ILLINOIS POLLUTION CONTROL BOARD
September 6, 2012

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-95
	)	(Enforcement - Land)
AET ENVIRONMENTAL, INC., a Colorado corporation, and E.O.R. ENERGY, LLC, a Colorado limited liability company,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by D. Glosser):

The People of the State of Illinois (People) filed a five-count complaint against AET Environmental, Inc. (AET) and E.O.R. Energy, LLC (EOR) (collectively respondents) alleging violations of the Environmental Protection Act (Act) and the Board's regulations. The violations relate to the transport, storage and disposal of a hazardous waste. The Board granted the People's motion to deem facts admitted and subsequently, the People simultaneously filed individual motions for summary judgment against each respondent. Today's order will address only the motion relating to EOR. To date, the Board has not received a response by EOR.

The Board finds that summary judgment is appropriate as to EOR and grants the People's motion for summary judgment as to EOR. The Board reserves ruling on the motion for summary judgment against AET. Based on the facts admitted the Board finds that EOR violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010)) [1] and multiple provisions of the Board's hazardous waste regulations and underground injection control (UIC) regulations. The Board finds that EOR violated Sections 12(g), 21(e) and 21(f) (1) and (2) of the Environmental Protect Act (Act) (415 ILCS 5/12(g), 21(e) and 21(f) (1) and (2) (2010)) and numerous provisions of the Board's rules as alleged in the complaint. Having found that EOR violated the Act and Board regulations, the Board finds that a civil penalty of $200,000 is appropriate and directs EOR to pay that civil penalty.

The Board will first summarize the procedural history and then summarize the complaint. Next the Board will recite the facts of the case followed by the statutory and regulatory background. The Board will then summarize the People's arguments before discussing the Board's decision.

[1] All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2010 compiled statutes.

PROCEDURAL HISTORY

On March 23, 2007, the People filed a five-count complaint against AET and EOR. On April 19, 2007, the Board accepted the complaint for hearing. On June 19, 2007, respondents each filed an answer to the People's complaint by non-attorneys. On October 18, 2007, respondents each re-filed an answer to the People's complaint through their attorney after a hearing officer required respondents to hire an attorney. *See* Hearing Officer Order 7/16/2007. On January 24, 2008, respondents' attorney withdrew from the case.

On March 24, 2008, the People filed a request to admit facts by AET. On April 22, 2008, Lori M. DeVito, a non-attorney, filed an appearance and a response to the People's request on behalf of AET. On January 18, 2009 an attorney filed an appearance on behalf of AET and on March 17, 2010, AET's attorney withdrew from the case.

On May 27, 2008, the People filed a request to admit facts by EOR. On January 23, 2009, the People again filed their request to admit facts by EOR after a January 20 hearing officer order. *See* Hearing Officer Order 1/20/09. On February 20, 2009, EOR filed an unsigned and unsworn response to the People's request through a new attorney.

On August 17, 2010, the People simultaneously filed motions to deem facts admitted against AET and EOR. The hearing officer gave respondents until September 3, 2010 to file a response. *See* Hearing Officer Order 8/31/10. EOR did not retain attorneys or timely respond to the People's motions. On September 16, 2010, the Board granted that motion.

On June 27, 2012, the People simultaneously filed motions for summary judgment against AET and EOR (EOR Mot.). EOR has not retained attorneys or timely responded to the People's motion for summary judgment.

COMPLAINT

On March 23, 2007, the People filed a five-count complaint (Comp.) against AET and EOR. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. The complaint concerns respondents' transport, storage, treatment, and disposal of hazardous acid to and at EOR's two oil fields. The first oil field (Rink-Truax Lease) is located north of 2050 N. Road and 400 E. Road in South Fork Township, Christian County. The second oil field (Galloway Lease) is located along Township Road 4.25E South East of the junction with Township Road 13S in Pawnee, Cotton Hill Township, Sangamon County.

The People allege that respondents violated Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 21(e) (2010)) by transporting hazardous wastes into Illinois for storage and disposal at a site that does not meet the Act's requirements (count I). In addition, the People allege that EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 21(e), (f)(1) (2010)) by storing, disposing, and/or abandoning hazardous wastes at a site that does not meet the Act's requirements, thereby conducting a hazardous-waste storage operation without a Resource Conservation and Recovery Act (RCRA) permit (count II). In count III the People allege that EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2),

and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2010)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site.

Count IV alleges that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, thereby violating Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2010). According to the complaint, EOR violated these provisions under count IV by failing to follow proper procedures, take all necessary precautions, and keep and maintain all appropriate records regarding the management of the hazardous waste acid.

Lastly, the People allege in Count V that EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having an Underground Injection Control (UIC) permit and failing to comply with the listed requirements of Section 704.203.

FACTS

EOR is based in Denver, Colorado, and is involved in the petroleum production industry. EOR Mot. Attach A at 1. EOR has two principal corporate officers, Arthur Clark and James Hamilton III, both of whom have been corporate officers in EOR since at least July 2002, continuing to the present date. EOR Mot. at 1-2. Mr. Clark is also employed by AET. *Id*. at 2. AET and EOR's offices are located in the same building. *Id*. at 2.

As part of its business, EOR controls oil leases for two oil fields near Pawnee, Sangamon County. EOR Mot. Exh. A at 1, 6. The first oil field is known as Rink-Truax Lease and the second oil field is known as Galloway Lease. *Id*. at 6. On both leases, EOR operates crude oil, coal gas and brine water injection wells. *Id*. at 7. Kincaid P&P operates a facility located near the Rink-Truax and Galloway Leases. *Id*. at 4.

In 2002, a company known as Luxury Wheels, hired AET to remove and dispose of acid material. EOR Mot. Exh. A at 2. AET obtained at least eight new and unused two hundred and seventy five (275) gallon plastic storage containers, known as totes. *Id*.

AET shipped the eight totes of acid material to Arvada Treatment Center (ATC) in Arvada, Colorado for disposal. EOR Mot Exh. A at 2. ATC rejected the acid material because the material in the containers was reacting and off-gassing, emitting a red or orange gas. *Id*. The acid material was also rejected by Safety Kleen, in Deer Trail, Colorado. EOR Mot. at 3.

At a storage facility, AET placed the acid material into a semi-trailer which was left open during the daytime, while leaving the totes containing the acid material slightly open to vent the gas which was produced by the acid material. EOR Mot. Exh. A at 3. AET also placed a fan in the trailer to help remove the gas escaping the totes, which was accumulating in the trailer. *Id*.

While the material was under the control of AET:

1. An exothermic reaction occurred in one or more of the totes;
2. One or more of the totes attained a temperature sufficient to melt the tote containing the material;
3. Additional materials were added including water and acid materials. EOR Mot. Exh. A at 3-4.

After dilution the acid material filled twelve 275 gallon totes. *Id*. at 10.

At some point during July and August of 2002, AET gave the material to EOR and on August 30, 2002, 12 totes of acid material shipped from the AET warehouse to Kincaid P&P in Pawnee, Sangamon County (Kincaid site). EOR Mot. Exh. A at 4-5. EOR has wells located near the Kincaid Site. EOR Mot. Exh. A at 6. EOR paid two Kincaid P&P employees, Rick Wake and Charles Geary to maintain the EOR Wells. *Id*. at 7.

AET billed Luxury Wheels for its services to arrange shipment of the acid material to the Kincaid Site, and AET did not ship the acid material with an accompanying Hazardous Waste Manifest. EOR Mot. Exh. A at 4-5. AET prepared a hazardous material bill of lading. *Id*. The Bill of Lading was dated "8/30/02" and listed Luxury Wheels as the shipper, SLT Express as the carrier, and Kincaid P&P as the consignee. *Id*. The Bill of Lading listed the acid material as "CORROSIVE LIQUID ACID, INORGANIC, N.O.S. (PHOSPHORIC, NITRIC), 8, UN3264, PGII". *Id*.

After the acid material arrived at the Kincaid Site, EOR stored it in a structure owned by Kincaid. EOR Mot. Exh. A at 7; Exh. I at 11. The structure had no electric power, was not heated and did not entirely keep out the outside weather. *Id*. The structure incorporated no containment structures to collect the acid material in event of a spil1. EOR Mot. Exh. I at 11. The building was not secured by a fence or any other means. *Id*. There were no signs posted on or near the structure warning that the structure contained a hazardous waste. *Id*. Neither EOR nor Kincaid P&P utilized any security or warning system for the structure. *Id*.

EOR did not disclose to Mr. Wake or Mr. Geary that the acid material was a hazardous waste. EOR Mot. Exh. A at 7, Exh. I at 3-4. EOR's only warning to Mr. Wake and Mr. Geary about the acid came from Mr. Clark who told them that it was a "light grade acid" and that they should "keep it out of their eyes and wash it off if they get it on them." EOR Mot. Exh. A at 9. EOR did not provide a Material Safety Data Sheet (MSDS) or any other documentation for the acid; nor did EOR instruct Mr. Wake and Mr. Geary how to properly handle and store the acid material. EOR Mot. Exh. I at 3-4.

At some time between August of 2002 and November of 2004, bags of hydrated lime were stored on pallets near the plastic totes containing the acid material. EOR Mot. Exh. A at 8. Several of the bags of lime had deteriorated to the point that the paper was split and the material fell on the ground around the bags. *Id*. Hydrated lime is a strong base which would react violently if mixed with a strong acid. *Id*. Exh. I at 4-5. EOR did not instruct Mr. Wake and Mr. Geary to separate the acid totes and the bags of hydrated lime. *Id*.

EOR directed Mr. Wake and Mr. Geary to put the acid material into the EOR Wells. EOR Mot. Exh. A at 10, 11; Exh. I at 3. Mr. Wake and Mr. Geary had no prior experience handling acid or applying it to oil or brine wells and EOR gave no specific instructions on how to apply the acid material to the wells. EOR Mot. Exh. A at 11, 12; Exh. I at 3-4. The process to discharge the acid consisted of Mr. Wake and Mr. Geary fabricating a hose fitting to attach the 275 gallon plastic totes to various fittings on the EOR Wells. EOR Mot. Exh. A at 12; Exh. I at 3, 25. Mr. Wake described the process used to discharge the acid more specifically. EOR Mot. Exh. I at 3. First a tote of the acid material would be loaded on the back of a pickup truck and driven to the oil field. From the back of the truck, the tote would be connected to a valve on an aboveground pipe attached to one of the EOR wells. *Id*. Within a three to four month period, Mr. Wake and Mr. Geary placed approximately eight and a half totes of acid material down various EOR Wells. *Id*. According to Mr. Wake and Mr. Geary, acid material was discharged into the following wells:

EOR Well Discharge Amounts

Well Name	**Well Location**	**Type of Well**	**Approximate Amount of Acid Material (Gallons)**
Galloway #3	Galloway Lease	Oil Production Well	15
Galloway #1	Galloway Lease	Gas Injection Well	275
Rink #4	Rink/Truax Lease	Oil Production Well	25
Rink #1	Rink/Truax Lease	Salt Water Disposal Well	1925
Truax #3	Rink/Truax Lease	Oil Production Well	25

EOR Mot. Exh. I at 6-7.

EOR was aware that Wake and Geary were discharging the acid down various EOR wells and in January of 2004, a corporate officer for EOR contacted Mr. Geary at his residence and told him to place all remaining acid material down the EOR wells as soon as possible. EOR Mot. Exh. A at 13. Mr. Geary was also instructed to rinse out all 12 of the plastic totes. *Id*.

On February 4, 2004, the United States Environmental Protection Agency (USEPA) and the National Enforcement Investigations Center (NEIC) served a search warrant and conducted sampling activities at the Kincaid site. EOR Mot. Exh. I at 2, Attach. 2. On that date the 12 totes were still present at the Kincaid site. *Id*. Three totes were full and one tote was partially full of acid material. EOR Mot. Exh. I at Attach. 2. The remaining eight totes contained residue from the acid material. *Id*. NEIC employees took liquid samples from the 12 totes and later performed tests on the liquid samples. *Id*. The liquid samples from the three full and one partially full totes all contained greater than 5.0 mg/L of leachable chromium. *Id*. Also the material contained in ten of the twelve totes had a Ph of less than 2 standard units. *Id*.

On November 17, 2004, Richard Johnson, an Illinois Environmental Protection Agency (IEPA) employee in the Bureau of Land, inspected the Kincaid site. EOR Mot. Exh. I at 2. Prior to his inspection, Mr. Johnson performed a review of IEPA records and discovered that the Kincaid Site is not a hazardous waste storage or disposal facility and has never been issued a RCRA permit to serve as a hazardous waste management facility. *Id*. Mr. Johnson interviewed

Mr. Wake when Mr. Johnson arrived at the Kincaid site, and Mr. Wake informed Johnson that he and Mr. Geary were paid by EOR to service and monitor the EOR wells. *Id*. at 3. Mr. Wake informed Mr. Johnson that the 12 totes of acid material were shipped to the Kincaid Site in August 2002, and EOR directed them to discharge the acid material down the EOR wells. *Id*.

During his site inspection, Mr. Johnson observed 12 plastic totes stored in a structure at the Kincaid Site. EOR Mot. Exh. I at 4. Furthermore, the building was not secured and contained no signs warning of the presence of the acid. *Id*. The building's concrete floor was wet in several spots where the ceiling was leaking. The structure was not heated, had no electricity, and did not entirely keep out the outside weather. The structure also failed to include any containment structures to retain the acid if any of the totes leaked. There were no alarms or other warning systems to sound an alert if any of the totes failed to contain the acid. *Id*. Also at the time of the inspection, three of the totes were full of an aqua-colored liquid. *Id*. at 4. A fourth tote was slightly less than one-half full. Eight other totes appeared to by empty except for some residue present in the bottoms of the totes. *Id*.

Mr. Johnson also observed pallets containing 50-pound bags of hydrated lime and soda ash-like material stored next to the totes of acid. EOR Mot. Exh. I at 4. Several of the older bags of lime and ash had deteriorated to the point that the paper was split and a white material could be observed. *Id*. Following the November 17, 2004 inspection, Mr. Johnson received a copy of the NEIC Report detailing the results of testing performed by the NEIC on samples of acid material which were taken on February 4, 2004.

On April 19, 2005, Mr. Johnson re-inspected the Kincaid Site and once again met with Mr. Wake. EOR Mot. Exh. I at 6. During the April 19, 2005 inspection, all 12 plastic totes of acid material were gone and Mr. Wake provided Johnson with a uniform hazardous waste manifest which indicated that 1000 gallons of corrosive and toxic hazardous waste was shipped from the Kincaid Site to SET Environmental, Inc. in Huston, Texas on April 14, 2005. *Id*. The manifest identified the waste as containing nitric and phosphoric acid. A Land Disposal Restriction notice accompanied the manifest. *Id*. The Land Disposal Restriction notice indicated that the waste exhibited the hazardous waste characteristic for corrosivity (D002) and Toxicity Characteristic Leaching Procedure (TCLP) chrome (D007). *Id*.

During the April 19, 2005 inspection, Mr. Wake agreed to take Mr. Johnson to the various EOR wells where he and Mr. Geary discharged the waste acid. EOR Mot. Exh. I at 6. Two of the wells were located on the Galloway lease property and three wells were located on the Rink-Truax lease property. *Id*. Mr. Wake led Mr. Johnson to the Galloway lease property where they met the property owner and made him aware of the investigation. *Id*.

STATUTORY BACKGROUND[2]

Section 12(g) of the Act provides in pertinent part that "[n]o person shall":

[2] The regulatory language for all the sections the People allege EOR violated is 18 pages long. Therefore, the relevant regulatory sections will be included as an appendix to the Opinion and Order.

* * *

g) Cause, threaten or allow the underground injection of contaminants without a UIC permit issued by the Agency under Section 39(d) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program .. .. 415 ILCS 5/12(g) (2010).

Sections 21(e) and (f) of the Act provide that "[n]o person shall":

e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

2) in violation of any regulations or standards adopted by the Board under this Act . . .. 415 ILCS 5/21(e) and (f) (2010).

MOTION FOR SUMMARY JUDGMENT

The People argue that for the Board to find EOR violated the Act and regulations as alleged in the complaint, the Board must make specific findings regarding EOR's actions or inactions. The Board will summarize the People's arguments on each count in the following paragraphs.

COUNT I

To find a violation of Count I, the People maintain that the Board must determine that EOR transported waste into Illinois for disposal, treatment, storage or abandonment, at a site that does not meet the requirements of the Act or Board regulations. EOR Mot. at 5. To prove this, the People state that they must prove that: 1) the acid material was a waste, 2) the material was transported to Illinois, 3) the purpose of the transport was disposal, treatment, storage or abandonment, and 4) the Kincaid site and EOR's wells do not meet the requirements of the Act or Board regulations. EOR Mot. at 22-23.

The People maintain that the acid material was discarded material as evidenced by the record. EOR Mot. at 22-23. The People point out that Luxury Wheels hired AET to dispose of the material, and AET made numerous attempts to dispose of the material. *Id*. The People further point out that the various hazardous waste profiles described the material as "spent aluminum etchant, a D002 corrosive hazardous waste and waste corrosive liquid that was created in an industrial process." *Id*. Thus the material was discarded. *Id*.

Furthermore, the People argue that the record demonstrates that the material resulted from an industrial process. EOR Mot. at 24. The People claim that the acid material was used by Luxury Wheels to etch aluminum wheels and was therefore generated as a direct result of a manufacturing process. *Id*. The People assert that because the acid material was a discarded liquid from industrial activities, the material meets the definition of waste in the Act. *Id*., citing 415 ILCS 5/3/535 (2010)).

The People claim that the acid material was a hazardous waste as that term is defined by Section 3.220 of the Act (415 ILCS 5/3.220 (2010)). EOR Mot. at 25. The People note that USEPA has tested the material and found that the material exhibited the characteristics of hazardous waste of corrosivity and toxicity. EOR Mot. at 25. The People maintain that under the Act exhibiting the characteristics of hazardous waste is sufficient to be defined as hazardous waste. EOR Mot. at 24-25.

The People argue that once a decision was made by AET to transfer the waste to EOR, EOR directed the waste be shipped to the Kincaid site. EOR Mot. at 26. The People acknowledge that the waste was shipped to the Kincaid site; however, the People assert that the shipment of the waste was "for use by EOR". *Id*. The People assert that the waste was stored at the Kincaid site because EOR employed the Kincaid employees to manage EOR wells. The People opine that were it not for the EOR wells being managed by Kincaid employees, the waste would not have been shipped to Illinois. EOR Mot. at 27.

The People further argue that under EOR's direction, Mr. Wake and Mr. Geary disposed of the waste in EOR's wells. EOR Mot. at 27. Furthermore, the People argue that the waste was stored at the Kincaid site for over 31 months before the waste was discharged into several wells. EOR Mot. at 27-28. While being placed in EOR's wells, the People assert that the acid material was spilled on the ground and came into contact with groundwater. EOR Mot. at 28.

Finally, the People argue that a search of the IEPA's records establishes that EOR does not have a RCRA permit. EOR Mot. at 28. Therefore for all these reasons, the People maintain that the Board should find that EOR violated Section 21(e) of the Act by transporting a waste to Illinois for storage and disposal without meeting the requirements of the Act or Board regulations. EOR Mot. at 29.

Count II

For Count II, the People claim that the Board must determine that EOR conducted a hazardous waste-storage operation without a RCRA permit. *Id*. Therefore, the People argue that they must prove the following: 1) the acid material was a waste; 2) EOR stored, disposed and/or

abandoned the acid material at the Kincaid site and the EOR Wells; 3) the Kincaid site and the EOR Wells do not meet the requirements of the Act and Board regulations; 4) EOR conducted a hazardous waste storage operation at the Kincaid site; and 5) EOR was not issued a permit to conduct a hazardous waste storage operation at the Kincaid site. EOR Mot. at 30.

The People note that the first three elements have been discussed under Count I and do not repeat those arguments. EOR Mot. at 30.

The People maintain that EOR conducted a hazardous waste storage operation as the acid material was stored at the Kincaid site for over 31 months. EOR Mot. at 30. Further at least some totes remained at the site, even after disposal of some of the acid material, until the totes were shipped for proper disposal. EOR Mot. at 31. The People restate that a search of the IEPA's records establish that EOR did not have a permit. Therefore, the People maintain that the record clearly establishes that EOR violated Sections 21(e) and (f)(1) of the Act. *Id*.

Count III

With Count III, the People assert that the Board must make several determinations concerning EOR's activities including that EOR owned or operated a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation and conducted such operation without a RCRA permit. EOR Mot. at 5. Further the People claim that the Board must determine that EOR failed to acquire a RCRA permit to store hazardous waste at a facility during its active life or even to apply for a RCRA permit within 30 days after being subject to the standards. EOR Mot. at 5-6.

The People argue that the Board's waste disposal regulations apply to EOR because EOR directed that the waste be stored at the Kincaid site. EOR Mot. at 33. EOR did not have a permit. Therefore, the People opine EOR violated Section 703.121(a) and (b) and 703.150(a)(2) of the Board's regulations (35 Ill. Adm. Code 703.121(a) and (b) and 703.150(a)(2)) and Section 21(f)(2) of the Act (415 ILCS 5/21(f)(2) (2010)).

Count IV

Regarding Count IV, the People maintain that in addition to finding that EOR owned or operated a hazardous waste facility and conducted storage, treatment or disposal operations, the Board must determine that EOR failed to apply to USEPA for a USEPA identification number. EOR Mot. at 6. The Board must also find that EOR failed to obtain a detailed chemical and physical analysis of a representative sample of any hazardous waste to be brought to its facility, prior to any treatment, storage, or disposal of the hazardous waste; and EOR failed to follow proper security procedures. *Id*. The People also opine that the Board must find that EOR failed to conduct inspections according to a written schedule to identify and correct conditions that might lead to a release of hazardous waste constituents or a threat to human health. EOR Mot. at 6-7. The People maintain that the Board must make a finding that EOR failed to follow procedures for training its personnel and to take all necessary precautions to prevent the ignition or reaction of ignitable or reactive wastes. EOR Mot. at 7.

Continuing on Count IV, the People argue that the Board must determine that EOR's failed to maintain and operate its facility to: 1) minimize the possibility of a fire, 2) maintain communications, 3) familiarize the local police, fire department, and hospitals with the type of hazardous waste at the facility, and 4) to develop a contingency plan. EOR Mot. at 7. The People assert that the Board must find that EOR failed to designate an employee as the emergency coordinator and failed to prepare manifests. *Id*. The Board must also find that EOR failed to: 1) keep a written operating record at its facility, 2) prepare reports for submission, 3) develop and keep a written closure plan on site, 4) prepare a detailed written estimate, of closure costs, and 5) establish financial assurance for closure of the facility. EOR Mot. at 7-8.

The People argue that the observations of the IEPA inspector support a finding that EOR failed to operate the facility pursuant to the Board's regulations. EOR Mot. at 36-48. The People maintain that the IEPA inspector found no evidence of inspections, emergency action plans, closure plans, or financial assurance. *Id*. Based on the evidence in the record, the People maintain that EOR violated the Board's regulations as set forth in the complaint.

Count V

The People maintain that the Board must determine that EOR caused, threatened or allowed the underground injection of contaminants without a UIC permit. EOR Mot. at 8. The People argue that they must prove that: 1) the hazardous waste was a contaminant, 2) EOR caused, threatened or allowed the underground injection of the waste, 3) EOR did not have a UIC permit, and 4) the injection of the materials was in violation of the Board regulations. EOR Mot. at 49.

The People assert that EOR paid Mr. Wake and Mr. Geary to inject the hazardous waste into EOR's wells with a majority of the material being placed in the salt water disposal well. EOR Mot. at 49-50. Further, the People argue there are no permits for a UIC well. EOR Mot. at 50. Finally, the People assert that EOR did not comply with the requirements of Board rules. *Id*. Therefore, the People opine that EOR violated the Act and Board regulations as alleged in the complaint. EOR Mot. at 50-51.

DISCUSSION ON MOTION FOR SUMMARY JUDGMENT

The Board will first set for the the standard of review for summary judgment and then the burden of proof in an enforcement action. The Board will then discuss its findings.

Standard of Review for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to relief "is clear and free from

doubt." Dowd & Dowd, Ltd., 181 Ill. 2d at 483, 693 N.E. 2d at 370, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on the pleadings, but must "present a factual basis which would arguably entitle [it] to judgment." Gauthier v. Westfall, 266 Ill. App. -3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

Burden of Proof

In an enforcement proceeding before the Board, the burden of proof is by a preponderance of the evidence. Lefton Iron & Metal Company, Inc. v. City of East St. Louis, PCB 89-53 at 3, (Apr. 12, 1990); Bachert v. Village of Toledo Illinois, *et al.*, PCB 85-80 at 3, (Nov. 7, 1985); Industrial Salvage Inc. v. County of Marion, PCB 83-173 at 3-4, (Aug. 2, 1984), *citing* Arrington v. Water E. Heller International Corp., 30 Ill. App. 3d 631, 333 N.E.2d 50,58, (1st Dist. 1975). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Industrial Salvage at 4, *citing* Estate of Ragen, 79 Ill. App. 3d 8, 198 N.E.2d 198, 203, (1st Dist. 1979). A complainant in an enforcement proceeding has the burden of proving violations of the Act by a preponderance of the evidence. Lake County Forest Preserve District v. Neil Ostro, PCB 92-80, (Mar. 31, 1994). Once the complainant presents sufficient evidence to make a prima facie case, the burden of going forward shifts to the respondent to disprove the propositions (Illinois Environmental Protection Agency v. Bliss, PCB 83-17, (Aug. 2, 1984)). *See* Nelson v. Kane County Forest Preserve, *et. al.*, PCB 94-244 (July 18, 1996); People v. Chalmers, PCB 96-111 (Jan. 6, 2000).

Findings

The Board's rules require respondents to respond to a request to admit within 28 days after receipt of the People's request. 35 Ill. Adm. Code 101.618(f). Respondents are to file a response denying or explaining the matters of which admission was requested. *Id*. In the absence of any denial or explanation, these matters are deemed to be admitted. *Id.* On May 27, 2008, the People filed a request to admit facts by EOR, which EOR responded to with unsigned and unsworn responses. On August 17, 2010, the People filed simultaneous motions asking that the fact be deemed admitted by respondents. Respondents were given until September 3, 2010, to respond to the People's motions. *See* Hearing Officer Order 8/31/10. Respondents did not timely respond to the People's motions. Respondents had 14 days to respond to the People's Motion: "If no response is filed, the party will be deemed to have waived objection to the granting of the motion." 35 Ill. Adm. Code 101.500(d). Thus, any objection to granting the motion was waived.

On September 16, 2010, the Board found that respondents' failure to timely respond by an attorney-at-law resulted in the facts included in the People's Request to Admit Facts to be admitted. *See* 35 Ill. Adm. Code 101.618.

Likewise, EOR has not responded to the motion for summary judgment. Therefore, the Board finds that EOR has waived an objection to granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

Because the facts have been deemed admitted and there is no response to the motion for summary judgment, the Board finds that summary judgment is appropriate. The Board will now discuss each count below.

Count I

The People have alleged that the respondents transported waste into Illinois for storage and disposal at a site that does not meet the requirements of the Act or Board regulations in violation of Section 21(e) of the Act. In support of this allegation the People point out that Luxury Wheels, the original generator of the acid material, hired AET to dispose of the acid material and AET in fact attempted to dispose of the material. *See e.g.* EOR Mot. Exh. A at 2. At some point, after the attempts to dispose of the material proved unsuccessful, AET gave the material to EOR and arranged to ship twelve 275 gallon totes of acid material to the Kincaid site. *See* EOR Mot. Exh. A at 4. EOR directed Kincaid P&P employees to store and ultimately dispose of the acid material. *See* EOR Mot. Exh. A at 7; Exh. I at 11. The record is replete with evidence that the Kincaid site does not meet the requirements of the Act or Board regulations. *See e.g.* EOR Mot. Exh. I.

These facts clearly establish that EOR arranged the shipment of the acid material, a material that is a waste, to the Kincaid site. Furthermore, the facts are uncontroverted that EOR directed Mr. Wake and Mr. Geary to dispose of the acid material in EOR's wells. Therefore, the Board finds that EOR transported waste into Illinois for storage and disposal at a site that does not meet the requirements of the Act or Board regulations in violation of Section 21(e) of the Act.

Count II

The People assert that EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 5/21(e) and (f)(1) (2010)) by storing, disposing, and or abandoning hazardous waste without a RCRA permit. Having found that the acid material was a waste, that EOR stored and disposed of a hazardous waste at the Kincaid site and that the Kincaid site does not meet the requirements of the Act and Board regulations, the Board must now determine that EOR conducted a hazardous waste storage operation without a RCRA permit.

The record contains no evidence of a permit either for the Kincaid site or EOR. In fact, the IEPA inspector, prior to inspection, performed a review of IEPA records and discovered that the Kincaid site is not a hazardous waste storage or disposal facility and has never been issued a RCRA permit granting it permission to serve as a hazardous waste management facility. *See* EOR Mot. Exh. I at 2. The record does contain evidence that the acid material was stored at the Kincaid site for over 31 months. Therefore, the Board finds that EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 5/21(e) and (f)(1) (2010)) by storing, disposing, and or abandoning hazardous waste without a RCRA permit.

Count III

The People allege that EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2), and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2010)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site. The Board has already found that EOR violated the Act by failing to have a RCRA permit. The Board's rules require a RCRA permit for a facility and the timely application for that permit. The Board finds that the Board's regulations apply and that EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2), and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2010)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site.

Count IV[3]

The People allege that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, thereby violating Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2010). The People maintain that EOR violated these provisions by failing to follow proper procedures, take all necessary precautions, and keep and maintain all appropriate records regarding the management of the hazardous waste acid.

The IEPA's inspector provided an affidavit, which documents EOR's failure to follow any procedures, to take any precautions, or to maintain records. *See* EOR Mot. Exh. I. The Board finds that the record contains ample evidence that EOR failed, among other things, to take proper precautions and provide a warning system, to notify local authorities or to provide for proper closure. Therefore, the Board finds that EOR alleges that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, and Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2010). The Board finds that EOR violated these provisions as alleged in the complaint.

Count V

The People maintain that EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having a UIC permit. The Board has found that the record establishes that EOR did not have a RCRA permit. Further, the record establishes that EOR did not have a UIC permit, but did dispose of hazardous materials in EOR's wells by underground injection. The Board's rules prohibit underground injection without a permit and require certain notifications and manifesting requirements. The record establishes that EOR did not comply with the Board's regulations before injecting the hazardous materials into its wells. Therefore, the Board finds EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having a UIC permit.

[3] The full text of the regulatory provisions is in an Appendix to the Board's order.

Conclusion on Motion for Summary Judgment

The Board finds that summary judgment is appropriate as all facts have been admitted against EOR and only questions of law remain. In reviewing the record and the allegations against EOR, the Board finds that EOR violated the provisions of the Act and Board regulations as alleged in the complaint. In sum, EOR transported a hazardous waste to Illinois for storage and disposal in EOR's wells. EOR did so without complying with the requirements of the Act and Board regulations relating to those activities. Therefore, the Board grants the motion for summary judgment. The Board will now consider the appropriate remedy for these violations.

REMEDY

The Board has found that EOR violated Sections 12(g), 21(e) and 21(f) (1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and 21(f) (1) and (2) (2010)) and Sections 703.121(a), (b), 703.150(a)(2), 704.121, 704.203, 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278 (35 Ill. Adm. Code 703.121(a), (b), 703.150(a)(2), 704.121, 704.203, 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278). The Board must now determine appropriate penalties in this case. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)).

Statutory Provisions Relating To Penalties

Section 33(c) of the Act provides as follows:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
>
> (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> (ii) the social and economic value of the pollution source;
>
> (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source; and
>
> (v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

Section 42(h) of the Act provides as follows:

In determining the appropriate penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

(7) whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

(8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to

a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2010).

People's Argument

Section 33(c) Factors

Regarding Section 33(c)(1) of the Act (415 ILCS 5/33(c)(1) (2010)), the People maintain that EOR's action severely threatened human health and the environment. EOR Mot. at 53. The People assert that the hazardous waste exhibited characteristics of both toxicity and corrosivity. EOR Mot. at 51. The People claim that despite these characteristics, EOR failed to ensure the proper shipment and storage of the hazardous waste. The People opine that these actions put the health, general welfare and physical property around the Kincaid site in danger as well as endangering those persons along the route from Colorado to the Kincaid site. EOR Mot. at 52.

Discussing the remaining 33(c) factors, the People argue that there was no social or economic value in the hazardous waste, and the waste was unsuitable for shipping to a site not permitted for hazardous waste. EOR Mot. at 53,*see also* 415 ILCS 5/33(c)(ii) and (c)(iii) (2010). Furthermore, the People maintain that proper disposal at a permitted facility was economically reasonable and technically feasible. *Id*., *see also* 415 ILCS 5/33(c)(iv) (2010). The People note that EOR did not self report the violations. EOR Mot. at 54.

Section 42(h) Factors

Regarding Section 42(h)(1) of the Act (415 ILCS 5/42(h)(1) (2010)), the People reiterate the instability of the hazardous waste and the failure to properly handle, store or dispose of the hazardous waste. EOR Mot. at 55. The People note that even though the material was unstable, EOR did not properly ship the materials, endangering the health, general welfare, and personal property of persons along the shipping route and near the Kincaid site. *Id*. Furthermore, the storage of the waste occurred for over 31 months. Thus, the People argue that the gravity of the violations was extremely high. EOR Mot. at 56.

In arguing the remaining Section 42(h) factors, the People maintain that EOR was not diligent in attempting to come into compliance. EOR Mot. at 56, *see also* 415 ILCS 5/42(h)(2) (2010). . The People have no information on the economic benefit EOR may have incurred but believe a penalty of $200,000 will serve to deter future violations and aid in future compliance with the Act and Board regulations. EOR Mot. at 57, *see also* 415 ILCS 5/42(h)(2) and (h)(3) (2010). . The People have no information of previous adjudicated violations, but note that EOR did not self report the violations. *Id.*, *see also* 415 ILCS 5/42(h)(5) and (h)(6) (2010). There is no supplemental environmental project and no compliance commitment agreement in place. *Id*. , *see also* 415 ILCS 5/42(h)(7) and (h)(8)(2010).

Discussion on Remedy

The Board will discuss each of the Section 33(c) and 42(h) factors below. The Board will then explain the reasoning for the civil penalty being assessed.

Section 33(c) Factors

The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

The Board has found that EOR transported, stored and disposed of a hazardous waste without following the statutory and regulatory requirements. Such actions endanger the health, general welfare, and physical property of the people. Therefore, The Board finds that this factor weighs against EOR.

The Social and Economic Value of the Pollution Source

The Board agrees with the People that a hazardous waste has no social or economic value. Therefore, the Board finds that this factor weighs against EOR.

The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved

The People assert that the disposal of the acid material was unsuitable for a property not properly permitted. The Board agrees and finds that this factor must be weighed against EOR.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

The People argue that compliance with the Act and Board is technically practical and economically reasonable. The Board agrees that proper disposal of materials is technically practicable and economically reasonable. Therefore, this factor must be weighed against EOR.

Any Subsequent Compliance

The People note that EOR did not self-report the violations. Although the Board notes that the remaining materials were shipped and properly disposed of at another site, EOR improperly disposed of hazardous waste. The Board finds that this factor must be weighed against EOR.

Finding on Section 33(c) factors

The Board finds that factors in Sections 33(c) justify requiring EOR to pay a civil penalty.

Section 42(h) Factors

Duration and Gravity of the Violation

Improper storage of the hazardous waste occurred for over 31 months. The potential harm from the improper transport, storage and disposal of hazardous waste is grave. EOR's action endangered citizens of Illinois and those persons along the route from Illinois to Colorado. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Due Diligence

The People argue that the EOR was not diligent. The record contains no evidence that the EOR made any attempt to properly comply with the requirements of the Act. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Economic Benefits Accrued

The People were unable to establish evidence of an economic benefit. Therefore, since the record contains no evidence of an economic benefit, the Board finds that consideration of this factor neither mitigates nor aggravates the assessment of penalty.

Penalty Which Will Serve To Deter Further Violations

The People argue that a total civil penalty of $200,00 will help to deter future violations. The Board finds that that consideration of this factor neither mitigates nor aggravates assessment of a substantial penalty.

The Number, Proximity In Time, And Gravity Of Previously Adjudicated Violations Of This Act By The Violator

The record contains no evidence of prior adjudicated violations and the People indicate that they are unaware of any previous violations. The Board finds that that consideration of this factor mitigates against a substantial penalty.

Self Disclosure

EOR did not self disclose the violations. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Supplemental Environmental Project

A supplemental environmental project is not at issue in this proceeding, so this factor neither aggravates nor mitigates the assessment of a penalty.

Compliance Commitment Agreement

A compliance commitment agreement has not been signed, so this factor neither aggravates nor mitigates the assessment of a penalty.

Appropriate Civil Penalty

In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)). People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer, PCB 99-27, slip. op. at 8.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act. *See* 415 ILCS 5/42(a) and (b) (2008). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act or Board regulations and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. In this case the statutory maximum for a single violation for each regulation and statute violated by EOR is $1,450,000. The statutory maximum for continuing for each day of the 31 months that the materials were stored is approximately $9,300,000 for a total maximum penalty of $10,750,000. The People ask for a civil penalty of $200,000.

The record contains no evidence of an economic benefit for EOR so the Board cannot determine what economic benefit might have accrued. The violations are of a grave nature and continued for more than two years; however, the record indicates that EOR has no previously adjudicated violations. The People believe that a $200,000 penalty is sufficient to deter future violations and ensure future compliance.

Analysis of the Section 33(c) and 42(h) factors illustrates that there are few mitigating factors against a substantial penalty. Furthermore, the violations found by the Board against EOR are very serious. EOR placed hazardous waste in wells at an unpermitted site. Given the seriousness of these violations a substantial penalty is warranted. The Board notes that a $200,000 penalty when viewed against the statutory maximum may not seem substantial. However, the Board relies on the People's assertion that $200,000 will deter future violations and aid in the enforcement of the Act. The Board further relies on the evidence that indicates EOR has no prior adjudicated violations. Therefore, the Board finds that a $200,000 civil penalty is appropriate.

CONCLUSION

The Board finds that summary judgment is appropriate as to EOR and grants the People's motion for summary judgment as to EOR. The Board reserves ruling on the motion for summary judgment against AET. Based on the facts admitted the Board finds that EOR violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010)) and multiple provisions of the Board's hazardous waste regulations and underground injection control (UIC) regulations. The Board finds that EOR violated the provisions of the rules as alleged in the complaint. Having found that EOR violated the Act and Board regulations, the Board finds that a civil penalty of $200,000 is appropriate and directs EOR to pay that civil penalty.

ORDER

1. The Board finds that E.O.R. Energy, LLC (EOR) violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010)). The Board further finds that EOR violated the Board rules as alleged in the complaint in 35 Ill. Adm. Code 703.121(a), (b), 703.150(a)(2), 704.121, 704.203, 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278.

2. The Board hereby assesses a penalty of two hundred thousand dollars ($200,000) against EOR. EOR must pay this penalty no later than October 9, 2012, which is the first business day following the 30th day after the date of this order. EOR must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and EOR's federal employer identification numbers must be included on the certified check or money order.

3. EOR must send the certified check or money order to:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   1021 North Grand Avenue East
   P.O. Box 19276
   Springfield, Illinois 62794-9276

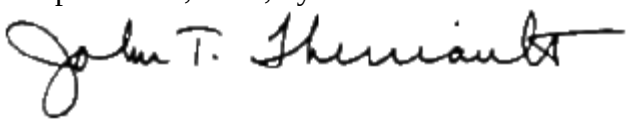
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

5. EOR must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 6, 2012, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

APPENDIX

Section 703.121 RCRA Permits

a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:

1) Without a RCRA permit for the HWM (hazardous waste management) facility; or

2) In violation of any condition imposed by a RCRA permit.

b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit. An owner or operator of a surface impoundment, landfill, land treatment unit, or a waste pile unit that received wastes after July 26, 1982, or that certified closure (according to 35 Ill. Adm. Code 725.215) after January 26, 1983, must have a post-closure care permit, unless it demonstrates closure by removal or decontamination, as provided under Sections 703.159 and 703.160, or obtains enforceable documents containing alternative requirements, as provided under Section 703.161. If a post-closure care permit is required, the permit must address applicable 35 Ill. Adm. Code 724 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements.

BOARD NOTE: Derived from 40 CFR 270.1(c) (2002).

Section 703.150 Application by Existing HWM Facilities and Interim Status Qualifications

a) The owner or operator of an existing HWM facility or of an HWM facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit must submit Part A of the permit application to the Agency no later than the following times, whichever comes first:

2) Thirty days after the date the owner or operator first becomes subject to the standards in 35 Ill. Adm. Code 725 or 726; or

Section 704.121 Prohibition Against Unauthorized Injection

Any underground injection, except into a well authorized by permit or rule issued pursuant to this Part and 35 Ill. Adm. Code 705 is prohibited. The construction of any well required to have a permit under this Part is prohibited until the permit has been issued.

BOARD NOTE: Derived from 40 CFR 144.11 (2005).

Section 704.203 Requirements

In addition to requiring compliance with the applicable requirements of this Part and 35 Ill. Adm. Code 730, the owner or operator of any facility described in Section 704.202 must comply with the following requirements:

a) Notification. The owner or operator must comply with the notification requirements of section 3010 of the Resource Conservation and Recovery Act (42 USC 6901 et seq.).

b) Identification number. The owner or operator must comply with 35 Ill. Adm. Code 724.111.

c) Manifest system. The owner or operator must comply with the applicable recordkeeping and reporting requirements for manifested wastes in 35 Ill. Adm. Code 724.171.

d) Manifest discrepancies. The owner or operator must comply with 35 Ill. Adm. Code 724.172.

e) Operating record. The owner or operator must comply with 35 Ill. Adm. Code 724.173(a), (b)(1), and (b)(2).

f) Annual report. The owner or operator must comply with 35 Ill. Adm. Code 724.175.

g) Unmanifested waste report. The owner or operator must comply with 35 Ill. Adm. Code 724.176.

h) Personnel training. The owner or operator must comply with the applicable personnel training requirements of 35 Ill. Adm. Code 724.116.

i) Certification of closure. When abandonment is completed, the owner or operator must submit to the Agency certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in Section 704.188.

BOARD NOTE: Derived from 40 CFR 144.14(c) (2005).

Section 725.111 USEPA Identification Number

Evey facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-12. The facility owner or operator must obtain a copy of the form from the Agency, Bureau of Land (217-782-6762), and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA.

Section 725.113 General Waste Analysis

a) Waste analysis:

1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information that must be known to treat, store, or dispose of the waste in accordance with this Part and 35 Ill. Adm. Code 728.

2) The analysis may include data developed under 35 Ill. Adm. Code 721 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

BOARD NOTE: For example, the facility's record of analyses performed on the waste before the effective date of these regulations or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility may be included in the data base required to comply with subsection (a)(1) of this Section, except as otherwise specified in 35 Ill. Adm. Code 728.107(b) and (c). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subsection (a)(1) of this Section. If the generator does not supply the information and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.

3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated as follows:

A) When the owner or operator is notified or has reason to believe that the process or operation generating the hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), has changed; and

B) For off-site facilities, when the results of the inspection required in subsection (a)(4) of this Section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

b) The owner or operator must develop and follow a written waste analysis plan that describes the procedures that the owner or operator will carry out to comply with subsection (a) of this Section. The owner or operator must keep this plan at the facility. At a minimum, the plan must specify the following:

1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) of this Section).

2) The test methods that will be used to test for these parameters.

3) The sampling method that will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either of the following methods:

A) One of the sampling methods described in Appendix A to 35 Ill. Adm. Code 721, or

B) An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.120(c) for related discussion.

4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.

5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods, as specified in Sections 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934(d), 725.963(d), and 725.984 and 35 Ill. Adm. Code 728.107.

7) For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for the following:

A) The sampling of impoundment contents;

B) The analysis of test data; and

C) The annual removal of residues that are not delisted under 35 Ill. Adm. Code 720.122 or that exhibit a characteristic of hazardous waste and either of the following is true:

i) The waste residues do not meet the applicable treatment standards of Subpart D of 35 Ill. Adm. Code 728, or

ii) Where no treatment standards have been established, the waste residues are prohibited from land disposal under 35 Ill. Adm. Code 728.132 or 728.139.

8) For an owner or operator seeking an exemption to the air emission standards of Subpart CC of 35 Ill. Adm. Code 724 in accordance with Section 725.983:

A) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

B) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator, or by the generator of the waste if the waste is received from off-site, that is used as the basis for knowledge of the waste.

c) For off-site facilities, the waste analysis plan required in subsection (b) of this Section must also specify the procedures that will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe the following:

1) The procedures that will be used to determine the identity of each movement of waste managed at the facility;

2) The sampling method that will be used to obtain a representative sample of the waste to be identified if the identification method includes sampling; and

3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

Section 725.114 Security

a) The owner or operator must prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless the following are true:

1) Physical contact with the waste, structures, or equipment of the active portion of the facility will not injure unknowing or unauthorized persons or livestock that may enter the active portion of the facility; and

2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility will not cause a violation of the requirements of this Part.

b) Unless exempt under subsections (a)(1) and (a)(2) of this Section, a facility must have the following:

1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry into the active portion of the facility; or

2) Controlled access, including the following minimum elements:

A) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

B) A means to control entry at all times through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

BOARD NOTE: The requirements of subsection (b) of this Section are satisfied if the facility or plant within which the active portion is located itself has a surveillance system or a barrier and a means to control entry that complies with the requirements of subsection (b)(1) or (b)(2) of this Section.

c) Unless exempt under subsection (a)(1) or (a)(2) of this Section, a sign with the legend, "Danger—Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility and at other locations in sufficient numbers to be seen from any approach to this active portion. The sign must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and that entry onto the active portion can be dangerous.

BOARD NOTE: See Section 725.217(b) for discussion of security requirements at disposal facilities during the post-closure care period.

Section 725.115 General Inspection Requirements

a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing—or which may lead to—the conditions listed below. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

1) Release of hazardous waste constituents to the environment, or

2) A threat to human health.

Section 725.116 Personnel Training

a) Personnel training program.

1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under subsection (d)(3) of this Section.

2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including the following where applicable:

A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;

B) Key parameters for automatic waste feed cut-off systems;

C) Communications or alarm systems;

D) Response to fires or explosions;

E) Response to groundwater contamination incidents; and

F) Shutdown of operations.

4) For facility employees that receive emergency response training pursuant to the federal Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility OSHA emergency response training meets all the requirements of this Section.

b) Facility personnel must successfully complete the program required in subsection (a) of this Section upon the effective date of these regulations or six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of subsection (a) of this Section.

c) Facility personnel must take part in an annual review of the initial training required in subsection (a) of this Section.

d) The owner or operator must maintain the following documents and records at the facility:

1) The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job;

2) A written job description for each position listed under subsection (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position;

3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subsection (d)(1) of this Section;

4) Records that document that the training or job experience required under subsections (a), (b), and (c) of this Section has been given to and completed by facility personnel.

e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from

the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Section 725.117 General Requirements for Ignitable, Reactive, or Incompatible Wastes

a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

b) Where specifically required by other Sections of this Part, the treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible waste or incompatible wastes and materials, must be conducted so that it does not do any of the following:

1) It does not generate extreme heat or pressure, fire or explosion, or violent reaction;

2) It does not produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

3) It does not produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4) It does not damage the structural integrity of the device or facility containing the waste; or

5) Through other like means, it does not threaten human health or the environment.

Section 725.131 Maintenance and Operation of Facility

Facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

Section 725.132 Required Equipment

All facilities must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

d) Water at adequate volume and pressure to supply water hose streams or foam producing equipment or automatic sprinklers or water spray systems.

Section 725.137 Arrangements with Local Authorities

a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of the following organizations:

1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes;

2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority;

3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

Section 725.151 Purpose and Implementation of Contingency Plan

a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

Section 725.155 Emergency Coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: The emergency coordinator's responsibilities are more fully spelled out in Section 725.156. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of wastes handled by the facility and type and complexity of the facility.

Section 725.171 Use of Manifest System

c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.134 apply only to owners or operators that are shipping hazardous waste which they generated at that facility.

Section 725.173 Operating Record

a) The owner or operator must keep a written operating record at the facility.

b) The following information must be recorded as it becomes available and maintained in the operating record for three years unless otherwise provided as follows:

1) A description and the quantity of each hazardous waste received and the methods and dates of its treatment, storage, or disposal at the facility, as required by Appendix A to this Part. This information must be maintained in the operating record until closure of the facility;

2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

BOARD NOTE: See Sections 725.219, 725.379, and 725.409 for related requirements.

3) Records and results of waste analysis, waste determinations, and trial tests performed, as specified in Sections 725.113, 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934, 725.963, and 725.984 and 35 Ill. Adm. Code 728.104(a) and 728.107;

4) Summary reports and details of all incidents that require implementing the contingency plan, as specified in Section 725.156(j);

5) Records and results of inspections, as required by Section 725.115(d) (except these data need be kept only three years);

6) Monitoring, testing, or analytical data, where required by Subpart F of this Part or Sections 725.119, 725.194, 725.291, 725.293, 725.295, 725.324, 725.326, 725.355, 725.360, 725.376, 725.378, 725.380(d)(1), 725.402, 725.404, 725.447, 725.477, 725.934(c) through (f), 725.935, 725.963(d) through (i), 725.964, and 725.1083 through 725.990. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility;

BOARD NOTE: As required by Section 725.194, monitoring data at disposal facilities must be kept throughout the post-closure period.

7) All closure cost estimates under Section 725.242 and, for disposal facilities, all post-closure cost estimates under Section 725.244 must be maintained in the operating record until closure of the facility;

8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.105, a petition pursuant to 35 Ill. Adm. Code 728.106, or a certification under 35 Ill. Adm. Code 728.108 and the applicable notice required of a generator under 35 Ill. Adm. Code 728.107(a). All of this

information must be maintained in the operating record until closure of the facility;

9) For an off-site treatment facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

10) For an on-site treatment facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

11) For an off-site land disposal facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108;

12) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, if applicable, required under 35 Ill. Adm. Code 728.107 or 728.108;

13) For an off-site storage facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

14) For an on-site storage facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108; and

15) Monitoring, testing or analytical data, and corrective action, where required by Sections 725.190 and 725.193(d)(2) and (d)(5), and the certification, as required by Section 725.196(f), must be maintained in the operating record until closure of the facility.

Section 725.175 Annual Report

The owner and operator must prepare and submit a single copy of an annual report to the Agency by March 1 of each year. The report form and instructions supplied by the Agency must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

a) The USEPA identification number (Section 725.111), name, and address of the facility;

b) The calendar year covered by the report;

c) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities this information must be listed by USEPA identification number of each generator;

e) The method of treatment, storage, or disposal for each hazardous waste;

f) Monitoring data under Section 725.194(a)(2)(B), (a)(2)(C), and (b)(2), where required;

g) The most recent closure cost estimate under Section 725.242 and for disposal facilities the most recent post-closure cost estimate under Section 725.244;

h) For generators that treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;

i) For generators that treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, to the extent such information is available for years prior to 1984; and

j) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative.

Section 725.212 Closure Plan; Amendment of Plan

a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

Section 725.242 Cost Estimate for Closure

a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and

2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator demonstrates that on-site disposal capacity will exist at all times over the life of the facility.

3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if permitted by the Agency pursuant to Section 725.213(d), facility structures or equipment, land or other facility assets at the time of partial or final closure.

4) The owner or operator must not incorporate a zero cost for hazardous waste, or non-hazardous waste if permitted by the Agency pursuant to Section 725.213(d), that may have economic value.

Section 725.243 Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options specified in subsections (a) through (e) of this Section.

a) Closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251, and the trust agreement must be accompanied by a formal certification of acknowledgment, as specified in 35 Ill. Adm. Code 724.251. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

A) The first payment must be made before May 19, 1981, except as provided in subsection (a)(5) of this Section. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

Where:

CE = the current closure cost estimate
CV= the current value of the trust fund
Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this Section.

5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this Section.

6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Section, to cover the difference.

7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.

8) If an owner or operator substitutes other financial assurance, as specified in this Section, for all or part of the trust fund, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8) of this Section, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency must instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h) of this Section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator a detailed written statement of reasons.

11) The Agency must agree to termination of the trust when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section.

Section 725.274 Inspections

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

BOARD NOTE: See Section 725.271 for remedial action required if deterioration or leaks are detected.

Section 725.278 Air Emission Standards

The owner or operator must manage all hazardous waste placed in a container in accordance with the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724.