

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2002

IN THE MATTER OF:)
) R02-1
RCRA SUBTITLE C UPDATE, USEPA) (Identical-in-Substance
AMENDMENTS (January 1, 2001 through) Rulemaking - Land
June 30, 2001))

RCRA SUBTITLE C UPDATE, USEPA) R02-12
AMENDMENTS (July 1, 2001 through) (Identical-in-Substance
December 31, 2001 and January 22, 2002)) Rulemaking - Land

UIC UPDATE, USEPA AMENDMENTS) R02-17
(July 1, 2001 through December 31, 2001)) (Identical-in-Substance
) Rulemaking - Land
) (Consolidated)

Proposed Rule. Proposal for Public Comment.

OPINION OF THE BOARD (by S.T. Lawton, Jr.):

SUMMARY OF TODAY'S ACTION

Under Sections 7.2 and 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 22.4(a) (2000)), the Board proposes amendments to the Illinois regulations that are "identical in substance" to hazardous waste regulations that the United States Environmental Protection Agency (USEPA) adopted to implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2000)). The nominal timeframe of docket R02-1 includes federal RCRA Subtitle C amendments that USEPA adopted in the period January 1, 2001 through June 30, 2001, and that for docket R02-12 includes federal RCRA Subtitle C amendments that USEPA adopted in the period July 1, 2001 through December 31, 2001.

Under Sections 7.2 and 13(c) of the Act (415 ILCS 5/7.2 and 13(c) (2000)), the Board proposes amendments to the Illinois regulations that are "identical in substance" to underground injection control (UIC) regulations that USEPA adopted to implement Section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. § 300h (2000)). The nominal timeframe of docket R02-17 includes federal UIC amendments that USEPA adopted in the period July 1, 2001 through December 31, 2001.

As explained below, for reasons of administrative economy, the Board is consolidating dockets R02-1, R02-12, and R02-17. The caption in today's order reflects this consolidation. At the January 9, 2002 request of the Illinois Environmental Protection Agency (Agency), we have

also added to docket R02-12 federal amendments adopted January 22, 2002. These amendments would normally wait at least six months until the next subsequent update period. The January 22, 2002 amendments cover corrective action management units (CAMUs), and USEPA stated that it intends to implement them in Illinois as federal rules by April 22, 2002, unless Illinois can commit to implement the amendments as State rules by that time.

Sections 7.2 and 22.4(a) provide for quick adoption of regulations that are identical in substance to federal regulations that USEPA adopts to implement Sections 3001 through 3005 of RCRA (42 U.S.C. §§ 6921-6925 (2000)). Similarly, Sections 7.2 and 13(c) provide for quick adoption of regulations that are identical in substance to federal regulations that USEPA adopts to implement Section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. § 300h (2000)). Sections 13(c) and 22.4(a) also provide that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2000)) do not apply to the Board's adoption of identical-in-substance regulations. The federal RCRA Subtitle C regulations are found at 40 C.F.R. 260 through 266, 268, 270, 271, 273, and 279. The federal UIC regulations are found at 40 C.F.R. 144 through 148.

This opinion supports an order that the Board also adopts today. The Board will cause the proposed amendments to be published in the *Illinois Register* and will hold the docket open to receive public comments for 45 days after the date of publication.

CONSOLIDATION OF DOCKETS R02-1, R02-12, AND R02-12 AND ADDITION OF JANUARY 22, 2002 CAMU AMENDMENTS

The Board hereby consolidates its consideration of the R02-1 and R02-12 RCRA Subtitle C update dockets and the R02-17 UIC update docket in the interests of administrative economy. There is some overlap in the amendments involved in the R02-1 and R02-12 RCRA Subtitle C update dockets, and consolidation of those two dockets will allow the timely adoption of all the amendments involved without co-pendent amendments to any of the provisions involved. The R02-17 UIC update docket covers the same time period as the R02-12 RCRA Subtitle C update docket, and the only federal amendments to the UIC regulations involved in docket R02-17 occurred on November 20, 2001, as a segment of a larger federal rulemaking to amend the RCRA Subtitle C regulations that are involved in docket R02-12. Consolidation of these three dockets will expedite the amendment of all the regulations involved.

In addition to the consolidation described above, the Board is proposing to adopt federal amendments that lie outside the nominal timeframes of the dockets involved. The Agency filed a request for expedited consideration of as-yet unpublished federal amendments on January 9, 2002. (PC 3) The federal amendments involved appeared in the January 22, 2002 issue of the *Federal Register* (at 67 Fed. Reg. 2961). For the reasons described more fully below (beginning on Page 21), the Board is granting the Agency's request and adding these later amendments to the R02-12 docket for consideration in this consolidated docket. The caption reflects this addition.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

The following briefly summarizes the federal actions considered in this rulemaking.

Docket R02-1: January 1, 2001 through June 30, 2001, **RCRA Subtitle C Amendments**

USEPA amended the federal RCRA Subtitle regulations on six occasions during the period January 1, 2001 through June 30, 2001. Each is summarized below:

66 Fed. Reg. 3466 (Jan. 16, 2001)

By a direct final rule, USEPA approved the use of updated test procedures for determination of various contaminants in water and wastewater. USEPA amended 40 C.F.R. 136, which is incorporated by reference in 35 Ill. Adm. Code 720.111.

66 Fed. Reg. 24270 (May 14, 2001)

USEPA withdrew segments of the June 19, 1998 (63 Fed. Reg. 33821) hazardous waste combustor rule. The court in Chemical Manufacturers Assoc. v. EPA, 217 F.3d 861 (D.C. Cir. 2000) had vacated the aspects of the rule the notice of intent to comply provisions in that rule, and the withdrawal was in response to that decision.

66 Fed. Reg. 26795 (May 15, 2001)

USEPA withdrew its January 16, 2001 (66 Fed. Reg. 3466) direct final rule that approved the use of updated test procedures for determination of various contaminants in water and wastewater.

66 Fed. Reg. 27218 (May 16, 2001)

USEPA adopted relaxed requirements for low-level radioactive waste that is mixed with hazardous waste (LLMW) and enhanced naturally occurring and accelerator-produced radioactive material (NARM). USEPA adopted a conditional exemption of certain LLMW from the hazardous waste regulations during storage and treatment, since these wastes are also subject to regulation under the Atomic Energy Act. USEPA also exempted LLMW and NARM from the RCRA manifest, transportation, and disposal requirements when certain conditions are met.

66 Fed. Reg. 27266 (May 16, 2001)

USEPA adopted the retention of the mixture rule and derived-from rule in the hazardous waste regulations. In retaining the rules, USEPA amended them in two regards to narrow their scopes. The first amendment is to exclude wastes listed solely for the characteristics of ignitability, corrosivity, and reactivity. The second amendment is the conditional exemption of mixed waste (waste that is hazardous waste and radioactive waste).

66 Fed. Reg. 34374 (June 28, 2001)

USEPA adopted technical amendments and corrections to various of its regulations, including the hazardous waste rules to update its own mailing addresses. This action was

a follow-up action intended to complete amendments adopted by USEPA on August 2, 2000 (65 Fed. Reg. 47323).

Docket R02-12: July 1, 2001 through December 31, 2001,
RCRA Subtitle C Amendments

USEPA amended the federal RCRA Subtitle C regulations on five occasions during the period July 1, 2001 through December 31, 2001. Each is summarized below:

66 Fed. Reg. 35087 (July 3, 2001)

USEPA adopted a direct final rule that amended its September 30, 1999 hazardous waste combustor rule. The amendments affected a segment of the standards applicable to hazardous waste treatment, storage, and disposal facilities.

66 Fed. Reg. 35379 (July 5, 2001)

USEPA published two memoranda that outline the applicability of the hazardous waste regulations to spent catalyst wastes removed from dual purpose hydroprocessing reactors at petroleum refining facilities, and it invited public comment on the memoranda. The memoranda explain that the wastes fall within the description of listed hazardous wastes numbered K171 and K172.

66 Fed. Reg. 50332 (Oct. 3, 2001)

USEPA adopted a direct final rule that incorporated two clarifying revisions into the May 16, 2001 hazardous waste identification rule. The first revision replaces exemptions from the mixture rule previously inadvertently deleted. The second revision clarifies that mixtures including certain wastes (“Bevill” wastes¹) and listed hazardous wastes listed solely for the characteristic of ignitability, reactivity, or corrosivity (*i.e.*, wastes not listed for toxicity) are no longer hazardous once the characteristic for which the waste was listed has been removed.

66 Fed. Reg. 52361 (Oct. 15, 2001)

USEPA withdrew segments of its July 3, 2001 direct final rule that amended its September 30, 1999 hazardous waste combustor rule. Although the withdrawal affected only air segments of the hazardous waste combustor rule, the air segments are incorporated into the hazardous waste rules by reference in 35 Ill. Adm. Code 720.111.

66 Fed. Reg. 58258 (Nov. 20, 2001)

USEPA adopted new hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing. With the new waste listings, USEPA adopted waste treatment standards and land disposal restrictions for the new wastes.

¹ Section 3001(b)(3)(A)(i) through (b)(3)(A)(iii) of RCRA (42 U.S.C. §§ 6921(b)(3)(A)(i) through (b)(3)(A)(iii) (1994) are known as the “Bevill exemption.” The wastes exempted are known as “Bevill” wastes. *See* 60 Fed. Reg. 11089 (Mar. 1, 1995).

Docket R02-17: July 1, 2001 through December 31, 2001,
UIC Amendments

USEPA amended the federal UIC regulations on one occasion during the period July 1, 2001 through December 31, 2001. That action is summarized below:

66 Fed. Reg. 58258 (Nov. 20, 2001)

USEPA adopted new hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing. With the new waste listings, USEPA adopted waste treatment standards and land disposal restrictions for the new wastes. This included restrictions on the underground injection of these wastes.

Later RCRA Subtitle C (Hazardous Waste) or UIC Amendments of Interest:
January 22, 2002 CAMU Amendments

The Agency has requested that the Board consider a specific set of federal amendments on an expedited basis. That set of amendments is the following:

67 Fed. Reg. 2961 (Jan. 22, 2002)

USEPA adopted amendments to the corrective action management unit (CAMU) rules. These amendments significantly revise the requirements imposed on CAMU units and on the waste to be managed in a CAMU unit.

The Agency states that it must notify USEPA within 60 days of the federal adoption of these amendments (by March 22, 2002), whether the State will be able to implement the rules within 90 days of their adoption (by April 22, 2002). If the State is unable to implement these amendments, USEPA will implement them. The Agency asserted that concurrent enforcement by USEPA and the Agency would be disruptive, and it wishes to avoid this situation. The Agency requested that the Board adopt the January 22, 2002 amendments as soon as possible.

The Board agrees that expedited consideration of the January 22, 2002 amendments is warranted. The quickest way to adopt those amendments is to include them in the present consolidated docket. We have added the amendments to this proposal.

Additionally, the Board engages in ongoing monitoring of federal actions. As of the date of this opinion and accompanying order, the Agency has identified a single USEPA action since January 1, 2002, that further amends the RCRA Subtitle C hazardous waste rules. When the Board observes an action outside the nominal timeframe of a docket that would require expedited consideration in the pending docket, the Board will expedite consideration of those amendments. Federal actions that could warrant expedited consideration include those that directly affect the amendments involved in this docket, those for which compelling reasons would warrant consideration as soon as possible, and those for which the Board has received a request for expedited consideration. If the Board identifies any federal additional actions that fulfill these criteria prior to final action on the present amendments, we may include those amendments in the present consolidated update docket R02-1, R02-12, and R02-17.

**Other Federal Actions Having a Direct Impact on the
Illinois RCRA Subtitle C and UIC Regulations**

In addition to the amendments to the federal RCRA Subtitle C regulations, another set of federal amendments has an effect on the corresponding Illinois rules. Most notably, 35 Ill. Adm. Code 720.111 includes several incorporations of federal regulations by reference, and USEPA has amended 40 C.F.R. 136, which is included among the incorporated references. The set of federal amendments to 40 C.F.R. 136 is as follows:

66 Fed. Reg. 32774 (June 18, 2001)

USEPA adopted technical corrections to the test procedures for determination of mercury in water and wastewater. USEPA amended 40 C.F.R. 136, which is incorporated by reference in 35 Ill. Adm. Code 720.111.

**RCRA Subtitle C (Hazardous Waste) and UIC Amendments
on Which No Board Action Is Necessary**

Among the listed federal RCRA Subtitle C and UIC amendments examined by the Board are four on which no Board action is necessary in the present consolidated update docket R02-1/R02-12/R02-17. Those actions were those of January 16, 2001, May 15, 2001, June 28, 2001, and July 5, 2001.

The amendments of January 16, 2001 were substantive direct final amendments; USEPA approved the use of updated test procedures for determination of various contaminants in water and wastewater. By the action of May 15, 2001, however, USEPA withdrew the direct final amendments of January 16 in response to significant adverse public comments.

In the action of June 28, 2001, USEPA amended several segments of its various regulations to update the address of the USEPA headquarters. Included were amendments to 40 C.F.R. 260.11(a)(11); 261, Appendix IX, tables 1 and 2; and 265.1080(f)(2)(viii)(H)(2). Thus, there is no counterpart in the Illinois regulations for these three particular segments of the federal regulations. The document referenced in 40 C.F.R. 260.11(a)(11) is available from other sources that are listed in the Illinois regulations, obviating an added listing for the "OSW Methods Team." The rules in 40 C.F.R. 261, Appendix IX, tables 1 and 2 and 265.1080(f)(2)(viii)(H)(2) pertain only to facilities outside Illinois.

Finally, the federal action of July 5, 2001 did not amend the federal hazardous waste regulations. Rather, USEPA published two interpretive memoranda relating to the application of its regulations to certain wastes and invited public comment on that interpretation. The interpretive memoranda do not warrant amendment of the Illinois hazardous waste regulations.

**Summary Listing of the Federal Actions Forming the Basis
of the Board's Actions in These Consolidated Dockets**

Based on the foregoing, the federal actions that form the basis for Board action in this update docket are as follows, in chronological order:

66 Fed. Reg. 24270 (May 14, 2001)	Withdrawal of segments of the hazardous waste combustor rule.
66 Fed. Reg. 27218 (May 16, 2001)	Relaxed requirements for low-level radioactive waste that is mixed with hazardous waste (LLMW) and enhanced naturally occurring and accelerator-produced radioactive material (NARM).
66 Fed. Reg. 27266 (May 16, 2001)	Retention of the mixture rule and derived-from rule in the hazardous waste regulations, with amendments to narrow their scopes.
66 Fed. Reg. 32774 (June 18, 2001)	Technical corrections to the test procedures for determination of mercury in water and wastewater.
66 Fed. Reg. 35087 (July 3, 2001)	Amendment of the hazardous waste combustor rule.
66 Fed. Reg. 50332 (Oct. 3, 2001)	Clarifying revisions into the May 16, 2001 hazardous waste identification rule.
66 Fed. Reg. 52361 (Oct. 15, 2001)	Withdrawal of segments of the July 3, 2001 amendments to the hazardous waste combustor rule.
66 Fed. Reg. 58258 (Nov. 20, 2001)	Hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing, with land disposal restrictions.
67 Fed. Reg. 2961 (Jan. 22, 2002)	Amendments to the CAMU rules.

PUBLIC COMMENTS

The Board will receive public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*. After that time, the Board will immediately consider adoption of the amendments, making any necessary changes made evident through the public comments. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow additional time for USEPA to review the adopted amendments before they are filed and become effective.

The Board received three public comments prior to adoption of this proposal for public comment. Those comments were the following:

- PC 1 Illinois Environmental Regulatory Group, June 14, 2001, by Karen L. Bernoteit, Attorney
- PC 2 Nascote Industries, Inc., September 28, 2001, by Jim Evilsizer, Environmental Engineer

PC 3 Illinois Environmental Protection Agency, January 9, 2002, by Kyle Rominger, Assistant Counsel

The public comments received prior to the proposal request that the Board take specific actions. On June 18, 2001, the Board received a request from the Illinois Environmental Regulatory Group (IERG), docketed as public comment number 1, as described below, that we consider the decision of the federal court in Association of Battery Recyclers, Inc. v. U.S. EPA, 208 F.3d 1047 (D.C. Cir. 2000). IERG asserted that this decision vacated the federal May 26, 1998 (63 Fed. Reg. 28555) Phase IV land disposal restrictions (LDRs) to the extent that it requires application of the toxicity characteristic leaching procedure (TCLP) test to determine whether manufactured gas plant (MGP) waste is hazardous. In response to the IERG comment, we examine the Association of Battery Recyclers decision in the discussion that begins on page 18 of this opinion.

In PC 2, Nascote Industries directed the Board's attention to the federal May 16, 2001 amendments to the hazardous waste identification rule (HWIR). Nascote requested expedited review of these amendments. The Board grants the request, since those amendments are a part of this docket. Discussion of the HWIR amendments appears in the segment of the following discussion that begins on page 12 below.

In PC 3, the Agency requested that the Board take prompt action on a set of USEPA amendments to the federal CAMU rules that appeared in the January 22, 2002 issue of the *Federal Register* (at 67 Fed. Reg. 2961). The Board grants this request, since it is within the interest of the State that we adopt these amendments as soon as possible, in order to avoid the possible inconsistencies involved in USEPA itself implementation implementing the amendments while the Agency simultaneously implements the different standards that now exist in the Illinois rules.

TIMETABLE FOR COMPLETION OF THIS RULEMAKING AND POSSIBLE REASONS FOR DELAY ORDER

The proposal for public comment in these consolidated dockets was originally scheduled for adoption by the Board at its January 10, 2002 meeting. Adoption of the proposal on January 10, 2002 was calculated to allow for timely adoption of the rule around April 29, 2002. But, upon receipt of the Agency's request for expedited review of the CAMU amendments on January 9, 2002, the Board postponed action in these consolidated dockets to fold in the amendments published by USEPA on January 22, 2002.

In postponing action in these dockets to accommodate the Agency and USEPA, the Board has jeopardized its ability to timely complete rulemaking in these dockets under Section 7.2(b) of the Act. The Board may therefore need to extend its deadline as provided under that Section.

More specifically, under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2000)), the Board has one year from the date of the earliest federal amendments involved in an identical-in-substance update to complete our rulemaking proceedings. The earliest federal amendments

involved in this consolidated docket were those of May 14, 2001 (66 Fed. Reg. 24270). Thus, the Board must complete its rulemaking proceedings on this consolidated docket on or before May 14, 2002. We have read “complete its rulemaking proceedings” as meaning filing the amendments with the Office of the Secretary of State. Section 7.2(b) further provides that the Board may extend the deadline by publishing a Notice of Public Information in the *Illinois Register* setting forth reasons for delay. That may be necessary at a later date in this consolidated docket because the Board has delayed the proposal of these amendments on the January 9, 2002 request of the Agency that we include the federal amendments of January 22, 2002 (67 Fed. Reg. 2961).

Considering the proposal of these amendments on this date, the Board projects the following will occur in the progress towards completion of these amendments:

Due date:	May 14, 2002
Board vote to propose amendments:	January 24, 2002
Submission for publication:	February 4, 2002
<i>Illinois Register</i> publication:	February 15, 2002
End of 45-day public comment period:	April 1, 2002
Board vote to adopt amendments:	April 18, 2002
End of 30-day hold period for USEPA review:	May 18, 2002
Probable filing and effective date:	May 27, 2002
Probable <i>Illinois Register</i> publication date:	June 7, 2002

Examination of this projected timetable makes it appear that the Board will vote whether to adopt the present amendments long before the May 14, 2002 due date. However, the actual filing of those amendments with the Office of the Secretary of State, will not occur until after the Board has held the amendments for another 30 days to allow USEPA to review them before the Board votes to adopt them. The actual filing of these amendments would not occur until several days after the May 14, 2002 adoption deadline.

If USEPA does not expressly waive the 30-day period for its review, the Board will need to adopt a reasons for delay order and publish a Notice of Public Information in the *Illinois Register* to extend the deadline. If USEPA expressly waives the 30-day period for post-adoption review of the amendments before the end of the public comment period, the delay will not be necessary. The Board requests that USEPA submit its comments on the proposed amendments before the end of the public comment period, and that it expressly notify the Board whether or not it waives its 30-day period of post-adoption review.

DISCUSSION

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by a discussion of the amendments and actions undertaken in direct response to the federal actions involved in this proceeding. This first series of discussions is organized by federal subject matter, generally appearing in chronological order of the relevant *Federal*

Register notices involved. Finally, this discussion closes with a description of the amendments and actions that are not directly derived from the federal actions.

General Revisions and Deviations from the Federal Text

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors that we see in the text as we engage in these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the Illinois Administrative Code.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As of the date of this opinion, the most recent version of the *Code of Federal Regulations* available to the Board is the July 1, 2000 version. Thus, we have updated all citations to the 2000 version, adding references to later amendments using their appropriate *Federal Register* citation, where necessary.

The Board substituted “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, spelling, and cross-reference format throughout the opened text. We changed “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred was not necessarily a natural person, or to “he or she,” where a natural person was evident; changed “which” to “that” for restrictive relative clauses; substituted “must” for “shall”; capitalized the section headings and corrected their format where necessary; and corrected punctuation within sentences.

In addition, the federal rules have been edited to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may,” “must” is used when an action is required by the rule, without regard to whether the action is required of the subject of the sentence or not. “Shall” is no longer used, since it is not used in everyday language. Thus, where a federal rule uses “shall,” the Board substitutes “must.” This is a break from our former practice where “shall” was used when the subject of a sentence has a duty to do something. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either . . . or” denotes “one but not both.” “And” denotes “both.”

The Joint Committee on Administrative Rules (JCAR) has requested that the Board refer to the United States Environmental Protection Agency in the same manner throughout all of our

bodies of regulations—*i.e.*, air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board has decided to refer to the United States Environmental Protection Agency as “USEPA.” We will continue this conversion in future rulemakings as additional sections become open to amendment. We will further convert “EPA” used in federal text to “USEPA,” where USEPA is clearly intended.

The Board has assembled tables to aid in the location of these alterations and to briefly outline their intended purpose. The tables set forth the miscellaneous deviations from the federal text and corrections to the pre-amended base text of the rules in detail. The tables are set forth and explained beginning at page 10 of this opinion. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

Discussion of Particular Federal Actions

Amendments to the Hazardous Waste Combustor Rule and Hazardous Waste NESHAP—Sections 703.280, 720.111, and 724.440

On May 14, 2001 (66 Fed. Reg. 24270), USEPA withdrew segments of its June 19, 1998 (63 Fed. Reg. 33783) hazardous waste combustor rule. USEPA undertook this action in response to the vacatur in Chemical Manufacturers Assoc. v. USEPA, 217 F.3d 861 (D.C. Cir. 2000). The court vacated certain standards applicable to baghouses and electrostatic precipitators so that USEPA could solicit further public comments on them. The Board originally adopted the hazardous waste combustor rule in RCRA Update, USEPA Regulations (July 1, 1997 through Dec. 31, 1997), RCRA Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), UIC Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), R98-21/R99-2/R99-7 (Dec. 17, 1998) (consolidated).

On July 3, 2001 (66 Fed. Reg. 35087), USEPA adopted a direct final rule that amended its September 30, 1999 (64 Fed. Reg. 52828) National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to cement kilns, lightweight aggregate kilns, and incinerators burning hazardous waste. USEPA explained that the amendments improve implementation of compliance, testing, and monitoring aspects of the rule. On October 15, 2001 (66 Fed. Reg. 52361), USEPA withdrew segments of the hazardous waste combustor NESHAP. The Board adopted the original September 30, 1999 hazardous waste combustor NESHAPs in RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through Dec. 31, 1999) (May 18, 2000), R00-13.

The Board amended the Illinois hazardous waste regulations to correspond with the May 14, 2001 federal amendments to the hazardous waste combustor rule and the July 3, 2001 and October 15, 2001 amendments to the hazardous waste combustor NESHAP. Many segments of the federal amendments related to 40 C.F.R. 63, which is the NESHAP part of the federal air pollution control regulations, which the Board has incorporated by reference in 35 Ill. Adm. Code 720.111 in the Illinois rules. Thus, we have updated that incorporation to include these amendments. These amendments have also resulted in limited changes in the language of Sections 703.280(j) and 724.440(b). Persons interested in the details of the federal amendments

should consult the May 14, 2001, July 3, 2001 and October 15, 2001 and *Federal Register* notices.

The Board requests public comment on our incorporation of the May 14, 2001, July 3, 2001, and October 15, 2001 federal corrections.

Hazardous Waste Identification Rule: Mixtures and Derived-From Rule—Section 721.103, Part 726, Subpart N, and Appendix G to Part 728

On May 16, 2001 (66 Fed. Reg. 27218), USEPA amended the mixtures and derived-from rule of the hazardous waste identification rule (HWIR) as it relates to low-level mixed waste (LLMW) and technologically enhanced naturally occurring and/or accelerator-produced material (NARM) mixed with hazardous waste. USEPA stated that new Subpart N to 40 C.F.R. 266 will allow greater flexibility to facilities managing these waste materials. In essence, the new rules grant facilities that generate LLMW or NARM mixed with hazardous waste and which meet certain criteria relief from the generally-applicable hazardous waste management requirements. The relief is in the form of a storage and treatment conditional exemption or a transportation and disposal conditional exemption. On October 3, 2001 (66 Fed. Reg. 50332), USEPA adopted a direct final rule to restore text inadvertently deleted in this first set of May 16, 2001 amendments.

Also on May 16, 2001 (66 Fed. Reg. 27266), USEPA amended the mixtures and derived-from rule as it relates to mixtures of wastes listed solely for the criteria of ignitability, corrosivity, and/or reactivity.² Under the mixture rule, a mixture of waste with a listed hazardous waste is defined as hazardous waste. Under the derived-from rule, a waste generated from the treatment, storage, or disposal of a listed hazardous waste is defined as hazardous waste. Under the May 16, 2001 amendments to the mixture and derived-from rules, a mixture containing a listed hazardous waste or a material derived from a listed hazardous waste is no longer defined as hazardous waste if the resulting waste or mixture no longer exhibits the characteristic for which USEPA listed the waste.

The Board incorporated both sets of the May 16, 2001 HWIR rule amendments with minimal deviation from the federal text. These first set of amendments (66 Fed. Reg. 27266) required limited changes to the existing language of Sections 721.103 and Appendix G to Part 728. In place of 40 C.F.R. 261.3(a)(2)(iii), which USEPA removed and marked “reserved,” we have added explanatory language at corresponding 35 Ill. Adm. Code 721.103(a)(2)(C) to avoid renumbering subsections and losing structural parity with the corresponding federal regulations.

The second set of amendments (66 Fed. Reg. 27266) involved the addition of new Subpart N to Part 726, which is a significant body of new provisions. The addition of the Subpart N rules raised a small number of issues that required deviation from the federal text. We

² This excludes waste listed for toxicity or acute toxicity. At this time the covered wastes appear limited to USEPA hazardous waste numbers F003, K044, K045, K047, P009, P042, P112, U001, U002, U008, U020, U031, U055, U056, U057, U092, U096, U110, U112, U113, U117, U124, U125, U154, U161, U186, U189, U213, and U239.

consider only the more significant of those issues in this discussion. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 30 of this opinion. Persons interested in the details of the federal amendments should consult the May 16, 2001 and October 3, 2001 *Federal Register* notices. The following discussion will consider only those aspects of the HWIR amendments that present codification issues.

The first set of issues confronting the Board relates to the style of the new federal LLMW and NARM rules. USEPA has continued its use of its “user-friendly” style with these rules. This style is highly colloquial, and it relies heavily on use of a question-and-answer format and the second person. Examples of this include the section headings, “What definitions apply to this subpart?” and “How could you lose the conditional exemption for your LLMW and what action must you take?” We have changed all such language to standard regulatory style in the non-personal third person. (For example, the Board changed the noted section headings to read “Definitions” and “Loss of a Storage and Treatment Conditional Exemption and Required Action.”) As the Board has discussed in past opinions, the Board believes that the regulations are more clearly understood in the standard regulatory style, and that there is no need to oversimplify the language.

The second set of issues relates to differences between the federal and state regulatory systems and to the fact that we are tailoring a rule to fit a single State, enabling us to use more specific language. Various segments of the new Subpart N regulations depend on concurrent regulation of the radioactive material. The entities that generate LLMW and NARM are regulated by the federal Nuclear Regulatory Commission (NRC) and the Department of Nuclear Safety (DNS) in Illinois. In numerous locations where the Subpart N rules refer to “NRC Agreement States,” the Board has substituted “Illinois DNS.” We retained the many references to the “NRC” as references to the “federal NRC.” We further had to replace a number of references to state-equivalent nuclear regulations with references to various DNS rules. When we referred to the state statute relating to regulation of nuclear materials and nuclear facilities, we referred to the Radiation Protection Act of 1990 (420 ILCS 40 (2000)). When we had to refer to DNS rules generally, we used a reference to 32 Ill. Adm. Code: Chapter II, Subchapter b, which is the entire body of DNS regulations. Where more specific regulations were required, we referred to 32 Ill. Adm. Code 340 for DNS manifest requirements, to 32 Ill. Adm. Code 341 for DNS packaging and transportation requirements, and to 32 Ill. Adm. Code 606 for DNS low-level radioactive waste disposal facility requirements.

A third set of codification issues relates to differences in the federal and Illinois regulatory schemes wherein the environmental functions are divided between the Board and the Agency. Under the federal scheme there is a single regulatory agency that establishes the regulations, implements them, grants necessary permits, and grants relief from the regulations. That is USEPA. These functions are divided in Illinois. Under the Illinois regulatory scheme, the Board establishes the environmental standards for the State by regulation, and the Agency implements them by, *inter alia*, granting permits. If relief from the general regulations is warranted, it is the Board that makes that determination and allows deviation from the generally

applicable statewide standards.³ Where flexibility is needed in implementing regulations, the Board establishes standards for Agency decision-making within the rules, so that the Agency can make any requisite determinations and itself establish the criteria needed to implement the federal rule within the Illinois regulatory framework. (*See Granite City Division of National Steel Co. v. PCB*, 155 Ill. 2d 149, 613 N.E.2d 719 (1993) (considering whether Board regulations were an unlawful delegation of rulemaking authority).) This vests the discretion in the Agency to make the requisite preliminary determinations, it does not allow the Agency the further discretion whether or not to implement the standard embodied in the rule. The Board must make decisions of the types delegated to it by the Act.

Under the federal Subpart N regulations, there are two conditional exemptions applicable to the storage and treatment of the affected wastes and to their transportation and disposal. The regulations are structured so that provisions relating to each type are established separately in successive groups of rules. Both of the exemptions are conditional, and each may be lost and restored by specific actions. Under 40 C.F.R. 266.240(a) and 266.355(a) of the federal rules (corresponding with 35 Ill. Adm. Code 726.340(a) and 726.455(a)), the exemptions are automatically lost when the waste generator fails to comply with the conditions applicable to each type of exemption. This automatic loss of the exemptions presented the Board with no challenges in codification. Codification issues arise, however, relative to non-automatic termination of the exemptions, both of which require an exercise of State discretion.

Issues arise with regard to State termination of the conditional exemptions because the termination is at the discretion of the agency overseeing compliance with the regulations. There are two types of State termination. The first is termination for non-compliance, while the second appears more like a disallowance of restoration of the exemptions.

The federal rules, in 40 C.F.R. 266.240(b) and 266.355(b) (corresponding with 35 Ill. Adm. Code 726.340(b) and 726.455(b)) provide that “we may terminate your conditional exemption . . . for serious or repeated noncompliance with any requirement(s) of subpart N or this part.” The only context where permission to revoke an action allowed by rule or permit can be discontinued in Illinois is in the context of an enforcement action. There is no other mechanism by which either the Board or the Agency may terminate an allowed activity. Thus, the Board has codified the pertinent segments of the rules as follows: “The Board may, by an order issued in an enforcement proceeding against the generator, terminate the generator’s conditional exemption” This mechanism is a bit more cumbersome than the simple exercise of discretion allowed USEPA under the federal system, but it is the only mechanism for discretionary termination that the Board can presently envision as comporting with the Illinois statutory scheme for regulation.

The federal rules, in 40 C.F.R. 266.245(a) and 266.360(a) (corresponding with 35 Ill. Adm. Code 726.345(a) and 726.460(a)) provide for what appears automatic restoration of the

³ The Board may grant a variance, under Sections 35 through 38 of the Act (415 ILCS 5/35-38 (2000)); establish an adjusted standard, under Section 28.2 of the Act (415 ILCS 5/28.1 (2000)); or adopt a site-specific regulation, under Sections 22.4, 27, and 28 of the Act (415 ILCS 5/22.4, 27, and 28 (2000)).

two types of conditional exemptions. Under these provisions, the waste generator may reclaim the conditional exemptions when it has fulfilled certain conditions and sent a specific notice to the State. 40 C.F.R. 266.245(b) and 266.360(b) (corresponding with 35 Ill. Adm. Code 726.345(b) and 726.460(b)) provide that “we may terminate a reclaimed conditional exemption if we find that your claim is inappropriate based on factors” Since the generator is required to submit what is essentially an application to the State for review, the Board does not believe that this is an appropriate context to require an exercise of Board discretion. Rather, we believe that the determination to disallow reclamation of the exemption is more in the nature of a decision to issue a permit. Thus, we drafted the rule so that the Agency is to determine whether to terminate a reclaimed conditional exemption under Section 39 of the Act, subject to Board review under Section 40.

The Board requests public comment on our incorporation of the May 16, 2001 federal amendments and the October 3, 2001 federal corrections. We request specific comment on our selection of the various DNS regulations cited in the regulations. We also request specific comment on our rendering of the discretionary termination of the conditional exemption as a Board decision made in the context of an enforcement action and the discretionary disallowance of a reclaimed conditional exemption as an Agency decision in the nature of a permit determination.

Update to the Clean Water Act Analytical Method Incorporated by Reference—Section 720.111

On June 18, 2001, (66 Fed. Reg. 32774), USEPA amended its “Guidelines Establishing Test Procedures for the Analysis of Pollutants” to make technical corrections to clarify the use of filed blanks for mercury testing under the federal Clean Water Act (33 U.S.C. 1251 *et seq.* (2000)). Specifically, USEPA revised Method 1631, Revision B, which USEPA has incorporated by reference in 40 C.F.R. 136.3. The Board has incorporated the methods of 40 C.F.R. 136 into the hazardous waste regulations by reference in Section 720.111(b).

The Board has incorporated the federal amendments into the Illinois hazardous waste regulations by updating the incorporation of 40 C.F.R. 136 by reference. This required the Board to update the version of 40 C.F.R. 136 incorporated by reference at 35 Ill. Adm. Code 720.111 by adding a reference to the June 18, 2001 *Federal Register* notice of adopted amendments at 66 Fed. Reg. 32774. Persons interested in the substance of the underlying federal action should refer to the notice that appeared in the June 18, 2001 issue of the *Federal Register*.

The Board requests public comment on the incorporation of the June 18, 2001 federal revisions to Method 1631, Revision B into the Illinois hazardous waste regulations.

Inorganic Chemical Manufacturing Wastes—Sections 721.104, 721.132, 721.App. G, 728.136, 728.Table T, and 738.118

On November 20, 2001 (66 Fed. Reg. 58258), USEPA listed three new wastes from inorganic chemical manufacturing processes as hazardous wastes. Two of the three new listed wastes (USEPA hazardous waste numbers K176 and K177) are wastes from the production of

antimony oxide. The third waste (USEPA hazardous waste number K178) is from the production of ferric chloride from production of titanium dioxide using the ilmenite process. With the three new listed wastes are corresponding treatment standards and LDRs, including restrictions on underground injection of the wastes.

The Board incorporated the November 20, 2001 inorganic chemicals production wastes listings and LDRs with minimal deviation from the federal text. Persons interested in the details of the federal amendments should consult the November 8, 2000 *Federal Register* notice. The following discussion will consider only those aspects of the HWIR amendments that present codification issues. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 30 of this opinion.

The Board found it necessary to add a Board note to Section 721.104(b)(15)(A) to indicate the effective dates of the waste listings set forth. Section 721.104(b)(15)(A) lists various conditions that leachate or gas condensate must fulfill in order to be excluded from regulation as hazardous waste. Subsection (b)(15)(A)(i) provides that the waste meet one or more of the listed waste descriptions if it “had been generated after the effective date of the listing,” and subsection (b)(15)(A)(ii) provides that the wastes “were disposed of prior to the effective date of the listing.” Previously, the only wastes listed in subsection (b)(15)(A)(i) for exclusion were USEPA hazardous wastes numbered K169, K170, K171, and K172. The effective date of the listings for these wastes was parenthetically added to the end of subsection (b)(15)(A)(i) as January 19, 1999. In the November 20, 2001 amendments, USEPA added USEPA hazardous wastes numbered K174, K175, K176, K177, and K178 to the list of wastes eligible for exclusion. This has caused us to re-examine of the language of subsection (b)(15)(A)(i).

There are now multiple effective dates for various groups of the waste listings set forth in Section 721.104(b)(15)(A)(i). USPEA adopted the K169, K170, K171, and K172 waste listings on August 6, 1998 (63 Fed. Reg. 42110), with an effective date of February 8, 1999. USEPA adopted the K174 and K175 waste listings on November 8, 2000 (65 Fed. Reg. 67068), with an effective date of May 7, 2001. USEPA adopted the K176, K177, and K178 waste listings in the November 20, 2001 (66 Fed. Reg. 58258) amendments, with an effective date of May 20, 2002. The Board has chosen to tabulate the hazardous waste listing effective dates at subsection (b)(15)(A)(i) as follows:

- b) Solid wastes that are not hazardous wastes. The following solid wastes are not hazardous wastes:
* * *
- 15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed of, under certain circumstances:
 - A) The following conditions must be fulfilled:
 - i) The solid wastes disposed of would meet one or more of the listing descriptions for the following USEPA hazardous

waste numbers that is generated after the effective date listed for the waste:

USEPA Hazardous Waste Numbers	Listing Effective Date
K169, K170, K171, and K172	February 8, 1999
K174 and K175	May 7, 2001
K176, K177, and K178	May 20, 2002

- ii) The solid wastes described in subsection (b)(15)(A)(i) of this Section were disposed of prior to the effective date of the listing (as set forth in that subsection);

The Board believes this approach will make the rules easier to read and understand. The Board requests public comment on our incorporation of the November 20, 2001 new hazardous waste listings. We request specific comment on the incorporation of the federal effective dates for the waste listings into the Illinois regulations.

The Association of Battery Recyclers Decision—Sections 721.102, 721.104, and 728.134(a)

In PC 1, IERG drew the Board's attention to the federal court's decision in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). IERG contended that this decision vacated the federal May 26, 1998 (63 Fed. Reg. 28555) Phase IV land disposal restrictions (LDR) rule⁴ to the extent that the rule requires application of the toxicity characteristic leaching procedure (TCLP) test to determine whether manufactured gas plant (MGP) waste is hazardous. IERG acknowledged that USEPA has not yet amended its regulations in response to the Association of Battery Recyclers decision, but it pointed out that USEPA is bound by the court's determination. IERG urged the Board to amend the Illinois regulations consistent with the court decision. IERG suggested that a statement appended to the rule to the effect that the Board considers a federal judicial decision binding as to derivative Illinois regulations. As a result of the Association of Battery Recyclers decision, IERG has suggested that the Board append the following Board note to Section 728.134(a) of the regulations, which pertains to application of the TCLP test to hazardous debris:

BOARD NOTE: The Phase IV Land Disposal Restriction (LDR) regulations, as it applies to manufactured gas plant (MGP) waste, was the subject of a court case in Association of Battery Recyclers v. EPA, No. 98-1368, decided on April 21, 2000 by the U.S. Court of Appeals for the District of Columbia Circuit. In this

⁴ The Board adopted the federal Phase IV LDRs in RCRA Update, USEPA Regulations (July 1, 1997 through December 31, 1997), R98-21 (Dec. 17, 1998), RCRA Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), R99-2 (Dec. 17, 1998), UIC Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), R99-7 (Dec. 17, 1998) (consolidated).

case, the court vacated the Phase IV LDR insofar as it provides for the use of the toxicity characteristic leaching procedure (TCLP) to determine whether MGP waste exhibits the toxicity characteristic. As such, this regulation is not enforceable in Illinois in so far as it provides for the use of the TCLP to evaluate MGP waste to determine whether it exhibits the toxicity characteristic.

As is explained below, the Board will grant the substance of IERG's request by adding a Board note. The Board will, however, amend the Board note's language and placement.

Board Notes—An Explanation

The Board does not ordinarily write notes in the rules. The Board has, however, on occasion done so in identical-in-substance rules because of their unique nature. IERG directed the Board's attention to such a note appended to the hazardous waste listing for USEPA hazardous waste number K066 in RCRA Update, USEPA Regulations (July 1, 1990 through Dec. 31, 1990), R91-1 (Aug. 8, 1991).

In the R91-1 proceeding, a member of the regulated community requested that the Board respond to the federal court decision in American Mining Congress v. EPA, 907 F.2d 1179 (D.D.C. 1990). That decision held the K066 waste listing arbitrary and capricious, and the court remanded the listing to USEPA for further consideration. In response, the Board appended a Board note to the K066 waste listing that stated our intent that the K066 waste listing not become effective until the earliest of three things occurrences: (1) when the Illinois regulations became "not equivalent to the federal program," as defined by Section 3006(b) of RCRA (42 U.S.C. 6926(b) (1984)), (2) when the Illinois regulations became "less stringent" than the corresponding federal regulations, as defined by Section 3009 of RCRA (42 U.S.C. 6929 (1984)), or (3) when the Illinois regulations became not "identical in substance" to the federal rules, as defined by Sections 7.2 and 22.4 of the Act (Ill. Rev. Stat. 1989 ch. 111½, pars. 1007.2 and 1022.4, now codified as 415 ILCS 5/7.2 and 22.4 (2000)). USEPA took no action to withdraw the affected waste listing until 1999, after the K066 listing and others were vacated by the court in Great Lakes Chemical Co. v. EPA, no. 98-1312, slip op., (D.C. Cir. Apr. 9, 1999). USEPA then promptly withdrew the K066 waste listing on October 20, 1999 (at 64 Fed. Reg. 56469), and the Board responded by withdrawing the listing in RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through Dec. 31, 1999) (May 18, 2000), R00-13.

The Association of Battery Recyclers and American Mining Congress decisions demonstrate that federal judicial decisions can impact the effectiveness of federal rules. Between the time that the court issues its mandate and USEPA completes amendment of its regulations in response, there may be a disparity between the federal regulations and what is actually enforceable in federal law. This is an undesirable situation until USEPA acts to remove the disparity. Further, USEPA may not always be able to respond to judicial decisions relating to the effectiveness of its regulations as quickly as the regulated community may wish.⁵

⁵ In the American Mining Congress case, it was nine years after the court initially held that the K066 listing was arbitrary and capricious before USEPA acted to withdraw the K066 listing. In the present instance, USEPA has acknowledged the effect of the Association of Battery

The Board does not intend that the Illinois hazardous waste regulations inadvertently become more stringent than the corresponding federal rules on which they are based. When USEPA adopts rules that relax the federal requirements, we promptly act using our identical-in-substance mandate under Sections 7.2 and 22.4(a) of the Act (415 ILCS 5/7.2 and 22.4(a) (2000)) to update the State rules accordingly. However, the Board cannot use the identical-in-substance mandate to withdraw or modify an Illinois regulation based on a federal judicial decision. We cannot remove or modify the substance of the Illinois rules without some duly adopted amendment by USEPA. To overcome this inability to materially respond to a federal judicial decision that nullifies a rule, the Board has, in some instances, appended a Board note to the affected rules to indicate the status of its federal counterpart as a result of the court's decision. We then state our intent that the State rule have no more effect than does the corresponding federal rule.

Text and Placement of Association of Battery Recyclers Note

After reviewing the Association of Battery Recyclers opinion, the Board agrees that an explanatory Board note appended to an appropriate segment of the regulations is warranted by the court's action. In this proposal for public comment, the Board has appended the following Board note to segments of the regulations:

BOARD NOTE: The Phase IV Land Disposal Restriction (LDR) regulations, as it applies to manufactured gas plant (MGP) waste, was the subject of a court case in Association of Battery Recyclers v. EPA, No. 98-1368, decided on April 21, 2000 by the U.S. Court of Appeals for the District of Columbia Circuit. In this case, the court vacated the Phase IV LDR insofar as it provides for the use of the toxicity characteristic leaching procedure (TCLP) to determine whether MGP waste exhibits the toxicity characteristic.

The Board note, then, incorporates verbatim the first two sentences of the language suggested by IERG. The third sentence is eliminated because it states a legal conclusion that may not be true in every possible instance.

We believe, however, that Section 728.134(a) may not be the most appropriate segment of the rules to which to append the note. There are several other segments of the Illinois hazardous waste regulations that pertain to testing hazardous debris for toxicity. We could append the note to any of these. We append the note to two provisions for the purposes of public comment. The Board appended the note to Section 728.134(a), which is what IERG requested, but we also appended this note to Section 721.124(a), relating to use of the TCLP test to determine if a waste is hazardous waste. The Board believes that Section 721.124(a) is the most appropriate placement of the note. The true impact of the Association of Battery Recyclers decision is that the generator does not need to use the TCLP test to determine if MGP waste is hazardous waste.

Recyclers decision in the context of an unrelated rulemaking (65 Fed. Reg. 51081, 51087 n. 6 (Aug. 22, 2000)), but has not yet formally responded with rulemaking action.

If a waste is not determined to be hazardous waste, the land disposal restrictions of Part 728 do not apply to the waste.⁶

Another issue confronted the Association of Battery Recyclers court. That was whether USEPA properly defined “solid waste” as it relates to materials generated and reclaimed within the primary mineral processing industry. This issue did not relate to MGP. In the Phase IV LDR rule (63 Fed. Reg. 28555 (May 26, 1998)), USEPA added a conditional exclusion of MGP waste from the definition of solid waste at 40 C.F.R. 261.4(a)(17). USEPA provided in this subsection and in 40 C.F.R. 261.2(c)(3) that reclaimed mineral processing secondary materials are not solid waste if they meet certain conditions. Those conditions were the following: (1) the material must be legitimately recycled, (2) the material must not be accumulated speculatively, and (3) the material must be stored in tanks, containers, or buildings that meet certain requirements intended to prevent the escape of constituents into the environment.

The Association of Battery Recyclers court observed that the dividing line between what was waste and what was not waste was the manner of storage, not whether the material was “discarded material,” as such is central to the definition of “solid waste” under RCRA. (See 42 U.S.C. 6903(27).) According to the court, USEPA erred when it included material destined for reuse within the ambit of what is considered “discarded material,” which can constitute solid waste. (208 F.3d at 1053.) The court vacated the parenthetical reference in 40 C.F.R. 261.2(c)(3) that read “except as provided under 40 CFR 261.4(a)(17)” and ordered USEPA to define “solid waste” consistent with its opinion. (208 F.3d at 1060.) The basic effect of this decision is that reclaimed mineral processing secondary materials are not solid waste.

Although we received no request to respond to this aspect of the Association of Battery Recyclers decision, the Board has added Board notes to do so. Since the court vacated a particular reference to a particular provision, we have added a single Board note in two segments of the rules. We added the note to Section 721.102(c)(3) (corresponding with 40 C.F.R. 261.2(c)(3)), where the invalidated cross-reference is located. We added it also to Section 721.104(a)(17) (corresponding with 261.4(a)(17)), which is the provision to which the vacated reference refers. The added notes read as follows:

BOARD NOTE: The court in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000), held that USEPA could not include in the definition of solid waste primary mineral processing secondary materials that were not “truly discarded, disposed of, thrown away, or abandoned.” The court ordered USEPA to correct the regulatory definition of solid waste in accordance with this holding. The court vacated the portion of 40 C.F.R. 261.2(c)(3) that states “except as provided in 40 C.F.R. 261.4(a)(17).” USEPA has not yet completed rulemaking action in response to the court’s order.

⁶ Other possible locations for the note include the following: Section 728.109(a), relating special requirements applicable to land disposal of characteristic hazardous wastes; Section 728.145(b)(1), relating the land disposal restrictions applicable to hazardous debris; and Section 728.149(a), relating the land disposal restrictions applicable to contaminated soils

The Board requests comment on the notes added to the text of the rules in response to our review of the Association of Battery Recyclers decision. We request specific comment on the language chosen for each comment, as well as the best location to append each.

Amendment of the CAMU Rules—Sections 720.110 and Subpart S to Part 724

On January 22, 2002 (67 Fed. Reg. 2961), USEPA adopted amendments to the corrective action management unit (CAMU) rules. USEPA stated that these amendments revised the CAMU rules in six ways: (1) they added a definition of waste that is distinct from remediation waste which is subject to the CAMU rules, (2) they establish more detailed minimum design standards for CAMUs in which waste will remain after closure, (3) they institute treatment standards for waste placed in a CAMU, (4) they require more detailed information for a CAMU application and require opportunity for public comment and participation in the approval process, (5) they incorporate new requirements for a CAMU used only for treatment or storage of waste, and (6) they “grandfather” existing CAMUs, allowing them to operate under the now-existing rule established by USEPA in 1993.

The Board incorporates the January 22, 2002 CAMU amendments with minimal deviation from the federal text. Persons interested in the details of the federal amendments should consult the January 22, 2002 *Federal Register* notice. The following discussion will consider only those aspects of the CAMU amendments that present codification issues. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 30 of this opinion.

Issues arise relating to incorporating the federal CAMU rule amendments into the Illinois regulations. One issue arises relative to the structure of the rule. A series of issues arise relative to allocation of decision-making responsibility under the rule in a way that comports with the statutory structure of the Illinois environmental regulatory system in Illinois. These issues are considered in this segment of this discussion.

First, we discuss the structural issue. Under the requirements for the structure of the Illinois Administrative Code, at 1 Ill. Adm. Code 100.340(b) and (d) (2000), we may divide regulations into subsections down to the fourth level. Segments of the federal regulations involved in the present amendments are divided to the fifth level. This has required the Board to move those segments of text so that they are divided only to the fourth indent level. Thus, we have codified 40 C.F.R. 264.552(e)(4)(i)(A)(1) and (e)(4)(i)(A)(2) as 35 Ill. Adm. Code 724.652(e)(4)(H)(i) and (e)(4)(H)(ii). We attach a Board note reference explaining their movement at 35 Ill. Adm. Code 724.552(e)(4)(A)(i), which corresponds with where they appear in the federal text. We refer to them as principal hazardous constituents that the Agency must designate in an added topical heading for them at 35 Ill. Adm. Code 724.552(e)(4)(H), which is where they now appear.

We similarly dealt with 40 C.F.R. 264.552(e)(4)(v)(E)(1) through (e)(4)(v)(E)(5) in rendering them as 35 Ill. Adm. Code 724.652(e)(4)(I)(i) through (e)(4)(I)(v). Although the exact nature of the intent of subsections (e)(4)(v)(E)(1) through (e)(4)(v)(E)(5) is not made explicit at 40 C.F.R. 264.552(e)(4)(v)(E), we read them to be circumstances relating to long-term

protection offered by the engineering design of the CAMU and related engineering controls. We add a reference to them as such at 35 Ill. Adm. Code 724.552(e)(4)(E)(v), which corresponds with where they appear in the federal text, and we added this description as a topical heading for them at 35 Ill. Adm. Code 724.552(e)(4)(H), which is where they appear.

We also added a Board note explaining the movement of text to 35 Ill. Adm. Code 724.552(e)(4)(E)(v). The Board did exactly the same things in moving 264.552(e)(6)(iv)(A)(I) through (e)(6)(iv)(A)(5) to 35 Ill. Adm. Code 724.552(e)(6)(F)(i) through (e)(6)(F)(v), except that it was clear from the federal text that these are intended by USEPA as final cover design and performance criteria.

A more complex set of issues arise relative to incorporating the regulatory decision-making provisions of the federal requirements into the State regulations. (See the discussion of the division of responsibility between the Board and the Agency at pages 14, 15 and 29 of this opinion.) The CAMU rule amendments charge a number of determinations to the “Regional Administrator” that have required more than superficial attention of the Board in adapting the amendments into the State regulations. While we substituted “Agency” for “Regional Administrator” where the federal rules clearly indicated standards for the exercise of discretion, there were instances where the standards are not so clear. The results of our examination of several appearances of “Regional Administrator” in these amendments are as follows:

1. Prohibition of placement of waste in a CAMU:

40 C.F.R. 264.552(a)(2): The Regional Administrator may prohibit the placement of waste in a CAMU if it receives information that the wastes were not managed in compliance with applicable LDRs, or applicable treatment, storage or disposal facility (T/S/D facility) unit design requirements, or that non-compliance with other USEPA regulations likely contributed to the release of the waste.

35 Ill. Adm. Code 724.652(a)(2): The Agency must prohibit the placement of waste if it receives information that the wastes were not managed in compliance with applicable LDRs; applicable treatment, storage or disposal facility (T/S/D facility) unit design requirements; or other applicable hazardous waste (Subtitle G) requirements, and that the non-compliance likely contributed to the release of the waste.

The Board wrote this rule so that the Agency makes the determination whether a facility complied with the specified rules or whether a release of waste likely resulted from non-compliance with applicable regulations because these are factual determinations in the nature of permit determinations. Thus, “may” is rendered as “must.” In the language of the federal provision, “likely contributed to the release of the waste” appears to refer only to “non-compliance with other applicable requirements,” although the preamble discussion of this provision (at 67 Fed. Reg. 2971-73) makes it clear that USEPA intended any described form of non-compliance. The Board has modified the wording so that the phrase relating to the likely cause of release clearly applies to all three cited forms of non-compliance.

Allowing the Agency to determine whether a release likely resulted from non-compliance may seem inconsistent with the earlier determination that the Board must determine whether a conditional exemption for mixed waste or NARM waste should terminate due to non-compliance (discussed above at page 14 of this opinion). However, the Board believes that requiring a Board finding of violation in the context of an enforcement decision before the Agency could deny a CAMU designation would be contrary to the federal intent that no generator benefit from its non-compliance by taking advantage of a CAMU designation. Further, an Agency determination whether the release likely resulted from non-compliance would be reviewable by the Board under Section 40 of the Act.

2. Designation of a regulated unit as a CAMU:

40 C.F.R. 264.552(b): The Regional Administrator may designate a regulated unit as a CAMU or incorporate it into a CAMU if specified conditions exist.

35 Ill. Adm. Code 724.652(a)(2): The Agency must designate a regulated unit as a CAMU or incorporate it into a CAMU if specified conditions exist.

The Board wrote this rule so that the Agency makes the determination whether specified conditions exist because this is a factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the conditions exist. There are no further standards given in the regulation that would support a further exercise of discretion to designate the unit as a CAMU or part of a CAMU. Thus, “may” is rendered as “must.”

3. Designation of design and operation requirements:

40 C.F.R. 264.552(e)(3)(i) and (e)(3)(ii): Specified minimum facility design and operation requirements apply to the CAMU unless the Regional Administrator has prescribed alternate requirements. The Regional Administrator may prescribe alternate design and operation requirements if it finds that alternate requirements will prevent migration of waste equally as effectively as the prescribed requirements.

35 Ill. Adm. Code 724.652(e)(3)(B): Specified minimum facility design and operation requirements apply to the CAMU unless the Agency has prescribed alternative requirements. The Agency must prescribe alternative design and operation requirements if it finds that alternative requirements will prevent migration of waste equally as effectively as the prescribed requirements.

The Board wrote this rule so that the Agency makes the determination whether specified conditions exist because this is a factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the alternative requirements are as effective in preventing migration. Thus, “may” is rendered as “must.” This determination of equivalency stands as its own standard for Agency decision-making, since it measures the effectiveness of the alternative standards against the prescribed standards. We further found it necessary to change “alternate” to “alternative,” since this is the grammatically correct usage. An Agency

determination under this provision would be reviewable by the Board under Section 40 of the Act.

4. Designation of waste constituents:

40 C.F.R. 264.552(e)(4)(i)(A) through (e)(4)(i)(C): The Regional Administrator will designate as principal hazardous constituents those carcinogens and non-carcinogens that pose an ingestion or inhalation risk. The Regional Administrator will designate as principal hazardous constituents those constituents that pose a risk by potential migration to groundwater. The Regional Administrator may designate as principal hazardous constituents other constituents that it determines pose a risk.

35 Ill. Adm. Code 724.652(e)(4)(A)(i) through (e)(4)(A)(iii): The Agency must designate as principal hazardous constituents those carcinogens and non-carcinogens that pose an ingestion or inhalation risk. The Agency must designate as principal hazardous constituents those constituents that pose a risk by potential migration to groundwater. The Agency must designate as principal hazardous constituents other constituents that it determines pose a risk.

The Board shifted “will,” which is a statement of present intent when used to refer to USEPA, to “must,” since it appears that the first two types of constituents designations are mandatory. We shifted “may” to “must” with regard to the discretionary type of constituents designation because the exercise of discretion is in the determination that the constituents pose a risk. The Board wrote this rule so that the Agency makes the determinations to designate constituents because the determinations are all factual determinations.

Allowing the Agency to determine what constituents are carcinogens, what pose an ingestion or inhalation risk, and what pose a risk by migration to groundwater is potentially problematic, since the federal rule does not reference lists of such constituents established by regulation. Establishing a list of contaminants that are carcinogens, a list of contaminants that pose an ingestion or inhalation risk, and a list of contaminants that pose a risk by migration to groundwater is an activity arguably suited to the Board’s rulemaking procedure. However, to require that Agency CAMU designations await Board rulemaking could be environmentally counter-productive. Thus, the Board has charged the Agency to make the required determinations, since an Agency determination of the constituents would be reviewable by the Board under Section 40 of the Act.

5. Designation of an alternative leaching test:

40 C.F.R. 264.552(e)(4)(iv)(F): The Regional Administrator may specify a leaching test other than the TCLP to measure treatment effectiveness if it determines that the leaching test is appropriate for use and the alternative more accurately reflects conditions at the site that affect leaching.

35 Ill. Adm. Code 724.652(e)(4)(D)(vi): The Agency must specify a leaching test other than the TCLP to measure treatment effectiveness if it determines that the leaching test is

appropriate for use and the alternative more accurately reflects conditions at the site that affect leaching.

The Board wrote this rule so that the Agency makes the determination whether an alternative test more accurately reflects leaching under site conditions because this is a factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the alternative test more accurately reflects leaching at the site. Thus, “may” is rendered as “must.” This determination of equivalency stands as its own standard for Agency decision-making, since the effectiveness of the alternative test is measured against the TCLP.

6. Adjustment of the treatment level or method:

40 C.F.R. 264.552(e)(4)(v): The Regional Administrator may adjust the treatment level or method determined under the rule based on consideration of listed factors. The adjusted treatment level or method must be protective of human health and the environment. The listed factors include technical impracticability of the level or method determined under the rule, whether concentrations significantly above or below the site cleanup standards would result, public attitudes towards the treatment levels or methods at the site, short-term risks associated with the treatment method, and the long-term protection offered by the engineering design.

35 Ill. Adm. Code 724.652(e)(4)(E): The Board will grant an adjusted standard to adjust the treatment level or method determined under the rule if the owner or operator demonstrates that the adjusted level or method would be protective of human health and the environment based on consideration of listed factors. The listed factors are substantively identical to those listed in the corresponding federal rule.

The Board drafted this segment of the rule so that the Board must make the determination whether to adjust the treatment level or method because the adjustment of a regulatory standard is the type of function that the Act charges to the Board. This is especially true where factors to be considered include economic considerations and public opinions about the alternatives. We realize that a formal determination using the adjusted standard procedure of Section 28.1 of the Act takes longer than an Agency determination in the nature of a permit decision, but we believe that allowing the Agency to adjust the treatment standards would constitute an unlawful delegation of our standard-setting authority.

7. Specification of a subset of principal hazardous constituents as analytical surrogates:

40 C.F.R. 264.552(e)(4)(vii): The Regional Administrator may specify a subset of principal hazardous constituents as analytical surrogates to determine whether treatment standards are met, based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

35 Ill. Adm. Code 724.652(e)(4)(G): The Agency must specify a subset of principal hazardous constituents as analytical surrogates to determine whether treatment standards are met if it determines that the subset is appropriate based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

The Board wrote this rule so that the Agency makes the determination of appropriate surrogate analytes because this is a technical factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the subset of analytes is appropriate based on consideration of the difficulty of treatment and analysis of constituents of similar properties. Thus, “may” is rendered as “must.”

8. Determination of applicable closure requirements:

40 C.F.R. 264.552(e)(6)(ii): The applicable closure requirements for a CAMU are those deemed appropriate and necessary by Regional Administrator for specified aspects of the facility.

35 Ill. Adm. Code 724.652(e)(6)(B): The applicable closure requirements for a CAMU are those deemed appropriate and necessary by the Agency for specified aspects of the facility.

The Board wrote this rule so that the Agency makes the determination of appropriate and necessary site closure requirements because this is a technical factual determination in the nature of a permit determination. The Agency already determines site closure requirements under various segments of the existing regulations.⁷

9. Modification of the cap requirements:

40 C.F.R. 264.552(e)(6)(iv)(B): The Regional Administrator may determine that modification of the prescribed cap requirements is necessary to facilitate treatment or performance of the CAMU.

35 Ill. Adm. Code 724.652(e)(6)(D)(ii): The Agency must modify the cap requirements from the prescribed requirements if it determines that the modification is necessary to facilitate treatment or performance of the CAMU.

The Board reworded this provision so that the Agency must apply cap requirements that deviate from those prescribed if it makes the determination that this is necessary. As reworded, it does not allow modification of the regulation itself. The Board wrote this rule so that the Agency makes the determination of necessity because this is a technical determination in the nature of a permit determination.

⁷ See, e.g., Section 724.297 (for tank systems), 724.358 (for waste piles), and 724.410 (for landfills).

10. Approval of placement of CAMU-eligible waste in an off-site landfill:

40 C.F.R. 264.555(a) and (e)(3): The Regional Administrator may approve the placement of CAMU-eligible waste that does not meet the land disposal restrictions of Part 728 in an offsite hazardous waste landfill under specified conditions. The owner or operator may not place the waste in the landfill until the Regional Administrator notifies it that he does not object to the placement. The Regional Administrator may object to the placement of the waste within 30 days, and he may extend the review period for an additional 30 days due to public concerns or insufficient information.

35 Ill. Adm. Code 724.655(a) and (e)(3): The Agency must approve the placement of CAMU-eligible waste that does not meet the land disposal restrictions of Part 728 in an offsite hazardous waste landfill if it determines that the placement meets specified conditions. The owner or operator may not place the waste in the landfill until the Agency notifies it that the Agency does not object to the placement. The Agency must object to the placement of the waste within 30 days, and the Agency must extend the review period for an additional 30 days if it determines that the extension is necessary due to public concerns or insufficient information.

The Board wrote this rule so that the Agency makes the determination whether the owner or operator can place the waste in the landfill because it is a technical factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the placement of the waste meets the specified conditions. Thus, “may” is rendered as “must.” An Agency determination of the constituents would be reviewable by the Board under Section 40 of the Act. As to extending the 30-day time for Agency decision on the placement of the waste, the 30-day extension results from an Agency determination that an extension is necessary due to public concerns or insufficient information.

11. Modification, reduction, or elimination of the notification requirements:

40 C.F.R. 264.555(d)(6): The Regional Administrator may modify, reduce, or eliminate the notification requirements for approval of placement of waste.

35 Ill. Adm. Code 724.655(d)(6): The Board will grant an adjusted standard that modifies, reduces, or eliminates the notification requirements for approval of placement of waste if the owner or operator demonstrates that this is possible.

The Board wrote this rule so that the determination on modification, reduction, or elimination of the notification requirements is a Board adjusted standard determination because the determination modifies regulatory standards. Granting relief from a rule is a Board function under the Act. This is especially true where the requirements involve notice to the Agency and to affected members of the public.

A final issue relative to codification of the federal CAMU amendments does not derive directly from the text of the federal rules involved in the USEPA amendments. Rather, it relates to the format used in the original federal rule. We observe that the existing text of Section

724.654 (as well as corresponding 40 C.F.R. 264.554, from which it derives) is in the question-and-answer format that the Board disfavors. We have used this opportunity to change this to the standard regulation format that we favor.

The Board requests public comment on our incorporation of the January 22, 2002 amendments to the CAMU rule.

Agency or Board Action

Section 7.2(a)(5) of the Act requires the Board to specify those portions of the program over which USEPA will retain decision making authority. Based on the general division of functions within the Act and other Illinois statutes, the Board is also to specify which State agency is to make decisions.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced “Regional Administrator” with USEPA, so as to avoid specifying which office within USEPA is to make a decision.

In some identical-in-substance rules, certain decisions pertaining to a permit application are not appropriate for the Agency to consider. In determining the general division of authority between the Agency and the Board, the following factors should be considered:

1. Whether the entity making the decision is applying a Board regulation, or taking action contrary to (“waiving”) a Board regulation. It generally takes some form of Board action to “waive” a Board regulation.
2. Whether there is a clear standard for action such that the Board can give meaningful review to an Agency decision.
3. Whether the action would result in exemption from the permit requirement itself. If so, Board action is generally required.
4. Whether the decision amounts to “determining, defining or implementing environmental control standards” within the meaning of Section 5(b) of the Act. If so, it must be made by the Board.

There are four common classes of Board decisions: variance, adjusted standard, site-specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site-specific rulemaking). There often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

**Tabulations of Deviations from the Federal text and
Corrections to and Clarifications of the Base Text**

Table 1 below list numerous corrections and amendments that are not based on current federal amendments. Table 1 (beginning immediately below) includes deviations made in this final order from the verbatim text of the federal amendments. Table 2 (beginning after table 1 immediately below) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in this table are housekeeping amendments not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 5 of this opinion.

**Table 1:
Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
721.102(a)(2)(C)	261.2(a)(2)(iii)	Used explanatory language in place of the word “reserved”
721.103(g)	261.3(g)	Added a subsection heading
721.103(g)(1)	261.3(g)(1)	Replaced commas with semicolons to separate elements of a series that contain commas (twice); added a comma before “as defined” to offset a parenthetical (three times)
721.103(g)(2)	261.3(g)(2)	Added “the following”
721.103(g)(2)(A)	261.3(g)(2)(i)	Added a comma before “as regulated” to offset a parenthetical
721.103(g)(2)(B)	261.3(g)(2)(ii)	Changed reference from “(c)(2)(I)” to “(e)(1)” to reflect the prior movement of 40 C.F.R. 261.3(c)(2) as 35 Ill. Adm. Code 721.103(e)
721.103(h)	261.3(h)	Added a subsection heading
721.103(h)(1)	261.3(h)(1)	Added “i.e., it is” for enhanced clarity
721.103(h)(2)	261.3(h)(2)	Added “the following”
721.104(b)(15)(A)(i)	261.4(b)(15)(i)(A)	Tabulated the hazardous waste listings and added the listing effective dates
721.104(b)(15)(B)	261.4(b)(15)(ii)	Changed “K169-K172” to “K169, K170, K171, or K172”; corrected “and” to “or” for what is actually a disjunctive series “K176, K177, or K178”
724. table of contents	264 table of contents	Revised the headings for Sections 724.650 through 724.552 as indicated in the entries for each Section
724.440(b)(3)	264.340(b)(3)	Added language to refer to the incorporation of 40 C.F.R. 63.1206(b)(14) by reference
724.650 heading	264.550 heading	Deleted the parenthetical abbreviation “CAMU”
724.650(a)	264.550(a)	Changed to singular “a CAMU is”

724.650(b)	264.550(b)	Changed to singular “a CAMU that is . . . is”; replaced bracketed “effective date of final rule” with “April 22, 2002”; changed to singular “a grandfathered CAMU”; replaced a semicolon with a period; added the introductory prepositional phrase “within a grandfathered CAMU offset by a comma; added a comma to offset the parenthetical “as approved”
724.651 heading	264.551 heading	Deleted the parenthetical abbreviation “CAMUs”
724.651(a)	264.551(a)	Added quotation marks to the defined term “corrective action management unit”; added the conjunction “or” and the alternate defined abbreviation “CAMU” in quotation marks; changed “the facility” to “that facility”
724.652 heading	264.552 heading	Deleted the parenthetical abbreviation “CAMU”
724.652(a)	264.552(a)	Added quotation marks to the defined term “corrective action management unit”; added the conjunction “or” and the alternate defined abbreviation “CAMU” in quotation marks; changed “the facility” to “that facility”
724.652(a)(1)	264.552(a)(1)	Added quotation marks to the defined term “CAMU-eligible waste”
724.652(a)(1)(B)	264.552(a)(1)(ii)	Changed to singular, lower-case “CAMU-eligible waste”
724.652(a)(1)(B)(i)	264.552(a)(1)(ii)(A)	Changed to singular “hazardous waste”; added a comma after “containers” to separate the final elements of a series
724.652(a)(1)(B)(i)	264.552(a)(1)(ii)(A)	Changed “the Regional Administrator exercises the discretion” to “the Agency makes the determination”

724.652(a)(2)	264.552(a)(2)	Changed “the Regional Administrator may” to “the Agency must”; deleted the parenthetical “as appropriate”; changed “Regional Administrator has or receives information” to “Agency determines”; changed “such wastes” to “the wastes”; changed “applicable unit design requirements of this part, or applicable unit design requirements of part 265” to “applicable unit design requirements of this Part or 35 Ill. Adm. Code 725”; removed “that non-compliance with” and replaced it with “and that the non-compliance” before “likely contributed”; changed “other applicable requirements of this chapter” with “other applicable requirements of this Subtitle G”
724.652(a)(3)	264.552(a)(3)	Changed to singular “a CAMU”
724.652(a)(3)(D)	264.552(a)(3)(iii)	Changed to singular “a CAMU”
724.652(a)(4)	264.552(a)(4)	Changed to singular “hazardous waste”
724.652(b)	264.552(b)	Added “establishing a CAMU” as a subsection heading
724.652(b)(1)	264.552(b)(1)	Changed “the Regional Administrator may . . . or may incorporate” to “the Agency must . . . or must incorporate”; removed an unnecessary comma after “CAMU”; added “it determines that the following is true of the regulated unit”
724.652(b)(1)(B)	264.552(b)(1)(ii)	Added a comma after “protective” to separate the final elements of a series
724.652(c)	264.552(c)	Changed “the Regional Administrator shall” to “the Agency must” (twice); changed “and/or” to “or”; changed “all other CAMUs” to singular “any other CAMU”; added “requirements”
724.652(c)(1)	264.552(c)(1)	Changed “shall” to “must”
724.652(c)(2)	264.552(c)(2)	Changed “shall” to “must”
724.652(c)(3)	264.552(c)(3)	Changed “shall” to “must”
724.652(c)(4)	264.552(c)(4)	Changed “shall” to “must”
724.652(c)(5)	264.552(c)(5)	Changed “shall” to “must”
724.652(c)(6)	264.552(c)(6)	Changed “shall” to “must”
724.652(c)(7)	264.552(c)(7)	Changed “shall” to “must”
724.652(d)	264.552(d)	Changed “owner/operator” to “owner or operator”; changed “shall” to “must”; changed “Regional Administrator” to “Agency”; added “the following”
724.652(d)(1)	264.552(d)(1)	Changed “and/or” to “or”
724.652(d)(2)	264.552(d)(2)	Changed “and/or” to “or”
724.652(d)(3)	264.552(d)(3)	Changed “and/or” to “or”

724.652(e)	264.552(e)	Changed “Regional Administrator shall” to “Agency must”; changed to singular “the CAMU”
724.652(e)(3)	264.552(e)(3)	Changed to singular “a CAMU”
724.652(e)(3)(A)	264.552(e)(3)(i)	Changed “Regional Administrator” to “Agency”; corrected “alternate” to “alternative”; changed to singular “a CAMU that consists” changed the defined term “composite liner” from italics and placed it in quotation marks
724.652(e)(3)(B)	264.552(e)(3)(ii)	Corrected “alternate” to “alternative”; changed “Regional Administrator may” to “Agency must”; changed to singular “a CAMU that consists” added “it determines that either of the following is true”
724.652(e)(3)(B)(i)	264.552(e)(3)(ii)(A)	Changed “Regional Administrator finds” to “Agency determines”; corrected “alternate” to “alternative”
724.652(e)(3)(B)(ii)	264.552(e)(3)(ii)(B)	Changed “Regional Administrator finds” to “Agency determines”
724.652(e)(4)	264.552(e)(4)	Changed “and/or” to “or”; changed “Regional Administrator” to “Agency”
724.652(e)(4)(A)	264.552(e)(4)(i)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(A)(i)	264.552(e)(4)(i)(A)	Changed “Regional Administrator will” to “Agency must”; added “those constituents specified in subsection (e)(4)(H) of this Section”; added the explanatory Board note
724.652(e)(4)(A)(ii)	264.552(e)(4)(i)(B)	Changed “Regional Administrator will” to “Agency must”; changed “Regional Administrator may” to “Agency must”
724.652(e)(4)(A)(iii)	264.552(e)(4)(i)(C)	Changed “Regional Administrator may” to “Agency must”; changed “Regional Administrator” to “Agency”
724.652(e)(4)(B)	264.552(e)(4)(ii)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(C)	264.552(e)(4)(iii)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(D)	264.552(e)(4)(iv)	Changed to singular “a CAMU”
724.652(e)(4)(D)(iv)	264.552(e)(4)(iv)(D)	Added a comma after “corrosivity” to separate the final elements of a series
724.652(e)(4)(D)(v)	264.552(e)(4)(iv)(E)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(D)(vi)	264.552(e)(4)(iv)(F)	Changed “Regional Administrator may” to “Agency must”; changed “Regional Administrator” to “Agency”

724.652(e)(4)(E)	264.552(e)(4)(v)	Changed “Regional Administrator may” to “Board will grant an adjusted standard pursuant to Section 28.1 of the Act to . . . if the owner or operator demonstrates that”; removed the period to combine the second sentence into the first as conditional language; changed “must” to “would”; added “based on consideration of the following” as a parenthetical offset by a comma
724.652(e)(4)(E)(iii)	264.552(e)(4)(v)(C)	Added a comma before “as applied” to offset a parenthetical
724.652(e)(4)(E)(v)	264.552(e)(4)(v)(E)	Added “under the circumstances set forth in subsection (e)(4)(H) of this Section”; added the explanatory Board note
724.652(e)(4)(G)	264.552(e)(4)(vii)	Changed to singular “a CAMU”; changed “Regional Administrator may” to “Agency must . . . if it determines that”; deleted the parenthetical “as appropriate”; removed the period to combine the second sentence into the first as conditional language; changed “will be” to “is appropriate”
724.652(e)(4)(H)	[264.552(e)(4)(iv)-(A)]	Created the subsection and added a subsection heading to locate moved text
724.652(e)(4)(H)(i)	264.552(e)(4)(iv)(A)(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(4)(H)(ii)	264.552(e)(4)(iv)(A)(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(4)(I)	[264.552(e)(4)(v)(E)]	Created the subsection and added a subsection heading to locate moved text
724.652(e)(4)(I)(i)	264.552(e)(4)(v)(E)-(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(ii)	264.552(e)(4)(v)(E)-(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(iii)	264.552(e)(4)(v)(E)-(3)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; changed “Regional Administrator” to “Board”; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(iv)	264.552(e)(4)(v)(E)-(4)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements

724.652(e)(4)(I)(v)	264.552(e)(4)(v)(E)-(5)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; changed “Regional Administrator” to “Board”; changed to singular “a laterally expanded CAMU”
724.652(e)(5)(C)	264.552(e)(5)(iii)	Changed “Regional Administrator” to “Agency”
724.652(e)(6)	264.552(e)(6)	Added “as follows” as a parenthetical offset by a comma
724.652(e)(6)(A)	264.552(e)(6)(i)	Changed “shall” to “must”; added “do the following”
724.652(e)(6)(B)	264.552(e)(6)(ii)	Changed to singular “a CAMU”; changed “shall” to “must”; changed “Regional Administrator” to “Agency”
724.652(e)(6)(C)	264.552(e)(6)(iii)	Changed to singular “a CAMU”; changed “Regional Administrator shall” to “Agency must”
724.652(e)(6)(D)(i)	264.552(e)(6)(iv)(A)	Moved “with constituent concentrations . . . to the site” to follow “remain”; changed “the following performance criteria” to “the performance criteria listed in subsection (e)(6)(F) of this Section”; added the explanatory Board note
724.652(e)(6)(D)(ii)	264.552(e)(6)(iv)(B)	Changed “Regional Administrator may determine that modifications to paragraph . . . are needed” to “Agency must apply cap requirements that deviate from those prescribed in subsection . . . if it determines that the modifications are needed”
724.652(e)(6)(E)	264.552(e)(6)(v)	Changed “shall” to “must”
724.652(e)(6)(F)	[264.552(e)(6)(vi)-(E)]	Created the subsection and added a subsection heading to locate moved text
724.652(e)(6)(F)(i)	264.552(e)(6)(vi)(E)-(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(ii)	264.552(e)(6)(vi)(E)-(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(iii)	264.552(e)(6)(vi)(E)-(3)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(iv)	264.552(e)(6)(vi)(E)-(4)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(v)	264.552(e)(6)(vi)(E)-(5)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(f)	264.552(f)	Changed to singular “a CAMU . . . is”; changed “and/or” to “or”; changed to singular “a CAMU” (twice)

724.652(f)(1)	264.552(f)(1)	Changed to singular “a CAMU . . . is . . . and is”; added commas before and after “at Section 724.654(d)(1)(A) and (d)(1)(B), (d)(2), (e), (f), (j), and (k)” to offset it as a parenthetical; changed to singular “a CAMU”;
724.652(f)(2)	264.552(f)(2)	Changed to singular “a CAMU . . . is”; changed “and/or” to “or”
724.652(f)(2)(A)	264.552(f)(2)(i)	Added “the owner or operator” to complete the sentence; changed “Regional Administrator” to “Agency”
724.652(f)(2)(B)	264.552(f)(2)(ii)	Added “the CAMU” to complete the sentence; changed to singular “is”; changed to singular “a CAMU”
724.652(g)	264.552(g)	Changed to singular “a CAMU” (twice); changed “and/or” to “or”
724.652(h)	264.552(h)	Changed “Regional Administrator shall” to “Agency must”; changed “shall” to “must”
724.652(i)	264.552(i)	Changed “Regional Administrator shall” to “Agency must”; changed “additional requirements as necessary” to “those additional requirements that it determines are”
724.652(j)	264.552(j)	Changed “Regional Administrator” to “Agency”
724.652(k)	264.552(k)	Changed “Regional Administrator’s” to “Agency’s”
724.654(a)(2)	264.554(a)(2)	Used explanatory language in place of the word “reserved”
724.655 heading	264.555 heading	Capitalized “Eligible Wastes in Permitted Hazardous Waste Landfills”
724.655(a)	264.555(a)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall” to “Agency must”; added “it determines that”; changed “conditions in . . . are met” to “following conditions”
724.655(a)(2)	264.555(a)(2)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place” to “Agency”
724.655(a)(2)(C)	264.555(a)(2)(iii)	Changed the reference to “Section 724.652(e)(4)(I)(ii)” to reflect the movement of the text
724.655(b)	264.555(b)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place” to “Agency”
724.655(c)	264.555(c)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall” to “Agency must”

724.655(e)(1)	264.555(e)(1)	Changed “and/or” to “or”; changed “Regional Administrator responsible for oversight of the landfill” to “Agency”
724.655(e)(2)	264.555(e)(2)	Changed “Regional Administrator” to “Agency”
724.655(e)(3)	264.555(e)(3)	Changed “Regional Administrator may” to “Agency must”; added “if it determines that the extension is necessary”
724.655(e)(4)	264.555(e)(4)	Changed “Regional Administrator” to “Agency”; changed “owner/operator” to “owner or operator”; changed “he or she” to “it”
724.655(e)(5)	264.555(e)(5)	Changed “Regional Administrator” to “Agency”; changed “owner/operator” to “owner or operator”; changed “he or she” to “it”
724.655(e)(6)	264.555(e)(6)	Changed “As part of the permit process of paragraph (d) of this section, the Regional Administrator may modify, reduce, or eliminate” to “the Board will grant an adjusted standard under Section 28.1 of the Act that modifies, reduces, or eliminates”; added “if the owner or operator demonstrates that this is possible”
726. table of contents	266 table of contents	Revised the headings for Sections 726.310 through 724.460 as indicated in the entries for each Section
726.310 heading	266.210 heading	Changed “What definitions apply to this subpart?” to “definitions”
726.310 preamble	266.210	Changed “this subpart uses the following special definitions” to “terms are defined as follows for the purposes of this Subpart N”
726.310 “CERCLA reportable quantity”	266.210	Added the definition (for the purposes of Section 726.340(a)(2))
726.310 “certified delivery”	266.210	Placed the defined term in quotation marks; deleted the unnecessary conjunction “or” from before “equivalent”; deleted the improper comma from before the restrictive relative clause “that provides . . .”
726.310 “director”	266.210	Placed the defined term in quotation marks; changed “refers to the definition” to “is as defined”
726.310 “DNS”	266.210	Added the definition (for the purposes of the entire Subpart)

726.310 “eligible naturally occurring or accelerator-produced radioactive material”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed “and/or” to “or”; changed “is” to “means”; used “naturally occurring or accelerator-produced radioactive material” in place of the acronym “NARM” and placed the acronym in parentheses; added the indefinite article “a” before “transportation”; changed to lower-case “transportation and disposal conditional exemption”; changed “NRC Agreement State equivalent” to “DNS”; added the Board note citing DNS regulations
726.310 “exempted waste”	266.210	Placed the defined term in quotation marks; deleted the second appearance of “meets”; removed the comma that separated a two-element series; added “a waste that” before “meets” for a restrictive relative clause; added “which” before “complies” for a subsequent restrictive relative clause; deleted “described”
726.310 “hazardous waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed “any material which is defined in accordance with” to “hazardous waste as defined in”
726.310 “land disposal restriction treatment standards”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the abbreviated form “LDR treatment standards” as an alternative defined term”
726.310 “license”	266.210	Placed the defined term in quotation marks; changed “Nuclear Regulatory Commission” to “federal NRC”; changed “NRC Agreement State” to “the Illinois DNS” (twice); changed to singular “a user that manages”; “changed “NRC” to “the federal NRC”; removed an unnecessary comma after “NRC”; added the citation “42 USC 2014 et seq.” in parentheses; added “or the Radiation Protection Act of 1990 [420 ILCS 40]”
726.310 “low-level mixed waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “LLMW”

726.310 “low-level radioactive waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “LLW”; changed “which” to “that” for a restrictive relative clause; removed the unnecessary comma from after “byproduct material”; added a comma to offset the parenthetical “as defined . . .”; corrected the citation to “section 11(e)(2)” and added the <i>United States Code</i> citation in parentheses; added the definite article “the” before “NRC”; removed the quotation marks from the word “waste”
726.310 “mixed waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the <i>United States Code</i> citation in parentheses
726.310 “naturally occurring or accelerator-produced radioactive material”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “NARM”; changed to singular “a radioactive material”; added “fulfills one of the following conditions”; added “it is” to complete the sentence in the sub-paragraph (twice); changed “are” to “it is”; changed “source, special, nuclear, or byproduct” to “a source, special, nuclear, or byproduct material”; removed the parentheses and offset the parenthetical “as defined by . . .” with commas; replaced “AEA” with “the federal Atomic Energy Act (42 USC 2014 et seq)”; placed the sentence “NARM is regulated by the States . . .” in a Board note; changed “State law” with “the Radiation Protection Act of 1990 [420 ILCS 40] and 32 Ill. Adm. Code: Chapter II, Subchapter b”; changed “DOE” to “federal Atomic Energy Act (42 USC 2014 et seq.)”
726.310 “NRC”	266.210	Placed the defined term in quotation marks; changed “U.S.” to “United States”
726.320 heading	266.220 heading	Changed “What does a storage and treatment conditional exemption do?” to capitalized “Storage and Treatment Conditional Exemption”

726.320	266.220	Deleted “your” from before “low-level”; changed “your” to “the”; changed “you meet” to “the generator meets”
726.325 heading	266.225 heading	Changed “What wastes are eligible for the storage and treatment conditional exemption?” to capitalized “Wastes Eligible for a Storage and Treatment Conditional Exemption for Low-Level Mixed Waste”
726.325	266.225	Added “as” before “defined”; changed “this” to “a storage and treatment”; changed “you” to “a person”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “a different person’s”; added “such mixed waste” to create an independent clause, adding a comma to offset the clause.
726.330 heading	266.230 heading	Changed “What conditions must you meet for your LLMW to qualify for and maintain a storage and treatment exemption?” to capitalized “Conditions to Qualify for and Maintain a Storage and Treatment Conditional Exemption”
726.330(a)	266.230(a)	Deleted “your” from before “LLMW”; changed “you” to “the generator”; changed “us” to “the Agency”; changed “you are” to “it is”; added “storage and treatment” before “conditional exemption”; changed “your” to “the generator’s” (four times); added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “code(s)” to “codes”; changed “unit(s)” to “units”; changed “you” to “the generator” (three times); changed “are” to “is”; changed “meet” to “meets”; changed “your” to “its”; dropped “in your State” after “rule”
726.330(b)	266.230(b)	Deleted “your” from before “LLMW”; changed “you” to “the generator”; added :do each of the following”
726.330(b)(1)	266.230(b)(1)	Changed “your” to “its” (twice)
726.330(b)(2)	266.230(b)(2)	Changed “your” to “its”; deleted unnecessary comma before “or” that separated a two-element series (twice)
726.330(b)(3)	266.230(b)(3)	Added “that the training” before “includes”
726.330(b)(4)	266.230(b)(4)	Changed “your” to “its”; changed “it” to “the waste”; added “this” before “Subpart N”

726.330(b)(5)	266.230(b)(5)	Changed “your” to “the generator’s”
726.335 heading	266.235 heading	Changed “What waste treatment does the storage and treatment conditional exemption allow?” to capitalized “Treatment Allowed by a Storage and Treatment Conditional Exemption”
726.335	266.235	Changed “you” to “the generator”; changed “your” to “its” (three times); added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”
726.340 heading	266.240 heading	Changed “How could you lost the conditional exemption for your LLMW and what action must you take?” to capitalized “Loss of a Storage and Treatment Conditional Exemption and Required Action”
726.340(a)	266.240(a)	Changed “your” to “a generator’s”; changed “you fail” to “the generator fails”; changed “your” to “the generator’s” (twice); changed “you” to “the generator”; changed “and/or” to “or”
726.340(a)(1)	266.240(a)(1)	Changed “you fail” to “a generator fails”; added a comma after “726.330” to offset the introductory parenthetical; changed “you” to “the generator”; changed “us and the NRC, or the oversight agency in the NRC Agreement State” to “the Agency, the Illinois DNS, and the NRC”; changed “your” to “the generator’s” (twice)
726.340(a)(1)(A)	266.240(a)(1)(i)	Changed “condition(s)” to “conditions”; added “that” for a restrictive relative clause; changed “you” to “the generator”
726.340(a)(1)(C)	266.240(a)(1)(iii)	Changed “date(s)” to “dates”; changed “you” to “the generator”; changed “condition(s)” to “conditions”
726.340(a)(1)	266.240(a)(1)	Changed “you” to “the generator” (twice); changed “us” to “the Agency”; changed to singular “a failure . . . is”; added “may” before “include”; changed “your” to “its”
726.340(b)	266.240(b)	Changed “we” to “the Board”; added “by an order issued in an enforcement proceeding against the generator” as a parenthetical offset by commas; changed “your” to “the generator’s”; changed “you” to “the generator”; changed “your” to “its”

726.345 heading	266.245 heading	Changed “If you lose the storage and treatment conditional exemption for your LLMW, can the exemption be reclaimed?” to capitalized “Reclaiming a Lost Storage and Treatment Conditional Exemption”
726.345(a)	266.245(a)	Changed “you” to “a generator”; added “a lost” after “reclaim”; added “conditional” before “exemption”; changed “your” to “its”; added “the following conditions are fulfilled”
726.345(a)(1)	266.245(a)(1)	Changed “you again meet” to “the generator again meets”
726.345(a)(2)	266.245(a)(2)	Changed “you send” to “the generator sends”; changed “us” to “the Agency”; changed “you are” to “the generator is”; changed “your” to “its” (twice); changed “your” to “the generator’s”; added a comma after “notice” to offset the introductory prepositional phrase; changed “you” to “the generator”
726.345(a)(2)(B)	266.245(a)(2)(ii)	Changed “you have” to “the generator has”; changed “you” to “it”; changed “your” to “its”; changed “you gain meet” to “the generator again meets”; added “that” for a restrictive relative clause; changed “you specify” to “the generator specifies”
726.345(a)(2)(C)	266.245(a)(2)(iii)	Changed “you have” to “the generator has”; added “that” for a restrictive relative clause (twice); changed “you have” to “it has”
726.345(a)(2)(D)	266.245(a)(2)(iv)	Added “that” for a restrictive relative clause; changed “you want” to “the generator wants”; changed “us” to “the Agency”; changed “we review” to “it reviews”; changed “your” to “the generator’s”
726.345(b)	266.245(b)	Changed “we” to “the Agency” (twice); changed “we determine” to “it determines”; added “in writing pursuant to Section 39 of the Act” as a parenthetical offset by commas; changed “your” to “the generator’s”; changed “you have” to “the generator has”; changed “you” to “the generator” (twice); added “any Agency determination . . . pursuant to Section 40 of the Act”
726.350 heading	266.250 heading	Changed “What records must you keep at your facility and for how long?” to capitalized “Recordkeeping for a Storage and Treatment Conditional Exemption”

726.350(a)	266.250(a)	Changed “your” to “the generator’s”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “you” to “the generator”
726.350(a)(1)	266.250(a)(1)	Changed “your” to “the generator’s”; changed “us” to “the Agency”; changed “failure(s)” to “failures”
726.350(a)(2)	266.250(a)(2)	Changed “your” to “the generator’s”
726.350(a)(3)	266.250(a)(3)	Changed “your” to “the generator’s”
726.350(a)(4)	266.250(a)(4)	Changed “your” to “the generator’s”; added a comma before “as specified” to offset a parenthetical
726.350(b)	266.250(b)	Changed “you” to “the generator”; changed “your” to “its”; changed “you claim” to “the generator claims”; added “federal” before “NRC” (twice); changed the parenthetical “or equivalent NRC Agreement State regulations” to “or under Illinois DNS regulations under 32 Ill. Adm. Code: Chapter II, Subchapter b”; changed “you” to “a generator”; changed the parenthetical “or equivalent NRC Agreement State regulations” to “or with Illinois DNS regulations under 32 Ill. Adm. Code: Chapter II, Subchapter b”
726.355 heading	266.255 heading	Changed “When is your LLMW no longer eligible for the storage and treatment conditional exemption?” to capitalized “Waste no Longer Eligible for a Storage and Treatment Conditional Exemption”
726.355(a)	266.255(a)	Changed “your” to “a generator’s”; changed “your” to “its”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “the generator’s”
726.355(b)	266.255(b)	Changed “your” to “a generator’s”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “a generator’s”
726.360 heading	266.260 heading	Changed “Do closure requirements apply to units that stored LLMW prior to the effective date of Subpart N?” to capitalized “Applicability of Closure Requirements to Storage Units”

726.360	266.260	Added the indefinite article “an” before “interim”; changed to singular “unit that has . . . stores”; added “this” before “Subpart N”; added “which” for a subsequent restrictive relative clause Twice); “which” to “that” for a restrictive relative clause; changed to singular “a storage unit . . . that has . . . is”
726.405 heading	266.305 heading	Changed “What does the transportation and disposal conditional exemption do?” to capitalized “Transportation and Disposal Conditional Exemption”
726.405	266.305	Changed “this” to “a transportation and disposal”; changed “your” to “a generator’s”; changed “your” to “the generator’s”; changed “you meet” to “the generator meets”;
726.410 heading	266.310 heading	Changed “What wastes are eligible for the transportation and disposal conditional exemption?” to capitalized “Wastes Eligible for a Transportation and Disposal Conditional Exemption”
726.410 preamble	266.310 preamble	Added “one or both of the following”
726.410(a)	266.310(a)	Changed “and/or” to “or”
726.415 heading	266.315 heading	Changed “What are the conditions you must meet for your waste to qualify for and maintain the transportation and disposal conditional exemption?” to capitalized “Conditions to Qualify for and Maintain a Transportation and Disposal Conditional Exemption”
726.415 preamble	266.315 preamble	Changed “you” to “a generator”; changed “your” to “its”
726.415(a)	266.315(a)	Added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon
726.415(b)	266.315(b)	Changed “you are” to “the generator is”; added “federal” before “NRC” (twice); changed “NRC Agreement State” to “Illinois DNS” (twice); changed “your” to “its” (twice); changed “you” to “the generator”; added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon
726.415(c)	266.315(c)	Added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon and added the conjunction “and”

726.415(d)	266.315(d)	Added a comma before “as described” to offset a parenthetical”
726.420 heading	266.320 heading	Changed “What treatment standards must your eligible waste meet?” to capitalized “Treatment Standards for Eligible Waste”
726.420	266.320	Changed “your” to “a generator’s”; added “applicable”; changed to the defined abbreviation “LDR”
726.425 heading	266.325 heading	Changed “Are you subject to the manifest and transportation condition in § 266.315(b)?” to capitalized “Treatment Standards for Eligible Waste”
726.425	266.325	Changed “you are” to “a generator is”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “its”; changed “you” to “the generator”; added “federal NRC” (twice); changed the parenthetical “or NRC Agreement State equivalent regulations” to “and Illinois DNS manifest requirements under 32 Ill. Adm. Code 340”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 341”
726.430 heading	266.330 heading	Changed “When does the transportation and disposal exemption first take effect?” to capitalized “Effectiveness of a Transportation and Disposal Exemption”
726.430 preamble	266.330 preamble	Added “of” after “all”
726.430(a)	266.330(a)	Changed “your” to “the generator’s”; changed the ending punctuation from a period to a semicolon
726.430(b)	266.330(b)	Changed “you have” to “the generator has”; changed “you have” to “it has”; changed “us” to “the Agency”; added a comma before “as described” to offset a parenthetical; changed the ending punctuation from a period to a semicolon

726.430(c)	266.330(c)	Changed “you have” to “the generator has”; changed “your” to “its”; added “federal” before “NRC”; used lower-case “packaging and transportation”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and Illinois DNS manifest requirements under 32 Ill. Adm. Code 340”; changed “your” to “a generator’s”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 341”
726.430(d)	266.330(d)	Changed “you have” to “the generator has”; changed “your” to “its”; added “the federal” before “NRC”; changed “NRC Agreement State” to “the Illinois DNS”
726.435 heading	266.335 heading	Changed “Where must your exempted waste be disposed of?” to capitalized “Disposal of Exempted Waste”
726.435	266.335	Changed “your” to “a generator’s”; added “the federal” before “NRC”; changed “or an NRC Agreement State” to “the Illinois DNS”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 606”
726.440 heading	266.340 heading	Changed “What type of container must be used for disposal of exempted waste?” to capitalized “Containers Used for Disposal of Exempted Waste”
726.440(a)	266.340(a)	Removed the unnecessary ending conjunction “or”
726.440(c)	266.340(c)	Added a comma before “as defined” to offset the parenthetical
726.445 heading	266.345 heading	Changed “Whom must you notify?” to “Notification”
726.445(a)	266.345(a)	Changed “you” to “a generator”; changed “us” to “the Agency”; changed “you are” to “it is”; changed “your” to “the generator’s” (twice); changed “your” to “its”; removed an unnecessary comma after “number” that separated a simple compound

726.445(b)	266.345(b)	Changed “you” to “a generator”; changed “your” to “its” (twice); changed “you” to “the generator”; changed “you have” to “it has”; changed “you have” to “it has”; added “information”
726.445(b)(1)	266.345(b)(1)	Changed “you have” to “the generator has”; changed the ending punctuation from a period to a semicolon
726.445(b)(2)	266.345(b)(2)	Changed the ending punctuation from a period to a semicolon
726.445(b)(3)	266.345(b)(3)	Changed “your” to “the generator’s”; changed the ending punctuation from a period to a semicolon
726.445(b)(4)	266.345(b)(4)	Changed the ending punctuation from a period to a semicolon
726.445(b)(5)	266.345(b)(5)	Changed the ending punctuation from a period to a semicolon
726.445(b)(6)	266.345(b)(6)	Changed the ending punctuation from a period to a semicolon and added the conjunction “and”
726.445(b)(7)	266.345(b)(7)	Changed “your” to “the generator’s”
726.450 heading	266.350 heading	Changed “What records must you keep at your facility?” to upper-case “Recordkeeping for a Transportation and Disposal Conditional Exemption”
726.450 preamble	266.350 preamble	Changed “your” to “a generator’s”; changed “NRC Agreement State” to “Illinois DNS”; changed “you” to “the generator”
726.450(a)	266.350(a)	Changed “you” to “the generator” (twice); changed “your” to “its”
726.450(b)	266.350(b)	Changed “you” to “the generator”
726.450(c)	266.350(c)	Changed “you” to “the generator”
726.450(d)	266.350(d)	Changed “you” to “the generator”
726.450(e)	266.350(e)	Changed “you are” to “the generator is”; added “federal” before “NRC”; changed “or NRC Agreement State equivalent” to “and Illinois DNS”; changed “your” to “its”; changed “you” to “the generator”; added “federal” before “10 CFR 20.2006”; changed “or NRC Agreement State equivalent regulations” to “and Illinois DNS requirements under 32 Ill. Adm. Code 340”

726.455 heading	266.355 heading	Changed “How could you lose the transportation and disposal conditional exemption for your waste and what actions must you take?” to upper-case “Loss of a Transportation and Disposal Conditional Exemption and Required Action”
726.455(a)	266.355(a)	Changed “you fail” to “the generator fails”
726.455(a)(1)	266.355(a)(1)	Changed “you fail” to “the generator fails”; changed “your” to “its” (twice); changed “you” to “the generator”; changed “us” to “the Agency”; changed “your” to “the generator’s”; added “the following”
726.455(a)(1)(A)	266.355(a)(1)(i)	Changed “condition(s)” to “conditions”; changed “you” to “the generator”
726.455(a)(1)(C)	266.355(a)(1)(iii)	Changed “date(s)” to “dates”; changed “you” to “the generator”; changed “condition(s)” to “conditions”
726.455(a)(2)	266.355(a)(2)	Changed “you” to “the generator”; changed “us” to “the Agency”
726.455(b)	266.355(b)	Changed “we” to “the Board”; added “by an order issued in an enforcement proceeding against the generator”; changed “your” to “the generator’s”; changed “you” to “the generator”; changed “requirement(s)” to “requirements”
726.460 heading	266.360 heading	Changed “If you lose the transportation and disposal conditional exemption for a waste, can the exemption be reclaimed?” to upper-case “Reclaiming a Lost Transportation and Disposal Conditional Exemption”
726.460(a)	266.360(a)	Changed “you” to “a generator”; changed “the” to “a”; added “lost” before “transportation”; added “conditional” before “exemption”; changed “you have” to “the generator has”; changed “we have” to “the Agency has”; changed “your” to “the generator’s”; added “the following conditions are fulfilled”
726.460(a)(1)	266.360(a)(1)	Changed “you again meet” to “the generator again meets”
726.460(a)(2)	266.360(a)(2)	Changed “you send” to “the generator sends”; changed “us” to “the Agency”; changed “you are” to “the generator is”; changed “your” to “the generator’s”; added “include all of the following”

726.460(a)(2)(A)	266.360(a)(2)(i)	Changed “explain” to “an explanation of”; changed the ending punctuation from a period to a semicolon
726.460(a)(2)(B)	266.360(a)(2)(ii)	Changed “certify” to “a certification”; changed “you” to “the generator”; changed “you meet” to “the generator meets”; changed “you specify” to “the generator specifies”; changed the ending punctuation from a period to a semicolon
726.460(a)(2)(C)	266.360(a)(2)(iii)	Changed “describe” to “a description of”; added “that” for a restrictive relative clause; changed “you have” to “the generator has” (twice); changed the ending punctuation from a period to a semicolon and added the conjunction “and”
726.460(a)(2)(D)	266.360(a)(2)(iv)	Deleted “include”; added “that” for a restrictive relative clause; changed “you want” to “the generator wants”; changed “us” to “the Agency”; changed “we review” to “the Agency reviews”; changed “your” to “the generator’s”
726.460(b)	266.360(b)	Changed “we” to “the Agency” (twice); changed “we determine” to “it determines”; added “in writing pursuant to Section 39 of the Act” as a parenthetical offset by a comma”; changed “your” to “the generator’s”; added “the following”; changed “you have” to “the generator has” (twice); changed “you” to “the generator”; added “any Agency determination . . . pursuant to Section 40 of the Act”
728.134(d)	268.34(d)	Used explanatory language in place of the word “reserved”
728.136(a)	268.36(a)	Changed “EPA Hazardous Waste Numbers” to lower-case “USEPA hazardous waste numbers”
728.136(b)	268.36(b)	Added “any of the following is true with regard to the waste”
738.118(k)	148.18(k)	Changed “EPA Hazardous Waste Numbers” to lower-case “USEPA hazardous waste numbers”

Table 2:
Board Housekeeping Amendments

Section	Source	Revision(s)
203.280(e)(1)	Board	Changed “shall” to “must”
203.280(j)(1)	JCAR	Changed to lower-case “see”; added the year to the <i>Code of Federal Regulations</i> citation
720.110 “boiler”	Board	Changed “shall” to “may”

721.102(c)(3)	IERG	Added Board note re the <u>Association of Battery Recyclers</u> decision
721.102(e)(1)	Board	Added a comma after “ash” to separate elements of a series
721.102(e)(1)(C)	Board	Added a space to correct “the materials”
721.103(a)(2)(C)	Board	Added an explanatory reference to replace the federally-withdrawn provision
721.104(a)(9)(C)(v)	Board	Changed “shall” to “must”
721.104(a)(17)(C)	Board	Corrected the cross-reference to “(a)(17)(D)”
721.104(a)(17)(D)	Board	Changed “shall” to “must”
721.104(a)(17)(D)(i)	Board	Changed “shall” to “must”
721.104(a)(17)(D)(iii)	Board	Corrected the cross-reference to “(a)(17)(D)”;
721.104(a)(17) Board note	Board	Added Board note re the <u>Association of Battery Recyclers</u> decision
721.104(b)(1)	Board	Changed “shall” to “must”
721.104(b)(15)(A)(i)	Board	Changed “Hazardous Waste Codes” to “the following USEPA hazardous waste numbers that is”; added “listed for the waste”
721.104(b)(15)(A)(ii)	Board	Corrected the cross-reference to “(b)(15)(A)(ii)”;
721.104(b)(15)(B)	Board	Removed the past effective date “after February 13, 2001”
721.104(d)(2)	Board	Changed “shall” to “must”
721.104(e)(3)(C)	Board	Changed “shall” to “must”
721.104(e)(3)(C)(iv)	Board	Changed “shall” to “must”
721.124(a)	Board	Changed “U.S. EPA” to “USEPA”
721.124(a) Board note	Board	Added Board note explanation re the <u>Association of Battery Recyclers</u> decision
721.124(b)	Board	Changed “U.S. EPA Hazardous Waste Number” to “USEPA hazardous waste number”
721.124(b) table	Board	Changed “U.S. EPA” to “USEPA” in column 1 heading
724.651(c)	Board	Changed “shall” to “must”
724.651(c)(1)	Board	Changed “shall” to “must”
724.651(c)(2)	Board	Changed “shall” to “must”
724.651(c)(3)	Board	Changed “shall” to “must”
724.651(c)(4)	Board	Changed “shall” to “must”
724.651(c)(5)	Board	Changed “shall” to “must”
724.651(c)(6)	Board	Changed “shall” to “must”
724.651(c)(7)	Board	Changed “shall” to “must”
724.651(d)	Board	Changed “shall” to “must”
724.651(e)	Board	Changed “shall” to “must”
724.651(e)(4)(A)	Board	Changed “shall” to “must”
724.651(e)(4)(B)	Board	Changed “shall” to “must”

724.651(e)(4)(C)	Board	Changed “shall” to “must”
724.651(e)(4)(D)	Board	Changed “shall” to “must”
724.651(f)	Board	Changed “shall” to “must” (twice)
724.651 Board note	Board	Deleted the Board note explanation of dual regulation by the State and USEPA
724.654 preamble	Board	Deleted the explanatory preamble
724.654(a)	Board	Changed “what is a staging pile?” to “definition of a staging pile.”
724.654(b)	Board	Changed “when may an owner or operator use a staging pile?” to “use of a staging pile.”; changed “shall” to “must” (twice)
724.654(c)	Board	Changed “what information must an owner or operator provide to get a staging pile designated?” to “information that an owner or operator must submit to gain designation of a staging pile.”; changed “shall” to “must”
724.654(d)	Board	Changed “what performance criteria must a staging pile satisfy?” to “performance criteria that a staging pile must satisfy.”; changed “shall” to “must”
724.654(d)(1)(C)	Board	Changed “shall” to “must” (twice)
724.654(d)(2)	Board	Changed “shall” to “must”
724.654(e)	Board	Changed “may a staging pile receive ignitable or reactive remediation waste?” to “receipt of ignitable or reactive remediation waste.”; changed “shall” to “must”
724.654(f)	Board	Changed “how does an owner or operator handle incompatible remediation wastes in a staging pile?” to “managing incompatible remediation wastes in a staging pile.”; changed “shall” to “must”
724.654(f)(1)	Board	Changed “shall” to “must”
724.654(f)(2)	Board	Changed “shall” to “must”
724.654(f)(3)	Board	Changed “shall” to “must”
724.654(g)	Board	Changed “are staging piles subject to land disposal restrictions (LDR) and federal minimum technological requirements (MTR)? no.” to “staging piles are subject to land disposal restrictions and federal minimum technological requirements.”
724.654(g)	Board	Changed “are staging piles subject to land disposal restrictions (LDR) and federal minimum technological requirements (MTR)? no.” to “staging piles are subject to land disposal restrictions and federal minimum technological requirements.”; changed “shall” to “must”
724.654(h)	Board	Changed “how long may an owner or operator operate a staging pile?” to “how long an owner or operator may operate a staging pile.”; changed “shall” to “must”

724.654(i)	Board	Changed “may an owner or operator receive an operating extension for a staging pile?” to “receiving an operating extension for a staging pile.”; changed “shall” to “must”
724.654(i)(1)	Board	Changed “shall” to “must”
724.654(i)(2)	Board	Changed “shall” to “must”
724.654(j)	Board	Changed “what is the closure requirement for a staging pile located in a previously contaminated area?” to “the closure requirement for a staging pile located in a previously contaminated area.”
724.654(j)(1)	Board	Changed “shall” to “must”
724.654(j)(2)	Board	Changed “shall” to “must”
724.654(j)(3)	Board	Changed “shall” to “must”
724.654(k)	Board	Changed “what is the closure requirement for a staging pile located in an uncontaminated area?” to “the closure requirement for a staging pile located in a previously uncontaminated area.”
724.654(k)(1)	Board	Changed “shall” to “must”
724.654(k)(2)	Board	Changed “shall” to “must”
724.654(l)	Board	Changed “how may an existing permit (for example, RAP), closure plan, or order be modified to allow an owner or operator to use a staging pile?” to “modifying an existing permit (e.g., an rap), closure plan, or order to allow the use of a staging pile.”
724.654(l)(1)(A)	Board	Changed “shall” to “must”
724.654(l)(1)(B)	Board	Changed “shall” to “must”
724.654(l)(2)	Board	Changed “shall” to “must”
724.654(l)(3)	Board	Changed “shall” to “must”
724.654(l)(4)	Board	Changed “shall” to “must”
724.654(m)	Board	Changed “is information about the staging pile available to the public?” to “public availability of information about a staging pile.”; changed “shall” to “must”
728.144(a) Board note	Board	Added Board note re the <u>Association of Battery Recyclers</u> decision
728.144(c)	Board	Removed the past effective date
728.149(a) table	Board	Changed “determined to contain” to “determined not to contain”
728.Appendix G, table 2 note 10	Board	Added a space before “U372”
728.Table T “D013”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”
728.Table T “F039”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”
728.Table T “K032”	JCAR, Board	Corrected “ χ -isomers ” to “ γ -isomers”
728.Table T “U129”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”

728.Table T Board note	JCAR	Updated the <i>Code of Federal Regulations</i> reference to include the <i>Federal Register</i> citation to the November 20, 2001 amendments
728.Table U	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”

**HISTORY OF RCRA SUBTITLE C AND UIC ADOPTION
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY OR BOARD ACTION
EDITORIAL CONVENTIONS**

It has previously been the practice of the Board to include an historical discussion in its RCRA Subtitle C and UIC identical-in-substance rulemaking proposals. However, in the last RCRA Subtitle C update docket, RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through Dec. 31, 1999), R00-13 (May 18, 2000), the Board indicated that it would cease this practice. Therefore, for a complete historical summary of the Board’s RCRA Subtitle C and UIC rulemakings and programs, interested persons should refer back to the May 18, 2000 opinion and order in R00-13.

The historical summary contains all Board actions taken to adopt and maintain these programs since their inception and until May 18, 2000. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all USEPA program authorizations issued during that time frame. As necessary the Board will continue to update the historical summary as a segment of the opinion in each RCRA Subtitle C and UIC update docket, but those opinions will not repeat the information contained in the opinion of May 18, 2000 in docket R00-13.

The following summarizes the history of the Illinois RCRA Subtitle C hazardous waste and UIC programs since May 18, 2000:

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the RCRA Subtitle C hazardous waste rules in the following docket since May 18, 2000:

- R00-13 RCRA Subtitle C Update, USEPA Regulations (July 1, 1999 through Dec. 31, 1999), R00-13 (May 18, 2000); published at 24 Ill. Reg.9443 (July 7, 2000), effective June 20, 2000.
- R01-3 RCRA Subtitle C Update, USEPA Regulations (Jan. 1, 2000 through June 30, 2000), R01-3 (Dec. 7, 2000); published at 25 Ill. Reg. 1266 (Jan. 26, 2001), effective January 11, 2001.
- R01-23 RCRA Subtitle C Update, USEPA Regulations (July 1, 2000 through Dec. 31, 2000), R01-23 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. (Consolidated with UIC update docket R01-21.)

- R02-1 RCRA Subtitle C Update, USEPA Regulations (Jan. 1, 2001 through June 30, 2001) This docket.
- R02-12 RCRA Subtitle C Update, USEPA Regulations (July 1, 2001 through Dec. 31, 2001) This docket.

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in the following dockets since May 18, 2000:

- R00-11 UIC Update, USEPA Regulations (July 1, 1999 through Dec. 31, 1999), R00-11 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (Dec. 22, 2001), effective Dec. 7, 2001. (Consolidated with docket R01-1.)
- R01-1 UIC Update, USEPA Regulations (Jan. 1, 2000 through June 30, 2000), R01-1 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (Dec. 22, 2001), effective Dec. 7, 2001. (Consolidated with docket R00-11.)
- R01-21 UIC Update, USEPA Regulations (July 1, 2000 through Dec. 31, 2000), R01-21 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. (Consolidated with UIC update docket R01-23.)
- R02-17 UIC Update, USEPA Regulations (July 1, 2001 through Dec. 31, 2001)
This docket.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion was adopted on the _____ day of _____ 2002, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board