

ILLINOIS POLLUTION CONTROL BOARD

May 24, 1990

IN THE MATTER OF:)
) R89-11
UIC UPDATE, USEPA REGULATIONS) (Identical in Substance Rulemaking)
(1-1-89 THROUGH 11-30-89))

ADOPTED RULE. FINAL ORDER.

OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Sections 22.4(a) and 13.(c) of the Environmental Protection Act (Act), the Board amends the Underground Injection Control (UIC) regulations. Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois, and Section 13(c) governs adoption of the UIC program regulations. Both Sections 22.4(a) and 13(c) provide for quick adoption of regulations which are "identical in substance" to federal regulations. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR).

The federal UIC regulations are found at 40 CFR 144, 146, and 148. This rulemaking updates UIC rules to correspond with federal amendments during the period January 1 through August 31, 1989. The Federal Registers utilized are as follows:

54 Fed. Reg. 25422	June 14, 1989
54 Fed. Reg. 26647	June 23, 1989
54 Fed. Reg. 34171	August 18, 1989
54 Fed. Reg. 35328	August 25, 1989
54 Fed. Reg. 47451	November 14, 1989

The Board divides state UIC and RCRA program updates into their traditional parts, UIC in 35 Ill. Adm. Code 704, 730, and 738 and RCRA in 35 Ill. Adm. Code 703, 705, 720 through 726, and 728, with minimal overlap. The present UIC amendments are limited to 35 Ill. Adm. Code 738.Subpart B.

PUBLIC COMMENTS

The public comment period ended 45 days after publication of the Notice of Proposed Amendments in the Illinois Register on February 21, 1990 (Part 720, at 14 Ill. Reg. 3006, and Part 730, at 14 Ill. Reg. 3014) and March 7, 1990 (Part 738, at 14 Ill. Reg. 3823). The Board received one public comment (P.C. #1) on April 4, 1990 from the Secretary of State, Administrative Code Division (Code Unit). The Board also received three letters from the Joint Committee on Administrative Rules (JCAR) on March 12 (Part 720) and April 11 (Part 730) and 18 (Part 738), 1990 relating to this rulemaking. The third of these JCAR letters commented on the format of two subsections; the other two included no comments.

The Board received no other public comments. The Board invited comments on various issues in its Proposed Opinion of January 25, 1990. The detailed

discussion that follows indicates each topic on which the Board invited public comment. The Board construes silence as no objection to the Board's approach to each topic.

The Board summarizes the changes it has made to the text as proposed in response to the comments in the following detailed discussion. The Board revised the text of Section 730.108(a) in response to the Code Unit's (P.C. #1) comment. The Board corrected the format of the proposed text of Section 738.114(c) and (d) in response to the JCAR letter received April 16, 1990.

DELAYED FILING OF ADOPTED AMENDMENTS

The Board will delay filing the adopted amendments for 30 days from the date of this Opinion and the accompanying Order, particularly to allow USEPA, the Agency, and the Attorney General to review them in final form before they are filed. This delay is in accordance with the procedural track for identical in substance rulemakings embodied in the informal "RCRA Pass-Through Rulemaking/Authorization Revision and Review Process" agreement between the above entities and the Board, as amended May, 1987.

HISTORY OF RCRA, UST and UIC ADOPTION

NOTE: For greater clarity, the Board is employing an alternative format to that previously used for the following historical summary of RCRA, UST, and UIC adoption. This alternative format includes updated information not part of the summaries in earlier RCRA, UST, and UIC opinions.

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

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

Special provisions for RCRA cases are included in Parts 102, 103, 104

and 106, the Board's procedural rules.

History of RCRA and State Hazardous Waste Rules Adoption

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

R81-22	45 PCB 317, September 16, 1981 & February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)
R82-18	51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
R82-19	53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)
R83-24	55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)
R84-9	64 PCB 427 & 521, June 13 & 27, 1985; 9 Ill. Reg. 11964, August 2, 1985, effective July 8 & 24, 1985. (1/19/83 through 4/24/84)
R85-22	67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)
R86-1	71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
R86-19	73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)
R86-28	75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684,

- May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)
- R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)
- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 & 12, 1987. (10/1/86 through 12/31/86)
- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)
- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 Proposal for Public Comment, April 12, 1990. (7-1-89 through 12/31/89)
- R90-10 Reserved Docket. (Toxicity Characteristic Leachate Procedure)

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

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

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

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

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

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

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

The Board has adopted special procedures in Parts 101, 102, and 104 for cases involving the RCRA regulations:

R84-10 62 PCB 87 & 349, December 20, 1984 & January 10, 1985; 9 Ill. Reg. 1383, February 1, 1985, effective January 16, 1985.

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

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

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

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

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

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

History of UIC Rules Adoption

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

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

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

- R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983, effective December 19, 1983. (4/1/83)
- R85-23 70 PCB 311 & 71 PCB 108, June 20 & July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 & 29, 1986. (5/11/84 through 11/15/84)
- R86-27 Dismissed at 77 PCB 234, April 16, 1987. (No USEPA amendments through 12/31/86).
- R87-29 85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87)
- R88-2 90 PCB 679, June 30, 1988; 12 Ill. Reg. 13700, August 26, 1988, effective August 16, 1988. (7/1/87 through 12/31/87)
- R88-17 94 PCB 227, December 15, 1988; 13 Ill. Reg. 478, January 13, 1989, effective December 30, 1988. (1/1/88 through 6/30/88)
- R89-2 January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11 This Docket. (1/1/89 through 11/30/89)
- R90-5 Dismissed on March 22, 1990. (No USEPA amendments 12/1/89 through 12/31/89)

History of UST Rules Adoption

The Board adopted Underground Storage Tank (UST) rules in R86-1 and R86-28, which were also RCRA update Dockets. The Board updated the UST regulations to correspond with USEPA amendments in several dockets. USEPA has not yet authorized the Illinois UST program. The entire listing of all UST rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)
- R88-27 98 PCB 413, April 27, 1989; 13 Ill. Reg. 9519, June 23, 1989, effective June 12, 1989. (9/23/88)
- R89-4 101 PCB 371, July 27, 1989; 13 Ill. Reg. 15010, September 22, 1989, effective September 12, 1989. (10/26/88)

- R89-10 March 1, 1990; 14 Ill. Reg. 153, January 5, 1990, effective April 10, 1990. (10/27/88 through 6/30/89)
- R89-19 April 26, 1990. (UST Fund Legislative Mandate)
- R90-3 Proposal for Public Comment March 8, 1990; 14 Ill. Reg. 4406, March 23, 1990. (7/1/89 through 12/31/90)

GENERAL DISCUSSION

The amendments are discussed in detail below. The following generally describes the USEPA actions encompassed by this rulemaking. The complete Federal Register Citations are given above. All dates are 1989.

- June 14 Additional restrictions on underground injection of First Third Wastes.
- June 23 Restrictions on underground injection of Second Third Wastes and Third Third Wastes.
- August 18 Interim approval of a water-brine interface mechanical integrity test for Class III salt solution mining injection wells.
- August 25 Correction to the additional restrictions on underground injection of First Third Wastes.
- November 14 Correction to the interim approval of a water-brine mechanical integrity test.

DETAILED DISCUSSION

PART 720 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART A: GENERAL PROVISIONS

The primary aspects of the proposed amendment to Part 720 are discussed below in the discussion of Part 730. The proposed amendment was limited to the addition of a Federal Register reference at subsection (d) to support the proposed amendment to Part 730. This Federal Register describes the alternative test method that USEPA granted interim approval. Adding the Federal Register reference would have required redesignating existing subsection (d) as subsection (e).

The Board did not adopt the proposed amendment to Part 720. The reasons for this are cited below in the discussion of the proposed amendments to Part 730, also not adopted in significant part.

PART 730
UNDERGROUND INJECTION CONTROL OPERATING REQUIREMENTS

SUBPART A: GENERAL

Section 730.108 Mechanical Integrity

This Section derives from 40 CFR 146.8. At 54 Fed. Reg. 34169 (August 18, 1989), USEPA granted a two-year interim approval to a well integrity test for Class III salt solution mining injection wells. This Water-Brine Interface mechanical integrity test is an alternative granted interim approval under 40 CFR 146.8(d) to the tests specified at 40 CFR 146.8(b). USEPA subsequently published a correction to this interim approval at 54 Fed. Reg. 47451 on November 14, 1989.

The Board proposed a revision to corresponding Section 35 Ill. Adm. Code 730.108(b) to reflect this interim approval, in order to open Section 730.108 to possible amendment. The Board invited comment, both as to its intent not to adopt this proposed amendment and to the proposed text if such amendment were necessary, and received none. Therefore, the Board does not adopt this proposed amendment to Part 730 (and Part 720).

As set forth in the January 25, 1990 Proposed Opinion for the sake of comment, the proposed amendment to Section 730.108 would have, in significant portion, taken the following form:

- b) 3) Until September 18, 1991, for Class III salt solution mining injection wells, the Water-Brine Interface Test described at 54 Fed. Reg. 34169, August 18, 1989, incorporated by reference at 35 Ill. Adm. Code 720.111.

Several factors militated against adoption of the proposed amendment. In the past, the Board has generally refrained from proposing amendments based on federal interim actions. Rather, the Board has adopted only final federal regulatory amendments. Second, Section 730.108(d) authorizes the Agency to allow use of alternative mechanical integrity tests. This would arguably allow the Agency to permit use of the alternative test granted interim federal approval if necessary. Finally, the Board is unaware whether any Class III salt solution mining injection wells presently exist in Illinois. The Board follows its past practice in this instance and does not adopt this proposed amendment.

The Board also proposed a number of minor editorial corrections to this Section in its January 25, 1990 Proposed Order. The Board amends "paragraph" to "subsection" wherever it appears and changes "sections" to "Sections" in subsection (a) (in response to P.C. #1), in order to comport with the Illinois Administrative Code format; the Board amends "it" to "the test" at subsection (d), for clarity; and the Board uses "it" instead of the gender-biased "he" at subsection (e).

SUBPART B: PROHIBITIONS ON INJECTION

During the present update period, USEPA added to the restrictions on injection of First Third Wastes (40 CFR 148.14), promulgated restrictions of Second Third Wastes (40 CFR 148.15), and promulgated the first few restrictions on injection of Third Third Wastes (40 CFR 148.16). USEPA also adopted technical corrections to the prohibitions on injection of solvent wastes (40 CFR 148.10) and dioxin-containing wastes (40 CFR 148.11).

The Board adopts parallel amendments to the corresponding sections in 35 Ill. Adm. Code 738 in a partially revised format. The Board has also reformatted those existing subsections of Sections 738.110 through 738.114 that contained listings of hazardous wastes by EPA Hazardous Waste number. The new format is also used for the similar subsections of new Sections 738.115 and 738.116. This format is similar to that adopted by the Board for similar listings in Part 728, the RCRA portions of the land ban rules. The Board believes that, while maintaining its rules as identical in substance with the corresponding federal rules, the new format will enhance readability and facilitate future revisions. The Board invited comment on this proposed new format and received none.

Section 738.110 Waste Specific Prohibitions - Solvent Wastes

Section 738.111 Waste Specific Prohibitions - Dioxin-Containing Wastes

Section 738.110 derives from 40 CFR 148.10 (1988), and Section 738.111 derives from 40 CFR 148.11 (1988), both as amended at 53 Fed. Reg. 28155 (July 26, 1988). USEPA made technical corrections at 54 Fed. Reg. 25422 (June 14, 1989). The effect of these corrections is to delete subsections 148.10(c)(4) and 738.11(b)(4) (corresponding to 35 Ill. Adm. Code 738.110(c)(4) and 738.111(b)(4)), which refer to treatability variances at 40 CFR 268.44 (adjusted treatment standards at 35 Ill. Adm. Code 728.144). USEPA replaces this with language at subsections 148.10(c)(1) and 148.11(b)(1) (corresponding to 35 Ill. Adm. Code 738.110(c)(1) and 738.111(b)(1)) that, in the opinion of USEPA, would achieve the same result. This revised language allows exception from the ban if the wastes are treated to meet the standards of 40 CFR 268, Subpart D (corresponding to 35 Ill. Adm. Code 738.Subpart D).

The Board adopts parallel amendments to the corresponding portions of subsections 738.110(c) and 738.111(b). The Board also updates the Board Notes to these Sections.

Section 738.114 Waste Specific Prohibitions - First Third Wastes

Section 738.114 derives from 40 CFR 148.14, as added at 53 Fed. Reg. 30918 (August 16, 1988). USEPA amended 40 CFR 148.14 at 54 Fed. Reg. 25423 (June 14, 1989), 54 Fed. Reg. 26647 (June 23, 1989), and 54 Fed. Reg. 35328 (August 25, 1989). The effect of the June 14 and 23 amendments is to complete the listing of First Third Wastes restricted from underground injection, which USEPA initiated on August 16, 1988. The ban on some of these wastes, now listed as 40 CFR 148.14(a), (b), and (c) (proposed 35 Ill. Adm. Code 738.114(a), (b), and (c)) took effect June 7 and 8, 1989. The ban on the others, now listed as 40 CFR 148.14(c) and (f) (proposed 35 Ill. Adm. Code

738.114(e) and (f)) will take effect on June 7 and 8, 1991. The amendments of August 25 corrected an error at 40 CFR 148.14(a) (corresponding to 35 Ill. Adm. Code 738.114(a)) with regard to K101 and K102 wastes. The prohibition against injection of these two wastes will now affect only K101 and K102 nonwastewater wastes containing less than one percent total arsenic and all wastewaters. USEPA will later promulgate a date for the ban on K101 and K102 nonwastewater wastes with an arsenic content greater than or equal to one percent.

The Board adopts corresponding amendments to Section 738.114. However, the Board slightly revises the federal text. The Board's amendments delete the past effective dates from subsections (a), (b), and (c). Aside from the format change noted above, the Board's amendments also include a small number of grammatical and punctuation revisions (i.e. using "one percent" in place of "1%", inserting "those" where necessary, changing "numbers" to "number" where only one waste is listed, and using "through" instead of listing the several subsections). The Board invited comment on these revisions to the federal text and received none. The Board also updates the Board Note to this Section.

Section 738.115 Waste Specific Prohibitions - Second Third Wastes

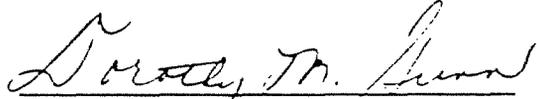
Section 738.116 Waste Specific Prohibitions - Third Third Wastes

Sections 738.115 and 738.116 derive from 40 CFR 148.15 and 148.16, as added at 54 Fed. Reg. 25423 (June 14, 1989) and amended at 54 Fed. Reg. 26647 (June 23, 1989). New 40 CFR 738.115 lists Second Third Wastes prohibited from underground injection. New Section 738.116 lists the initial Third Third Wastes similarly prohibited. Similarly to 40 CFR 738.114, which lists the First Third Wastes, 40 CFR 738.115 and 40 CFR 738.116 both list past effective dates, and they both list the same conditions under which the prohibitions do not apply.

The Board adopts 35 Ill. Adm. Code 738.115 and 738.116 to correspond with the new federal sections. However, the Board slightly revises the federal text of both sections. These revisions are similar to those made to the Section 738.114 language, with only one large deletion of federal text. One prohibition at 40 CFR 148.15(c) was for a temporary period already past. In the course of deleting past effective dates from the federal text, the Board deleted this entire prohibition. Aside from this, and those grammatical and punctuation revisions of the type noted for Section 738.114, the Board also adds "from underground injection" to clarify the subsection 738.115(c) prohibition. The Board invited comment on these revisions to the federal text and received none. The Board also updates the Board Notes to these Sections.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion of the Board was adopted on the 24th day of May, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board