits analysis indicates, and the Board so finds, that the costs of this regulation in its final form are small in relation to the magnitude of the problems the manifest system should correct.

THE PROPOSED SPECIAL WASTE HAULING RULES AND REGULATIONS

The final draft of the Agency proposed regulation consists of seven parts, Part VIII was added by the Board to provide emergency exemptions in the event of an accidental spill by a carrier or by the transporter or hauler while in transit to disposal, treatment or storage sites. Since originally submitted by the Agency, the text of this proposal has undergone numerous revisions. The Board has incorporated further changes which are consistent with the requirements of RCRA and meet the substantive and procedural requirements of the Act.

PART I: INTRODUCTION

101 Authority, Policy and Purposes

The rule which has been subject to many revisions during the course of this proceeding is self-explanatory as revised.

102 Severability

This is the standard severability rule which is intended to preserve the integrity of this Chapter and the validity of its rules in the event that a rule, a part or some portion of this Chapter is adjudged invalid.

103 Definitions

The rule lists definitions of which "Act," "Agency," "Board," "permitted disposal site," "septic tank pumpings," "site," "tank," "truck," and "vehicle" require no explanation. Others are derived nearly verbatim from the definitions in Section 1004 of RCRA. These are as follows:

"Disposal" from Section 1004(3).

"Person" from Section 1004(15).

"Manifest" from Section 1004(12).

"Solid waste" is included in Rule 103 under the definition of "waste" (intended to be synonymous) with the solid waste definition in Section 1004(27) of RCRA and state requirements. The definitions of garbage and refuse are included to further refine the broad definition of "waste."

"Special waste hauler" has been revised in order to exclude sluicing and any transfer by conduit and thus restricting the definition of the word "transport" to conventional modes of transportation.

Proposed definition of "reclamation" has been revised by the Board to reflect the definition in Section 1004(22) of RCRA. "Treatment" has been adopted from Section 1004(34) of RCRA and reworded to comply with the requirements of this Chapter and "spill" is derived in part from USEPA Draft for Generators of Hazardous Waste, dated March 23, 1978 in Section 250.21(9) (Exh. #25).

As stated above, the suggested terms "industrial process effluent," "pollution control residual" and "hazardous waste" have been revised by the Board; the subsets of "special waste" will be divided into "industrial process waste," "pollution control waste" and "hazardous waste." It is the intention of the Board to include within industrial process waste and pollution control waste those wastes which pose a threat to human health or to the environment not currently handled by pre-treatment or discharged to a sanitary system.

Included in the "industrial process waste" definition will be the following words (underlined):

... performance of a service, including which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. Industrial process effluent includes but is not limited to ...

Included in the "pollution control waste" definition will be the following words (underlined);

... from the air, water or land, including which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. Pollution control residual includes but is not limited to ...

In proposing the "hazardous waste" definition, the Agency intends to include within the scope of "special waste" those wastes which are particularly hazardous as defined by federal guidelines and thereby eliminate any requirement for the Agency to maintain lists or develop criteria for hazardous waste. The Agency testified that it is nearly impossible to formulate a complete list of hazardous waste from the more than 100 elements and the perhaps million organic compounds. Other states which have prepared lists of hazardous waste have discovered many pitfalls in maintaining a complete list and determining dose-response concentrations of hazardous waste from the limited amount of existing data and research (R. 44, 323-25).

The Board will not require the Agency to undertake this task. While the record indicates many problems in establishing and maintaining a hazardous waste list and/or its quantities and concentrations, the Board further notes that the hazards of the waste cannot be assessed solely by determining chemical or physical properties of the waste in the laboratory; other factors including the performance of the waste in the environment must also be considered. Liquids, sludges and hazardous wastes are currently subject to the supplemental permit requirements of Rule 210 by Rule 310 of Chapter 7. Any waste, in large quantity, with a significant liquid fraction, is difficult to manage in a sanitary landfill which is designed and operated for the disposal of the usual domestic and commercial wastes. Common sense dictates the classification and handling of waste material; the supplemental permit system for special wastes as administered by the Agency has proven satisfactory and we find no reason to require the Agency to engage in the production of another "list" to supersede the criteria now in use and which the Agency is well equipped to apply.

Finally, although closer control of the disposal of hazardous waste is a major objective of these regulations, it is not the only objective. There are many other types of waste which must be prudently handled, simply because of sheer volume or form, and these regulations are also designed to that end.

PART II: SPECIAL WASTE HAULING PERMITS

201 Special Waste Hauling Permits - General

The Agency has modified this rule in its final draft to reflect the intention that special waste hauling permits are required for the transportation of special waste which is to be stored, disposed or treated within Illinois. The rule is intended to exempt interstate hauling of special waste through Illinois, and haulers of special waste who qualify for an exemption under Rule 210 of this Chapter.

The Board further finds the phrase "shall haul or otherwise convey" overly broad in that the definition of "convey" includes transfer by sluicing appurtenances and other stationary conduits. The Board will hereby substitute the verb "transport" for "convey" to limit the intended scope of this rule to conventional modes of transportation and thereby exclude sluices and conduits.

Rule 201 will therefore be modified as follows:

No person shall haul or otherwise transport any special waste within Illinois for disposal, treatment or storage without a current, valid waste hauling permit issued by the Agency in accordance with the requirements of this Part or unless the waste hauler is exempt from the permit requirements under Rule 210 of this Part.

Rule 702 provides that the special waste hauling permit requirements shall become enforceable 120 days after the effective date of this Chapter.

202 Applications for Special Waste Hauling Permit - Contents and Timing of Filing

Rule 202 lists the information required by the special waste hauling permit requirements including certification requirements by the owner and operator to promote sound operation and maintenance practices among the special waste haulers of this State. The Board will amend Proposed Rule 202(C)(1) in order to make the environmental requirements for loading, hauling and unloading consistent with the provisions of this Chapter, the requirements of the Act and federal laws. Rule 202(C)(1) will be amended as follows:

Special waste loading, hauling and unloading shall be conducted in compliance with all applicable state and federal laws and regulations.

Rule 202(C)(4) will also be amended to reflect the same purpose:

No waste shall be mixed with other wastes in one tank or on one vehicle if such mixture results in a hazardous combination likely to cause explosion, fire or the release of a dangerous or toxic gas or in violation of any applicable state or federal law and regulation.

Pursuant to Rule 202(D), the Board will permit the Agency to require a reasonable amount of additional information established through Agency permit procedures filed with the Secretary of State.

203-

209 Application Requirements and Permit Rules

Application procedures for special waste are derived largely from the permit provisions adopted by the Board in Chapter 7. Since these provisions have been thoroughly tested under Chapter 7, few revisions are necessary. The Board will amend proposed Rule 204(C) to require that notices of final action shall be sent to the applicant by Registered or Certified Mail Return Receipt Requested (R. 246).

210 Exemptions

The exemptions proposed in Rule 210 are designed to exclude certain classes of special waste haulers from the special waste hauling permit and manifest requirements of this Chapter and to eliminate conflict with concurrent state and federal laws or regulations. In the Agency Brief dated September 11, 1978 (Exhibit #36, 17), the Agency proposed that each exemption include explicit language excepting each exempt special waste hauler from the manifest requirements and from attendant reporting and recordkeeping requirements in the following manner:

... need not obtain a special waste hauling permit or carry and complete a manifest under these Regulations.

The Board will accept this proposed revision as consistent with our amendments to Rule 501(A) which restricts the manifest requirement to those who deliver to permitted special waste haulers.

To qualify for an exemption under Rule 210, the special waste hauler must meet two criteria. First, the special waste

hauler must be subject to current statutory or regulatory guidelines. The second requirement is that the special waste hauler must haul only the special waste or waste-type denominated in the exemption. If other special waste is hauled, the exemption from the special waste hauling permit requirement will not apply.

In this final draft, the proposed regulation lists exemptions for septic tank haulers (Rule 210(A)) and for rendering haulers (Rule 210(D)) who haul only those respective wastes because both are licensed and regulated under existing state statutes. Haulers transporting only oil and gas extraction wastes (210(E)) and radioactive wastes (210(F)) are presently regulated under other statutory provisions and thereby qualify for this exemption. Haulers who are regulated by the Illinois or Interstate Commerce Commissions would be exempt under Rule 210(G), and persons hauling only livestock waste (210(B)) or water or wastewater treatment plant sludge (210(C)) which are covered by existing Agency guidelines would not be required to comply with the requirements of this Chapter.

During this regulatory proceeding, representatives of utility companies proposed that fly ash generated from the burning of coal although designated as a special waste could be utilized beneficially in fertilizers and for other uses (R. 272-73, 351). The Agency indicated that fly ash is a relatively inert, generally harmless special waste which also has application as a filler or a base in construction projects (Exh. #36, 16). In view of these circumstances, the Board will adopt Rule 210(H) which exempts those who haul only coal combustion fly ash.

In a concurrent proceeding, R77-12, Docket C, the Agency has proposed that digested municipal sludges uncontaminated by large quantities of industrial waste be considered for application to farmland at nitrogen agronomic rates. Since the proposed final draft was submitted to the Board, the USEPA has stated that it is considering exempting sludge generated by publicly owned treatment works from the requirements of RCRA and to control sludge management under Section 405(d) of the Clean Water Act. In light of this development, the Board will reserve consideration of the sludge exemption from the requirements of this proposed Chapter for the concurrent proceeding R77-12, Docket B. Until the Board makes a decision upon Docket B, the pollution control waste exclusion of wastewater treatment plant sludge and the Rule 210(C) exemption will continue as part of this Chapter.

PART III: DELIVERY OF SPECIAL WASTE TO,
AND ACCEPTANCE OF SPECIAL WASTE FROM,
SPECIAL WASTE HAULERS

At the outset, the Board will change the titles of Rules 301 and 302. Rule 301 will read "Requirements for Delivery of Special Waste to Haulers," and "Requirements for Acceptance of Special Waste from Haulers."

301 Requirements for Delivery of Special Waste to Haulers

This rule in Part III requires that in selecting a waste hauler, the person making delivery must determine that the hauler has a current valid special waste hauling permit (R. 239). As proposed, however, Rule 301 does not make explicit a concurrent responsibility that a manifest must be provided upon delivery to the special waste hauler, completed in accordance with the requirements of Rule 501.

The Board will hereby include the reference to Rule 501 to eliminate unnecessary confusion for those regulated by this Chapter. The revised form will include the following:

No person shall deliver any special waste for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Part V of this Chapter to a special waste hauler who holds a current valid special waste hauling permit issued by the Agency under Part II of this Chapter.

302 Requirements for Acceptance of Special Waste from Haulers

Under Proposed Rule 302(A), no facility may accept special waste from a hauler who does not hold a current valid special waste hauling permit issued by the Agency. Proposed Rule 302(B) requires that the waste hauler deliver special waste to the permitted site which possesses a supplemental permit for the waste load pursuant to Rules 210 and 310(b) of Chapter 7: Solid Waste Regulations and Agency guidelines.

While Proposed Rule 302(A) clearly delineates certain responsibilities for the permitted class of special waste haulers and the receivers of special waste, Rule 302(A) will be amended to clarify references to applicable requirements in the manifest document under Rule 501.

As revised, Rule 302(A) shall include the following:

No person shall accept any special waste for disposal, storage or treatment within Illinois from a special waste hauler unless the special waste hauler has a valid special waste hauling permit issued by the Agency under Part II of this Chapter and concurrently presents to the receiver of the special waste, or his agent, a completed, signed manifest as required by Rule 501 of this Chapter, and which manifest designates the receiver's facility as the destination for the special waste.

The special waste hauling responsibilities in Proposed Rule 302(B) will be divided into Rules 302(B) and 302(C). Under Rule 302(B) the special waste hauler is prohibited from delivering special waste to a sanitary landfill site without the requisite operating and supplemental permits. Rule 302(C) requires that the hauler deliver only to storage, transfer, treatment, processing, incineration, recycling or reclamation sites which have complied with applicable permit requirements of the Act and Board regulations.

Rule 302(B) shall read as follows:

No person shall deliver special waste in Illinois for purposes of disposal unless the person who accepts the special waste has a current, valid sanitary landfill operating permit issued by the Agency and the necessary supplemental permits required by Rule 210 and 310(b) of Chapter 7.

Rule 302(C) shall be as follows:

No person shall deliver special waste in Illinois for purposes other than disposal unless the person who accepts the special waste has all applicable Agency permits as required by the Act and Board regulations.

In this final draft, the Agency proposed Rule 702 which provides the participants of the special waste management program with a 120-day grace period for compliance with the provisions of Part III, In light of these revisions to Part III, the 120-day delay will be retained for all concurrent delivery and acceptance requirements in Part III.

PART IV: VEHICLE AND TANK NUMBERS
AND HAZARDOUS WASTE SYMBOLS

Part IV in Rule 401 and 402 refer to the numbering and labeling requirements of vehicles used in transport of special waste. While the vehicle and tank numbers in Rule 401 list specific standards and requirements, the hazardous waste symbols in Rule 402 are designated to incorporate any and all requirements for labeling of tanks, vehicles, trucks and drums in accordance with IDOT or USDOT regulations to eliminate the potential for overlap and conflict.

The Board will amend Part IV replacing the designation "special" for the word "hazardous" in order to make it consistent with the other parts of this Chapter.

PART V: MANIFESTS, RECORDS, ACCESS
TO RECORDS AND REPORTING

501 Manifest

In Part V, the Agency made numerous revisions to clarify the obligations of each participant in the manifest system, their reporting and recordkeeping requirements, and additional requirements for the deliverer when the special waste will be delivered to intermediate temporary storage or transfer points. In its final form, this rule requires the person who delivers the special waste to provide the number of completed manifests which are necessary to accompany the special waste from delivery through intermediate points of acceptance at off-loading points, transfer stations, storage depots, etc., to the permanent disposal or treatment special waste receptor site. To clarify these responsibilities of the person making delivery of special waste, Rule 501(A) will be amended as follows:

Any person who delivers special waste to a permitted special waste hauler shall complete a manifest or the manifests necessary to accompany the special waste from delivery through all contemplated intermediate points for storage or transfer to the final destination of the special waste.

In Rule 501(C), the Agency has proposed that the manifest requirements for special waste received at a treatment site be identical to the requirements for disposal sites and be considered as a disposal site for purposes of this Chapter. The Board finds that these designations are unnecessary in this Chapter where "treatment" is defined in Part I and the manifest requirements for treated and disposed special waste

are distinguished from the obligations of stored or transferred special waste at interim points. Rule 501(C) will be revised in the following manner:

- C. A permitted site which receives special waste for disposal or treatment must be designated on the manifest as the final destination point. Any subsequent delivery of the special waste or any portion or product thereof to a special waste hauler shall be conducted under a manifest initiated by the permitted site.

Rule 501(D) will be incorporated to delineate the manifest requirements for special waste transported through intermediate points:

- D. A permitted site which receives special waste for storage or transfer at an intermediate point must be designated on the manifest as an intermediate destination. Any subsequent delivery of stored or transferred special waste or any portion thereof to a special waste hauler shall be provided for on the original manifests.

Accordingly, the Board will include Rules 501(C) and (D) and list Proposed Rule 501(D) as Rule 501(E). Proposed Rules 501(D) and (E) will be revised to reflect the changes made in Rules 501(C) and (D).

Rule 501(A) shall be revised as follows:

The information on these manifests may include ... the date of delivery, any intermediate destination, the final disposal or treatment site, and the name ...

Rule 501(E) shall read:

In all cases, the special waste hauler ... send one copy of the completed manifest to the generator person who delivered the special waste. Should delivery acceptance of special waste ...

As discussed above, Rules 501(A), (B), (C) and (D) describe in detail the functions of the manifest system proposed by the Agency and lists the requirements of all participants as the manifest passes upon delivery to the special waste hauler through any intermediate point to the final receiving

site. Rule 501(F) enumerates recordkeeping requirements. Rule 501(A) requires the person delivering special waste to concurrently supply the special waste hauler with the necessary number of completed six-part manifest forms containing the name of the source of the special waste, the person who delivered it, and the name of the special waste hauler who has accepted the waste load. The manifests must also include the date of delivery, any intermediate and final destination, and the name and quantity of the special waste. Rule 501(B) requires that the manifest include signatures of the one who delivered the special waste and the special waste hauler acknowledging receipt to accompany the special waste load.

After the special waste hauler signs the manifest, the person who delivered the manifest shall receive one copy as a record and send another copy to the Agency within two working days. The remaining four copies will travel with the special waste to its intermediate or final site. According to Rule 501(C), the special waste must be delivered to the permanent disposal or treatment site designated on the manifest form. Where the special waste will be transported through storage, transfer or an off-loading point, the deliverer, pursuant to Rule 501(D), must provide a sufficient number of manifest forms to accompany the special waste through all contemplated intermediate points to its final destination.

Upon receipt of the special waste load at the intermediate or final receiving site, the receiver or his agent shall sign the four manifest copies and return one copy to the hauler as his record. The receiving site who retained three copies shall keep one as a record. At the end of each month or longer period designated by the Agency, the receiver of the special waste is required by Rule 501(E) to send one copy to the person who delivered the special waste and to mail the remaining copy to the Agency with all completed manifests received during the designated period.

Rule 501(F) requires the person initiating delivery of special waste, the special waste hauler and the receiver of special waste to retain the copy of the special waste manifest as record of the special waste transaction for a period of three years.

The Board finds that the manifest system and the attendant recordkeeping and requirements provide an adequate means for control and monitoring of special waste which is consistent with the requirements of RCRA.

PART VI: DURATION OF SPECIAL WASTE HAULER
PERMITS AND TANK NUMBERS

601 Duration of Special Waste Hauler Permits and Tank
Numbers

Rule 601 as revised limits the duration of special waste hauling permits and tank numbers to one year and requires renewal of special waste hauling permits be made by application 90 days prior to the expiration date.

PART VII: COMPLIANCE DATES FOR CHAPTER

Part VII was incorporated to provide for the different effective dates of specific provisions of this Chapter. Under Rule 701, the introductory material and the definitions and the emergency contingency requirements will become enforceable on the effective date of this Chapter. Other provisions including the special waste hauling permit requirements in Part II and the concurrent requirements enumerated in Part III will become effective on the 120th day of the effective date of this Chapter. The Board will amend Rule 702 to include the vehicle numbers, the special waste symbol requirements of Part IV and the manifest system requirements of Part V.

Rule 702 shall read:

Every person subject to the provisions of Rule 201, 301, 302, 401, 402 and 501 shall comply with such rules on-and-after 120 days after the effective date of this Chapter.

PART VIII: EMERGENCY CONTINGENCY
REQUIREMENTS FOR SPILL EPISODES

Rule 801 provides the Agency with the authority to exempt in writing any person involved in a spill episode, which generates special waste, from the special waste hauling permit and manifest requirements of this Chapter and Chapter 7 as is necessary to expedite safe removal and proper disposition of all the wastes generated by any accidental release. As stated above, the Agency is required to develop spill episode regulations which are consistent with the regulations to be promulgated under Section 3003 of RCRA.

FINDINGS AND CONCLUSIONS

The Board has reviewed the record in this proceeding and finds that the procedural requirements of the Act and the Rules regarding the adoption of these Rules as Chapter 9: Special Waste Hauling Regulations, have been fulfilled.

PROPOSED FINAL ORDER

ILLINOIS POLLUTION CONTROL BOARD
RULES AND REGULATIONS

CHAPTER 9: SPECIAL WASTE HAULING REGULATIONS

Part 1: INTRODUCTION

101 Authority, Policy and Purposes

Pursuant to the authority contained in Sections 5, 10, 13 and 22 of the Environmental Protection Act, and consistent with the policy and purposes expressed in Section 20 thereof, the Board adopts the following Rules and Regulations. These rules prescribe the procedures for issuance of permits to special waste haulers; for the inspection and numbering of vehicles; and for proper hauling of special wastes to approved disposal, storage and treatment sites within Illinois. It is the purpose of these Regulations to control only wastes as defined herein.

102 Severability

If any provision of these rules or regulations is adjudged invalid, or if the application thereof to any person or in any circumstance is adjudged invalid, such invalidity shall not affect the validity of this Chapter as a whole, or of any other part, sub-part, sentence or clause thereof not adjudged invalid.

103 Definitions

"ACT" means the Illinois Environmental Protection Act.

"AGENCY" means the Illinois Environmental Protection Agency.

"BOARD" means the Illinois Pollution Control Board.

"DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or special waste into or on any land or water so that such waste or special waste or any constituent

thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. Proper disposal will prevent such waste from contaminating the environment (see "Waste," "Special Waste").

"GARBAGE" is waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage and sale of produce (see "Waste").

"HAZARDOUS WASTE" means a waste, or combination of wastes, which because of quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential threat to human health or to the environment when improperly treated, stored, transported or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of Resource Conservation Act, P.L. 94-580 or pursuant to Agency guidelines consistent with the requirements of the Act and Board regulations.

"PERMITTED DISPOSAL SITE" means a sanitary landfill which has both a valid current operating permit issued by the Agency under Rule 202 of Chapter 7 of the Pollution Control Board Rules and Regulations and a supplemental permit issued by the Agency under Rule 210 of Chapter 7, specifically permitting the site to accept a special waste tendered for disposal.

"INDUSTRIAL PROCESS WASTE" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Industrial Process Waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes, core sands, metallic dust sweepings, asbestos dust, hospital pathological wastes and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.

"MANIFEST" means the form provided by the Agency and used for identifying the quantity, composition, and the origin, routing, and destination of special waste during its transportation from the point of generation to the point of disposal, treatment, or storage, as required by this Chapter or by the Resource Conservation and Recovery Act, P.L. 94-580, or regulations thereunder.

"PERSON" means any individual partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity or their legal representative, agent or assignee.

"POLLUTION CONTROL WASTE" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution Control Waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, scrubber sludges and chemical spill cleanings.

"RECLAMATION" means the recovery of material or energy from special waste for commercial or industrial use.

"REFUSE" means any garbage or other discarded materials, with the exception of radioactive materials discarded in accordance with the provisions of Chapter 111 1/2 of the Illinois Revised Statutes, paragraphs 211-229 and 230.1-230.14 as now or hereafter amended (see "Waste").

"SEPTIC TANK PUMPINGS" means the liquid portions and sludge residues removed from septic tanks.

"SITE" means any location, place or tract of land and facilities used for collection, storage, disposal or treatment of special waste.

"SOLID WASTE" (see "Waste").

"SPECIAL WASTE" means any "hazardous waste," "industrial process waste" or "pollution control waste."

"SPECIAL WASTE HAULER" means any person who transports special waste from any location.

"SPILL" means any accidental discharge of special waste.

"STORAGE" means the interim containment of special waste prior to disposal or reclamation.

"TREATMENT" means any method, technique or process including neutralization designed to change the physical, chemical or biological character or composition of any special waste so as to neutralize that waste or so as to render that waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of special waste to render it less dangerous or nonhazardous.

"TANK" means any bulk container placed on or carried by a vehicle to transport special waste, including wheel mounted tanks.

"VEHICLE" means any device used to transport special waste in bulk or in tanks, drums or other containers.

"WASTE" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. "Waste" as here defined does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or in industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880); or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923); or radioactive materials discarded in accordance with the provisions of "An act to authorize the Director of Public Health to purchase, lease, accept or acquire suitable sites for the concentration and storage of radioactive wastes, to provide for supervision of the operation of such sites and to authorize the Department of Public Health to prepare and to enforce regulations pertaining to the use and operation of such sites," approved August 16, 1963, as now or hereafter amended, and as authorized by regu-

lations promulgated pursuant to the "Radiation Protection Act," approved July 17, 1959, as now or hereafter amended. "Waste" as here defined is intended to be consistent with the definition of "solid waste" set forth in Section 1004(27) of Resource Conservation and Recovery Act of 1976, P.L. 94-580.

PART II: SPECIAL WASTE HAULING PERMITS

201 Special Waste Hauling Permits - General

No person shall haul or otherwise transport any special waste within Illinois for disposal, treatment or storage without a current valid waste hauling permit issued by the Agency in accordance with the requirements of this Part unless the hauler is exempt from the special waste hauling permit requirements under Rule 210 of this Part.

202 Applications for Special Waste Hauling Permit - Contents and Timing of Filing

Applications for special waste hauling permits shall be made on application forms prescribed by the Agency which as a minimum shall require the following information:

- A. Name, address, telephone number and location of the vehicle owner and operator applying for the permit.
- E. A description of the service to be provided, including the number and types of vehicles and tanks to be used.
- C. An agreement by the vehicle owner and the operator identified in Rule 202(A) that:
 - (1) Special waste loading, hauling and unloading will be conducted in compliance with all applicable state and federal laws and regulations.
 - (2) All vehicles and tanks used in special waste hauling will be clean and in good repair at all times when so employed.
 - (3) All vehicles, tanks and associated piping, valving, etc., will be constructed and maintained to prevent leakage or spillage, and shall be cleanable.

- (4) No waste shall be mixed with other wastes in one tank or on one vehicle if such mixture results in a hazardous combination likely to cause explosion, fire or release of a dangerous or toxic gas in violation of any applicable state or federal law and regulation.
- (5) The special waste hauling equipment and procedures to be used shall be proper for the permitted service, be safe for the haulers, handlers, and others, and meet the requirements of all other applicable state and federal laws and regulations.

D. The application may require additional information deemed necessary by the Agency consistent with the requirements of the Act and Board regulations and filed with the Index Division of the Office of the Secretary of State pursuant to "Illinois Administrative Procedure Act," approved September 22, 1975, as amended.

203 Applications for Special Waste Hauling Permit - Signatures and Authorization

All special waste hauling permit applications shall be signed by the owner and operator of the vehicle; or, in the name of the owner and operator, by the owner's and operator's duly authorized agent when accompanied by evidence of authority to sign the application.

204 Applications for Special Waste Hauling Permit - Filing and Final Action by the Agency

- A. An application for special waste hauling permit shall be deemed to be filed on the date of initial receipt by the Agency of a properly completed application on the form prescribed.
- B. If the Agency fails to take final action, by granting the special waste hauling permit with conditions, within 90 days from the filing of the completed application, the applicant may deem the special waste hauling permit granted for a period of one calendar year commencing on the 91st day after the application was filed.

- C. The Agency shall send all notices of final action by U.S. Registered or Certified Mail, Return Receipt Requested. The Agency shall be deemed to have taken final action on the date that the notice of final action is mailed.
- D. The Agency shall require the application to be complete and consistent with the provisions of the Act and Board regulations and may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application. If the application is complete and the granting thereof will not cause a violation of the Act or Board regulations, the Agency shall grant the permit.

205 Special Waste Hauling Permit Conditions

- A. In granting special waste hauling permits hereunder, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and the Board regulations.
- B. The applicant may deem any conditions imposed by the Agency as a denial of the special waste hauling permit for purposes of review pursuant to Section 40 of the Act.

206 Special Waste Hauling Permit Revision

A special waste hauling permit issued hereunder is automatically modified to include any relevant change in the Act or Board regulations. The Agency shall revise any special waste hauling permit issued by the Agency under this Part to make the permit compatible with any such relevant changes and so notify the permittee. Failure of the Agency to issue a revised permit shall not excuse the permittee from compliance with any such change.

207 Transfer of Special Waste Hauling Permits

No special waste hauling permit is transferable from one person to another. A special waste hauling permit is personal to the persons named in the special waste hauling permit.

208 Special Waste Hauling Permit Revocation

Violation of any special waste hauling permit conditions or failure to comply with any provision of the Act or with any Board regulation shall be ground for sanctions as provided in the Act, including revocation of the permit as therein provided.

209 Permit No Defense

The existence of a special waste hauling permit under these rules shall not provide the permittee with a defense to a violation of the Act or Board regulations, except for hauling special waste without a special waste hauling permit.

210 Exemptions from Special Waste Hauling Permit Requirements

- A. Any person licensed in accordance with the Private Sewage Disposal Licensing Act, Illinois Revised Statutes, Chapter 111 1/2, Paragraph 116.301 et seq., and who hauls only septic tank pumpings, need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- B. Any person who hauls only livestock waste intended for land application pursuant to Agency Guideline WPC-2 need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- C. Any person who hauls only municipal water or wastewater treatment plant sludge pursuant to established Agency policy need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- D. Any person licensed in accordance with "An Act in relation to the Disposal of Dead Animals," Illinois Revised Statutes, Chapter 8, Paragraph 149 et seq., and who hauls only grease, meat packing scraps, dead animals and parts of animals for delivery to a renderer, need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- E. Any person operating under rules and regulations adopted pursuant to "An Act in relation

to Oil, Gas, Coal and Other Surface and Underground Resources," Illinois Revised Statutes, Chapter 96 1/2, Paragraph 5401 et seq., and who hauls only oil and gas extraction wastes as defined therein need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.

- F. Any person who hauls only radioactive wastes as defined by the Radiation Protection Act, Illinois Revised Statutes, Chapter 111 1/2, Paragraph 211 et seq., need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- G. Any person holding a permit or certificate issued by the Illinois Commerce Commission or the Interstate Commerce Commission and who handles only shipments pursuant to a bill of lading in accordance with such Commission's regulations need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.
- H. Any person who hauls only coal combustion fly ash need not obtain a special waste hauling permit or carry and complete a manifest under this Chapter.

PART III: DELIVERY OF SPECIAL WASTE TO, AND
ACCEPTANCE OF SPECIAL WASTE FROM,
SPECIAL WASTE HAULERS

301 Requirements for Delivery of Special Waste to Haulers

No person shall deliver any special waste for disposal, treatment or storage within Illinois unless that person concurrently delivers a manifest completed in accordance with Part V of this Chapter to a special waste hauler who holds a current, valid special waste hauling permit issued by the Agency under Part II of this Chapter.

302 Requirements for Acceptance of Special Waste from Haulers

- A. No person shall accept any special waste for disposal, treatment or storage within Illinois from a special waste hauler unless the special waste hauler has a valid special waste hauling

permit issued by the Agency under Part II of this Chapter and concurrently presents to the receiver of the special waste or his agent, a completed, signed manifest as required by Part V of this Chapter, which manifest designates the receiver's facility as the destination for the special waste.

- B. No person shall deliver special waste in Illinois for purposes of disposal unless the person who accepts the special waste has a current, valid sanitary landfill operating permit issued by the Agency and the necessary supplemental permits required by Rule 210 and 310(b) of Chapter 7.
- C. No person shall deliver special waste in Illinois for purposes other than disposal unless the person who accepts the special waste has all applicable Agency permits as required by the Act and Board regulations.

PART IV: VEHICLE NUMBERS AND SPECIAL WASTE SYMBOLS

401 Vehicle Numbers

Upon issuance of a special waste hauling permit hereunder, each vehicle used to transport special waste shall be issued a number by the Agency; such number shall be displayed by the owner and operator of the vehicle on both sides of the vehicle following the words "Licensed Special Waste Hauler: (number)." Numbers and letters shall be not less than two inches high and shall be removable only by destruction. Directly adjacent to said words and number, the vehicle owner and operator shall display a seal furnished by the Agency which shall designate the date on which the permit was issued.

402 Special Waste Symbols

- A. Labeling of tanks, vehicles and trucks permitted to haul special waste shall be in accordance with regulations adopted by the Illinois Department of Transportation or the United States Department of Transportation, whichever has jurisdiction.
- B. Labeling of each drum utilized as a special waste container shall be in accordance with regulations adopted by the Illinois Department of Transportation or the United States Department of Transportation, whichever has jurisdiction.

PART V: MANIFESTS, RECORDS, ACCESS
TO RECORDS AND REPORTING

501 Manifests, Records, Access to Records and Reporting
Requirements

- A. Any person who delivers special waste to a permitted special waste hauler shall complete a manifest or the manifests necessary to accompany the special waste from delivery through all contemplated intermediate points to the final destination of the special waste. The manifest which shall be provided by the Agency shall contain, as a minimum, the name of the generator of the special waste, when and where generated, name of the person from whom delivery is accepted and the name of the site from which delivered, the name of the special waste hauler, the special waste hauling permit number, the date of delivery, any intermediate destination, the final disposal or treatment site, and the name, chemical content, concentration and quantity of the special waste delivered to the hauler.
- B. The manifest shall be signed by the person who delivers special waste to a special waste hauler, such signature acknowledging such delivery. The manifest shall also be signed by the special waste hauler, such signature acknowledging receipt of the special waste. The person who delivers special waste to a special waste hauler shall send one copy of the manifest signed by the deliverer and the special waste hauler to the Agency within two working days and shall retain one copy as a record. The remaining four copies of the manifest shall accompany the special waste shipment. At each intermediate point and at destination, the manifest shall be signed by each person who accepts special waste from a special waste hauler, such signature acknowledging acceptance of the special waste.
- C. A permitted site which receives special waste for disposal or treatment of special waste must be designated on the manifest as the final destination point. Any subsequent delivery of the special waste or any portion or product thereof to a special waste hauler shall be conducted under a manifest initiated by the permitted site.

- D. A permitted site which receives special waste for storage or transfer at an intermediate point must be designated on the manifest as an intermediate destination. Any subsequent delivery of stored or transferred special waste or any portion thereof to a special waste hauler shall be provided for in the original manifests.
- E. In all cases, the special waste hauler shall deliver three copies of the completed, signed manifest to the person who accepts delivery of special waste from the hauler. The special waste hauler shall retain one copy of the completed, signed manifest as a record. In addition, at the end of each month, or such other longer period of time approved by the Agency, the owner and the operator of the site who accepts special waste from a special waste hauler shall submit a copy of each completed, signed manifest received during that period to the Agency, and shall send one copy of the completed manifest to the person who delivered the special waste. Should acceptance of such special waste be to an intermediate point or points, supplemental manifests as needed will be initialed, filled out, and routed to record each acceptance and delivery.
- F. Every person who delivers special waste to a special waste hauler, every person who accepts special waste from a special waste hauler and every special waste hauler shall retain a copy of the special waste manifest as a record of all special waste transactions. These copies shall be retained for three years and shall be made available at reasonable times for inspection and photocopying by the Agency.

PART VI: DURATION OF SPECIAL WASTE
HAULER PERMITS AND TANK NUMBERS

601 Duration of Special Waste Hauler Permits and Tank Numbers

- A. All permits and tank numbers issued hereunder shall be issued for a period not to exceed one year and are renewable.
- B. Applications for renewal of a special waste hauler permit shall be made 90 days prior to the expiration date of the permit on the application forms prescribed in Rule 202 of this Chapter.

PART VII: EFFECTIVE DATE

- 701 Except as otherwise provided in this Part VII, any person subject to the provisions of this Chapter shall comply with such provisions on and after the effective date of this Chapter.
- 702 Every person subject to the provisions of Rule 201, 301, 302, 401, 402 and 501 shall comply with such rules 120 days after the effective date of this Chapter.

PART VIII: EMERGENCY CONTINGENCIES
FOR SPILL EPISODES

801 General Provision

In order to facilitate the clean-up, transportation or safe treatment, storage or disposal of any waste generated by an accidental release of any material or special waste within Illinois which constitutes a present or potential threat to health or to the environment, the Agency may give written exception from the procedural requirements of this Chapter and Chapter 7 in accordance with guidelines adopted by the Agency which are consistent with Section 3003 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) and the Act and Board regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Proposed Final Order was approved for publication and public comment on the 30th day of November, 1978 by a vote of 5:0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board