

ILLINOIS POLLUTION CONTROL BOARD
September 13, 1990

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R90-10
TCLP (1-1-90 THROUGH 3-30-90)) (Rulemaking)

ORDER OF THE BOARD (by J. Anderson):

On August 30, 1990, the Board adopted a final Opinion and Order in this matter, amending the RCRA rules. The Board set September 11, 1990, as the date for post-adoption comments. The Board has received none. However, the Board notes that, on August 9, 1990, it also adopted a final Opinion and Order in R89-13A, In the matter of IDENR Special Waste Categorization. In Section 808.410(b)(4) there is a cross reference to "an EP toxicity test, as specified in 35 Ill. Adm. Code 721.124". In R90-10 we have replaced the EP toxicity test with the TCLP test. This renders the cross reference confusing.

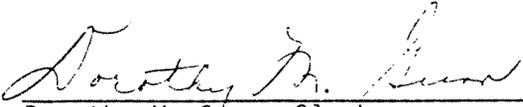
The reference to the EP toxicity test occurs with the contents of the application for wastestream characterization. The point of including it was to provide a basis for the Agency's determination that the wastestream in question is not hazardous prior to characterizing it. It would be possible to continue referencing the EP toxicity test in the USEPA Guidance Manual, SW 846, as was discussed in the R90-10 Opinion of August 30, 1990. However, the test results would not be meaningful, in that it would no longer establish whether the waste was hazardous or not. Moreover, it would impose an additional testing burden on generators. Under the new RCRA rules, all generators will have to do the TCLP test to determine whether their waste is hazardous. To the extent Section 808.410 required an EP Toxicity test, it would be imposing an additional testing burden which the Board did not intend in R89-13A. The Board therefore concludes that the intent of Section 808.410 was to require "the test specified by Section 721.124", rather than the "EP Toxicity test" which happened to be specified in that Section.

The Board will therefore add to the explanatory note in Section 721.124, as follows:

BOARD NOTE: Generators are required to use the TCLP test for the hazardous waste determination under 35 Ill. Adm. Code 722.120 as of September 25, 1990. Provided, however, that, as specified at 55 Fed. Reg. 11850, March 29, 1990, small quantity generators of 100 to 1000 kg/ month, as defined in 35 Ill. Adm. Code 721.105, may continue to use the EP toxicity test until March 29, 1991. The EP toxicity test is Method 1310 in SW 846, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", incorporated by reference in 35 Ill. Adm. Code 720.111. The reference to the "EP toxicity test" in 35 Ill. Adm. Code 808.410(b)(4) is to be understood as referencing the test required by this Section.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15th day of September, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board