ILLINOIS POLLUTION CONTROL BOARD
September 23, 1993

IN THE MATTER OF:	)	
	)	
RCRA UPDATE, USEPA REGULATIONS	)	R93-4
(7/1/92 - 12/31/92)	)	(Identical in Substance
	)	Rules)

Adopted Rule. Final Order.

OPINION OF THE BOARD (by J. Anderson):

By a separate order, pursuant to Section 7.2 and 22.4(a) of the Environmental Protection Act (Act), the Board hereby amends the RCRA hazardous waste regulations. The amendments involve 35 Ill. Adm. Code 703, 720, 721, 722, 724, 725, 726 and 728. In addition, the Board is adopting new Part 739. The Board will not file the adopted rules until 30 days after the date of this order, to allow time for post-adoption comments, particularly from the agencies involved in the authorization process.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 22.4(a) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270. In addition, this update includes new federal Part 279 [State Part 739]. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period July 1 through December 31, 1992. The USEPA actions during this period are as follows:

57 Fed. Reg.	Date	Summary
29220	July 1, 1992	Correction to typographical errors
30657	July 10, 1992	Correction to previous arsenical treated wood product toxicity characteristics.
37263	Aug. 18, 1992	Treatment Standards under the land disposal program for certain hazardous wastes.
37305	Aug. 18, 1992	Lists seven coal by-products as hazardous; finalizes determination not to list certain hazardous wastes wastewaters.

37885, 37888	Aug. 21, 1992	State specific: Tennessee and Michigan.
38564	Aug. 25, 1992	Clarification of technical amendments to final rule for boilers and industrial furnaces.
39275	Aug. 28, 1992	Correction of effective date.
41173	Sept. 9, 1992	Correction to rule document.
41611	Sept. 10, 1992	Addition of Used oil program; deletion 266.Subpart E.
42835	Sept. 16, 1992	Amendment of financial assurance requirements.
44999	Sept. 30, 1992	Correction of administrative error.
47385	Oct. 15, 1992	Listing of chlorinated toluenes as hazardous waste.
47776	Oct. 20, 1992	Approval of an interim final case-by-case extension of the LDR regulations applicable to Third-Third hazardous soils.
49279	Oct. 30, 1992	Removal of reinstatement expiration date regarding of "mixture" and "derived from" rules.
54460	Nov. 18, 1993	Landfill disposal of containerized liquids mixed with sorbents.
55117	Nov. 24, 1992	Removal of the quality assurance requirement found in Method 1311, Toxicity Characteristic Leaching Procedure.
57674	Dec. 7, 1992	State specific; Connecticut
61502	Dec. 24, 1992	Modification of technical standards for drip pads.

This update also includes:

58 Fed. Reg. 6854	Feb. 2, 1993	Typographical correction.
58 Fed. Reg. 29884	May 24, 1993	Amendments in response to Chemical Waste Management, Inc. v. EPA (976 F.2d 2 (D.C. Cir. 1992).)

Section 7.2 of the Environmental Protection Act limits identical in substance batch periods to no more than six months for the purposes of computing the adoption deadline. However, in this rulemaking two amendments which occurred during this batch period were addressed in the previous rulemaking, R92-10. The actions were:

57 Fed. Reg. 29220 July 1, 1992 Correction to oil filter rule

57 Fed. Reg. 30658 July 10, 1992 Corrections to TCLP rules

The USEPA amendments included several site-specific delistings. As provided in 35 Ill. Adm. Code 720.122(p), as amended in R90-17, the Board will not consider adoption of site-specific delistings as determined by the USEPA unless and until someone files a proposal before the Board showing that the waste will be generated or managed in Illinois.

In the May 24, 1993, Federal Register, USEPA issued an interim final rule in response to the provisions vacated by the Federal Court in Chemical Waste Management, Inc. v. EPA 976 F.2d 2 (D.C. Cir. 1992). The affects the Third-Third land disposal. Because this was an interim final rule, the Board proposed to take no action in it's May 27, 1993, proposal for public comment in the instant proceeding. Rather, the Board proposed to await USEPA's interim Final Rule and to respond to it within the normal update period. The Board solicited comment as to whether the interim final rule required immediate response or whether the Board could delay adopting the rule until it becomes final. The Board received a draft comment from USEPA Region 5 on this issue.[1] USEPA Region 5 informs the Board that:

> The effect of the Chemical Waste was to vacate the deactivation treatment standards for certain ignitable and corrosive wastes. U.S. EPA's interim final rule was promulgated as an emergency measure because, if no treatment standard is in place, land disposal of these wastes is absolutely prohibited. See 58 Fed. Reg. 29860 (May 24, 1993).
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> In all likelihood, because the Federal standards for certain ignitable and corrosive wastes were vacated, the State equivalents are not enforceable. In re Hardin County, No. RCRA-V-W-89-R-29 (May 27, 1993). As

[1] Region 5 kindly submitted its comments in draft rather than unduly delay the Board's proceeding until its comments were formalized. We anticipate receiving non-draft comments during the post-adoption comment period.

> a result, if the Board fails to promulgate an Illinois equivalent to U.S. EPA's interim final rule, land disposal of the wastes affected by the Chemical Waste Management decision would be absolutely prohibited in Illinois.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

The Board has concluded that it should adopt the interim rules in this proceeding, rather than risk the consequences that may flow from further delay. We note that the Board has not before dealt with the effects of an inconsistency arising from a vacated federal rule on an existing derivative Board rule under circumstances such as this. Nevertheless, in this identical in substance setting, the Board concludes that its Board rule derived from the vacated federal rule has become unenforceable. This conclusion is consistent with Board reasoning regarding the effects of other federal court actions. (See e. g., "Federal Stay" section at the back-end of this opinion.) Further, since the federal court action to vacate in this instance has, in effect, left the existing derivative Board rule no longer viable, at the very least we believe it would be prudent not to delay addressing the resulting absolute disposal ban problem at the State level to be consistent with the response at the federal level; thus, the Board will not delay adopting a rule that is identical in substance to the USEPA's interim rule.

The effect of the interim final rule is explained briefly in the preamble to the Interim Final Order. USEPA states:

> The Agency is promulgating revised treatment standards for certain ignitable and corrosive wastes that are not managed: (1) in centralized wastewater treatment systems subject to the CWA or in Class I underground injection wells subject to the SDWA Underground Injection Control (UIC) program; or (2) by a zero discharger with a wasterwater treatment system equivalent to that utilized by CWA dischargers prior to land disposal. The treatment standards promulgated in this Interim rule retain the requirement of deactivation to remove the hazardous characteristics (see DEACT in Table 1, 40 CFR 268.42); however, this rule also sets numerical treatment standards for the underlying hazardous constituents that may be present in the wastes. EPA is also promulgating alternative treatment standards of incineration, fuel substitution, and recovery of organics for ignitable wastes.
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> * * *
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> Furthermore, new precautionary measures are being established in the LRD regulations in 40 CFR 268 to prevent

emissions of violent reactions during the process of diluting ignitable and reactive wastes. All are described in detail in subsequent sections of this preamble.

* * *

58 Fed. Reg. 98, p. 29866.

The interim final order affects Sections 264.1 [724.101], 265.1 [725.101], 268.1 [728.101], 268.102 [728.202], 268.7 [728.107], 268.109 [728.109], 268.37 [728.137], 268.40 [728.140], 268.41 [728.141], 268.41 [728.141], 268.42 [728.142] and 268.43 [728.143]. Those Sections will appear in full below. In addition, the interim final order affects Section 728. Tables B and D.

EXTENSION OF TIME ORDERS

Section 7.2 (b) of the Act requires that identical in substance rulemakings be completed within one year after the first USEPA action in the batch period. If the Board is unable to do so it must enter an "extension of time" Order. The earliest USEPA action in this Docket was July 1, 1992. The Board issued an extension of time order at its April 22, 1993 Board meeting. Pursuant to the extension of time order, this rulemaking, R93-4, is due for adoption on October 9, 1993. The Board will not file the adopted rules until 30 days after the date of this order, to allow time for post-adoption comments, particularly from the agencies involved in the authorization process.

PUBLIC COMMENT

The Board adopted a proposal for public comment on ****. The proposed rules appeared on June 26, 1993, at ** Ill. Reg. *****. The Board received the following public comment:

PC 1	Department of Commerce and Community Affairs, Regulatory Flexibility Unit, June 30, 1993.
PC 2	Illinois Environmental Protection Agency, Division of Legal Counsel, August 9, 1993.
PC 3	Safety-Kleen Corporation, Environmental Manager, Oil Division, August 9, 1993.
PC 4	Pennzoil Company, Division, Environmental Safety and Health Affairs, August 9, 1993.
PC 5	Growmark, Incorporated, Environmental and

Regulatory Affairs Division, August 9, 1993.

In addition, the Board received three public comments after the comment deadline. The first comment came from the Illinois Farm Bureau, on August 18, 1993. This comment was accompanied a motion to file comments instanter. The Board hereby grants the motion. The second comment came from the Office of the Secretary of State, Index Department, Administrative Code Unit, on August 16, 1993. The last comment received by the Board was an informal draft of comments from USEPA, Region Five. Conversations with USEPA personnel indicates that USEPA will make these comments formally at a later date, but offered the draft comments to facilitate the Board's understanding of the Federal amendments. These comments shall be referred to respectively as:

PC 6 Illinois Farm Bureau, Division of Natural and Environmental Resources, August 18, 1993.

PC 7 Office of the Secretary of State, Index Department, Administrative Code Unit, August 16, 1993.

PC 8 USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Several of the comments advocated the adoption of regulations which would have been less stringent than the rules adopted by USEPA. Due to the identical-in-substance statutory mandate, which governs this proceeding. The Board is unable to consider less stringent rules.

The Department of Commerce and Community Affairs has deferred to the Board and to public comments as to whether the proposed rules will affect small businesses. The Illinois Environmental Protection Agency offered several comments concerning typographical corrections. Safety-Kleen Corporation's comments concerned several sections of the proposed Used Oil program. Those comments will be discussed in the body of the opinion, at the relevant sections.

Pennzoil Oil Company informed the Board that the American Petroleum Institute has filed a petition for review with the United States Court of Appeals for the District of Columbia concerning various aspects of the used oil management standards. In particular, they challenge standards regulating the transportation of used oil in crude oil pipelines and refiner's use of used oil in manufacturing operations. Pennzoil asks the Board to exercise regulatory and enforcement constraint until the case is resolved. The Board appreciates Pennzoil's concerns, however, the Board will proceed with the rules as written until notified of a Federal stay or until otherwise directed by USEPA.

Both Growmark and the Illinois Farm Bureau commented that the 25 gallon limitation on farmers generating used oil was not high enough. The Board agrees with Growmark and the Farm Bureau that a higher limitation would probably better promote recycling by farmers. However, given the constraints of the Board's identical-in-substance rulemaking powers, the Board is unable to adopt a provision that is less stringent than the federal rules. Similar reasoning applies to Growmark's and the Farm Bureau's suggestions concerning the 55 gallon limit on off-site shipments. Finally, both Growmark and the Farm Bureau comment on Section 739.131 which governs Oil Collection Centers. Those suggestions shall be addressed later in this opinion. The Board notes that as a matter of practice, the Board supplies USEPA with a copy of all public comments received by the Board pertaining to identical-in-substance rulemakings. Therefore, while USEPA has received a copy of these comments, the Board encourages commentors to contact USEPA directly.

The Office of the Secretary of State, Index Department, Administrative Code Unit, suggested several typographical corrections. These corrections are reflected throughout the text of the order.

USEPA, Region Five, has offered several comments as solicited by the Board. These comments are in an informal draft. The Board anticipates receiving formal comment from USEPA in the post-adoption period. USEPA's draft comments will be addressed throughout the text of this opinion where relevant.

REGULATORY HISTORY

The complete history of the RCRA, UST and UIC rules appears at the end of this opinion. While a short form of reference to the adopting opinions will be used in the body of this opinion, complete citations are included in the history. Also at the end of this opinion, there is included a discussion of the approach the Board uses to determine whether the Federal amendment calls for an Agency or a Board Action, HSWA Driven Rules, Federal Stays, and Editorial Conventions.

PART 703: RCRA Permit Program

USEPA stated that they had no comments concerning Part 703. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 703.155

Section 703.155 is derived from 40 CFR 270.72, which was amended at 57 Fed. Reg. 37281-82, on August 18, 1992. This section concerns changes to a facility during interim status and

is amended to include containment buildings. The Federal section refers to RCRA section 3004, which is contained in part at 35 Ill. Adm. Code 728.139.

Section 703.181

Section 703.181 is derived from 40 CFR 270.13, which was amended at 57 Fed. Reg. 37281, on August 18, 1992. This section concerns the contents of Part A permit applications and is amended to include hazardous debris. In addition, the Board has placed Board notes after every subsection to direct readers to the corresponding Federal provision.

Section 703.183

Section 703.183 is derived from 40 CFR 270.14, which was amended at 57 Fed. Reg. 37281, on August 18, 1992. This section concerns the contents of Part B permits and is amended to include hazardous debris.

Section 703.280

Section 703.280 is derived from 40 CFR 270.42, which was amended at 57 Fed. Reg. 37281, on August 18, 1992. This section concerns permit modifications and is amended to include containment buildings.

Section 703.Appendix A

Section 703.Appendix A is derived from 40 CFR 270.42 Appendix I, which was amended at 57 Fed. Reg. 37281, on August 18, 1992. This section concerns classification of permit modifications and is amended to include enclosed waste piles and containment buildings.

PART 720: GENERAL PROVISIONS

This Part specifies definitions, incorporation by reference and other general provisions governing the hazardous waste program. It is drawn from 40 CFR 260. USEPA stated that they had no comments concerning Part 720. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 720.110

This Section is derived from 40 CFR 260.10 which was amended at 57 Fed. Reg. 37263, on August 18, 1992; 57 Fed. Reg. 38564, on August 25, 1992; 57 Fed. Reg. 41611, on September 10, 1992; and 57 Fed. Reg. 54460, on November 18, 1992. USEPA has added a definition for "containment building", "sorbent" and "used oil"; and revised the definitions of "infrared incinerator",

"miscellaneous unit", "plasma arc incinerator" and "pile". The definitions for "sorbent" and "used oil" are given below:

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. "Sorb" means to either adsorb or absorb, or both.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use in contaminated by physical or chemical impurities.

The definition for used oil is discussed in more detail later in this opinion in the section concerning new Part 739, Standards For the Management of Used Oil.

Section 720.120

This Section was derived from 40 CFR 260.20, which was amended at 57 Fed. Reg. 38564, on August 25, 1992. This Section had previously contained procedures for petitioning the USEPA Regional Administrator for modifications or revocations to federal Parts 260 through 265 and Part 268. This amendment changes those Parts to 260 through Part 265 and Part 268, however, the Board has already made this change in a past rulemaking and takes no action at this time.

PART 721: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

This Part derived from 40 CFR 261. USEPA has amended these rules in several isolated rulemakings, which will be identified with each Section.

Section 721.102

This Section is derived from 40 CFR 261.2, which was amended at 57 Fed. Reg. 38564, on August 25, 1992. This Section contains the definition of solid waste. The amendment to Section 721.102(e)(2)(D) adds inherently waste-like materials to materials that are solid wastes even if the recycling process involves use, reuse or return to the original process.

Section 721.103

This Section defines hazardous waste. This Section is derived from 40 CFR 261.3, which was amended at 57 Fed. Reg. 37263, on August 18, 1992; at 57 Fed. Reg. 41611, on September 10, 1992; and at 57 Fed. Reg. 49279, on October 30, 1992.

Section 721.103(a)(2)(C) is amended to state that nonwastewater mixtures are still subject to the requirements of Part 728, even if they do not exhibit a characteristic at the

point of land disposal.

Section 721.103(a)(2)(E) is amended by adding a rebuttable presumption for used oil to the definition of hazardous waste. This rebuttable presumption is added to reflect new part 739, which regulates used oil. This rebuttable presumption is discussed in more detail in the discussion concerning new Part 739.

Section 721.103(c)(2)(B)(iii) is amended to add "industrial furnaces" to the list of units. Section 721.103(c)(2)(B)(iii) is also amended by revising nearly all the generic exclusion levels for K061 and K062 nonwastewater HTMR residues. Section 721.103(c)(2)(B)(iii) is further amended by removing vanadium from, and adding zinc to, the list of constituents in the generic exclusion levels for K061 and K062 nonwastewater HTMR residues.

According to Section 721.103 (c)(2)(B)(iii), nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006, are excluded from the definition of hazardous waste if such wastes: meet the generic exclusion levels; do not exhibit the characteristics of hazardous waste; and are disposed of in a Subtitle D landfill. The generic exclusion levels are established to protect human health and environment. Such levels are derived from health based modeling using EPAMCL model. Except for zinc and arsenic, the exclusion levels are equal to or lower than the HTMR treatment standards, which are technology based standards. The USEPA notes that it did not adjust the exclusion levels to reconcile them with the treatment standards since the different, and occasionally overlapping, sets of numbers for treatment standards and generic exclusion levels reflect the fact that they are two different sets of regulatory controls on HTMR residues from K061, K062 and F006 wastes. (57 Fed. Reg. 37207)

Therefore, in order to be excluded from the definition of hazardous waste, the HTMR residues from K061, K062, and F006 wastes must meet both the HTMR treatment standards and the generic exclusion levels. In effect, the HTMR residues of the subject wastes must meet the lower of either the treatment standards or the exclusion levels for each constituent to qualify for a generic exclusion.

The Board has inserted the following Board Note after 721.103:

BOARD NOTE. The generic exclusion levels for arsenic and zinc are higher than the HTMR based alternative treatment standards for K062 and F006, and HTMR based treatment standards for K061, specified in Section 728.141. However, the HTMR residues must meet the applicable treatment standards prior to generic exclusion. Therefore, to be eligible for a generic exclusion,

the treated residues must meet the lower of either the treatment standards or the generic exclusion levels for each constituent.

The Board solicited comment on the inclusion of this Board Note. Only USEPA commented on this matter and voiced no objection. Therefore, the Board Note is included as proposed.

In addition, Section 721.103(c)(2)(B)(iii) is amended to add a requirement of a one-time notification and certification for K061, K062 or F006 HTMR residues. Section 721.103(f) is added to identify materials which are not subject to regulation under 35 Ill. Adm. Code 720, 721 to 726, 728, 702, or 703.

57 Fed. Reg. 49278-79, October 30, 1992, amends Section 261.3 by deleting subsection (e). 261.3 is a "sunset" provision which would have normally been adopted in R92-10. However, because of the lag-time in adopting the State equivalent of Federal regulations, the Board had notice of the October 30, 1992 deletion. As a result, to avoid adopting a subsection which was already deleted at the Federal level, the Board did not adopt 721.103(e) (see R92-10, p. 2-3). The Board has added "filler" language at 721.103(e) to maintain structural consistency with the Federal regulations.

Section 721.104

In R92-10, the Board adopted two amendments to Section 721.104 that would normally fall within this update. The first amendment was a correction to 40 CFR 261.4(b)(15) [721.104(b)(15)] which appeared at 57 Fed. Reg. 29220, July 1, 1992. The second was a correction to the TCLP rules which appeared at 57 Fed. Reg. 30658, on July 10, 1992. The Board will take no action on the July 1, 1992 and July 10, 1992 actions previously dealt with in R92-10. (see R92-10, p. 16-18)

As also noted in R92-10, the subsection numbering in the USEPA and Board rule now jumps from (b)(12) to (15), with (13) and (14) missing. The Board has numbered the State rule to parallel the USEPA numbering. The Board cannot renumber (b)(15) to (13), without reviewing the entire rule set (Parts 702 through 728) for cross-references, and setting up a continuing program to keep track of this anomaly. In R92-10, the Board inserted "filler" sections into (b)(13) and (14). These filler sections are unaltered by this rulemaking.

Section 721.104(a)(10), which contains exclusions from the definition of hazardous waste, was revised at 57 Fed. Reg. 37305, August 18, 1992, to add USEPA hazardous waste Nos. K060, K141, K142, K143, K144, K145, K147 and K148.

Section 721.105

Section 721.105 governs special requirements for hazardous waste generated by small quantity generators. Section 721.105(j) is derived from 40 CFR 261.5(j), which was amended at 57 Fed. Reg. 41611, on September 10, 1992. The amendment revises subsection (j), which concerns hazardous wastes mixed with used oil, by deleting a previous reference to 35 Ill. Adm. Code 726.Subpart E, to reference subpart G of the new Part 739 regulations (which are proposed for adoption in this docket). 726.Subpart E concerned used oil burned for energy recovery. Under Section 739.110(b)(3) mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 721.105 are regulated as used waste oil.

Section 721.106

Section 721.106 is derived from 40 CFR 261.6, which was amended at 57 Fed. Reg. 41611, on September 10, 1992. Two subsections are removed and subsequent subsections require redesignation. This amendment states that recycled used oil that exhibits a hazardous waste characteristic is regulated under new Part 739, and not under parts 720 through 728 as it had previously. Contrast this with 739.110 which states that non-recycled used oil that exhibits a characteristic is regulated as a hazardous waste unless the characteristic it exhibits is ignitibilty.

Section 721.131

Section 721.131 is derived from 40 CFR 261.31, which was amended at 57 Fed. Reg. 61502-03, on December 24, 1992. The amendment states that where F032, F034 and F035 wastewaters have not come into contact with process contaminants, they are not listed as hazardous wastes (which the Board had previously stated in a Board Note following the listings for F032, F034, and F035). In addition, the Board Note stated that the F034 and F035 listings are administratively stayed with respect to the process area. This State stay reflected a similar Federal stay. The Federal stay has been lifted and, therefore, the Board will also lift the State stay. Thus, the Board has eliminated the Board Notes that previously appeared in 721.131 after the listing for F032, F034, and F035.

The Board solicited comment as to whether it had correctly interpreted the Federal amendments as having the effect of lifting the stays. USEPA commented that the Board's interpretation is correct and that the State stay should be lifted. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 721.132

Section 721.132 is derived from 40 CFR 261.32, which was

amended at 57 Fed. Reg. 37305, on August 18, 1992; and at 57 Fed. Reg. 47385, on October 15, 1992. The first amendment added several hazardous wastes to the "Coking" subgroup. The second amendment added several waste streams to the "Organic Chemicals" subgroup and to Appendix G.

Section 721.Appendix B

Section 721.Appendix B is derived from 40 CFR 261.Appendix II, which was amended at 57 Fed. Reg. 55117, on November 24, 1992; and at 58 Fed. Reg. 6854, on February 2, 1993. This appendix addresses Method 1311 Toxicity Characteristic Leaching Procedure and is incorporated by reference into the Board rules. The second amendment is outside the time period for this rulemaking, but corrects a typographical error present in the first amendment. As the per the Board's past practice, the Board has adopted this correction, even though it is outside the usual time period to avoid adopting an incorrect rule.

Section 721.Appendix G

Section 721.Appendix G is derived from 40 CFR 621.Appendix VII, which was amended at 57 Fed. Reg. 37305, on August 18, 1992 and at 57 Fed. Reg. 47385 on October 15, 1992, to add several waste streams to the basis for listing hazardous waste index.

Part 722: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Part 722 provides the standards applicable to generators of hazardous waste. This Part was amended once, as indicated below. USEPA stated that they had no comments concerning Part 722. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 722.134

Section 722.134 is derived from 40 CFR 262.34, which was amended at 57 Fed. Reg. 37264, on August 18, 1992. The Board has substantially restructured this section in past rulemakings to condense subsections. The Federal Register amends this section by removing the semi-colon at the end of the introductory text and replacing it with a colon. The Board has already made this change in a previous rulemaking.

These amendments add requirements concerning containment buildings. Sections defining and regulating containment buildings constitute a significant aspect of this rulemaking. Containment buildings are defined at 35 Ill. Adm. Code 720.110 as "A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subpart DD of Parts 724 and 725." Subpart DD of parts 724 and 725 are also added in this rulemaking.

The amendments to this part require that after February 18, 1992, a Professional Engineer certification that the containment building meets the design standards specified in 35 Ill. Adm. 725.1101 [40 CFR 265.1101] be kept in the facility's operating records. Because this is a HSWA driven regulation, February 18, 1992 became the effective date for that provision in Illinois, upon the adoption of the Federal amendment on August 18, 1992. Therefore, the Professional Engineer certification provision became effective August 18, 1992 in Illinois.

PART 724: STANDARDS FOR PERMITTED HWM FACILITIES

This Part contains the standards for owners or operators of hazardous waste management (HWM) facilities with RCRA permits. Standards for interim status facilities are in Part 725, below. This Part is drawn from 40 CFR 264.

Section 724.101

Section 724.101(f)(2) is derived from 40 CFR 264.101(g)(2), which was revised at 57 Fed. Reg. 38564, on August 25, 1992. 724.101 provides the purpose, scope and applicability of Part 724. 724.101(f)(2) was amended to delete subpart D of Part 726 and add subpart H of Part 726 as parts which apply to the owners or operators of recycling facilities. Subpart D of Part 726 concerns hazardous waste burned for energy recovery. Subpart H of Part 726 concerns hazardous waste burned in boilers and industrial furnaces. The Board has added a Board Note to alert readers that 724.101(f) correlates to 264.101(g).

In response to the court decision in Chemical Waste Management (976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 724.101(f)(6), as follows:

f) The requirements of this Part do not apply to:

6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in 35 Ill. Adm. Code 720.110, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 35 Ill. Adm. Code 728.Table D), or corrosive (D002) waste, to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in Section 724.117(b) of this part;

The Board **solicits post-adoption comment** from USEPA on this matter.

Section 724.113

Section 724.113(c)(3) is derived from 40 CFR 264.13(c)(3), which was added at 57 Fed. Reg. 54460, on November 18, 1993. This new subsection adds information that an owner or operator of an off-site landfill must include in the facility's waste analysis plan.

Section 724.210

Section 724.210 is derived from 40 CFR 264.110, which was amended at 57 Fed. Reg. 37264, on August 18, 1992 to correct typographical errors. In addition, the amendment applies Sections 724.216 through 724.220 to containment buildings.

Section 724.211

Section 724.211 is derived from 40 CFR 264.111, which was amended at 57 Fed. Reg. 37265, on August 18, 1992 to require an owner or operator of a facility to conform to new section 724.1102 (49 CFR 264.1102). New section 724.1102 concerns closure and post-closure of containment buildings.

Section 724.212

Section 724.212 is derived from 40 CFR 264.112, which was amended at 57 Fed. Reg. 37265, on August 18, 1992 to include new section 724.1102 (40 CFR 264.1102) among the regulations with which closure plans must conform. In addition, the Board has corrected a typographical error: Section 724.515 becomes 724.215 in subsection 724.212(a)(2).

Section 724.240

Section 724.240 is derived from 40 CFR 264.140, which was amended at 57 Fed. Reg. 37265, on August 18, 1992 to correct typographical errors and add landfill requirements to some containment buildings.

Section 724.242

Section 724.242 is derived from 40 CFR 264.142, which was amended at 57 Fed. Reg. 37265, on August 18, 1992, to include new section 724.1102 (40 CFR 264.1102) among the regulations to be considered in the cost estimate for closure.

Section 724.243

Section 724.243 is derived from 40 CFR 264.143, which was amended at 57 Fed. Reg. 42835-36, on September 16, 1992. This section concerns financial assurance for closure. The section is revised to allow "the direct or higher-tier parent corporation",

"a firm whose parent corporation is also the parent corporation of the owner or operator, or a 'firm with a substantial business relationship' with the owner or operator" to act as a "guarantor" for the financial assurance for closure provisions. In addition, the amendment revises the requirement that a letter from the guarantor's chief financial officer accompany required documentation.

Section 724.245

Section 724.245 is derived from 40 CFR 264.145, which was amended at 57 Fed. Reg. 42836, on September 16, 1992. This amendment is substantially the same as the changes made in Section 724.243, except that this section refers to financial assurance for post-closure care.

Section 724.247

Section 724.247 is derived from 40 CFR 264.147, which was amended at 57 Fed. Reg. 42836, on September 16, 1992. This section concerns liability requirements and these amendments represent significant changes to the provisions, primarily the addition of a Certification of Valid Claim. In addition, the subsections are redesignated.

State subsection 724.247(a)(7)(A) concerns a "claim" which results in a reduction in the amount of financial assurance for liability coverage Section 724.251. Prior to these amendments, the subsection was not limited to reductions caused by a "Claim" but was instead concerned with any reduction.

The new federal rules add a requirement that where a "Certification of Valid Claim" for bodily injury or property damages is entered into between the owner or operator and a third party claimant, the owner or operator must notify the Agency. This certification is explained in detail at 724.151(h)(2), (k), (l), (m) and (n). This requirement appears as subsection 724.(a)(7)(B).

724.247(a)(7)(C) concerns a "final court order establishing a judgment for bodily injury or property damage caused by the sudden or non-sudden accidental occurrence".

New subsection 724.247(h)(4) requires trustees to be regulated by a Federal or State agency. Similar regulations have been discussed in a past rulemaking (R89-1, p. 21-24). In accordance with past Board practice, the Board proposed to use the language "regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1991, ch. 17, par. 1551-1 et seq.)" in lieu of "regulated and examined by a Federal or State agency".

The Board solicited comment on this matter. USEPA stated that this interpretation of the regulation may create a more stringent regulation than the Federal regulation. USEPA states that this more stringent provision is acceptable. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.) The Board believes that the Board's provision is consistent with the Federal regulations. Therefore, the Board has adopted the provision as proposed.

Section 724.251

Section 724.251 incorporates by reference 40 CFR 264.151, which was amended at 57 Fed. Reg. 42836-43, on September 16, 1992. This section provides the form for the Certification of Valid Claim discussed above.

SUBPART N: LANDFILLS

This Subpart specifies design and operating requirements for landfill units at permitted facilities. It is derived from 40 CFR 264.Subpart N.

Section 724.414

This Section concerns special requirements for bulk and containerized bulk. It is derived form from 40 CFR 264.314 and was amended at 57 Fed. Reg. 54460, on November 18, 1992.

The amendments to 724.414(a) regulate activity that occurred prior to May 8, 1985. Consistent with past Board practice, the Board has not adopted this subsection or the amendments to it. Instead the Board has adopted a "filler" subsection to correlate with the Federal regulations. In addition, old state Section 724.414(a) has become 724.414(b) to correlate with the Federal Regulations. Old state Section 724.414(b) becomes 724.414(c); and old state Section 724.414(c) becomes 724.414(d). Prior to this rulemaking, there was no state 724.414(d). USEPA commented that it had no problems with the proposed renumbering to Section 724.414. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

New Federal section 264.314(e) concerns nonbiodegradable sorbents. This new section arguably concerns the same subject matter as section 724.414(f) which requires the addition of absorbents to free liquids prior to disposal. The Board concludes that 264.314(e) and 724.414(f) cover the same subject matter and that 264.314(e) is more stringent, particularly in its specificity. Therefore, the Board has adopted the new Federal Section and deleted 724.414(f).

For comparison purposes, the two sections are as follows.

New Federal 724.414(e):

e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in subsection (e)(1) below; materials that pass one of the tests in subsection (e)(2) below; or materials that are determined by the Board to be nonbiodegradable through the 35 Ill. Adm. Code 106 adjusted standard process.

1) Nonbiodegradable sorbents are:

A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal (activated carbon)); or

B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, poly urethane, polycrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

C) Mixtures of these nonbiodegradable materials.

2) Tests for nonbiodegradable sorbents:

A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a) -- Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b) -- Standard Practice for Determining Resistance of Plastics to Bacteria.

Old State 724.414(f):

> f) Disposal of liquid wastes or wastes containing free liquids otherwise allowed under this Section must be authorized pursuant to 35 Ill. Adm. Code 709.401(a). As required by 35 Ill. Adm. Code 709.520(c), the Agency must require the addition of absorbents to any such waste, any provision of this Section notwithstanding.

While the Federal amendment cites the 40 CFR 260 [35 Ill. Adm. Code 720] petition process, the Board believes there is no petition process spelled out in Part 720 which governs here. The Board concludes that the amendment involves an adjusted standard procedure. The adjusted standard procedure is the appropriate procedure where a petitioner attempts to show that a material is nonbiodegradible where it is not listed or does not met one of the listed tests. The Board solicited comment on this matter and received no public comments concerning the use of the adjusted procedure process. Therefore the Board will cite the Board's regulation 35 Ill. Adm. Code 106.

The procedures for granting an adjusted standard are set forth in 35 Ill. Adm. Code 106.Subpart G. They provide for a method of review and public participation which is similar to that used by USEPA for the grant of a Part B RCRA permit. The procedures were summarized in the R90-17 opinion, at p. 5. That discussion is repeated here.

The adjusted standard procedure may be initiated by a petitioner alone, or with the Agency as a co-petitioner. (Section 106.703.) The contents of the petition are specified in Section 106.705. If the Agency is not a co-petitioner, it is required to file a response within 30 days after the filing of the petition, in which it must recommend a grant or denial of the petition, and supporting rationale. (Section 106.714.)

Within 14 days after the filing of a petition, the petitioner must publish a public notice of the filing of the petition in a newspaper in the area likely to be affected. (Section 106.711.) The notice gives members of the public 21 days to request a public hearing. (Section 106.713.) The Board will schedule a hearing if one is requested, or if it otherwise determines that one is advisable. (Section 106.801.) Interested persons are allowed to present testimony and exhibits. (Section 106.806.) A final comment period is allowed following the public hearing. (Section 106.807.)

Lastly, State section 724.414(e) becomes subsection (f).

Section 724.416

Section 724.416 is derived from 40 CFR 264.316, which was amended at 57 Fed. Reg. 54460, on November 18, 1993. This section replaces "absorbent" material with the newly defined "sorbent" material. In addition, the amendment requires the sorbent material to be determined to be nonbiodegradable in accordance with Section 724.414.(e).

SUBPART W: DRIP PADS

This Subpart governs "drip pads", a type of hazardous waste management unit on which wood products are stored following application of wood preservatives.[2]

These drip pad provisions were stayed at the Federal level on June 13, 1991, and February 6, 1992. The provisions were also stayed at the State level as indicated by the Board Notes that appeared in Section 724.673. The stays were terminated as a result of the Federal amendments reflected here. Therefore, the Board has removed the Board Notes in Section 724.673 which imposed a State stay of the requirements of the provisions. The Board solicited comment on this matter and requested comments as to whether any other Sections are affected by the removal of the stays. USEPA commented that the Board correctly to terminated the stays.

The Board notes that a typographical error appears in 57 Fed. Reg. 61493 in the "Background" section, where a "June 6, 1992," stay is referred to. The Board believes, and USEPA concurs, that there were only two stays, one that occurred on June 13, 1991, and the other that occurred on February 6, 1992.

There is a further complication to the effective dates of these provisions. The complication lies in the fact provisions added in connection with F032 are HSWA driven and those concerning F034 and F035 are not HSWA driven. Therefore, the changes made to provisions concerning F032, including modifications to drip pad standards, took effect on December 24, 1992. The provisions concerning F034 and F035 take effect upon adoption of the State rule.

Moreover, in the preamble to these amendments, USEPA reports that there are four exceptions to the above effective dates:

1. With respect to meeting the drip pad permeability requirements of this final rule (264.573(a)(4)(i)) [724.673(a)(4)(A)] and (265.443(a)(4)(i)) [725.543(a)(4)(A)], the

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[2] Drip pads were a major topic in R91-1 and R91-26. Readers may wish to reference those rulemakings for background material.

Agency is establishing a new effective date of June 24, 1993, by which time owners or operators must comply with the standard.

2. With respect to the requirement that new drip pads for which owners or operators have chosen liners and leak collection system (264.573(b)(3)) [724.673(b)(3)] and (265.443(b)(3)) [725.543(b)(3)], the Agency is establishing an effective date of June 24, 1993.

3. With respect to the provisional elimination of the F032 waste code, the Agency is establishing an effective date of June 24, 1993.

4. With respect to the requirements for contingency plans for incidental drippage in storage yards (264.570(c)(1)) [724.670(c)(1)] and (265.440(c)(1)) [725.540(c)(1)], the Agency is establishing an effective date of June 24, 1993.

The Board solicited comment as to whether the above exceptions concern HSWA driven regulations and whether a HSWA or non-HSWA driven status effects the effective date. USEPA commented that the preamble to the Federal Register on December 6, 1990, indicated that the wood preserving rule is HSWA driven. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 724.670

Section 724.670 is derived from 40 CFR 264.570, which was amended at 57 Fed. Reg. 61502-03, on December 24, 1992. The amendments specify which drip pads are regulated by Section 724.673(b)(3). In addition, subsection (c) is added to exempt the management of infrequent and incidental drippage from the requirements of this subpart under certain enumerated conditions. USEPA commented that (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)
USEPA commented that (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.)

Section 724.671

Section 724.671 is derived from 40 CFR 264.571, which was amended at 57 Fed. Reg. 61503, on December 24, 1992. These amendments delete the requirement of documenting, to the extent possible, the age of the drip pad.

Section 724.672

Section 724.672 is derived from 40 CFR 264.572, which was amended at 57 Fed. Reg. 61503, on December 24, 1992. This

section requires an owner or operator of new drip pads to ensure that the pads are designed, installed, and operated in accordance with either 724.673 (except 724.763(a)(4)), 724.674 and 724.676; or with 724.673 (except 724.763(b)), 724.674 and 724.676.

Section 724.673

Section 724.673 is derived from 40 CFR 264.573, which was amended at 57 Fed. Reg. 61503, on December 24, 1992. These amendments add design and operating requirements for drip pads. 724.673(b) is revised to add specific requirements where an owner or operator elects to comply with 724.672(b) instead of 724.572(a).

USEPA commented that the Board's proposed regulation did not include a reference to Section 270, as did the Federal amendment. (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.) The Board will correct this by adding "Part 702, Part 703" at the appropriate place.

Section 724.1100 through 724.1102

New subpart 724.Subpart DD regulates containment buildings. This new subpart is derived from 40 CFR 264.1100 through 264.1102, which was adopted at 57 Fed. Reg. 37265, on August 18, 1992 and became effective on the same day. This is a HSWA driven regulation.

The new containment building provisions regulate, in part, units the USEPA had previously classified as indoor waste piles. Generally, these indoor waste piles contain non-liquid, large-volume hazardous wastes, which were not amendable to management in tanks or containers. Today's regulations include containment buildings among those units covered by 35 Ill. Adm. Code 728.150 as permissible for the storage of prohibited waste. In addition, containment buildings are made subject to the prohibition on extended storage. The regulations include design and operation standards and allow those containment buildings which meet all technical requirements to be eligible under 35 Ill. Adm. Code 726.134 for the 90 day generator provisions. The management of hazardous waste in a containment building is not land disposal.

Containment buildings operating under Part 725, interim status must meet the same operating and design standards. However, there are some differences in Parts 724 and 725 in terms of whether the provisions call for USEPA, Agency or Board action. The Board has noted the differences throughout the opinion.

The Table of Contents to Part 724 is revised to:

Subpart DD-Containment Buildings

Section
264.1100 Applicability.
264.1101 Design and operating standards.
264.1102 Closure and post-closure care.

724.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under 724.1101. These provisions became effective on February 18, 1993, although the owner or operator may notify the USEPA of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in 35 Ill. Adm. Code 728.102 provided that the unit:

(Emphasis added)

In light of the fact these are HSWA driven regulations which became effective upon adoption of the Federal rule, the Board believes the USEPA intended these subsections to be time specific. The Board proposed to adopt the Section 724.1100 introductory language as given to maintain correlation with the Federal regulations in the event there are potential State enforcement responsibilities after the State takes over primary enforcement authority.

USEPA commented that, in light of the fact that February 18, 1993, has come and gone, it "would make more sense for the Board to change this language to ...'The Federal regulations became effective on February 18, 1993, although owners and operators were entitled to notify USEPA...'" (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993). The Board will adopt the regulations as "These provisions became effective on February 18, 1993~~, although the owner or operator may notify the USEPA of his intent to be bound by this subpart at an earlier time~~" The Board believes this approach will maintain correlation with the Federal regulations and express USEPA's intent. As per Board practice, the Board will change "Regional Administrator" to "USEPA" (see the discussion at the end of this opinion on Agency or Board actions).

The regulations continue:

724.1100

a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to

prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation including the movement of heavy equipment within the unit and contact of such equipment within the unit and contact of such equipment with containment walls;

The Board has restructured the above subsection for clarity, as follows:

a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to:

1) pressure gradients;

2) settlement, compression, or uplift;

3) physical contact with the hazardous wastes to which they are exposed;

4) climatic conditions; or

5) the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

The Board solicited comment as to whether this restructuring properly reflects the intended meaning of the provision. USEPA agreed with this restructuring, so long as "or" followed subsection 4).

The regulations continue:

724.1100

c) If the unit is used to manage liquids, has:

For clarity purposes, the Board has restructured the above subsection as follows:

c) If used to manage liquids, the unit has:

The regulations continue:

Section 724.1101 Design and operating standards

a) All containment buildings must comply with the following design and operating standards:

The Board has added "and operating" to the above subsection because 724.1101(a)(3) is more correctly an operating requirement as opposed to a design requirement. The Board solicited comment on this matter and received no response.

The regulations continue:

Section 724.1101

a)

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b) below, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute [ACI] and the American Society of Testing Materials [ASTM] in judging the structural integrity requirements of this Section. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(Emphasis added)

The Board has revised the above underlined language as follows:

> The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry

such as the American Concrete Institute [ACI] and the American Society of Testing Materials [ASTM].

The Board believes that this approach creates an affirmative duty on the owners or operators and provides the Agency with criteria for the permit application. The Board solicited comment on this matter.

USEPA commented that this change would have the effect of making the Illinois regulation more stringent and that USEPA would have no objection to that change. The Board will make the change as proposed.

The regulations continue:

Section 724.1101

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 725.293(d)(1). In addition, the containment building must meet the requirements of Section 725.193(b) and (c) to be <u>considered</u> an acceptable secondary containment system for a tank.)

(Emphasis added)

The Board has eliminated "considered" from the above subsection.

The regulation continues (subsection (b) is repeated for clarity):

Section 724.1101

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

4) For existing units other than 90-day generator units, the Regional Administrator may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subpart. In making this demonstration, the owner or operator must:

A) Provide written notice to the Regional Administrator of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;

B) Respond to any comments from the Regional Administrator on these plans within 30 days; and

C) Fulfill the terms of the revised plans, if such plans are approved by the Regional Administrator.

(Emphasis added)

This subsection raises uncertainty as to the State's enforcement responsibility. Given that the prescribed deadline was prior to State adoption, plans could have only been submitted to USEPA. However, because there are no decision deadlines, it is uncertain what the status of the plan will be at the point the State gains authorization. Moreover, there are no criteria given for plan approval or appeal. The Board solicited comment as to what enforcement responsibility is placed on the State by this

provision and the Board further solicited comment as to whether this subsection is appropriately adopted by the States at all.

USEPA commented:

> In Sections 724.1101(b)(4) and 725.1101(b)(4), U.S. EPA allowed the owner or operator of an existing containment building to apply for a delay in implementing the secondary containment requirement for up to two years. Such owner/operator was required to submit written notice to the Regional Administrator of such a request by November 16, 1992 and, in this notification, describe operating practices and plans for retrofitting the unit with secondary containment. No criteria are provided by which the Regional Administrator determines whether the owner or operator's unit is in substantial compliance with the standards of the regulation such that a two year delay is justified.
>
> * * *
>
> We have checked with the RCRA Permitting Section and they have informed us that no applications for the two year extension period were received in Region V. Accordingly, the issue of the effect of this regulation upon State enforcement responsibility is moot.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Therefore, the Board will adopt these subsections as proposed to maintain correlation with the Federal regulations. The Board will replace "Regional Administrator" with "USEPA" to conform with past Board practice (see the discussion at the end of this opinion on Agency or Board actions).

In addition, the Board alerts readers that the corresponding section in 725.1101 takes a similar approach.

The regulations continue:

Section 724.1101

c) Owners or operators of all containment buildings must:

3) Throughout the active life of the containment building, if the owner or operator <u>detects a condition that could lead to or has caused a release of hazardous waste</u>, must repair the condition promptly, in accordance with the following procedures.

A) Upon detection of a condition that <u>has lead</u>

to a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(Emphasis added)

The above language is underlined to emphasize the lack of clarity of the above sections. The Board has revise the above section as follows:

c) Owners or operators of all containment buildings must:

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly~~, in accordance with the following procedures~~. In addition however:

A) Upon detection of a condition that has caused ~~lead to~~ a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

The Board solicits comment as to whether this revision reflects USEPA's intent. The Board received no comments on this matter and will adopt the subsection as proposed.

The regulations continue as amended above:

Section 724.1101

c) Owners or operators of all containment buildings must;

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly. In addition however:

A) Upon detection of a condition that has caused a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within 7 days after the discovery of the condition, notify the ~~Regional Administrator~~ Agency in writing of the condition in writing, and within 14 working days, provide a written notice to the ~~Regional Administrator~~ Agency, with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

B) The ~~Regional Administrator~~ Agency shall review the information submitted, make a determination in accordance with Section 34 of the Act, regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of its determination and the underlying rationale in writing.

C) Upon completing all repairs and cleanup the owner or operator shall notify the ~~Regional Administrator~~ Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv) above.

(Emphasis added)

In subsection (iv), the Board has added the requirement that the notification be in writing. The Board solicited comment on this matter and received none. Therefore, the Board has retained the requirement that the notification be in writing.

The Board has determined that this section comes under the Agency's power to seal, pursuant to Section 34 of the Act, because the regulation gives the Agency only the power to determine whether the unit must be taken out of service. It does not give the Agency the power to approve or disapprove the cleanup plan or to determine whether the owner or operator is in compliance with the plan. Under Section 34(d) the owner or operator may appeal the Agency's decision to seal the unit to

members of the Board or seek injunctive relief. The Board rejected other approaches because of the fact that it is a "cease operations" determination, of which any appeal should be resolved quickly. The Board solicits comment on this matter.

The Board has replaced "Regional Administrator" with "Agency" in all instances above.

The regulations continue:

Section 724.1101

> e) Notwithstanding any other provision of this subpart the Regional Administrator may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Emphasis provided)

The Board believes the above subsection may be interpreted two ways. The first is that this subsection contemplates an adjusted standard proceeding in that a "waiver" is involved. However, the Board suggests that in this case, the subsection may be actually requiring a determination based solely on the limited type and amount of liquid in the containment building, exclusive of any other waste management concerns. The Board proposed that, with this interpretation, this determination may be handled through a permit condition. To better express this, the Board has changed the above language to:

> e) Notwithstanding any other provision of this subpart ~~the Regional Administrator may waive requirements for~~ the Agency shall not require secondary containment for a permitted containment building if the owner or operator demonstrates to the Agency that the only free liquids in the unit are limited amounts of dust suppression liquids as required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

The Board directs readers to the discussion later in this opinion concerning corresponding section 725.1101. Because owners or operators under 725 Interim Status do not have a permit, the Board could not take the same approach as in the above Section. Therefore, the Board has treated 725.1101(e) as

an adjusted standard provision pursuant to section 28.1(b) of the Act, utilizing the above Board language as the level of justification. The Board solicited comment on this matter.

In addition, the Board directed readers to the discussion at the end of this opinion concerning Agency or Board action and solicited comment on this matter regarding the interpretation of the permit process and conditions, and whether an adjusted standard would be more appropriate for permitted as well as interim status facilities for procedural consistency.

USEPA commented:

> In Section 724.1101(e), the Federal regulations provide: "... the Regional Administrator may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that ...." The Board has proposed to substitute: "the Agency shall not require secondary containment for a permitting containment building if ...." The Board should recognize that the Federal regulation does not require the Regional Administrator to waive the requirment for secondary containment, but leaves it to his discretion in case other factors weigh against such a waiver. The proposed Illinois equivalent leaves the State agency with no similar discretion, and may cause the Agency to be less stringent. (emphasis in original)

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

The Board believes that it is unable to adopt USEPA's approach under Illinois' administrative law. As proposed by the Board, the Agency shall not require secondary containment for a permitting containment building if:

> the owner or operator demonstrates to the Agency that the only free liquids in the unit are limited amounts of dust suppression liquids as required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

USPEA's approach would allow the Agency unfettered discretion to waive or not waive the requirment based on "other factors". The Board believes that "other factors" is so vague as to not provide any standards under which the Agency may base a waiver. Moreover, it does not provide a standard under which a petitioner may appeal an Agency decision to the Board. In addition, under common statutory construction, the above language serves to exclude those factors not expressly included. The subsection as proposed at the Federal level does not contain any modifying

phrase that would allow another construction. Therefore, the Board believes the subsection is intended to limit the factors to those listed.

Therefore, the Board will adopt the subsection as proposed and pending any additional comment form USEPA in the past-adoption comment period.

PART 725: INTERIM STATUS STANDARDS

This Part is drawn from 40 CFR 265. This Part contains the design and operating requirements for hazardous waste management facilities with interim status. The Part 265 [725] rules are nearly identical to the Part 264 [724] rules, above, which apply to permitted facilities. However, interim status rules often need decision-making procedures in the absence of a permit system.

SUBPART B: GENERAL FACILITY STANDARDS

This Subpart contains general rules governing all types of interim status hazardous waste facilities.

Section 725.101

Section 725.101 is derived from 40 CFR 265.1, which was amended at 57 Fed. Reg. 38564, on August 25, 1992. This change closely parallels the amendments to Section 724.101. 725.101 provides the purpose, scope and applicability of Part 725. 725.101(c)(6) was amended to delete subpart D and add subpart H of Part 726 as parts which apply the owners or operators of recycling facilities. Subpart D of Part 726 concerns hazardous waste burned for energy recovery. Subpart H of Part 726 concerns hazardous waste burned in boilers and industrial furnaces.

In response to the Federal court decision in Chemical waste Management (976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 725.101(c)(10) as follows:

c) The requirements of this Part do not apply to:

10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in 35 Ill. Adm. Code 720.110, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 35 Ill. Adm. Code 728.Table D), or corrosive (D002) waste, in order to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in Section 725.117(b);

The Board **solicits post-adoption comment** from the USEPA on this matter.

Section 725.113

Section 725.113 is derived from 40 CFR 265.13, which was amended at 57 Fed. Reg. 54461, on November 18, 1992. This change closely parallels the amendments to 35 Ill. Adm. Code 724.101. Section 725.113(c) is amended to add subsection (c)(3), which adds a requirement that an owner or operator of an off-site landfill specify the procedures that will be taken to determine whether a biodegradable sorbent has been added to the waste in the container.

Section 725.210

Section 725.210 is derived from 40 CFR 265.110, which was amended at 57 Fed. Reg. 37267, on August 18, 1992. This Section applies the post-closure care sections to the owners and operators of containment buildings which under new section 725.1102 must meet the requirements for landfills.

Section 725.211

Section 725.211 is derived from 40 CFR 265.111, which was amended at 57 Fed. Reg. 37267, on August 18, 1992. This amendment closely parallels the changes made in 724.211. This amendment requires a owner or operator of a facility to conform to new section 35 Ill. Adm. Code 724.1102 (Federal Section 264.1102). 35 Ill. Adm. Code 724.1102 concerns closure and post-closure of containment buildings.

Section 725.212

Section 725.212 is derived from 40 CFR 265.112, which was amended at 57 Fed. Reg. 37267, on August 18, 1992. This amendment closely parallels the changes made in 724.212. The section is amended to include new section 35 Ill. Adm. Code 724.1102 (40 CFR 264.1102) among the regulations with which closure plans must conform.

Section 725.240

Section 725.240 is derived from 40 CFR 265.140, which was amended at 57 Fed. Reg. 37267, on August 18, 1992. This amendment closely parallels the changes made in 724.240. The amendment requires containment buildings that are required under 724.1102 to meet the requirements for landfills.

Section 725.242

Section 725.242 is derived from 40 CFR 265.142, which was

amended at 57 Fed. Reg. 37267, on August 18, 1992. This Section adds section 725.278 and new section 725.1102 to the applicable closure requirements from which an owner or operator determines the closure cost estimate.

Section 725.243

Section 725.243 is derived from 40 CFR 265.143, which was amended at 57 Fed. Reg. 42843, on September 16, 1992. This amendment closely parallels the changes to 35 Ill. Adm. Code 724.243. This section concerns financial assurance for closure.

Section 725.245

Section 725.245 is derived from 40 CFR 265.145, which was amended at 57 Fed. Reg. 42843, on September 16, 1992. This amendment closely parallels the changes made to 35 Ill. Adm. Code 724.243.

Section 725.247

Section 725.247 is derived from 40 CFR 265.147, which was amended at 57 Fed. Reg. 42843-44, on September 16, 1992. This amendment closely parallels the changes made to 35 Ill. Adm. Code 724.247. See the discussion above.

Section 725.321

Section 725.321 is derived from 40 CFR 265.221, which was amended at 57 Fed. Reg. 37267, on August 18, 1992. This Section concerns surface impoundments which are newly subject to RCRA 3005(j)(1) due to newly added wastes (See R92-10, p. 51-53).

Section 3005(j) gives operators of impoundments, in existence since November 8, 1984, who qualified for interim status, 48 months to upgrade the impoundment to meet the requirements of Section 3004(o)(1)(A), subject to three exceptions in 3005(j)(2), (3), or (4). Continued receipt of waste was prohibited after that time. Today's amendment apparently gives the same 48 months to operators of existing impoundments which become subject to RCRA rules because of new listings or new hazardous waste characteristics. The requirements of section 3004(o)(10(A) were adopted by the Board in R86-1, as detailed in the Board Note following Section 725.321(c)(1). Those standards were upgraded in R92-10, but the Board Note was added, allowing continued operation of impoundments constructed in compliance with the R86-1 standards, so long as there is no reason to believe the liner is not functioning as designed.

The Board was uncertain as to USEPA's intent by referring to RCRA 3005(j) but concluded that it intended "subject to this

Part." Thus, the Board concludes, a surface impoundment that becomes subject to the interim status has 48 months to comply. For this interpretation to be correct, the USEPA text must contain an error. The USEPA rule requires compliance with "subsections (a), (c), and (d)". This is apparently incorrect as (c) and (d) are alternatives to (a) in any situation. The Board proposed to adopt the subsection as follows, and solicited comment on this matter. USEPA responded that the Board's interpretation is correct. Therefore, the Board has adopted the subsection as proposed:

h) Surface impoundments that are newly subject to this Part due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with subsections (a), (c), or (d) above not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under 35 Ill. Adm. Code 728 or the granting of an extension to the effective date of a prohibition pursuant to 35 Ill. Adm. Code 728.105, within this 48 month period.

Section 725.401

Section 725.401 is derived from 40 CFR 265.301, which was amended at 57 Fed. Reg. 30658, on July 10, 1992. This amendment revises the double liner requirement waiver in 724.401(d)(1). The amendment was previously adopted in R92-10. The Board takes no action at this time.

Section 725.414

Section 725.414 is derived from 40 CFR 265.314, which was amended at 57 Fed. Reg. 54461, on November 18, 1992.

The Board had not previously adopted a subsection (a) for this section because it was inapplicable to the State rules (See R86-26). In this rulemaking, the Board has adopted a subsection (a) in this rulemaking that would contain "filler" language.

USEPA commented that it appears that subsection (a)(2) is missing from the State regulations. The Board believes that it has properly excluded that subsection for the reasons stated above. The Board will adopt the provision as proposed and **solicits comment** on this matter from USEPA during the post-adoption comment period.

"Sorbent" replaces "absorbent" throughout this section. Section 725.414(f) adds the requirement that nonbiodegradable sorbents treat free liquids disposed in landfills. Section

725.414(f)(1) lists nonbiodegradable sorbents and Section 725.414(f)(2) incorporates biodegradable test methods.

The amendment to this Section closely parallels the amendment to 724.414. New Federal section 265.314(f) is added and concerns nonbiodegradable sorbents. This new section arguably concerns the same subject matter as old state section 725.414(g) which requires the addition of absorbents to free liquids prior to disposal. The Board concludes that 265.314(f) and 725.414(g) cover the same subject matter and that 265.314(f) is more stringent. Therefore, the Board has adopted the new Federal Section and has deleted State Section 725.414(g).

Furthermore, the Board concludes that the amendment calls for an adjusted standard procedure where it allows a petitioner to show that a material is nonbiodegradible even where it is not listed or does not met one of the listed tests. In addition, the USEPA amendment cites the 40 CFR 260 [35 Ill. Adm. Code 720] petition process. The Board believes there is no petition process spelled out in Part 720 which governs here. Therefore the Board will cite to the Board's regulation 35 Ill. Adm. Code 106. See discussion above at page 18.

Section 725.416

Section 725.416 is derived from 40 CFR 265.316, which was amended at 57 Fed. Reg. 54461, on November 18, 1992. "Sorbent" replaces "absorbent" and the nonbiodegradibility determination found in 725.414(f) is included.

Section 725.540

Section 725.540 is derived from 40 CFR 265.440, which was amended at 57 Fed. Reg. 61503-04, on December 24, 1992. This Section clarifies that the leak collection system requirement found in Section 725.543(b)(3) applies, with some exceptions, only to drip pads constructed after December 24, 1992. Section 725.540(c) closely parallels Section 724.670, see discussion above.

Section 725.541

Section 725.541 is derived from 40 CFR 265.441, which was amended at 57 Fed. Reg. 61504, on December 24, 1992. This amendment deletes the requirement that the owner or operator "justify" the extent to which the drip pads meet the relevant standards.

Section 725.542

Section 725.542 is derived from 40 CFR 265.442, which was amended at 57 Fed. Reg. 61504, on December 24, 1992. This

amendment closely parallels the changes made to Section This section requires an owner or operator of new drip pads to ensure that the pads are designed, installed, and operated in accordance with either 725.543 (except 725.543(a)(4)), 725.544 and 725.545; or with 725.543 (except 725.543(b)), 725.544 and 725.545.

Section 725.543

Section 725.543 is derived from 40 CFR 265.443, which was amended at 57 Fed. Reg. 61504, on December 24, 1992. This amendment revises design and operating requirements for drip pads. See above discussion concerning Section 724.673.

725.Subpart DD

New subpart 725.Subpart DD regulates containment buildings. This new subpart is derived from 40 CFR 265.1100 through 265.1102, which was adopted at 57 Fed. Reg. 37268, on August 18, 1992, and became effective on that date. This is a HSWA driven regulation. Although this subpart is nearly identical to Part 724.Subpart DD, the Board must interpret the provisions differently because Part 725 owners or operators do not work under a permit system. Readers should reference the above discussion in 724 to note differences.

Table of Contents

The following entries are added to the Table of Contents for Part 725:

Subpart DD Containment Buildings

Section
725.1100 Applicability
725.1101 Design and operating standards
725.1102 Closure and post-closure care

The new regulations are given below. The Board has added emphasis for discussion purposes.

Section 725.1100 Applicability

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under 35 Ill. Adm. Code 725.1101. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in 35 Ill. Adm. Code 728.102 provided that the unit:

(Emphasis added)

In light of the fact these are HSWA driven regulations which became effective upon adoption of the Federal rule, the Board believes the USEPA intended these subsections to be time specific. The Board proposed to adopt the Section 725.1100 introductory language as given to maintain correlation with the Federal regulations in the event there are potential State enforcement responsibilities after the State takes over primary enforcement authority.

USEPA commented that, in light of the fact that February 18, 1993, has come and gone, it "would make more sense for the Board to change this language to ...'The Federal regulations became effective on February 18, 1993, although owners and operators were entitled to notify USEPA...'" (Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993). The Board will adopt the regulations as "These provisions became effective on February 18, 1993~~, although the owner or operator may notify the USEPA of his intent to be bound by this subpart at an earlier time~~" The Board believes this approach will maintain correlation with the Federal regulations and express USEPA's intent. As per Board practice, the Board will change "Regional Administrator" to "USEPA" (see the discussion at the end of this opinion on Agency or Board actions).

The regulations continue:

Section 724.1100

a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation including the movement of heavy equipment within the unit and contact of such equipment within the unit and contact of such equipment with containment walls;

The Board has restructured the above subsection for clarity, as follows:

a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to

prevent failure due to:

1) pressure gradients;

2) settlement, compression, or uplift;

3) physical contact with the hazardous wastes to which they are exposed;

4) climatic conditions; or

5) the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

The Board solicited comment as to whether this restructuring properly reflected the intended meaning of the provision. USEPA commented that this interpretation did reflect the intended meaning so long as the word "or" appears after subsection 4. Therefore, the Board has adopted the provisions as shown above.

The regulations continue:

Section 724.1100

c) If the unit is used to manage liquids, has:

The Board has restructured, for clarity the above subsection as follows:

c) If used to manage liquids, the unit has:

The Board solicited comment on this matter. The Board received no public comments on this provision, therefore, the Board has adopted the above provision as proposed.

The regulations continue:

3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Section 725.1101(b)(4);

The Board proposed to replace "possible" with "practicable." Practicable is used elsewhere throughout 725.Subpart DD and

724.Subpart DD (see 724.1100(a)(3); 724.1101(b)(3); 725.1101(b)(2)(B); and 725.1101(b)(3)). The Board was uncertain as to whether it is USEPA's intention to give this subsection a separate and discrete meaning by use of the word "possible" where "practicable" has been used elsewhere. The Board concluded that it is merely a drafting error. Therefore, in order to avoid the implication that a separate meaning is intended, the Board proposed to replace "possible" with "practicable." The Board solicited comment on this matter. USEPA commented that the Board's analysis was probably correct. However, USEPA believes that replacing "possible" with "practicable" creates a less stringent regulation. Therefore, USEPA suggests that the Board forgo making the substitution until the Federal rules are changed. The Board agrees with that suggestion.

The regulations continue:

Section 724.1100

d) Has controls as needed to permit fugitive dust emissions; and

The word "permit" in the above subsection is certainly an error. The Board has revised the above subsection, using the language in the corresponding Part 724 subsection, as follows:

d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in Section 725.1101(c)(1)(D); and

The Board solicited comment on this matter. USEPA suggested that the Board either insert the word "prevent" in lieu of the error, thereby leaving the regulation as a general prohibition on fugitive dust emissions; or use the following more stringent language:

d) Has controls sufficient to permit fugitive dust emissions to meet the no visible emission standard in Section 725.1101(c)(1)(D); and

The Board believes USEPA's suggested language is appropriate given that it corresponds with 724.1100. Therefore, the Board will adopt the second option offered by USEPA.

The regulations continue:

Section 725.1101 Design and operating standards

a) All containment buildings must comply with the following design and operating standards:

The Board has added "and operating" to the above subsection

because 725.1101(a)(3) is more correctly an operating requirement as opposed to a design requirement.

The regulations continue:

Section 725.1101

a)

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b) below, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute [ACI] and the American Society of Testing Materials [ASTM] in judging the structural integrity requirements of this Section. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(Emphasis added)

The Board proposed to revise the above underlined language as follows:

> The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute [ACI] and the American Society of Testing Materials [ASTM].

The Board believes that this approach creates an affirmative

duty on the owners or operators. The Board solicited comment on this matter.

USEPA commented that this change would have the effect of making the Illinois regulation more stringent and that USEPA would have no objection to that change. The Board does not conclude that, by placing an affirmative duty on the owner or operator to comply with standards acceptable to the USEPA, the requirement is thereby made more stringent. Therefore, the Board will make the change as proposed.

The regulations continue:

Section 725.1101

a)

3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

The Board believes the above subsection is an operating requirement, and as discussed above, has revised 725.1101(a) to reflect this.

The regulations continue:

Section 725.1101

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient

> strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 725.293(d)(1). In addition, the containment building must meet the requirements of Section 725.193(b) and (c) to be considered an acceptable secondary containment system for a tank.)

(Emphasis added)

The Board has eliminated "considered" from the above subsection.

The regulations continue (section (b) is repeated for clarity):

Section 725.1101

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

4) For existing units other than 90-day generator units, the Regional Administrator may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subpart. In making this demonstration, the owner or operator must:

A) Provide written notice to the Regional Administrator of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;

B) Respond to any comments from the Regional Administrator on these plans within 30 days; and

C) Fulfill the terms of the revised plans, if

such plans are approved by the Regional Administrator.

(Emphasis added)

This subsection raised uncertainty as to the State's enforcement responsibility. Given that the prescribed deadline was prior to State adoption, plans could have only been submitted to USEPA. However, because there are no decision deadlines, it is uncertain what the status of the plan would have been at the point the State gains authorization. Moreover, there are no criteria given for plan approval or appeal. The Board solicited comment as to what enforcement responsibility is placed on the State by this provision and the Board further solicited comment as to whether this subsection is appropriately adopted by the States at all.

USEPA commented:

> In Sections 724.1101(b)(4) and 725.1101(b)(4), U.S. EPA allowed the owner or operator of an existing containment building to apply for a delay in implementing the secondary containment requirement for up to two years. Such owner/operators were required to submit written notice to the Regional Administrator of such a request by November 16, 1992 and, in this notification, describe operating practices and plans for retrofitting the unit with secondary containment. No criteria are provided by which the Regional Administrator determines whether the owner or operator's unit is in substantial compliance with the standards of the regulation such that a two year delay is justified.
>
> * * *
>
> We have checked with the RCRA Permitting Section and they have informed us that no applications for the two year extension period were received in Region V. Accordingly, the issue of the effect of this regulation upon State enforcement responsibility is moot.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Therefore, the Board will adopt these subsections as they are to maintain correlation with the Federal regulations. The Board will replace "Regional Administrator" with "USEPA" to conform with past Board practice (see the discussion at the end of this opinion on Agency or Board actions).

In addition, the Board alerts readers that the corresponding section in 724.1101 takes a similar approach.

The regulations continue:

Section 725.1101

c) Owners or operators of all containment buildings must;

1) Use controls and practice to ensure containment of the hazardous waste within the unit; and, at a minimum:

D) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, Appendix A, Method 22 - Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR part 60 subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

(Emphasis added)

The underlined language does not appear in the above section but did appear in the corresponding section in Part 724. The Board inserted the language to aid owners or operators.

The regulations continue:

Section 725.1101

c) Owners or operators of all containment buildings must:

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly, in accordance with the following procedures.

A) Upon detection of a condition that has lead to a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(Emphasis added)

The above language is underlined to emphasize the lack of clarity of the above sections. The Board has revised the above section as follows:

c) Owners or operators of all containment buildings must:

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly~~, in accordance with the following procedures~~. In addition however:

A) Upon detection of a condition that has caused ~~lead to~~ a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

The regulations continue (as amended above):

Section 725.1101

c) Owners or operators of all containment buildings must:

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly. In addition however:

A) Upon detection of a condition that has caused a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system,and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within 7 days after the discovery of the

condition, notify the Regional Administrator in writing of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

B) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

C) Upon completing all repairs and cleanup the owner and operator must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv) above.

(Emphasis added)

In above subsection (iv), the Board has added the requirement that the notification be in writing.

The Board has determined that this section comes under the Agency's power to seal, pursuant to Section 34 of the Act, because the regulation gives the Agency only the power to determine whether the unit must be taken out of service. It does not give the Agency the power to approve or disapprove the cleanup plan or to determine whether the owner or operator is in compliance with the plan. Under Section 34(d) the owner or operator may appeal the Agency's decision to seal the unit to members of the Board or seek injunctive relief. The Board rejected other approaches because of the fact that it is a "cease operations" determination, of which any appeal should be resolved quickly. The Board solicits comment on this matter.

The Board has replaced "Regional Administrator" with "Agency" in all instances above. The Board solicited comment on this matter and received none.

The regulations continue:

Section 725.1101

e) Notwithstanding any other provision of this subpart the Regional Administrator may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Emphasis added)

The Board interprets the above section as an adjusted standard provision. Where the regulations require a "waiver" the Board typically concludes that it is an adjusted standard procedure. The Board directs readers to the discussion concerning the corresponding section in Part 724, where the Board discussed whether handling as that section permit condition would be appropriate. The Board concludes, that because Part 725 owners and operators do not work under a permit, the permit condition approach was not available here. However, this approach arguably creates a procedurally inconsistency by treating corresponding sections in Part 724 and Part 725 differently.

Moreover, the Board notes that the above section refers to "permitted" units. This suggests to the Board that the above section may have possibility been included in part 725 by accident. The Board solicits comment as to whether this section should be eliminated from Part 725.

The Board has adopted the above section as revised:

e) Notwithstanding any other provision of this subpart, the owner or operator may seek relief from the secondary containment, by petitioning the Board for an adjusted standard pursuant to Section 28.1 of the Act, by demonstrating to the Board that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

The Board solicited comment on this matter and received none.

PART 726: STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTE AND SPECIFIC TYPES OF HAZARDOUS WASTE

MANAGEMENT FACILITIES

726.Subpart E

726.Subpart E is derived from 40 CFR 276.Subpart E and was deleted in its entirety at 57 Fed. Reg. 41612, on September 10, 1992. 726.Subpart E is deleted and is replaced by new Part 739 [279]. USEPA stated no objection to Part 726 except for two typographical comments.

Section 726.200

Section 726.200 is derived from 40 CFR 266.100, which was amended at 57 Fed. Reg. 38564, on August 25, 1992. This amendment adds subsection (f) to the sections listed in section (a) The Board has previously made this change and takes no action today. The Section was further amended at 57 Fed. Reg. 41612, on September 10, 1992. This amendment requires used oil that is burned for energy and which exhibits a characteristic of waste to be regulated by Part 739.

Section 726.201

Section 726.201 is derived from 40 CFR 266.101, which was amended at 57 Fed. Reg. 38564, on August 25, 1992. The provisions which regulate management prior to burning for storage facilities that come under the small quantity burner exemptions are amended.

Section 726.203

Section 726.203 is derived from 40 CFR 266.103, which was amended at 57 Fed. Reg. 38564-65, on August 25, 1992 and at 57 Fed. Reg. 45000-01, on September 30, 1992. Section 726.203(b) incorporates 40 CFR 266.103(b) by reference. Section 726.203(c)(1) is revised to allow an owner or operator to establish limits on the listed parameters based on operations during the compliance test or as otherwise specified. Subsection 726.203(c)(1)(B)(i) is revised so that it becomes Subsection 726.203(c)(1)(B)(ii).

Because the Board has restructured this section in the past to allow for various Code restrictions, it is difficult to compare the State section to its Federal equivalent. The Board has added the following Board Note after 726.203(c)(1)(B)(1): BOARD NOTE: Federal subsections 266.103(c)(1)(ii)(A)(1) and (2) are condensed into the above subsection. The Board solicited comment as to whether the Federal amendments were correctly incorporated into the State section. The Board received a typographical comment from USEPA and no other comments.

In prior rulemakings, the Board moved the information

contained in 726.203(c)(7)(B) to 35 Ill. Adm. Code 726.219. The Board continues this practice by moving today's amendment to 724.203(c)(7)(B) to 726.219 as well. In addition, the reference to 726.203(c)(7)(B) in 724.203(c)(5) is amended to reflect the arrangement.

726.203(c)(5) is amended by as follows:

> 5) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the HC controls provided by Sections 726.204(c) or subsection (a)(5)(A)(iv), above, a conditioned gas monitoring system may be used in conformance with specifications provided in Appendix I ("eye") provided that the owner or operator submits a certification of compliance without using extensions of time provided by (c)(7) below. <u>However, owners or operators of facilities electing to comply with the alternative hydrocarbon provision of Section 726.204(f) and requesting a variance for a time extension pursuant to Section (c)(7)(B) may establish the baseline HC level and comply with the interim HC limit established by the time extension using a conditioned gas monitoring system if the Board determines that the owner or operator has also demonstrated a good faith effort to operate a heated monitoring system but found it to be impracticable.</u>

Readers are again alerted that the State correlation to the 40 CFR 266.103(c)(7)(ii)(B) (time extension provisions) is at Section 726.219 (Extension of Time). The Board has replaced "Regional Administrator" with "Board". The Board has determined the power to grant time extensions pursuant to this amendment lies with the Board as part of its existing power to grant extensions pursuant to Section 726.219. The Board solicited comment on this matter and received none.

In addition, the Board has added the word "also" in the last clause as follows: "...that the owner or operator has <u>also</u> demonstrated a good faith effort to operate a heated monitoring system but found it to be impracticable." The Board has added "also" because it believes the amendment as worded would replace all the existing showing requirements contained in 726.219 with a demonstration of good faith. The Board believes USEPA intended that the good faith showing is required in addition to the other showings.

Lastly, at 57 Fed. Reg. 44999, the USEPA corrected an administrative error which could have led to some confusion as to

what sections in 726.203 remained in effect. All section remain in effect. The Board appreciates the clarification.

Section 726.204

Section 726.204 is derived from 40 CFR 266.104, which was amended at 57 Fed. Reg. 38565, on August 25, 1992. This Section is amended to add demonstrations which must be made by the owner or operator. The baseline HC level is redefined and the method for determining the baseline CO level is identified.

Section 726.206

Section 726.206 is derived from 40 CFR 266.106, which was amended at 57 Fed. Reg. 38565-66, on August 25, 1992. Section 726.206(b)(7) is revised to require owners or operators of facilities not eligible for screening limits to comply with either Tier III standards or with the adjusted Tier I feed rate screening limits. Section 726.206(d) is revised to state that the requirements of that subsection apply, with exceptions, to facilities that comply with the Tier III standards or with the adjusted Tier I controls. The section is further revised to identify how compliance with those standards must be demonstrated. In addition, the section is revised to exempt facilities complying with Tier I controls from emissions testing requirement.

The amendment also appears to correct typographical changes in the equation that appears at 726.206(d). The Board has already corrected the errors. The Board solicited comment as to whether the amendment was intended to correct typographical errors only or whether substantive changes were intended. The Board received no comments on this matter.

Section 726.207

Section 726.207 is derived from 40 CFR 266.107, which was amended at 57 Fed. Reg. 38566, on August 25, 1992. Section 726.207(a) is revised to add subsection (e), adjusted Tier I feed rate screening limits, to the sections providing controls.

Section 726.208

Section 726.208 is derived from 40 CFR 266.108, which was amended at 57 Fed. Reg. 38566, on August 25, 1992. Typographical changes to the equation implementing quantity limits found in Section 726.208(c), are corrected. The Board has already corrected these errors. The Board solicited comment as to whether the amendment was intended to correct typographical errors only or whether substantive changes were intended and received none.

Section 726.212

Section 726.212 is derived from 40 CFR 266.112, which was amended at 57 Fed. Reg. 38566, on August 25, 1992. Section 726.212(b)(2)(1) is revised to add to level of detection as an upper limit on the concentration of each nonmetal toxic constituent.

Section 726.219

As discussed above at Section 726.203, this section is amended by the changes made to 40 CFR 266.103(c)(7)(ii).

Section 726.Appendix I

Section 726.Appendix I is derived from 40 CFR 266.Appendix IX, which was amended at 57 Fed. Reg. 38566, on August 25, 1992 and at 57 Fed. Reg. 44999-45000, on September 30, 1992. The state rules incorporate the federal rules by reference.

PART 728: LAND DISPOSAL RESTRICTIONS

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 728.101(e)(4) as follows:

e) The following hazardous wastes are not subject to any provision of this Part:

4) De minimis losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), or corrosive (D002), and that contain underlying hazardous constituents as defined in Section 728.102 of this Part, are not considered to be prohibited wastes. De minimis is defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purging; and relief device discharges.

5) Land disposal prohibitions do not apply to laboratory wastes displaying the characteristic of ignitable and corrosive laboratory wastes containing underlying hazardous constituents from laboratory operations, that are mixed with other plant wastewaters at facilities whose ultimate

> discharge is subject to regulations under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headwork does not exceed one percent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one part per million in the facility's headwork.

Section 728.102

Section 728.102 is derived from 40 CFR 268.2, which was amended at 57 Fed. Reg. 37270, on August 18, 1992. The definitions for "Debris" and "Hazardous Debris" are added. It is unclear whether the intent of this amendment was to replace "Inorganic Solid Debris" in the definitions section with "Debris". The Board has not deleted the definition for "Inorganic Hazardous Debris".

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 728.102 as follows:

> "Underlying hazardous constituent" means any regulated constituent present at levels above the F039 constituent-specific treatment standard at the point of generation of the hazardous waste.

Section 728.105

Section 728.105 is derived from 40 CFR 268.5, which was amended at 57 Fed. Reg. 37270, on August 18, 1992. This Section concerns the procedures for case-by-case extensions to an effective date. The state rule incorporates the federal rule by reference.

Section 728.107

Section 728.107 is derived from 40 CFR 268.7, which was amended at 57 Fed. Reg. 37270-71, on August 18, 1992. The record keeping, notification and certification requirements for hazardous debris are revised and exemptions are provided.

The Federal Register indicates that 40 CFR 268.7(a)(1)(iii) [728.107(a)(1)(C)] is amended to eliminate the "and" at the end of the subsection.

The Federal Register contains a typographical error at (a)(2). The Board believed 261.3(e)(2) should have been 261.3(d)(2). This error also appeared at 728.103(b)(4) and (5),

728.103(d), 728.103(d)(1)(C), and 728.103(d)(2) and (3). The Board proposed to replace 728.103(e) with 728.103(d) throughout. The Board solicited comment on this matter. USEPA responded that:

> The Board is correct in its assumption that the reference to Section 261.3(e) is an error. However, the Board's proposed substitute is also incorrect. According to the RCRA Hotline, the correct substitution for references to Section 261.3(e) is new regulation Section 261.3(f)(2) [728.103(f)(2)]. This provision is the new "contained-in" policy, which allows the Regional Administrator to make case-by-case hazardousness determinations.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

The Board notes that a typographical error probably appears in the comment and that the correct State Section is 721.103(f)(3). The Board will amend the regulations as proposed except that Section 721.103(f)(3) will be substituted for 721.103(d)(2).

Section 728.107(a)(2) refers to debris that "the Director has determined does not contain hazardous waste." The Board understands this to mean a delisted waste. Therefore, the Board proposes to replace "Generators of hazardous debris that is excluded from the definition of hazardous waste under Section 261.3(d)(2) (i.e. debris that the Director has determined does not contain hazardous waste)" with "Generators of hazardous debris that is excluded from the definition of hazardous waste under 35 Ill. Adm. Code 721.103(c), 35 Ill. Adm. Code 721.103(d)(2) and 35 Ill. Adm. Code 720.122 (i.e. debris that is delisted)". The Board uses this same reasoning for similar language in 728. 103(b)(4) and (5), and 728.103(d). The Board solicited comment on this matter and received none.

Subsection (d) is added to address generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under 721.103. Subsection (d)(1) contains a one time notification requirement. The federal rules require this notice to be given to the Director or authorized state. The Board concludes that notice in this instance should be made to the Agency.

The Board solicited comment on this matter and received none.

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 728.107(a), (a)(1)(B) and (b)(4)(B) as follows:

Section 728.107 Waste Analysis and Recordkeeping

~~a) Except as specified in Section 728.132 or 728.143, the generator shall test the generator's waste, or test an extract developed using the test method described in Section 728.Appendix A, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part.~~

a) Except as specified in Section 728.132, where a generator's waste is listed in 35 Ill. Adm. Code 721.Subpart D, the generator shall test his waste, or test an extract using the test method described in 35 Ill. Adm. Code 721.Appendix B, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in Section 728.132, if a generator's waste exhibits one or more of the characteristics set out at 35 Ill. Adm. Code 721.Subpart C, the generator must test an extract using the test method described in 40 C.F.R. 268.Appendix IX (Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (SW-846, Method 1310A)) as incorporated by reference in 35 Ill. Adm. Code 720.111, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. If the generator determines that his waste displays the characteristic of ignitibility (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of Section 728.Table C of this Part), or the characteristic or corrosivity (D002), and is prohibited under Section 728.137, the generator must determine what underlying hazardous constituents (as defined in Section 728.102 of this Part), are reasonably expected to be present in the D001 or D002 waste.

1) If a generator determines that the generator is managing a restricted waste under this Part and determines that the waste does not meet the applicable treatment standards set forth in Subpart D of this Part or exceeds the applicable prohibition levels set forth in Section 728.132 or 728.139, with each shipment of waste the generator shall notify the treatment or storage facility in writing of the appropriate treatment standard set forth in Subpart D of this Part and any applicable prohibition levels set forth in Section 728.132 or 728.139. The notice must include the following information:

A) USEPA Hazardous Waste Number;

B) The corresponding treatment standards for wastes F001-F005, F039, ~~and~~ wastes prohibited pursuant to Section 728.132 or Section 3004(d) of the Resource Conservation and Recovery Act, referenced in Section 728.139, and for underlying hazardous constituents (as defined in Section 728.102 of this Part), in D001 and D002 wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in Section 728.102(f)) or nonwastewater (as defined in Section 728.102(d)) category, the applicable subcategory made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the Section(s) and subsections(s) where the applicable treatment standard appears. ~~Treatment standards for all other restricted wastes must either be referenced as above, or by including on the notification the subcategory of the waste, the treatability group(s) of the waste(s), and the Section and subsection where the treatment standards appear~~. Where the applicable treatment standards are expressed as specified technologies in Section 728.142, the applicable five-letter treatment code found in Table C (e.g., INCIN, WETOX) also must be listed on the notification.

b) Treatment facilities shall test their wastes according to the frequency specified in their waste analysis plans as required by 35 Ill. Adm. Code 724.113 or 725.113. Such testing must be performed as provided in subsections (b)(1), (b)(2) and (b)(3).

4) A notice must be sent with each waste shipment to the land disposal facility which includes the following information, except that debris excluded from the definition of the hazardous waste under 35 Ill. Adm. Code 721.103(d) (i.e., debris treated by an extraction or destruction technology provided by Section 728.Table F, and debris that is delisted) is subject to the notification and certification requirements of subsection (d) below rather than these notification requirements:

A) USEPA Hazardous Waste Number;

B) The corresponding treatment standards for wastes F001-F005, F039, ~~and~~ wastes prohibited pursuant to Section 728.132 or Section

3004(d) of the Resource Conservation and Recovery Act, referenced in Section 728.139, and for underlying hazardous constituents (as defined in Section 728.102 of this Part), in D001 and D002 wastes if those wastes are prohibited under Section 728.137 of this Part. Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in Section 728.102(f)) or nonwastewater (as defined in Section 728.102(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the Section(s) and subsection(s) where the applicable treatment standard appears. ~~Treatment standards for all other restricted wastes must either be referenced as above, or by including on the notification the subcategory of the waste, the treatability group(s) of the waste(s), and the Section and subsection where the treatment standards appear.~~ Where the applicable treatment standards are expressed as specified technologies in Section 728.142, the applicable five-letter treatment code found in Table C (e.g., INCIN, WETOX) also must be listed on the notification.

Section 728.109

Section 728.109 is derived from 40 CFR 268.9, which was amended at 57 Fed. Reg. 37271, on August 18, 1992. The notification and certification requirement for a waste which is no longer hazardous is revised.

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 728.109(a) follows:

Section 728.109 Special Rules for Characteristic Wastes

a) The initial generator of a solid waste shall determine each waste code applicable to the waste in order to determine the applicable treatment standards under Subpart D of this Part. For purposes of 35 Ill. Adm. Code 728, the waste will carry a waste code designation for any applicable listing under 35 Ill. Adm. Code 721.Subpart D, and also one or more waste code designations under 35 Ill. Adm. Code 721.Subpart C where the waste exhibits the relevant characteristic,

except in the case when the treatment standard for the waste code listed in 35 Ill. Adm. Code 721.Subpart D operates in lieu of the standard for the waste code under 35 Ill. Adm. Code 721.Subpart C, as specified in subsection (b) below. If the generator determines that his waste displays the characteristic of ignitibility (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of 728.Table C of this Part) are reasonably expected to be present in the D001 or D002 waste.

Section 728.114 Surface Impoundment Exceptions

Section 728.114 is derived from 40 CFR 268.14, which was added at 57 Fed. Reg. 37271, on August 18, 1992. This section allows a newly identified or listed waste under RCRA section 3001 that is stored in a surface impoundment, to continue to be stored there for 48 months, provided the impoundment is in compliance with 35 Ill. Adm. Code 725.Subpart F. In addition, a similar regulation is adopted for the treatment of a newly identified or listed waste under RCRA section 3001.

Section 728.135

Section 728.135 is derived from 40 CFR 268.35, which was amended at 57 Fed. Reg. 47776, on October 20, 1992. This amends land disposal regulations.

Section 728.136 Waste Specific Prohibitions -- Newly Listed Wastes

Section 728.136 is derived from 40 CFR 268.36, which was added at 57 Fed. Reg. 37271-72, on August 18, 1992. The new section concerns Waste Specific Prohibitions -- Newly Listed Wastes. This section lists wastes which are prohibited from land disposal. The Section also includes exceptions to the prohibitions.

Section 728.137

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is adding 728.137 follows:

Section 728.137 Waste Specific Prohibitions -- Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated

a) Effective August 9, 1993, the wastes specified in 35 Ill. adm. code 721.121 as D001 (and is not in the High

TOC Ignitable Liquids Subcategory), and specified in 35 Ill. Adm. Code 721.122 as D002, that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies.

b) Effective February 10, 1994, the wastes specified in 35 Ill. Adm. Code 721.121 as D001 (and is not in the High TOC Ignitable Liquids Subcategory), and specified in 35 Ill. Adm. Code 721.122 as D002, that are managed in systems defined in 35 Ill.Adm. Code 704 and 730 as Class V injection wells, that do not engage in CWA-equivalent treatment before injection, are prohibited from land disposal.

Section 728.140

Section 728.140 is derived from 40 CFR 268.40, which was amended at 57 Fed. Reg. 37272, on August 18, 1992. This section is revised to regulate hazardous debris.

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board is amending 728.140(b) follows:

Section 728.140 Applicability of Treatment Standards

b) A restricted waste for which a treatment technology is specified under Section 728.142(a) or hazardous debris for which a treatment technology is specified under Section 728.145 may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Agency under the procedures set forth in Section 728.142(b). For waste displaying the characteristic of ignitibility (D001) and reactivity (D003), that are diluted to meet the deactivation treatment standard in Section 728.Tables C and D (DEACT), the treater must comply with the precautionary measures specified in 35 Ill. adm. Code 724.117(b) and 35 Ill. Adm. Code 725.117(b).

Section 728.141

Section 728.141 is derived from 40 CFR 268.41, which was amended at 57 Fed. Reg. 37272-73, on August 18, 1992. This section is revised to clarify the application of treatment standards.

In response to the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above, the Board has amended 728.141 to revise the "Waste code" and the "See also" columns.

Section 728.142

Section 728.142 is derived from 40 CFR 268.42, which was amended at 57 Fed. Reg. 37273, on August 18, 1992. This section is revised to add a number of wastes to the Table of Treatment Standards expressed as specific technologies.

Section 728.142(b) allows any person to submit to the Agency an application demonstrating that an alternative treatment method can achieve a measure of performance equivalent to the specified methods. This section stays essentially the same except it is revised to include hazardous debris.

Section 728.142(d) also remains essentially the same except that it is revised to include hazardous debris.

Section 728.143

Section 728.143 is derived from 40 CFR 268.43, which was amended at 57 Fed. Reg. 37274-77, on August 18, 1992. This section is revised to amend treatment standards for several wastes expressed as waste concentrations.

Section 728.145 Treatment Standards for Hazardous Debris

Section 728.145 is derived from 40 CFR 268.45, which was added at 57 Fed. Reg. 37277-80, on August 18, 1992. This new section concerns treatment standards for hazardous waste.

Section 728.146 Alternative Treatment Standards based on HTMR

Section 728.146 is derived from 40 CFR 268.46, which was added at 57 Fed. Reg. 37280-81, on August 18, 1992. This section is added to provide alternative treatment standards based on HTMR.

Section 728.150

Section 728.150 is derived from 40 CFR 268.50, which was amended at 57 Fed. Reg. 37281, on August 18, 1992. This section concerns prohibitions on storage of restricted wastes and is revised to reference containment buildings.

Section 728.Table B

Section 728.Table B is amended to reflect the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above.

Section 728.Table D

Section 728.Table D is amended to reflect the Federal court decision in Chemical Waste Management 976 F.2d 2 (D.C. Cir. 1992), as discussed above.

Section 728.Appendix B

Section 728.Appendix B is derived from 40 CFR 268.Appendix II, which was amended at 57 Fed. Reg. 37281, on August 18, 1992, and incorporated by reference in the state section.

PART 739 STANDARDS FOR THE MANAGEMENT OF USED OIL

The USEPA has determined that recycled used oil is not hazardous waste if managed according to the standards promulgated in this part. These standards cover used oil generators, transporters, processors and refiners, burners, and marketers. These standards are promulgated under the authority of Section 3014 of RCRA and will be codified in a new Part 739 of the Illinois Administrative Code. New Part 739 is not a HSWA driven rule and therefore becomes effective upon adoption by the State. USEPA has given authorized states until July 1, 1994 to reflect new part 279 [739].

The Board's RCRA identical in substance authority in Section 22.4 of the Act relates to USEPA rules implementing Sections 3001 - 3005 of the federal RCRA Act, a portion of RCRA Subtitle C, which addresses hazardous waste. The Board's UST authority relates to Section 9003.

New Part 40 CFR 279 [739] cites to Sections 1006, 2002, 3001 - 3007, 3010, 3014 and 7004. Since several of these Sections are outside Sections 3001 - 3005, this raises the issue as to whether the Board has authority to adopt new Part 739 in an identical in substance proceeding.

The September 10 Federal Register amends the hazardous waste rules proper, adding references to the new Part 739. If the Board does not adopt new part 739, the hazardous waste rules will reference a non-adopted part. In addition, the preamble to the Federal rule states that all states will be required to revise their programs to address today's rules (57 Fed. Reg. 41604 -05). One approach would be to adopt the portion of the rules which amend the hazardous waste rules proper, but not adopt a state

equivalent to Part 279 [739]. The Board would then cite the federal section wherever Part 279 is referenced in the regulations. The Board originally handled Part 266 in this manner.

However, USEPA has added 40 CFR 271.26, requiring adoption of Part 279 [739] as a Part of the State RCRA program. The legislative findings in Section 21(a)(4) et seq. require us to maintain the RCRA program. Today's proposed rules are adopted in part pursuant to Sections 3001 - 3005 of the RCRA Act, and it would be difficult, if not impossible, to determine what portions of 739 were adopted pursuant to other Sections. Moreover, while Section 22.4 requires the Board to adopt rules derived from certain Sections, it does not prohibit the Board from adopting related rules derived from other Sections. The rules are an essential part of the RCRA program, which the Board is required to adopt to keep the program. In addition, Part 279 is intended to replace Subpart E of Part 726.

We further note that the Board cannot consider the rules in any substantive sense as it would be required to do were it to utilize the procedures of Title VII of the Act instead of the identical in substance rules. Lastly, if the Board does not adopt the new Part, the Board will still have to refer to the Federal equivalents within the State rules, thereby causing the regulated community to conform to a patchwork of regulations. This is a situation the legislature intended to avoid.[3]

Therefore, the Board concludes that it must adopt new Part 739 in an identical in substance proceeding.

The Board notes that new Part 739 supersedes 726.Subpart E. The Board also notes that the New Part 739 is not intended to supersede all existing used oil regulations, given that the new part does not regulate used oil in underground storage tanks.

A note on style. Throughout this Part the federal rules use word combinations such as "accepts/aggregates and stores" and "processor/re-refiner". The Board will to replace the slashes

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[3]For example, Section 20(a) (8) of the Environmental Protection Act states:

a) The General Assembly finds:

8) that it is in the interest of the people of the State of Illinois to authorize such hazardous waste management program and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting state and federal programs.

with commas. In the case of "processor/re-refiner" the Board will use "processor" since "re-refining" is included within the definition of "processing". The Board believes that the meaning remains the same and becomes somewhat clearer. In addition, as per the usual Board custom, the Board replaces "and/or" with "or".

The Board received extensive comments from Safety-Kleen Corporation concerning new Part 739. Safety-Kleen suggests that the new used oil regulations may potentially be used to skirt the current hazardous waste disposal requirements. Specifically, Safety-Kleen believes the new regulations will encourage the mixing of hazardous wastes and used oil. In addition, Safety-Kleen believes the regulations will encourage the burning of used oil contaminated with lead, chlorinated solvents, and benzene in small oil-fired space heaters. Safety-Kleen believes this will result in an unquantifiable amount of hazardous emissions to the ambient air. Safety-Kleen encouraged the Board to prohibit the burning of off-specification used oil is small space heaters, and to require all burners to conduct testing to ensure that chlorinated solvents and metals are not being burned at levels above those included in Section 739.111.

The Board shares Safety-Kleen's concerns. However, under the Board's identical-in-substance mandate, the Board may not adopt regulations that are not identical in substance to the Federal regulations from which the State regulations are derived. Therefore, the Board is unable to adopt Safety-Kleen's proposals as they would result in regulations that are inconsistent with the Federal counterparts. In particular, the Board cannot prohibit the dilution of characteristic hazardous waste into used oils or prohibit the burning of off-specification used oil fuels in small space heaters as both these activities are allowed under the Federal scheme.

Safety-Kleen has also commented on the Shipping and Tracking Requirements and secondary containment at transfer facilities. Safety-Kleen suggests that the tracking provisions of Subpart C (Generator Standards), Subpart E (Transporter Standards) and Subpart F (Processors Standards) do not correspond to existing Illinois regulations. Safety-Kleen believes that used oils that are not regulated as hazardous wastes will be classified as special wastes under existing Illinois regulations. Safety-Kleen states:

> As such, these used oils will be subject to the manifesting regulations of 35 IAC Section 809.501, as well as the new proposed used oil management regulations. In accordance with the "special waste" regulations, used oil generators are required to obtain an Illinois generator Id number and manifest their used oil off-site. Transporters are required to obtain a permit and manifest the used oils to a permitted

special waste facility. Transfer facilities and processing facilities are required to obtain a Special Waste operating Permit and Waste Stream authorization numbers for each type of oil received. None of these provisions are included or referenced in the used oil regulations. In fact, section 739.156 states that processors records "may take the form of a log, invoice, manifest, bill of lading or other shipping documents." Using a invoice or a bill of lading may not be in compliance with the special waste requirements. The IPCB must make clear which tracking requirements apply to used oil shipments.

Safety-Kleen encourages the IPCB to remove the tracking requirements on the proposed used oil management regulations and reference the existing special waste regulations.

Public Comment #3: Safety-Kleen Corporation, Kenneth Snell, Environmental Manager, Oil Division, August 9, 1993.

The Board agrees with Safety-Kleen that the shipping and tracking requirements require correction. The Board agrees that the used oil should be subject to the special waste manifesting regulations. The Board believes that its existing manifest regulations in Part 809 are more stringent than the Federal regulations and thus apply. Therefore, the Board will adopt the regulations to reflect that used oils are subject to special waste manifesting regulations and welcomes post-adoption comment.

Section 739.124 sets forth the conditions for exemptions from the EPA identification requirements for transporting used oil. One of the conditions requires that the volume of used oil transported must be no more than 55 gallons. However, the Board notes that a generator transporting less than 55 gallons may still be subject to the State's special waste hauling permit requirements under 35 Ill. Adm. Code 809. Part 809 regulations exempt only generators who generate a total quantity of 100 kg or less of special waste in any calendar month from hauling permit requirements. Therefore, a generator transporting less than 55 gallons of used oil would be subject to the special waste permit requirements if the weight of the oil exceeds 100 kg.

In order to alert a generator regarding the special waste hauling permit requirements, the Board intends to add a Board Note under Section 739.124. Such a Board note will clarify that even if a generator qualifies for an exemption under Section 739.124, the generator may still be subject to the State's special waste hauling permit requirements under Part 809. The Board believes that the minimum volume of used oil that is greater than a weight of 100 kg, would subject a generator to the special waste hauling requirements under Part 809. The minimum volume of used oil must be determined on the basis of it's specific gravity or by weighing the used oil. For example, if

the used oil were gasoline instead, with a specific gravity of 0.78, then a generator transporting more than 33.8 gallons would be subject to the special waste hauling permit requirements.

Lastly, the Farm Bureau commented that they would like the regulations to include some liability protection provisions. That suggestion is outside the scope of this rulemaking. The Board reminds the Farm Bureau that general rulemaking procedures are available to them should they wish to pursue this matter.

Part 739.Subpart A Definitions

Section 739.100 Definitions.

Section 739.100 is derived from 40 CFR 279.Subpart A, which was adopted at 57 Fed. Reg. 41613, on September 10, 1992. Several of the new definitions are reprinted in full below.

"Aboveground tank" means a tank used to store or process used oil that is not an underground storage tank as defined in 35 Ill. Adm. Code 731.112.

This definition is different from the definition for "Aboveground tank" given in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the main distinction is that the definition for this Part limits the tanks to those used to store or process used oil, whereas the 720.110 definition includes tanks which contain hazardous wastes. The Board has adopted the definition as given above, and adds a Board Note to alert readers that the definition is limited to this Part only. USEPA suggested that if the Board thought appropriate, the Board may want to consider defining the term as "Aboveground Used Oil Tank." The Board has decided to adopt the provision as proposed.

"Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the State in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either

1) A continuous on-site installation program has begun, or

2) The owner or operator has entered into contractual obligations-which cannot be canceled or modified without substantial loss-for installation of the tank to be completed within a reasonable time.

This definition is similar to the definition for "Existing

tank system" in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the definition given above for "existing tank" in this Part limits the tanks to those used to store or process used oil, whereas the 720.110 definition includes existing tank systems which contain hazardous wastes. The Board has adopted the definition as given above, and adds a Board Note to alert readers that the definition is limited to this Part only.

"New tank" means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

This definition is similar to the definition given for "New tank system" given in 35 Ill. Adm. Code 720.110. Although the meanings are similar, the definition given above for "new tank" in this Part limits the tanks to those used to store or process used oil, whereas the 720.110 definition includes new tanks systems which contain hazardous wastes. The Board has adopted the definition as given above, and adds a Board Note to alert readers that the definition is limited to this Part only.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

The Environmental Protection Act defines "used oil" in much the same way as above except that after the above language, the Act adds the following clause: "except that'used oil' shall not include that type of oil generated on farmland property devoted to agricultural use and used on that property for heating or burning." Section 739.120(a)(4) also regulates used oil produced by farmers for their own use. Section 739.120(a)(4) states:

> Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of Part 739.

The Board concluded that there are two classes of used oil generated by farmers regulated by the above provisions: (1) oil which is produced on farms, and is devoted to agricultural use and used on the farm for heating or burning, and is not subject to regulation under the Act; and (2) oil produced by farmers who generate an average of 25 gallons per month or less from vehicles or machinery used on the farm, and is not subject to Part 739. The two provisions arguably govern the same subject matter. The Board notes that we use the definitions as provided in the Federal rules in the identical in substance rulemakings, so as to not change the scope or applicability of the rules. The Board solicited comment on this matter.

USEPA commented as follows:

> Under the Federal regulation there are two classes of farmers: 1) those generating used oil from vehicles or machinery in quantities greater than 25 gallons per month; and 2) those generating used oil from vehicles or machinery in quantities less than or equal to 25 gallons per month. If a farmer generates greater than 25 gallons per month on farmland property devoted to agricultural use and uses the used oil for heating or burning, the farmer's used oil would be subject to 40 C.F.R. 279 (Part 739) regulations.
>
> In addition, the farmland property, not the oil, must be devoted to agricultural use in order to fall within the exemption. The used oil must be used for burning or heating. (emphasis in original)

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Therefore, only oil generated by farmers who generate greater than 25 gallons per month on farmland property devoted to agricultural use and uses the used oil for heating or burning, is subject to 40 C.F.R. 279 (Part 739) regulations.

SUBPART B: APPLICABILITY

Sections 739.110, 739.111, and 739.112 are derived from 40 CFR 279.10, 279.11 and 279.12 respectively, which were adopted at 57 Fed. Reg. 41613-15, on September 10, 1992. This section concerns applicability.

Section 739.110(a) states the presumption that used oil is to be recycled unless it is disposed or arrangements are made for its disposal.

Section 739.110(b) addresses mixtures of used oil and hazardous waste. Mixtures of used oil and a hazardous waste that is listed in subpart D of Part 721 are regulated as hazardous waste, rather than as used oil.

Section 739.110(b)(1)(B) contains the presumption that used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste listed in 35 Ill. Adm. Code 721.subpart D. The subsection provides the way to rebut the presumption. Under specified circumstances, the presumption does not apply to metalworking oils or fluids containing paraffins and used oils contaminated with chlorofluorocarbons.

Section 739.110(b)(2) addresses mixtures of used oil and

characteristic hazardous waste. Mixtures of used oil and hazardous waste that exhibit a hazardous waste characteristic identified in 35 Ill. Adm. Code 721.Subpart C are regulated as a hazardous waste rather than as used oil. Where a mixture does not exhibit a characteristic of hazardous waste or of ignitibility, it is regulated as used oil. Under Section 739.110(b)(3) mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 721.105 are regulated as used waste oil.

Other mixtures regulated as used oil are: used oil with non-hazardous solid wastes (Section 739.110(c)) and most used oil and fuels or other products (Section 739.110(d)). Mixtures of used oil with products are generally subject to regulation as used oil under this Part. Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this Part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 739.Subpart C (Standards for Used Oil Generators).

Under Section 739.110(e)(1), materials reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are not used oil and thus are not subject to this Part, and are not solid wastes and are thus not subject to the hazardous waste regulations of Parts 720 through 726, 726, 720, and 124 as provided in Section 721.3(c)(2)(i).

Under Section 739.110(e)(2), materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this Part.

Under Section 739.110(e)(3), except as provided in subsection (e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are not used oil and thus are not subject to this Part, but are solid wastes and thus are subject to the hazardous waste regulations of Parts 720 through 726, 728, 720, and 705 if the materials are identified as hazardous waste.

Under Section 739.110(e)(4), re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this Part at this time, and not subject to the hazardous waste regulations of Parts 720 through 726, 728, 720, and 705 at this time.

Under Section 739.110(f), wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not

subject to the requirements of Part 739. For purposes of this subsection, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

The above section limits the definition of "de minimis" to that subsection only. The Board solicited comment as to whether "de minimis used oil" has a different meaning in any other Part. USEPA commented that "de minimis" is addressed in 40 C.F.R. 261.3 [721.103] and may be addressed in the new Federal hazardous waste identification rule. Therefore, the Board will not alter the scope of "de minimis" beyond this subpart.

Under Section 739.110(g), used oil that is placed directly into a crude oil or natural gas pipeline is subject to the management standards of Part 739 only prior to the point of introduction to the pipeline. Once the used oil is introduced to the pipeline, the material is not regulated by this Part.

Under Section 739.110(h), used oil produced on vessels from normal shipboard operations is not subject to this Part until it is transported ashore.

Under Section 739.110(i), PCB-containing used oil regulated under Part 721 is exempt from regulation under this Part.

Section 739.110 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is regulated under Section 739.110 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table A[4]. Once used oil that is to be

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[4] Table A appears as follows:

Table A-Used Oil Not exceeding Any Specification Level Is Not Subject to This Part When Burned for Energy Recovery[1]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.

burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with Sections 739.172 (On-specification used oil fuel), 739.173 (Notification), and 739.174(b) (Tracking), the used oil is no longer subject to this Part.

The Board solicited comment as to whether a definition for off-specification used oil should be added to the definitions section.

Table A states "Used oil not exceeding any specification level is not subject to this part when burned for energy recovery". Restated, by eliminating the negatives: Used oil exceeding any specification level is subject to this part when burned for energy recovery. The footnotes after the table state:

> The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see Section 739.110(b)). Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Section 739.110(b)(1). Such used oil is subject to 35 Ill. Adm. Code 726.subpart H rather than this Part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

The Board interpreted the above information in the following manner:

1. Used oil that is to be burned for energy recovery and has been shown <u>not</u> to exceed any specification and the person making that showing complies with Sections 739.172 (On-specification used oil fuel), 739.173 (Notification), and 739.174(b) (Tracking), is no longer subject to this Part.

2. Used oil exceeding any specification level is subject to Part 739 when burned for energy recovery. <u>(See discussion below.)</u>

Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum.[2]

FOOTNOTE: [1] The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see Section 739.110(b)).
FOOTNOTE: [2] Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Section 739.110(b)(1). Such used oil is subject to 35 Ill. Adm. Code 726.subpart H rather than this Part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

3. The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see Section 739.110(b), and therefore these mixtures are subject to 35 Ill. Adm. Code 726.subpart H, rather than this part.

4. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Section 739.110(b)(1), and is there regulated under 35 Ill. Adm. Code 726.subpart H rather than this part.

5. Except, used oil containing more than 1,000 ppm total halogens where the presumption of hazardousness is rebutted under Section 739.110(b)(1) is regulated under Part 739.

The Board solicited comment as to whether these interpretations are correct and generally solicited comments on this matter.

USEPA responded that

> [I]t would be difficult and no more clear to add a definition than to simply keep the footnotes after Table A. Eliminating the negatives in the statement, "Used oil not exceeding any specification level is subject to this part when burned for energy recovery" results in a false statement due to the rebuttable presumption. If a used oil fuel meets the specifications for metals, flash, and total halogens (but exceeds 1,000 parts per million total halogens), then the used oil fuel would be regulated as a hazardous waste. Used oil fuels meeting the metals and flash specifications and having total halogen concentrations between 1,000 ppm and 4,000 may be regulated as either on-specification used oil fuel or hazardous waste, depending on the source of the total halogens and handlers success in rebutting the presumption of the mixture.
>
> The Board listed 5 interpretations... All interpretations are correct except item 2. Used oil exceeding 1,000 ppm total halogens (less than 4,000 ppm specification level) may be regulated as a hazardous waste, depending on the handlers success in rebutting the presumption of the mixture.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Therefore, the Board will not add a definition for off-specification used oil to the definitions section. In addition, the Board notes that item 2, above, "Used oil exceeding any specification level is subject to Part 739 when burned for energy recovery" is incorrect.

Section 739.112 Prohibitions

Section 739.112 addresses various prohibitions on the use of used oil. For instance, under Section 739.112(a) used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Parts 724 or 725. Under Section 739.112(b) the use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in Section 739.182(c). Section 739.182(c), specifies where off-specification used oil fuel may be burned for energy recovery.

SUBPART C-STANDARDS FOR USED OIL GENERATORS

Section 739.120 Applicability.

Sections 739.120, 739.121, 739.122, 739.123, 739.124, 739.121, 739.122, 739.123, and 739.124 are derived from 40 CFR 279.20, 279.21, 279.22, 279.23, 279.24, 279.21, 279.22, 279.23, and 279.24, respectively, which were adopted at 57 Fed. Reg. 41615-16 on September 10, 1992.

Section 739.120 generally applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. However, under Section 739.120(a)(1) Household "do-it-yourselfer" used oil generators are not subject to regulation under this Part. Under Section 739.120(a)(2), vessels at sea or at port are not subject to this subpart. For purposes of this subpart, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this subpart once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of this subpart.

Under Section 739.120(a)(3), mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this Part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this subpart.

Under Section 739.120(a)(4) farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of Part 739.

Under Section 739.120(b)(1) generators who transport used

oil, except under the self-transport provisions of Section 739.124 (a) and (b), must also comply with 739.Subpart E (Standards for used oil transporter and transfer facilities). Under Section 739.120(b)(2), generators who process or re-refine used oil must also comply with 739.Subpart F (Standards for used oil processors and re-refiners). Under Section 739.120(b)(3), generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of Section 739.123, must also comply with 739.Subpart G (Standards for used oil burners who burn off-specification used oil for energy recovery).

Under Section 739.120(b)(4), generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 739.111 must also comply with 739.Subpart H (Standards for used oil fuel marketers). Under Section 739.120(b)(5), generators who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with 739.Subpart I (Standards for use as a dust suppressant and disposal of used oil).

The Board received comments concerning Section 739.120 from Growmark, Inc. a regional agricultural supply and grain marketing cooperative operating in Illinois. Growmark was generally pleased with the proposed regulations but requested that farmers be allowed to generate up to 50 gallons per month without being subject to Part 739 regulations. The Board received a similar comment from the Illinois Farm Bureau, a voluntary non-profit organization whose members include many of the farmers in the State of illinois. The Board appreciates the comments from both Growmark and the Illinois Farm Bureau. However, under the Board's identical-in-substance mandate, the Board may not adopt regulations that are less stringent than the Federal regulations from which the State regulations are derived. Allowing farmers to generate up to 50 gallons before being regulated under part 739 is less stringent than the Federal regulations, and therefore the Board, absent a federal amendment raising the allowable amount to 50 gallons, is unable to adopt such a measure at this time.

Generally under Section 739.121, generators are prohibited from mixing hazardous waste with used oil. The rebuttable presumption for used oil of Section 739.110(b)(1)(B)[5] applies to

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[5] Section 729.110(b)(1)(B) contains the rebuttable presumption that used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste listed in subpart D of Part 721. Under specified circumstances, the presumption does not apply to metalworking oils or fluids containing paraffins and used oils

used oil managed by generators.

Section 739.122 Used oil storage.

As specified in Section 739.110(f), wastewaters containing "de minimis" quantities of used oil are not subject to these proposed regulations, including the prohibition on storage in units other than tanks or containers. Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

Moreover, generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 724 or 725. The containers and aboveground tanks used to store used oil at generator facilities must be good condition. Furthermore, the containers and aboveground tanks, and the fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

Under Section 739.120(b)(5)(d), upon detection of a release of used oil to the environment, a generator must stop the release; contain the released used oil; clean up and manage properly the released used oil and other materials; and if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

Section 739.123 On-site burning in space heaters

Under Section 739.123(a), generators may burn used oil in used oil-fired space heaters where the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators; the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and the combustion gases from the heater are vented to the ambient air.

Section 739.124 Off-site shipments.

Under Section 739.124, except as provided in subsections (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained

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contaminated with chlorofluorocarbons.

EPA identification numbers. However, generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center or an aggregation point under the specified conditions. In addition, used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under "tolling arrangement" as defined by this section.

Section 739.124(a) has the heading "Self-transportation of small amounts to approved collection centers." (emphasis added). The Board received comments concerning Section 739.124 from Growmark, Inc. Growmark requested that farmers be allowed to transport up to 200 gallons per trip without being subject to Part 739 regulations. The Board received a similar comment from the Illinois Farm Bureau. The Board appreciates the comments from both Growmark and the Illinois Farm Bureau. However, under the Board's identical-in-substance mandate, the Board may not adopt regulations that are less stringent than the Federal regulations from which the State regulations are derived. Allowing farmers to transport up to 200 gallons before being regulated under part 739 is less stringent than the Federal regulations, and therefore the Board, absent a federal amendment of its regulations providing for such an allowable level, is unable to adopt such a measure at this time.

The Board solicited comment as to whether the transporter requirement, here and in subsequent provisions, creates a need for further language to adapt it to Illinois' hazardous waste/nonhazardous special waste manifest systems. The Board further solicited comment as to whether these sections contemplated the creation of a permit process.

USEPA commented:

> The Board has requested comments on whether new federal regulations regarding the transportation and collection of used oil contemplate the creation of a permit process. The regulations require that used oil collection centers must be registered, licensed, permitted or recognized by a State, county or municipal government to manage used oil.
>
> Section 3014 of RCRA provides for "permit by rule". This is somewhat like interim status for hazardous wastes and basically means that so long as someone complies with the regulations, they are permitted to conduct the activity. The Administrator may require owners or operators to obtain a permit pursuant to RCRA Section 3005(c) if he determines that an individual permit is necessary to protect human health and the environment. (See Section 3014(d) of RCRA, as amended.)

> We have contacted ... Headquarters about this issue. (They) ... informed us that state and local governments retain some discretion to choose the type and extent of oversight.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

Growmark expressed concern that the regulation was vague and requested clarification as to what level of government would ultimately be responsible for registration or licensing.

In this situation, the Board will allow used oil collection centers to fulfill the above mentioned provision by registering with the Agency through written notification. This written notification must be sufficient to allow the Agency to identify, locate and communicate with the facility. This information must be submitted on forms provided by the Agency. The Board requests comments, particularly from the Agency on this matter during the post-comment period.

SUBPART D-STANDARDS FOR USED OIL COLLECTION CENTERS AND AGGREGATION POINTS

Section 739.130, 739,131, and 739.132 are derived from 40 CFR 279.30, 279.31, and 279.32, respectively, which were adopted at 57 Fed. Reg. 41616, on September 10, 1992.

Section 739.130 Do-it-yourselfer used oil collection centers.

Under Section 739.130, a do-it-yourselfer (DIY) used oil collection centers is any site or facility that accepts or aggregates, and stores used oil collected only from household do-it-yourselfers. Owners or operators of all DIY used oil collection centers must comply with the generator standards in 739.Subpart C (Standards for used oil generators).

Section 739.131 Used oil collection centers.

Under Section 739.131(a), a used oil collection center is any site or facility that accepts or aggregates and stores used oil collected from used oil generators regulated under 739.Subpart C who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Section 739.124(a). Used oil collection centers may also accept used oil from household do-it-yourselfers. Owners or operators of all used oil collection centers must comply with the generator standards in 739.Subpart C; and must be registered, by the Agency to manage used oil.

Section 739.132 Used oil aggregation points owned by the

generator.

Section 739.132 defines used oil aggregation point as any site or facility that accepts, aggregates or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of Section 739.124(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers. Owners or operators of all used oil aggregation points must comply with the generator standards in 739.Subpart C.

SUBPART E-STANDARDS FOR USED OIL TRANSPORTER AND TRANSFER FACILITIES

Sections 739.140, 739.141, 739.142, 739.143, 739.144, 739.145, 739.146, and 739.147 are derived from 40 CFR 279.40, 279.41, 279.42, 279.43, 279.44, 279.45, 279.46 and 279.47, respectively, which were adopted at 57 Fed. Reg. 41616-41619, on September 10, 1992.

Section 739.140 Applicability.

Section 739.140 defines used oil transporters as persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities. This section does not apply to: on-site transportation; generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in 739.124(a) and (b); transportation of used oil generated by household do-it-yourselfers from the initial generator to a regulated used oil generator, collection center, aggregation point, processor or burner subject to the requirements Part 739. Except as provided in subsections (a)(1) through (a)(3) of this section, this subpart does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States.

Unless trucks previously used to transport hazardous waste are emptied as described in 35 Ill. Adm. Code 721.107 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous

waste unless, under Section 739.110(b), the mixture is determined not to be hazardous waste.

Section 739.140(d) provides other, miscellaneous provisions applicable to transporters. In addition, the Board has corrected a typographical error that appeared in the Federal regulations.

Section 739.141 Restrictions on transporters who are not also processors

Section 739.141 places restrictions on transporters who are not also processors or re-refiners. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in subsection (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors in 739.Subpart F. In addition, transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in 739.Subpart F.

Section 739.142 Notification.

Section 739.142(a) requires used oil transporters to obtain an EPA identification number and explains the EPA number application process.

Section 739.143 Used oil transportation.

Section 739.143(a) regulates where a used oil transporter may deliver used oil to. Section 739.143(b) regulates the shipping of used oil and Section 739.143(c) regulates used oil discharges. The Board interprets this section to mean that the transportation of more than 55 gallons of used oil is not regulated if it is being delivered to a Do-It-Yourself collection center, a collection center, or an aggregation point. The Board solicited comment on this interpretation.

USEPA believes that interpretation is incorrect. They state:

> Section 739.140 of Illinois' proposed regulations specifies that the regulations are not applicable to generators who transport no more than 55 gallons of used oil to a used oil collection point, or to an aggregation point owned by the same generator. The key point is <u>who</u> is doing the transporting. If the transporter is not the generator, or if the transporter is not transporting do-it-yourselfer used oil, then the transporter is subject to regulation, even if he or she is transporting no more than 55 gallons os used

oil.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

The Board agrees with USEPA's interpretation and will adopt the regulation as proposed.

Section 739.144 Rebuttable presumption for used oil.

Section 739.144 regulates the manner in which a used oil transporter must determine the total halogen content of used oil being transported or stored at a transfer facility. Section 739.144(c) provides the method by which an owner or operator may rebut the presumption the used oil is hazardous where it contains greater than or equal to 1,000 ppm total halogens.

Section 739.144(d) requires records of analyses conducted or information used to comply with subsections (a), (b), and (c) of this section be maintained by the transporter for at least 3 years.

Section 739.144 states in part:

Section 739.144 Rebuttable presumption for used oil.

a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of 739.110(b)(1)(ii), the used oil transporter must determine whether the total halogen content of used oil being transporter or stored at a transfer facility is above or below 1,000 ppm.

b) The transporter must make this determination by:

1) Testing the used oil; or

2) <u>Applying knowledge of the halogen content of the used oil in light of the materials or processes used</u>.

(emphasis added)

The Board is concerned that the above test does not appear to require the transporter to possess any level of expertise or background when determining the halogen content of the used oil. Simply put, the above subsection may be interpreted that a transporter with no technical background in materials or processes would be allowed to determine whether the oil does contains more than 1,000 halogens ppm based on his own knowledge and experience.

This issue arises again in Section 739.163 (regulating

burners of used oil) and Section 739.153 (regulating processors). The issue in Section 739.153 is mitigated by Section 739.155 which requires processors to state the basis of their knowledge.

The Board solicited comment on this matter. USEPA replied:

> The Board notes that the test does not require that the transporter possess any level of expertise or background when determining the halogen content of the used oil... This is a legitimate concern that also appears in Sections 722.111(c) of the Illinois' rules and 40 C.F.R. 262.11(c) ... Note that the requirements are fundamentally alike. The U.S. EPA decided not to establish a more rigorous management standard for used oil than for hazardous waste. In an enforcement situation, the inspector may not find the determination acceptable and might allege that an inadequate determination did not rebut the presumption.

Public Comment #8; USEPA, Region Five, Draft of comments concerning R93-4, August 24, 1993.

The Board believes that USEPA's comments contain a warning to potential transporters that an inadequate determination will not rebut the presumption. The Board will adopt the regulation as proposed in this identical in substance situation..

Section 739.145 Used oil storage at transfer facilities.

As specified in Section 739.110(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of Part 739, including the prohibition on storage in units other than tanks or containers. Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (35 Ill. Adm. Codes 730 and 731) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

Section 739.145(a) defines used oil transfer facilities as transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under 739.Subpart F. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under 35 Ill. Adm. Code 724 or 35 Ill. Adm. Code 725.

Section 739.145(c) requires containers and aboveground tanks

used to store used oil at transfer facilities to be in good condition.

Section 739.145(d) regulates secondary containment for containers, Section 739.145(e) regulates secondary containment for existing aboveground tanks and Section 739.145(f) regulates secondary containment for new aboveground tanks. Section 739.145(g) specifies labeling requirements.

Safety-Kleen commented that the Board should include a new paragraph 739.145(d)(1)(C) to reflect a correction made to Federal regulations by USEPA. The Board notes that this amendment appeared in the Federal register on June 17, 1993, which would normally fall in the next update period. The Board intends to make this change in the next update.

Section 739.145(h) provides the clean-up steps an owner or operator of a transfer facility must perform in response to releases.

Section 739.146 Tracking.

Section 739.146 requires used oil transporters to keep a record of each used oil shipment accepted for transport and each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor, or disposal facility. In addition, used oil transporters must also maintain the records described in subsections (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

Section 739.147 Management of residues.

Section 739.147 requires transporters who generate residues from the storage or transport of used oil to manage the residues as specified in Section 739.110(e).

SUBPART F-STANDARDS FOR USED OIL PROCESSORS AND RE-REFINERS

Sections 739.150, 739.151, 739.153, 739.154, 739.155, 739.156, 739.157, 739.158 and 739.159 are derived from 40 CFR 279.51, 279.52, 279.53, 279.54, 279.55, 279.56, 279.57, 279.58, and 279.59 respectively, which were adopted at 57 Fed. Reg. 41619-23, on September 10, 1992.

Section 739.150 Applicability.

Section 739.150(a) defines "processing" as chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is

not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

The requirements of this Section 739.150 do not apply to transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in Section 739.141; or burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in Section 739.161(b).

Under Section 739.150(b) processors or re-refiners who generate used oil must also comply with 739.Subpart C; processors who transport used oil must also comply with 739.Subpart E; and processors who burn off-specification used oil for energy recovery must also comply with 739.Subpart G, except as provided in subsections (b)(3)(A) and (b)(3)(B) of this section. Processor or re-refiners burning used oil for energy recovery are not subject to 739.Subpart G where the used oil is burned in an on-site space heater that meets the requirements of Section 739.123; or the used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

Section 739.150(4) and (5) provide additional compliance requirements.

Section 739.151 Notification.

Section 739.151(a) and (b) require used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA section 3010 to comply with these requirements and obtain an EPA identification number and provides the mechanics of notification.

Section 739.152 General facility standards.

Section 739.152(a) provides preparedness and prevention standards including maintenance and operation of facility, required equipment, alarm systems, fire control equipment, water spray systems, testing and maintenance of equipment, alarm system, required aisle space, arrangements with local authorities, contingency plan and emergency procedures, named emergency coordinator, and emergency procedures. The emergency coordinator's responsibilities are fully spelled out in subsection (b)(6). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

Section 739.153 Rebuttable presumption for used oil.

Section 739.153(a) requires the owner or operator of a used oil processing facility to determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm to ascertain whether the used oil at the facility is hazardous. Section 739.153(b) provides the method by which that determination is to be made.

Under Section 739.153(c), where the oil is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 35 Ill. Adm. Code 721.Subpart D, the owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste.

The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils or fluids or to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation.

Section 739.154 Used oil management.

This Section regulates the managements of units and secondary containment systems, response to releases, and closure requirements.

Section 739.155 Analysis plan.

Owners or operators of used oil processing facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section 739.153 and, if applicable, Section 739.172. The owner or operator must keep the plan at the facility. As specified in this section, the plan varies according to whether the rebuttable presumption for used oil applies or whether off-specification used oil is involved.

Section 739.156 Tracking.

Section 739.156 requires used oil processors to keep a record of each used oil shipment accepted for processing, and a record of each shipment of used oil that is shipped to a used oil burner, processor or re-refiner, or disposal facility. Record requirements are included in this section.

Section 739.157 Operating record and reporting.

Section 739.157 requires the owner or operator to keep a written operating record at the facility. Record requirements are included in this section. Furthermore, used oil processors must report to the Agency, in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the EPA

identification number, name, and address of the processor; the calendar year covered by the report; and the quantities of used oil accepted for processing and the manner in which the used oil is processed, including the specific processes employed.

Section 739.158 Off-site shipments of used oil.

Section 739.158 requires used oil processors or who initiate shipments of used oil off-site to ship the used oil using a used oil transporter who has obtained an EPA identification number.

Section 739.159 Management of residues.

Section 739.159 requires owners and operators who generate residues from the storage, or processing of used oil to manage the residues as specified in Section 739.110(e).

SUBPART G-STANDARDS FOR USED OIL BURNERS WHO BURN OFF-SPECIFICATION USED OIL FOR ENERGY RECOVERY

Sections 739.160, 739.161, 739.162, 739.163, 739.164, 739.165, 739.166 and 739.167 are derived from 40 CFR 279.60, 279.61, 279.62, 279.63, 279.64, 279.65, 279.66 and 279.67 respectively, which were adopted at 57 Fed. Reg. 41623-25, on September 10, 1992.

Section 739.160 Applicability.

Section 739.160(a) defines a used oil burner as a facility where used oil not meeting the specification requirements in Section 739.111 is burned for energy recovery in devices identified in Section 739.161(a). However, facilities burning used oil for energy recovery in an on-site space heater under the provisions of Section 739.123 and used oil is burned by a processor for purposes of processing used oil are not subject to this Subpart.

Section 739.160(b) states other provisions applicable to burners of used oil.

Section 739.160(c) exempts persons burning used oil that meets the used oil fuel specification of Section 739.111, provided that the burner complies with the requirements of 739.Subpart H, from complying with this section.

Section 739.161 Restrictions on burning.

Section 739.161(a) allows off-specification used oil fuel to be burned for energy recovery in industrial furnaces and boilers identified in 35 Ill. Adm. Code 720.110. These boilers must be industrial boilers located on the site of a facility engaged in a

manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; used oil-fired space heaters provided that the burner meets the provisions of Section 739.123; or hazardous waste incinerators subject to regulation under 35 Ill. Adm. Code 724.Subpart O and 35 Ill. Adm. Code 725.Subpart O.

Under Section 739.161(b), burners of used oil may not process used oil unless they also comply with the requirements of 739.Subpart F, except where the used oil burners aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning. Used oil burners may not aggregate for purposes of producing on-specification used oil.

Section 739.162 Notification

Under Section 739.162(a), used oil burners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number. Section 739.162(b) provides the mechanics of notification.

Section 739.163 Rebuttable presumption for used oil.

To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Section 739.110(b)(1)(B), Section 739.163 requires a used oil burner to determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm. Section 739.163(b) provides the methodology.

Under Section 739.163(c), where the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 35 Ill. Adm. Code 721.subpart D. The methodology to rebut the presumption is provided in this section. The rebuttable presumption does not apply to metalworking oils and fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 739.124(c), to reclaim metalworking oils and fluids or to chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation.

Section 739.165 Tracking.

Section 739.165 requires used oil burners to keep a record of each used oil shipment accepted for burning.

Section 739.166 Notices.

Section 739.166 requires that prior to accepting the first shipment of off-specification used oil fuel from a generator, transporter, or processor, the burner must provide to the generator, transporter, or processor a one-time written and signed notice certifying that the burner has notified EPA stating the location and general description of his used oil management activities; and the burner will burn the used oil only in an industrial furnace or boiler identified in Section 739.161(a).

Section 739.167 Management of residues.

Section 739.167 requires burners who generate residues from the storage or burning of used oil to manage the residues as specified in Section 739.110(e).

SUBPART H-STANDARDS FOR USED OIL FUEL MARKETERS

Sections 739.170, 739.171, 739.172, 739.173, 739.174, and 739.175 were derived from 40 CFR 279.70, 279.71, 279.72, 279.73, 279.74 and 279.75, respectively, which were adopted at 57 Fed. Reg. 41625-26 on September 10, 1992.

Section 739.170 Applicability.

Section 739.170 applies to any person who directs a shipment of off-specification used oil from their facility to a used oil burner; or first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 739.111.

Persons who are used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner not subject to this section. However, processors who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processor who incidently burn used oil are not marketers subject to this section.

In addition, persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of Section 739.111 are not subject to regulation by this section.

Any person subject to the requirements of this Section must also comply with Subpart C (Standards for Used Oil Generators); Subpart E (Standards for Used Oil Transporters and Transfer Facilities); Subpart F (Standards for Used Oil Processors and Re-refiners); or Subpart G (Standards for Used Oil Burners who Burn

Off-Specification Used Oil for Energy Recovery).

Section 739.171 Prohibitions.

Section 739.171 provides that a used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who has an EPA identification number; and burns the used oil in an industrial furnace or boiler identified in Section 739.161(a).

Section 739.172 On-specification used oil fuel.

Section 739.172 provides that a generator, transporter, processor, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section 739.111 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications. Such used oil that is to be burned for energy recovery is not subject to further regulation under this part.

Section 739.173 Notification.

Section 739.173(a) requires a used oil fuel marketer subject to the requirements of this section who has not previously complied with the notification requirements of RCRA Section 3010 must comply with these requirements and obtain an EPA identification number. The section provides information on obtaining an EPA identification number.

Section 739.174 Tracking.

Section 739.174 requires any used oil generator who directs a shipment of off-specification used oil to a burner or who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section 739.111 to keep a record of each shipment of used oil to a used oil burner. Record requirements are provided in this Section.

Section 739.175 Notices.

Section 739.175 contains notice and certification requirements for used oil generator, transporter, or processor who directs the first shipment of off-specification used oil fuel to a burner.

SUBPART I-STANDARDS FOR USE AS A DUST SUPPRESSANT AND DISPOSAL OF USED OIL

Sections 739.180, 739.181, and 739.182 were derived from 40 CFR

279.80, 279.81 and 279.82 respectively, and were adopted at 57 Fed. Reg 41626, on September 10, 1992.

Section 739.180 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

Section 739.181 Disposal.

Section 739.181(a) requires that used oils that are identified as a hazardous waste and cannot be recycled in accordance with this Part must be managed in accordance with the hazardous waste management requirements of 35 Ill. Adm. Codes 720 through 726, 728, 270 and 124.

Section 739.181(b) requires that used oils that are not hazardous wastes and cannot be recycled under this Part must be disposed in accordance with the requirements of Parts 257 and 258.

Section 739.182 Use as a dust suppressant.

Section 739.182(a) prohibits the use of used oil as a dust suppressant, except when such activity takes place in one of the states listed in subsection (c) of this section.

(b) A State may petition (e.g., as part of its authorization petition submitted to EPA under 35 Ill. Adm. Code 271.105 or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitibility) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil and hazardous waste mixtures or used oil exhibiting a characteristic other than ignitibility as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

(c) List of States. [Reserved]

HISTORY OF RCRA, UST and UIC ADOPTION

The Illinois UIC (Underground Injection Control), RCRA (Resource Conservation and Recovery Act), and UST (Underground Storage Tank) regulations, together with more stringent state regulations particularly applicable to hazardous waste, include the following Parts of Title 35 of the Illinois Administrative Code:

702 RCRA and UIC Permit Programs
703 RCRA Permit Program

704 UIC Permit Program
705 Procedures for Permit Issuance
709 Wastestream Authorizations
720 General
721 Identification and Listing
722 Generator Standards
723 Transporter Standards
724 Final TSD Standards
725 Interim Status TSD Standards
726 Specific Wastes and Management Facilities
728 USEPA Land Disposal Restrictions
729 Landfills: Prohibited Wastes
730 UIC Operating Requirements
731 Underground Storage Tanks
738 Hazardous Waste Injection Restrictions

Special provisions for RCRA cases are included in Parts 102, 103, 104 and 106 of the Board's procedural rules.

History of RCRA and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA regulations. USEPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. USEPA granted final authorization of the Illinois RCRA "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). USEPA granted authorization to "Cluster I revisions" to the Illinois program and granted partial Hazardous and Solid Waste Amendments (HSWA) (Pub. L. 98-616, Nov. 8, 1984) authorization effective March 5, 1988, at 53 Fed. Reg. 126 (January 5, 1988). USEPA authorized certain subsequent amendments and granted further partial HSWA authorizations effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), and June 3, 1991, at 56 Fed. Reg. 13595 (April 3, 1991). USEPA codified its approvals of the Illinois program at 40 CFR 272.700 and 272.701 on November 13, 1989, at 54 Fed. Reg. 37649 (Sep. 12, 1989), and on March 31, 1992, at 57 Fed. Reg. 3731 (Jan. 31, 1992). The entire listing of all RCRA identical in substance rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

R81-22 45 PCB 317, September 16, 1981 & February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)

R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)

R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)

R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)

R84-9 64 PCB 427 & 521, June 13 & 27, 1985; 9 Ill. Reg. 11964, August 2, 1985, effective July 8 & 24, 1985. (1/19/83 through 4/24/84)

R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)

R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)

R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)

R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)

R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)

R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 & 12, 1987. (10/1/86 through 12/31/86)

R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)

R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.

R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)

R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)

R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)

R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)

R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)

R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)

R90-17 Delisting Procedures (See below)

R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)

R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)

R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)

R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg. 17636, effective November 6, 1992. (7/1/91 through 12/31/91)

R92-10 January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)

R93-4 Next RCRA Docket. (7/1/92 through 12/31/92)

On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison Co. v. PCB, 127 Ill. App. 3d 446; 468 N.E.2d 1339 (3d Dist. 1984).)

The Board added to the federal listings of hazardous waste by listing dioxins pursuant to Section 22.4(d) of the Act:

R84-34 61 PCB 247, November 21, 1984; 8 Ill. Reg. 24562, December 21, 1984, effective December 11, 1984.

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted USEPA delistings at the request of Amoco and Envirite (the date of the corresponding federal action is included in parentheses):

R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, May 16, 1986, effective May 2, 1986. (9/13/85)

R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (11/14/86)

R91-12 128 PCB 369, December 19, 1991; 16 Ill. Reg. 2155, effective January 27, 1992. (USX)

Subsequently, upon the April 30, 1990 federal authorization of Illinois granting waste delistings, USEPA transferred pending delisting petitions to the Board. The Board docketed these as site-specific rulemaking proceedings (the name of the petitioner waste generator appears in parentheses):

R90-18 Dismissed at 123 PCB 65, June 6, 1991. (USX Corp, South Works)

R90-19 Dismissed at 116 PCB 199, November 8, 1990. (Woodward Governor Co.)

R90-23 Dismissed at 124 PCB 149, July 11, 1991. (Keystone Steel & Wire Co.)

The Board has modified the delisting procedures to allow the use of adjusted standards in lieu of site-specific rulemakings:

R90-17 119 PCB 181, February 28, 1991; 15 Ill. Reg. 7934, effective May 9, 1991.

Waste generators have filed Part 106 adjusted standards petitions for solid waste determinations with the Board pursuant to Section 720.130 (generator name in parentheses):

AS89-4 Dismissed at 105 PCB 269, November 15, 1989. (Safety-Kleen Corp.)

AS89-5 Dismissed at 113 PCB 111, July 3, 1990. (Safety-Kleen Corp.)

AS90-7 Dismissed at 124 PCB 125, July 11, 1991. (Quantum Chemical Co.)

The Board has granted hazardous waste delistings by way of adjusted standards (generator name in parentheses):

AS91-1 130 PCB 113, February 6, 1992. (Keystone Steel and Wire Co.)

AS91-3 February 4, 1993; opinion issued March 11, 1993. (Peoria Disposal Co.)

The Board has procedures to be followed in cases before it involving the RCRA regulations:

R84-10 62 PCB 87, 349, December 20, 1984 and January 10, 1985; 9 Ill. Reg. 1383, effective January 16, 1985.

The Board also adopted special procedures to be followed in certain determinations under Part 106. The Board adopted these Part 106 special procedures in R85-22 and amended them in R86-46, listed above.

One Part 106 adjusted standard proceeding filed pursuant to 728.106 sought relief from a prohibition against land disposal (petitioner's name in parentheses):

AS90-6 Dismissed at 136 PCB 93, September 17, 1992. (Marathon Petroleum Co.)

Other adjusted standard proceedings sought delayed closure of land disposal units (petitioners' names in parentheses):

AS90-8 130 PCB 349, February 27, 1992. (Olin Corp.)

AS91-4 131 PCB 43, March 11, 1992. (Amoco Oil Co.)

Still another adjusted standard proceeding relates to substantive physical requirements of the RCRA regulations:

AS91-10 Presently pending. (Cabot Corp.)

In another regulatory proceeding, the Board has considered granting temporary relief from the termination of an exclusion of a hazardous waste listing in the form of an emergency rule (Petitioner's name in parentheses):

R91-11 Presently pending. (Big River Zinc Corp.)

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

R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 14, 1984, effective December 4, 1984.

R83-28 68 PCB 295, February 26, 1986; 10 Ill. Reg. 4875, March 21, 1986, effective March 7, 1986.

R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, November 21, 1986, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed by the First District Court of Appeals. (Citizens for a Better Environment v. PCB, 152 Ill. App. 3d 105, 504 N.E.2d 166 (1st Dist. 1987).)

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA docket. USEPA authorized the Illinois UIC program on February 1, 1984, at 49 Fed. Reg. 3991. The entire listing of all UIC rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

R81-32 47 PCB 93, May 13, 1982; 6 Ill. Reg. 12479, October 15, 1982, effective February 1, 1984. (7/7/81 through 11/23/81)

R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)

R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983, effective December 19, 1983. (4/1/83)

R85-23 70 PCB 311 & 71 PCB 108, June 20 & July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 & 29, 1986. (5/11/84 through 11/15/84)

R86-27 Dismissed at 77 PCB 234, April 16, 1987. (No USEPA amendments through 12/31/86).

R87-29 85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87)

specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.