

ILLINOIS POLLUTION CONTROL BOARD
March 2, 1995

IN THE MATTER OF:)
) R95-4
UIC UPDATE, USEPA REGULATIONS) (Identical-in-Substance Rules)
(7-1-94 THROUGH 12-31-94))

IN THE MATTER OF:)
) R95-6
RCRA UPDATE, USEPA REGULATIONS) (Identical in Substance Rules)
(7-1-94 THROUGH 12-31-94))

Proposal for Public Comment.

PROPOSED OPINION OF THE BOARD (by E. Dunham):

Pursuant to Section 13(c) and 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/13(c) & 22.4(a) (1992)], the Board proposes amendments to the RCRA Subtitle C hazardous waste (RCRA) and underground injection control (UIC) regulations. (See "Consolidation of Dockets" below.)

Section 22.4(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by U.S. EPA to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. §§ 6921-6925) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35 & 5-40 (1992)] shall not apply. Section 13(c) similarly provides with respect to underground injection control regulations adopted by U.S. EPA pursuant to Section 1421 of the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h). Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, and, more recently, 279. The federal UIC regulations are found at 40 CFR 144, 146, and 148.

This opinion supports an order adopted on the same day. The Board will cause the proposed amendments to be published in the Illinois Register and will hold the docket open for 45 days after the date of publication to receive public comments.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This rulemaking updates the Illinois RCRA Subtitle C and UIC rules to correspond with federal amendments made in the period from July 1 through December 31, 1994. The USEPA actions during this period are as follows:

Federal Action	Summary
59 Fed. Reg. 38536, July 28, 1994	Exclusion from definition of solid waste for certain in-process recycled secondary materials used by the petroleum refining industry
59 Fed. Reg. 43496, August 24, 1994	Withdrawal of exemption from Subtitle C regulation of slag residues from high temperature metal recovery (HTMR) of electric arc furnace dust (K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) that are used in a manner constituting disposal
59 Fed. Reg. 47980, September 19, 1994	Restoration of text from 40 CFR 268.7(a) inadvertently omitted in the amendments of August 31, 1993, at 58 Fed. Reg. 46040
59 Fed. Reg. 47982, September 19, 1994	Phase II land disposal restrictions (LDRs): universal treatment standards for organic toxicity wastes and newly-listed wastes (including underground injection control (UIC) amendments)
59 Fed. Reg. 62896, December 6, 1994	Organic material air emission standards for tanks, surface impoundments, and containers

In addition to these principal amendments that occurred during the update period, the Board has included an additional, later action:

60 Fed. Reg. 242, January 3, 1995	Corrections to the Phase II land disposal restrictions (universal treatment standards)
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This January 3 action was an amendment of the September 19, 1994 Phase II LDRs (universal waste rule). U.S. EPA corrected errors and clarified language in the universal treatment standards. The Board did not delay in adding these amendments for three reasons:

- 1) The January 3, 1995 amendments are corrections and clarifications of the September 19, 1994 regulations, and not new substantive amendments;
- 2) Prompt action on the January 3, 1995 amendments will facilitate implementation of the Phase II LDRs; and
- 3) The Board has received a request from the regulated community that we add the January 3, 1995 amendments to

those of September 19, 1994. (See "Expedited Consideration" below.)

The Board also notes that the later amendments occurred within six months of the earliest amendments included in this docket, even if they occurred outside the nominal time-frame of the docket.

PUBLIC COMMENTS

The Board will receive public comment on this proposal for a period of 45 days following its publication in the Illinois Register. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow U.S. EPA review. The complete text of the proposed amendments appears in a separate order adopted this day.

EXPEDITED CONSIDERATION

Prior to commencing work on the present amendments, the Board had already received filings in this docket, although we did not docket these as public comments. The Illinois Environmental Regulatory Group (IERG) filed a motion for expedited adoption of the September 19, 1994 federal universal treatment standards amendments on January 9, 1995. That motion represented that the Illinois Environmental Protection Agency (Agency) agreed. The Board granted that motion by an order dated January 11, 1995, requested clarification of whether the request contemplated inclusion of the January 3, 1995 corrections. In a response filed January 24, 1995, IERG stated that it wanted the Board to include those amendments.

This proposal for public comment represents a significant effort on the part of the Board to act as promptly as possible, given the magnitude of the amendments included in this docket. Assuming all the necessary work to complete this rulemaking occurs as rapidly as possible, the Board would anticipate adopting these amendments at our regularly-scheduled meeting of May 18, 1995, filing them with the Secretary of State 30 days later.

CONSOLIDATION OF DOCKETS

Although the Board generally deals with RCRA Subtitle C and UIC regulations separately, we have dealt with them together where the UIC amendments are minor and closely related to the RCRA Subtitle C regulations and where doing so was expeditious for the Board and would not mislead the public. Generally, we have done this by dismissing the UIC docket, noting the action that we undertook in the RCRA Subtitle C docket.

The present UIC amendments are small in volume and closely

related to the RCRA Subtitle C amendments in this instance. The only UIC amendments occurred as part of the federal Phase II LDRs on September 19, 1994. It is therefore expeditious for us to deal with the amendments with the RCRA Subtitle C amendments. However, the Board does not believe that outright dismissal of the UIC docket is appropriate; the amendments are major in importance to facilities operating injection wells that inject hazardous waste. For these reasons, the Board has consolidated the two proceedings, in order to avoid any possible confusion and to particularly draw the attention of the interested public to the UIC amendments.

HISTORY OF RCRA SUBTITLE C, UST and UIC ADOPTION AGENCY OR BOARD ACTION? EDITORIAL CONVENTIONS

The Board appends three routine discussions at the end of this opinion. The first is a summary history of the Illinois RCRA Subtitle C and UIC programs. It lists all actions taken to adopt and maintain these programs since their inceptions. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all U.S. EPA program authorizations issued to date. The second is a discussion of how the Board codifies requirements that call for state determinations, such as for exemptions, exceptions, etc. The third discussion relates to our use of language in the codification of identical-in-substance rules. We intend these as reference aids for interested persons in the regulated community.

DISCUSSION

The federal actions that underlie this proceeding require amendment of the Illinois RCRA Subtitle C and UIC regulations. This discussion briefly focuses on each by subject matter, indicating the specific details of the actions taken by the Board where pertinent.

General Revisions

The Board will continue to change its method of referring to the United States Environmental Protection Agency in this present rulemaking that we began in update docket R93-16 and continued in R94-7 and R94-17. We now refer to "U.S. EPA", which we believe is a more conventional and clearly understood in the context of the Illinois regulations than either "USEPA" or "EPA". We further began to refer to the "U.S. EPA hazardous waste number" and "U.S. EPA document number" for similar clarity. This changed usage occurs only in the Sections opened in this proceeding, and we will continue this conversion in future rulemakings as additional Sections otherwise become open to amendment.

The Board also continues its move toward presentation of equations and expressions in standard scientific notation. Thus, in Section 721. Appendix H, we have used the appropriate chemical notation. For example, we replaced "H3AsO4" with " H_3AsO_4 ", as formerly used for arsenic acid. We believe that any person sophisticated enough to understand the chemical equations will more readily recognize them in the standard mathematical notation, as they appear in the federal original. In that Section we also corrected the chemical name in the entry for aldrin by adding a missing parentheses. The Board also substituted "or" for "/" in most instances where this appeared in the federal base text, using "and" where more appropriate.

The Board also used this opportunity to make a number of corrections to punctuation, grammar, and cross-reference format throughout the opened text. Where the cross-references within the text to other segments of the Illinois Administrative Code did not formerly comport with the standard format, the Board made the necessary changes. We also changed "who" to "that" and "he" 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 "shall" for "will"; capitalized the Section headings and corrected their format where necessary; and corrected punctuation within sentences.

Finally, some of the language structure of the federal base text (in both the new amendments and that incorporated in earlier dockets) is cumbersome or less than clear. The Board has attempted to correct some of the worst instances of this. We realize that the language of the hazardous waste regulations still suffers in conciseness and clarity, but we cannot go further at this time and still maintain parity with the federal regulations. However, we invite interested members of the regulated community to submit suggestions relating to correcting deficiencies and errors and enhancing clarity of the rules.

Repeal of Part 700

Part 700 was formerly the outline of the solid waste (Subtitle G) regulations. In docket R94-5, the Board repealed all of the Sections in that Part except Section 700.106. We noted that the Part was greatly outdated, and because its limited continued utility did not justify the labor involved with updating it, we decided a repeal was the appropriate course. We did not repeal the entire Part at that time because Section 700.106 set forth the effective dates of a number of provisions by reference. In R94-5, the Board amended many of the permitting and UIC regulations that referenced Section 700.106 for an effective date (primarily in the Section and Part source notes).

The Board now completes the repeal of Part 700. We have

opened all Sections that still had references to Section 700.106. The mere act of any amendment of these Sections removed the references in the Section source notes. The amendments to these Sections are minor corrections and clarifications. Thus, we have amended the following Sections for the primary purpose of deleting the references to Section 700.106: 705.128, 720.121, 722.122, 723.130, 725.114, 725.117, 725.150, 725.171, 725.192, 725.194, 725.271, 725.272, 725.274, 725.325, 725.352, 725.378, 725.477, 725.501, 725.502, 725.503, 725.504, 725.505, 725.506, 730.104, 730.105, 730.110, 730.132, 730.133, and 730.151. We have also removed the references to Section 700.106 from the main source notes of Parts 720, 721, 722, 723, and 725. In these instances, the Board has substituted the appropriate dates of the federal authorizations upon which the effective dates of the Illinois regulations originally depended.

Thus, having eliminated the final utility of Part 700, we have repealed it in its entirety. **The Board invites public comment on the elimination of the references to Section 700.106 and the repeal of Part 700.**

Effect of a Permit--Section 702.181

Section 702.181 derives in part from 40 CFR 270.4, which U.S. EPA amended at 59 Fed. Reg. 62952 (Dec. 6, 1994), as part of the tank, surface impoundment, and container volatile organic emissions amendments. Section 270.4(a) basically recites that compliance with a RCRA Subtitle C permit constitutes compliance with RCRA Subtitle C itself, except in certain narrow circumstances when not included in the permit. The gist of the exceptions is that immediate compliance with certain newer provisions is required in the time between when U.S. EPA promulgates a new regulation and when the permit is amended to reflect the newer requirement. The federal amendments added a new exception circumstances: the new Part 265 (interim status) subparts AA (process vents), BB (equipment leaks), and CC (tanks, surface impoundments, and containers) air emissions requirements. Thus, holding a permit that does not include these requirements does not excuse non-compliance with them.

In Illinois, compliance with a permit does not constitute compliance with the Environmental Protection Act, except as to the statutory requirement to operate in compliance with a permit.¹ Thus, the Board's regulation at Section 702.181(a) is very different from 40 CFR 270.4(a). The Board never adopted and

¹ In a prior UIC update, R81-32 (May 13, 1982), and a prior RCRA Subtitle C update, R92-10 (January 21, 1993), the Board read Lanfill, Inc. v. PCB (1978), 74 Ill. 2d 541, 387 N.E.2d 258, as requiring this conclusion.

never could reasonably have adopted the federal exceptions. At this time, the Board adds a Board Note to this provision explaining the existence of the federal regulation, and explicitly stating that in not adopting the federal exceptions, the Board does not imply the opposite of the federal intent: that compliance with the conditions of a permit excuses compliance with the newer requirements. **The Board invites comment on our addition of a Board Note to Section 702.181(a).**

Permit Application Requirements--Sections 703.183, 703.201, 703.202, 703.203 & 703.213

Sections 703.183, 703.201, 703.202, 703.203, and new 703.213 derive from 40 CFR 270.14(b), 270.15, 270.16, 270.17, and newly-added 270.27, respectively. These provisions all relate to the submission of RCRA Subtitle C permit applications. U.S. EPA amended these provisions at 59 Fed. Reg. 62952 (Dec. 6, 1994), as part of the organic material emissions amendments, to require the submission of certain information in permit applications. 40 CFR 270.14(b)(5) (corresponding with 35 Ill. Adm. Code 703.183(e)) now requires submission of information relating to compliance with the air leaks inspection requirements. 40 CFR 270.15(e), 270.16(k), and 270.17(j) (corresponding with 35 Ill. Adm. Code 703.201(e), 703.202(k), and 703.203(j), respectively) require submission of information relating to container, tank system, and surface impoundment air emissions control equipment. New 40 CFR 270.27 (corresponding with 35 Ill. Adm. Code 703.213) requires an owner or operator of a tank, surface impoundment, or container that uses air emissions controls to provide more specific and detailed information on the controls.

Aside from minor corrective revisions, both to the federal amendments and the pre-existing base text (most extensive in Section 703.213), the Board has adapted the text of the federal amendments without deviation. **The Board invites comment on our codification of the federal air emissions control permit information requirements.**

Incorporations by Reference--Section 720.111

Section 720.111 derives in large measure from 40 CFR 260.11, which U.S. EPA amended at 59 Fed. Reg. 62926 (Dec. 6, 1994), as part of the tank, surface impoundment, and container air emissions requirements. U.S. EPA added an incorporation for "Evaporative Loss from External Floating-Roof Tanks", API Publication 2517, Third Edition, and updated the incorporation of ASTM D 2879-92, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope", to the 1992 edition. U.S. EPA also amended Method 25E, "Determination of Vapor Phase Organic", in 40 CFR 60, appendix A, at 59 Fed. Reg. 62924. As a consequence of these federal actions, the Board has added the new API method and

updated the ASTM method in the incorporations by reference. We also updated the incorporation of 40 CFR 60 by reference to reflect the update of Method 25E. At new 40 CFR 264.1086(b)(1)(B), U.S. EPA requires that hazardous waste containers must meet the U.S. Department of Transportation hazardous materials transportation requirements (U.S. DOT HAZ-MAT regulations) of 49 CFR 178. Although U.S. EPA did not (was not required to) incorporate the U.S. DOT HAZ-MAT regulations by reference, the Board added an incorporation at Section 720.111(b).

Aside from minor corrective revisions and placing the API method "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" in its proper alphabetical order under API, the Board has adapted the text of the federal amendments without significant deviation. However, the Board did not delete the reference to the 1986 version of the method in making the amendments; the older version is still cited in Sections 724.963 and 725.963. The Board also amended the citations to other ASTM methods by adding the date extension to the method numbers that appeared in the preexisting text at Sections 724.933(e)(2), 724.963(d)(1) and (h), 725.933(e)(2), 725.963(d)(1) and (h), 725.984(c)(3)(B)(iv). At new Section 726.200(g) (definition of "SSU"), the Board added the letter prefix to the method number, which did not appear in the original federal text. **The Board invites comment on our incorporations by reference.**

Solid Waste Determinations--Sections 720.130 through 720.133 and 721.102

Sections 720.130 through 720.133 derive from 40 CFR 260.30 through 260.33, and 35 Ill. Adm. Code 721.102 derives from 40 CFR 261.2, which U.S. EPA amended as part of the Phase II LDRs (universal treatment standards) at 59 Fed. Reg. 48041 (Sept. 19, 1994). These provisions all relate to solid waste determinations, a necessary requisite to determining the applicability of the RCRA Subtitle C regulations. The first segment of the amendments involved replacing references to the "Regional Administrator" with the "Administrator" at 40 CFR 260.30 through 260.33, wherever this appeared. Thus, U.S. EPA centralized the authority for granting the variances from solid waste determination. The Board does not need to respond to these amendments, since they all pertain to decisionmaking at the federal level. However, at 40 CFR 260.30(b) and 260.31(b) (corresponding with 35 Ill. Adm. Code 720.130(b) and 720.131(b)), U.S. EPA changed "original primary production process" to "original production process", thus allowing the variances for production processes using secondary materials. The amendment of 40 CFR 261.2(e)(1)(iii) (corresponding with 35 Ill. Adm. Code 721.102(e)(1)(C)) similarly expanded the scope of materials that are not solid wastes when recycled to include secondary processes, so long as materials management does not allow

placement on the land.

The Board amends Sections 720.130(b), 720.131(b), and 721.102(e)(1)(C) to reflect the changes in 40 CFR 260.30(b), 260.31(b), and 261.2(e)(1)(iii). We have also made a limited number of corrective and clarifying amendments to the open provisions. We did not find it necessary to open Sections 720.132 or 720.133 for amendments based on the federal changes. **The Board invites comment on the amendments to the solid waste determination provisions.**

Exclusion of In-Process Recycled Secondary Materials from the Petroleum Refining Industry--Sections 721.103, 721.104, 721.106, and 726.200

Sections 721.103, 721.104, and 721.106 derive from 40 CFR 261.3, 261.4, and 261.6, respectively. Section 721.103 relates to the definition of hazardous waste, Section 721.104 sets forth exclusions from regulation as a hazardous waste, and Section 721.106 sets forth requirements for recyclable materials. Section 726.200 derives from 40 CFR 266.100 sets forth the applicability of the Part 726 requirements for boilers and industrial furnace facilities burning hazardous waste for energy recovery. U.S. EPA amended 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(12), 261.6(a)(3)(iv), and 266.100(b)(3) (corresponding with 35 Ill. Adm. Code 721.103(e), 721.104(a)(12), 721.106(a)(3)(D), and 726.200(b)(3)) at 59 Fed. Reg. 38545 (July 28, 1994) to exclude certain in-process recycled secondary materials from the petroleum refining industry from the definition of solid waste when inserted into the normal production process (petroleum refining) prior to crude distillation or catalytic cracking. U.S. EPA stated that it undertook this action in response to judicial determinations, in several cases,² that U.S. EPA had exceeded its statutory authority by including materials recycled and reused in ongoing manufacturing processes.

The Board adapts the federal amendments with minimal deviation. First, we have made a limited number of corrective and clarifying amendments to the amendments and the pre-existing text of the open provisions. Second, 40 CFR 261.3(c)(2)(ii) (corresponding with 35 Ill. Adm. Code 721.103(c)(2)(B)) had become very lengthy. U.S. EPA had employed five (very necessary)

² In support of its action, U.S. EPA cited Chemical Waste Management, Inc. v. EPA, 976 F.2d 2 (D.C. Cir. 1992), cert. denied, -- U.S. --, 113 S. ct. 1961 (1993); Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991); American Mining Congress v. EPA, 907 F.2d 1179 (D.C. Cir. 1990); and American Petroleum Institute v. EPA, 906 F.2d 729 (D.C. Cir. 1990).

levels of indents to maintain the utility of this provision--even though a sixth level would have even further enhanced its readability. Illinois codification requirements only allow four levels of indents. Therefore, since this subsection is too cumbersome at this location, and since U.S. EPA has marked subsection (e) as reserved, the Board moved subsection (c)(2) (as amended) to subsection (e). We placed Board Notes at subsections (c)(2) and (e) to indicate the change in structure. We also revised the cross-references to this subsection, at Sections 724.1102(a), 725.1102(a), and 739.110(e)(1)(B) to reflect the changed location of this provision. Finally, Section 721.104(b)(11) (40 CFR 261.4(b)(11)) relates to an exclusion from regulation that expired in 1993. The Board has deleted it and replaced it with an explanatory statement. **The Board invites comment on our handling of the federal secondary materials exclusion in Sections 721.103, 721.104, 721.106, and 726.200.**

Updated Waste Exclusions--Section 721.Appendix I, Tables A, B, C & D

Section 721.Appendix I, Tables A, B, and C derive from 40 CFR 261, Appendix IX, Tables 1, 2, and 3. These set forth the federally-granted hazardous waste exclusions (delistings). As is more fully discussed in the historical outline below, until Illinois gained authorization to grant hazardous waste delistings, U.S. EPA had the exclusive authority to grant this relief to Illinois facilities. When requested by the affected facility owner or operator that had obtained a federal delisting, the Board used identical-in-substance procedures to make the federally-granted delisting effective in Illinois as a matter of state and federal law.³ Thus, the Board established Sections 721.Appendix I to incorporate the federally-granted adjusted standards. In response to petitions from Amoco Corporation (R85-2), Envirote Corporation (R87-30), and USX Corporation (R91-12), the Board added the federally-granted delistings to the tables.⁴

On April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990),

³ Section 3006 of RCRA (42 U.S.C. § 6926) provides that state regulations apply in an authorized state in lieu of the federal regulations. Section 3009 (42 U.S.C. § 6929) provides that states may establish regulations that are more stringent than the federal regulations. These provisions made it necessary for owners and operators to obtain relief at both the federal and state levels until Illinois obtained delisting authorization from U.S. EPA.

⁴ The Board notes that U.S. EPA granted a delisting to Monsanto Corporation, but we never received a petition to add this delisting to Appendix I.

U.S. EPA authorized Illinois to grant hazardous waste delistings. On February 28, 1991, in docket R90-17, the Board adopted procedures for granting the delistings using the statutorily-prescribed adjusted standard mechanism. Since gaining the authority and establishing the procedures, the Board has granted hazardous waste delistings by adjusted standards. The Board added Section 721.Appendix I, Table D to list hazardous waste delistings granted by adjusted standards. That table does not derive from federal regulations; rather, it is an addition for the convenience of the regulated community.

Recently, in AS 94-10, on December 14, 1994, the Board granted an adjusted standard to Envirite Corporation. By its terms, this hazardous waste delisting expressly superseded the delistings included in Section 728.Appendix I for that entity. In other words, under federal authorization, the state-granted adjusted standard superseded the federal exemption that was first incorporated into the federal regulations by U.S. EPA, then subsequently incorporated as site-specific relief into the Illinois regulations using identical-in-substance procedures.

These facts place the Envirite entries in Sections 721.Appendix I in an unusual position. First, they are now a nullity, with no operative effect. As such, it is undesirable that they remain in that Section. Second, U.S. EPA no longer retains authority to grant hazardous waste delistings in Illinois. Thus, the Board does not anticipate that U.S. EPA will amend 40 CFR 261, Appendix IX, Tables 1, 2, and 3 at any time in the near future with respect to Illinois facilities. For these reasons, the Board has acted unilaterally under Section 22.4(a) of the Act and deleted the entries for Envirite in Tables A and B. The Board believes that since we adopted the entries pursuant to Section 22.4(a), we have the inherent authority to delete the entries pursuant to that provision under the circumstances. For these reasons also, we added AS 94-10 to Table D, which memorializes the hazardous waste delistings granted by adjusted standards.

In addition to the amendments prompted by AS 94-10, the Board makes a small number of clarifying amendments. In all of Tables A through D, the Board has made minor amendments to add clarity, including to change the Section heading for Section 721.Appendix I to reflect that the tables pertain to wastes excluded by administrative action. To the headings of Tables A through C, we add that they pertain to wastes excluded by U.S. EPA, and to the heading of Table D we add that the exclusion was granted by the Board. Other provisions in the body of Part 721 exclude wastes by rule. In the Table B entry for Amoco Corporation, the Board has added a sentence omitted from the original federal text identifying the waste as containing K086 waste. We further made a clarifying change in the structure of another sentence. The Board believes that the changes will add

clarity to the regulations. **The Board invites comment on our actions with regard to the listings of hazardous wastes excluded by administrative actions.**

Generator Compliance with Air Emissions Requirements--Section 722.134

Section 722.134 derives from 40 CFR 262.34, which U.S. EPA amended at 59 Fed. Reg. 62926 (Dec. 6, 1994), as part of the air emissions regulations for hazardous waste tanks, containers, and surface impoundments. The federal amendments to subsections (a)(1)(i), (a)(1)(ii), and (d)(2) (corresponding with 35 Ill. Adm. Code 722.134(a)(1)(A), (a)(1)(B), and (d)(2)) require the generator placing hazardous waste in tanks or containers to comply with the applicable organic material emissions requirements applicable to interim status treatment, storage, and disposal (T/S/D) facilities.

In addition to the simple amendments based on the federal revisions, the Board has made a small number of corrective and clarifying amendments to the pre-existing base text of Section 722.134. Significant among these, we revised subsection (a)(1)(D) to delete a past compliance date and the concomitant expiration of a 60-day grace period for making an entry into the facility operating record. The Board added a citation at subsection (b) to the Illinois EPA's requirements for requesting a 30-day extension (provisional variance) for accumulation of hazardous waste. **The Board invites comment on our revisions to Section 722.134.**

Transporter Reporting of Releases--Section 723.130

Section 723.130 derives from 40 CFR 263.30, a provision not amended during the present update period. Rather, the Board opened Section 723.130 for the purpose of deleting a reference to Section 700.106, as noted above. During the course of review, we realized that the reference for reporting to the Emergency Services and Disaster Agency was wrong. The name has changed to the Illinois Emergency Management Agency. We used the opportunity to make a small number of clarifying amendments. **The Board invites comment on the amendments to Section 723.130.**

Applicability of T/S/D Facility Standards to Elementary Neutralization Units--Sections 724.101 and 725.101

Section 724.101(g)(6) derives from 40 CFR 261(g)(6), and Section 725.101(c)(10) derives from 40 CFR 265.1(c)(10), both of which U.S. EPA amended at 59 Fed. Reg. 48042 (Sept. 19, 1994). The amendments corrected an error in the May 24, 1993 (58 Fed. Reg. 29873) imposition of requirements on owners and operators of elementary neutralization and wastewater treatment units treating certain wastes. The owner or operator of an elementary

neutralization unit or wastewater treatment unit is exempted from the T/S/D facility and interim status facility standards, with narrow exceptions: the owner or operator must comply with the limited protective requirements of Section 724.117(b) or 725.117(b) (corresponding with 40 CFR 264.17(b) or 265.17(b)) if it is diluting certain wastes prior to land disposal. The wastes originally indicated in the May 24, 1993 rules were ignitable (D001) or corrosive (D002) wastes. The September 19, 1994 action corrected this to ignitable (D001) or reactive (D003) wastes.

The Board has incorporated the federal corrections without deviation. However, we used this opportunity to make a number of corrective and clarifying amendments to the pre-existing base text of the open Sections. **The Board invites comment on our approach to the Section 724.101 and 725.101 corrections.**

Applicability of Air Emissions Standards and General Records-keeping and Reporting Requirements--Sections 724.113, 724.115, 724.173, 724.177, 724.279, 724.300, 724.332, 724.701, 725.101, 725.113, 725.115, 725.173, 725.177, 725.278, 725.302 & 725.331

U.S. EPA amended the treatment, storage, and disposal (T/S/D) facility standards applicability, general recordskeeping, and reporting requirements amended as part of the December 6, 1994 organic material emissions requirements for tanks, containers, and surface impoundments. The following tables set forth the Illinois provisions involved, their Code of Federal Regulations counterpart provisions, the Federal Register citations of the amendments, and the general nature of the amendments to the provision:

Permitted T/S/D Facility Standards

35 Ill. Adm. Code Section	Derived from 40 CFR --	59 Fed. Reg. --; action	Type of Provision; Nature of Amendments
724.113 (b) (8)	264.13 (b) (8)	62926; amended	Written waste analysis plan requirement; must include scheme for determining volatile organic (VO) content when claiming an exemption from controls requirements
724.115 (b) (4)	264.15 (b) (4)	62926; amended	General facility inspection requirements; must establish frequency for air emissions controls inspections

724.173 (b)(3) & (b)(6)	264.73(b)(3) & (b)(6)	62926; amended	Facility operating record requirements; must maintain entries in operating record of testing, monitoring, corrective action, etc. relating to volatile organic emissions control
724.177(c)	264.77(c)	62926; amended	Submission of reports; must submit reports as required under volatile organic emissions rules
724.279	264.179	62926; added	Requires owner or operator managing hazardous waste in container to comply with volatile organic emissions regulations
724.300	264.200	62926; added	Requires owner or operator managing hazardous waste in tank to comply with volatile organic emissions regulations
724.332	264.232	62926; added	Requires owner or operator managing hazardous waste in surface impoundment to comply with volatile organic emissions regulations
724.701	264.601	62927; amended	Miscellaneous unit performance standards; requires permit conditions to include compliance with volatile organic material emissions regulations

Interim Status T/S/D Facility Standards

Amended 35 Ill. Adm. Code Section	Derived from 40 CFR --	59 Fed. Reg. --; action	Type of Provision; Nature of Amendments
725.101(b)	265.1(b)	62934	Applicability of interim T/S/D standards; exempts certain activities from tank, container, and surface impoundment air emission standards

725.113 (b) (6)	265.13(b) (6)	62935; amended	Written waste analysis plan requirement; must include scheme for determining volatile organic (VO) content when claiming an exemption from controls requirements
725.115 (b) (4)	265.15(b) (4)	62935; amended	General facility inspection requirements; must establish frequency for air emissions controls inspections
725.173 (b) (3) & (b) (6)	265.73(b) (3) & (b) (6)	62935; amended	Facility operating record requirements; must maintain entries in operating record of testing, monitoring, corrective action, etc. relating to volatile organic emissions control
725.177(d)	265.77(d)	62935; amended	Submission of reports; must submit reports as required under volatile organic emissions rules
725.278	265.178	62935; added	Requires owner or operator managing hazardous waste in container to comply with volatile organic emissions regulations
725.302	265.202	62935; added	Requires owner or operator managing hazardous waste in tank to comply with volatile organic emissions regulations
725.331	265.231	62935; added	Requires owner or operator managing hazardous waste in surface impoundment to comply with volatile organic emissions regulations

The Board has made the amendments as indicated by U.S. EPA, with only minor deviations to the text of the amendments and the pre-existing base text for the sake of correction and clarity. Without elaborating on the minor deviations, we note one more significant correction. Formerly, Section 724.300 (corresponding with 40 CFR 264.200) set forth special requirements for managing

F020 through F023, F026, and F027 wastes in tank systems. At 51 Fed. Reg. 25422, 25471 (July 14, 1986), U.S. EPA amended the tank systems requirements. Without explicitly describing its action as repealing 40 CFR 264.200, U.S. EPA printed the table of contents for Subpart J of part 264 without section 264.200. The effect of the printing of the table of contents was a de facto repeal of section 264.200. Since U.S. EPA did not indicate the repeal in the descriptive heading for the action, the Board failed to pick up on the repeal in docket R86-46, adopted July 16, 1987.⁵ The addition of 40 CFR 264.200 relating to tank air emission standards brought the error to the Board's attention, so we correct it now. **The Board invites comment on our approach to the air emission standards applicability and general recordskeeping and reporting amendments.**

Amendments to the Process Vent and Equipment Leaks Emissions Requirements--Sections 724.933 & 725.933

Section 724.933(k)(2) and (m) derives from 40 CFR 264.1033(k)(2) and (m), which U.S. EPA amended at 59 Fed. Reg. 62927 (Dec. 6, 1994), and Section 725.933(j)(2) and (l) derives from 40 CFR 265.1033(j)(2) and (l), which U.S. EPA amended at 59 Fed. Reg. 62935 (Dec. 6, 1994), as part of the air emissions regulations amendments. This provision applies to owners and operators of closed-vent systems and control devices used to comply with the process vent air emissions requirements. The added language at subsection (k)(2) obviates annual leak detection monitoring after the initial round of monitoring for closed-vent systems that operate under vacuum. The addition of subsection (m) requires documentation that all activated carbon removed from a control device be regenerated or reactivated in a permitted thermal treatment device, incinerated in a permitted facility, or burned in a permitted industrial boiler.

The Board has used the federal language of these new subsections with only minimal deviation for clarity. **The Board invites comment on our codification of new subsections (k)(2) and (m) to Section 724.933.**

Volatile Organic Emissions Standards for Tanks, Containers, and Surface Impoundments--Sections 724.980 through 724.991 and 725.980 through 725.991

35 Ill. Adm. Code 724.Subpart CC (Sections 724.980 through

⁵ U.S. EPA erred in one of two ways; the standard Federal Register format would have required it to either expressly describe the action as a repeal or to have included the section heading in the table of contents. The error had the effect of misleading the Board.

724.991) and 725.Subpart CC (Sections 725.980 through 725.991) derive from 40 CFR 264, Subpart CC (sections 264.1080 through 264.1091) and 40 CFR 265, Subpart CC (sections 265.1080 through 265.1091), which U.S. EPA added at 59 Fed. Reg. 62927 through 62952 (Dec. 6, 1994). These two new Subparts are the core of the new volatile organic air emissions control requirements for tanks, containers, and surface impoundments. The Part 724 standards apply to permitted T/S/D facilities, and the Part 725 standards apply to interim status T/S/D facilities. They are the third installment of air emissions regulations applicable to hazardous waste management facilities, after Subparts AA (process vents) and BB (equipment leaks) to both Parts. The new requirements impose emissions standards, control requirements, testing and monitoring procedures, inspection and monitoring requirements, and recordskeeping and reporting requirements.

The Board has incorporated the new federal provisions with only minor revisions for clarity and to adapt to the Illinois regulatory scheme. Most of the revisions, as through the text of the rest of the regulations, are limited to changes in punctuation, wording, and sentence structure for clarity. However, a small number of revisions are more noteworthy.

Worthy of note is the change at Sections 724.980(c) and 725.980(c) that requires that the requirements of Subparts CC become incorporated into the facility permit when it is reissued. The Board has included permit renewal and modification as conditions that trigger this requirement. Also, U.S. EPA employed distance, pressure, and volume quantities in SI units (meters (m) or centimeters (cm), pascals (Pa), kilopascals (kPa), and cubic meters (m³)), which the Board has revised. We retain the SI units as the primary quantities, only converting Pascals to kilopascals for consistency, then we parenthetically add the conversion to feet (ft) and inches (in) for distance; pounds per square inch, either gauge (psig) or absolute (psia), as appropriate, and millimeters of mercury (mm Hg) for pressure; and cubic feet (ft³) and gallons (gal) for volume. Thus, for example, a distance of 15.25 cm also indicates 0.50 ft or 6.0 in, a volume of 151 m³ also indicates the volume of 5333 ft³ or 39,887 gal, and a pressure of 76.6 kPa appears also as 11.1 psia or 574 mm Hg.

Also noteworthy is the change at Sections 724.984(e), 724.985(f), 725.985(e), and 725.986(f), where the Board added federal language as a Board note. U.S. EPA stated in the regulatory text at both places that it considers a drain system that meets certain requirements to be a "closed-system". Rather than retain an expression of U.S. EPA's opinion as core regulatory text, the Board incorporated the fact of U.S. EPA's expression into Board Notes. We then indicated, as we have done in the past, that the Board intends the same meaning for the

term. Similarly, in the Section 725.981 definition of "point of waste origination", the Board has placed in a Board Note the U.S. EPA expression of intent that this term have the same meaning as "point of generation" under the Clean Air Act regulations (40 CFR 60, 61, and 63).

The Board has made two minor structural changes for clarity. We have divided Section 725.982(c), which indicates the two conditions necessary for an extension of the implementation date, into two distinct subsections for enhanced clarity. Due to codification constraints, the Board has also found it necessary to combine 40 CFR 265.1085(c)(6)(iii)(B)(1) and (c)(6)(iii)(B)(2) into the main body of Section 724.985(c)(6)(C)(ii), since, as previously explained, the Illinois Administrative Code format does not allow a fifth level of subsections.

Finally, the Board has adapted one federal provision by allowing the Illinois EPA to recommend that the Board grant provisional variances.⁶ 40 CFR 265.1091(b)(1)(ii) and (b)(1)(v) allow the U.S. EPA Regional Administrator under specified circumstances to allow an owner or operator an additional 30 days to repair or empty and remove from service a tank whose primary roof seal has failed. Believing that the provisional variance mechanism is the appropriate tool for such grants of relief in Illinois, the Board has so provided in Sections 725.991(b)(1)(B) and (b)(1)(E). In so doing, the Board requires the owner and operator to comply with the Illinois EPA procedural requirements for provisional variance relief (35 Ill. Adm. Code 180).

Applicability of Management Standards to HTMR Slags--Section 726.120

U.S. EPA added 40 CFR 266.20(c) and 268.41(a) at 59 Fed. Reg. 43500 (Aug. 24, 1994). Section 726.120(c) of the Illinois regulations derives from 40 CFR 266.20(c).⁷ Section 726.120 states the applicability of the regulations relating to recyclable materials that are used in a manner constituting disposal (applied to or placed on land). Existing subsection (b) exempts materials that meet the land disposal restrictions under

⁶ Section 35(b) of the Act provides, "The Board shall grant provisional variances . . . upon notification from the Agency that compliance on a short term basis with any rule or regulation . . . impose an arbitrary or unreasonable hardship. . . ." [415 ILCS 5/35(b)]

⁷ Since U.S. EPA subsequently deleted all substantive requirements in section 268.41, in the September 19, 1994 Phase II LDRs, this discussion does not further discuss that provision with regard to the HTMR slag exemption.

certain circumstances, and Section 721.103(c)(2) exempts high temperature metals recovery (HTMR) slags meeting certain contaminants content requirements that are disposed in RCRA Subtitle D facilities if they do not exhibit any characteristic of hazardous waste. Thus, the requirements for disposal in a RCRA Subtitle D facility were more stringent than the requirements for materials used in a manner constituting disposal. New Section 726.120(c) simply removes anti-skid and de-icing (road and highway) uses of F006, K061, and K062 HTMR slags from the exemption of subsection (b). These uses of these materials are subject to the 726.Subpart C requirements.

In adapting this provision to the Illinois regulations, the Board has used the federal regulatory text with minor deviations; we have slightly altered the language for clarity and directness. **The Board invites comment on our codification of the limitation of the use exemption as to HTMR slags in Section 726.120(c).**

Applicability of Hazardous Waste Standards to Use in a Manner that Constitutes Disposal--Section 726.123

Section 726.123(a) derives from 40 CFR 266.23(a), which U.S. EPA amended at 59 Fed. Reg. 48042 (Sept. 19, 1994), as part of the Phase II land disposal restrictions regulatory package. Section 726.123 sets forth the standards that generally apply to use of recyclable materials in a manner that constitutes disposal. The federal amendment reworded the provision slightly and added 40 CFR 268 (the land disposal restrictions) to the body of general regulations that apply to such use.

The Board has followed the federal language. However, since Subparts A through N constitutes all of 40 CFR 124, 268, and 270, the U.S. EPA has limited the applicability of only 40 CFR 264 and 265 to those Subparts, i.e., 40 CFR 124, 268, and 270 would apply generally to use in a manner constituting disposal, unless otherwise limited by their own terms. Thus, the Board has limited only the applicability of Parts 724 and 725 to Subparts A through N in adapting the federal language. **The Board invites comment on our handling of the Section 726.123(a) applicability statement.**

Applicability of BIF Rules to Mercury Recovery Furnaces--Sections 726.200 & 726.Appendix M

U.S. EPA amended 40 CFR 266.100(c)(1), (c)(3), (c)(3)(i), (c)(3)(ii), and (c)(3)(i)(A) at 59 Fed. Reg. 48042 (Sept. 19, 1994), as part of the Phase II LDRs. These correspond with 35 Ill. Adm. Code 726.200(c)(1), (c)(3), (c)(3)(A), (c)(3)(B), and (c)(3)(A)(i). These provisions state the applicability of the Subpart H regulations pertaining to burning hazardous waste in a boiler or industrial furnace (BIF rules). The amendments limit the availability of an exemption for a mercury recovery furnace

from the BIF rules. U.S. EPA added 40 CFR 266, appendix XIII (now corresponding with 35 Ill. Adm. Code 266.Appendix M) at the same time. This new appendix lists the mercury-bearing wastes that qualify for burning in an exempted BIF unit.

The Board has incorporated the federal amendments with only minor revisions to enhance clarity. **The Board invites comment on our amendments relating to the Sections 726.200(c) and 726.Appendix M exemption for BIF units burning mercury-containing waste.**

Feed Rate and Emissions Screening Limits--Sections 726.Appendices A through C; Risk-Specific Doses--Section 726.Appendix E

Sections 726.Appendices A through C and E derive from 40 CFR 266, appendices I through III and V. U.S. EPA did not amend these provisions during the current update period. Rather, the Board has opened these provisions at the suggestion of the Joint Committee on Administrative Rules (JCAR). During the course of the prior update docket, R94-17, JCAR staff liked the Board's conversion of the format "x.xE+nn" or "x.xE-nn" to the standard decimal notation. It specifically requested that the Board make this conversion on these remaining appendices to Part 726. This is the reason the Board has made the amendments described. **The Board invites comment on our conversion of the numbers in Sections 726. Appendices A through C and E to standard decimal notation.**

Phase II LDRs--Parts 728 & 738

U.S. EPA adopted the Phase II land disposal restrictions (LDRs) on September 19, 1994, at 59 Fed. Reg. 47982. U.S. EPA subsequently amended the Phase II LDRs on January 3, 1995. As discussed above, this is the segment of the present update in which the regulated community has expressed interest. The Board has also included the January 3, 1995 amendments, as also discussed above, despite the fact that it is technically outside the present update period, for the convenience of that community. We have also consolidated the underground injection control (UIC) segments of the Phase II LDR amendments together with the RCRA Subtitle C segments for the convenience of the Board.

U.S. EPA promulgated the Phase II LDRs pursuant to the Hazardous and Solid Waste Amendments of 1984 to RCRA (HSWA). Federal law provides that they went into effect in Illinois on the federal effective date (September 19, 1994), except as to those provisions for which there was a more stringent Illinois counterpart provision. This, according to IERG, has led to confusion, and, hence, there is an interest in the Board adopting these provisions as rapidly as possible.

U.S. EPA explained that the new LDRs did not change the

treatment standards for all wastes, and that the new LDRs do not fully replace the older ones. Rather, U.S. EPA rendered two sets of standards for each hazardous waste constituent, one for wastewaters and another for nonwastewaters, as before, but now using the same standards for each constituent without regard to the waste code. Thus, differences in concentration limits for the same constituent were eliminated. The older constituent concentration in waste (40 CFR 268.48, Table CCW; corresponding with 35 Ill. Adm. Code 728.Table B) and constituent concentration in waste extract (40 CFR 268.41, Table CCWE; corresponding with 35 Ill. Adm. Code 728.Table A) tables have been replaced by treatment standards for hazardous wastes (40 CFR 268.40) and universal treatment standards (40 CFR 268.48, Table UTS) tables. The treatment standards for hazardous wastes table (codified by the Board as Section 728.Table T) lists hazardous wastes by waste code, setting forth the constituents of concern and the wastewater and/or nonwastewater treatment standards for each. The treatment standards are given in terms of maximum constituent concentrations for the contaminant or as a treatment method or methods allowed for land disposal. The universal treatment standards (UTS) table (codified by the Board as Section 728.Table U) sets forth the maximum constituent concentrations for the contaminants for which these were established. The maximum constituent concentrations are the same for the contaminants wherever they appear in these tables.

U.S. EPA further established additional land disposal restrictions in the Phase II LDRs. Some are for high total organic carbon (TOC) ignitable liquids (D001 waste) and halogenated pesticide wastes (D012 through D017 wastes), which now require full treatment before disposal (unless disposed in an underground injection well that has a no-migration exemption. Others are for "newly-listed wastes" (i.e., coke by-product production, K141 through K145, K147 and K149 wastes, and chlorotoluene production, K149 through K151, wastes listed since HSWA).

The Board tabulates the amendments required by the federal Phase II LDR action to Parts 728 and 738 as follows:

35 Ill. Adm. Code Section	Derived from 40 CFR --	Federal Register Citation(s)
Type of Provision; Nature of Amendments.		
728.101(c)(1)(C)	268.1(c)(1)(iii)	59 Fed. Reg. 48043 (Sept. 9, 1994)
Exclusion from restriction against land disposal; allows continued land disposal of D001 high TOC and D012 through D017 pesticide waste that meets treatment standards.		
728.101(e)(4) & (e)(5)	268.1(e)(4) & (e)(5)	59 Fed. Reg. 48043 (Sept. 19, 1994)

Exclusion from Part; adds de minimis losses of organic characteristic toxic wastes (D012 through D043) and rinsate from safety showers, personal safety equipment, and containers to a wastewater treatment systems and organic toxicity characteristic (D012 through D043) laboratory wastes that are mixed with wastewaters subject to Clean Water Act regulation.

728.102 ("debris" &	268.2	59 Fed. Reg. 48043
"underlying		(Sept. 19, 1994) &
hazardous		60 Fed. Reg. 244
constituent")		(Jan. 3, 1995)

Definitions; adds lead-acid batteries, cadmium batteries, and radioactive lead solids to list of wastes for which treatment standards exist and that are excluded from the definition of "debris"; changes definition of "underlying hazardous constituent" to refer to table UTS and exclude vanadium and zinc.

728.107	268.7	59 Fed. Reg. 48043
		(Sept. 19, 1994) &
		60 Fed. Reg. 244
		(Jan. 3, 1995)

Waste analysis and recordskeeping requirements; substitutes combustion for incineration and fuel substitution treatments to exclusion; adds organic toxicity characteristic (D012 through D043) wastes to those for which the generator must determine the underlying hazardous constituents; amends the generator and T/S/D facility notice and certification requirements; exempts generator of lab packs and those using alternative treatment standards from waste analysis requirements, and those of lab packs from the notice and certification requirement; adds certification requirement for D001, D002, and D012 through D043 wastes.

728.109(a) & (d)	268.9(a) & (d)	59 Fed. Reg. 48045
		(Sept. 19, 1994) &
		60 Fed. Reg. 245
		(Jan. 3, 1995)

Special rules for characteristic waste; adds organic toxicity characteristic (D012 through D043) wastes to those for which the generator must determine the underlying hazardous constituents; amends the generator and T/S/D facility notice and certification requirements.

728.138	268.38	59 Fed. Reg. 48045
		(Sept. 19, 1994)

Newly-listed organic toxicity and coke by-product and chlorotoluene production wastes LDRs; phased prohibitions against land disposal of newly-listed organic toxicity (D012 through D043) wastes, coke by-product production (K141 through K145, K147 and K149) wastes, and chlorotoluene production)K149 through K151) wastes.

728.140 & 728.Tab. T 268.40 & Table

59 Fed. Reg. 48046
(Sept. 19, 1994) &
60 Fed. Reg. 245
(Jan. 3, 1995)

Applicability of treatment standards; body of revised regulations stating the applicability of the Phase II treatment standards and setting forth the standards (in table, by waste code); restrictions added for high TOC ignitable waste (D001), halogenated pesticide (D012 through D017) wastes, coke by-product production (K141 through K145, K147 and K149) wastes, and chlorotoluene production (K149 through K151) wastes.

728.141 & 728.Tab. A 268.41 & Table CCWE

59 Fed. Reg. 48103
(Sept. 19, 1994)

Former treatment standards as concentrations in waste extract (CCWE); standards deleted in favor of new standards.

728.142 & 728.Tab. C 268.42, Table 1

59 Fed. Reg. 48103
(Sept. 19, 1994) &
60 Fed. Reg. 302

(Jan. 3, 1995)
Treatment standards as specified treatment technologies; addition
of combustion (CMBST) treatment technology; modification of
language to accommodate amended treatment standards.

728.143 & 728.Tab. B 268.43 & Table CCW 59 Fed. Reg. 48103
(Sept. 19, 1994)
Former treatment standards as concentrations in waste (CCW);
standards deleted in favor of new standards.

728.145(b)(2) 268.45(b)(2) 59 Fed. Reg. 48103
(Sept. 19, 1994)
Provision for identification of hazardous debris subject to
treatment; conformation of language to universal treatment
standards.

728.146 & 728.Tab. G 268.46 & Table 1 59 Fed. Reg. 48103
(Sept. 19, 1994)
Former treatment standards for hazardous debris; standards
deleted in favor of new standards.

728.Table D 268.42, Table 2 59 Fed. Reg. 48103
(Sept. 19, 1994)
Listing of treatment technologies by waste code; deleted.

728.Table E 268.42, Table 3 59 Fed. Reg. 48103
(Sept. 19, 1994)
LDRs for mixed radioactive wastes; standards deleted in favor of
new standards.

728.148 & 728.Tab. U 268.48 & Table UTS 59 Fed. Reg. 48103 &
60 Fed. Reg. 302
(Jan. 3, 1995)

Listing of treatment standards by hazardous constituent; listing added.

728.Appendix D & 268, appendix IV & V 59 Fed. Reg. 48107
728.Appendix E (Sept. 19, 1994)
List of wastes excluded from lab packs; former listings replaced
with new list.

[illegible]

Table of recordkeeping, notification, and certification requirements; listing summarizing land disposal restrictions recordkeeping, notification, and certification requirements added.

738.117(b) & (c) 148.17(b) & (c) 59 Fed. Reg. 48041
(Sept. 19, 1994)

Underground injection disposal restrictions; restrictions added for high TOC ignitable waste (D001), halogenated pesticide (D012 through D017) wastes, coke by-product production (K141 through K145, K147 and K149) wastes, and chlorotoluene production (K149 through K151) wastes.

The Board has followed the federal amendments with a greater or lesser degree of deviation to enhance readability and clarity. Many of the revisions to the federal text are minor, but others are worthy of note. One noteworthy general amendment is that wherever the federal regulations refer to disposal in a "Subtitle D facility", the Board has amended the language to indicate a "RCRA Subtitle D (municipal solid waste landfill) facility", in the belief that this gives optimum clarity. Simple references to "Subtitle D" can lead to confusion in the context of "Subtitle C" regulations.

Much clarification of 40 CFR 268.7 and 268.9 was necessary in Sections 728.107 and 728.109. At Section 728.107(a), the Board combined two parallel (and nearly identical) statements relating to characteristic (721.Subpart C) and listed (721.Subpart D) wastes into a single statement. At this subsection and Section 728.109(a), we retained the language "are reasonably expected to be present", which U.S. EPA deleted at corresponding 40 CFR 268.7(a) and 268.9(a), because the statements are not clear without the omitted language. Similarly, the Board retained "wastes prohibited pursuant to" in Section 728.107(a)(1)(B), which U.S. EPA also omitted from 40 CFR 268.7(a)(1)(i), and "wastes prohibited pursuant to" at Section 728.107(b)(4)(B), which U.S. EPA omitted from 40 CFR

268.7(b)(4)(ii). We corrected the misspelling of "contaminant" in the pre-existing text of Section 728.107(a)(3)(E)(i) (which did not appear in error in the original federal text). To Section 728.107(a)(4), we added "or containment buildings", which appeared in the base text of 40 CFR 268.107(a)(4), but not in the Illinois pre-existing base text.

U.S. EPA revised the cross-references to the various LDR tables to the new references throughout the open provisions, but did not open other sections to complete the process throughout part 268. Rather, U.S. EPA placed references at 40 CFR 268.40, 268.41, and 268.43 indicating the relationship between the old standards and the locations of the new standards. The Board copied these broader cross-referential notes, then took the extra step and has opened all the Sections with references that we could find and tried to amend all the references so that they now refer to the proper location for the present standard.

The Board opened Sections 728.130 and 728.133 solely to revise the references to the treatment standards, as explained above, but has made additional amendments to clarify the pre-existing text. We deleted a past compliance date and accompanying expired notification requirement from Section 728.130(c). The Board parenthetically added "adjusted standard" to the Sections 728.130(d)(2) and 728.133(e)(2) references to an "exemption". In Section 728.130(d)(3), added language is intended to not only clarify the provision, but also to clarify that it is U.S. EPA that grants an extension to a prohibition (as noted in referenced Section 728.105). Finally, Section 728.133(f) was not in the pre-existing base text. Rather, the subsections went from (e) to (g), skipping (f). Since this violates Illinois Administrative Code codification requirements, the Board corrected this by adding an explanation of the lack of a parallel provision as subsection (f), as we have done in the past.

New Section 738.138(a) and (b) contains numerous minor deviations from the original text of 40 CFR 268.38(a) and (b). None of the changes is individually worthy of discussion, but the Board highlights the fact that these two provisions were those that deviated the most from established Board usage and common, clear language. Therefore, these two subsections required the greatest revision of all the provisions involved in this proceeding.

Another minor correction arose through the January 3, 1995 amendments to the September 19, 1994 rules. U.S. EPA added Appendix X (corresponding to Section 728.Appendix J), then amended certification statement B at the end. In so doing, U.S. EPA deleted the cross-reference to the body of the regulations for the statement. The Board retained the cross-reference as given on September 19.

One thing we contemplated changing from the federal original of 40 CFR 268, appendix X, but which we did not propose in Section 728. Appendix J, was the addition of limiting language. The Board perceives that the appendix is a useful but gratuitous summary of the body of the land disposal restrictions recordkeeping, notification, and certification requirements-- i.e., we do not believe that it should have substantive effect beyond the text of the core regulations themselves. If, indeed, this tabular summary is intended to have no substantive effect, the Board believes that the safer course is to include a statement to that effect, in case there is ever a conflict between the summary and the basic requirement. However, we are unclear on this point, so we did not include such a limiting statement.

The Board found it necessary to alter the format of Sections 728.Tables T and U from the original federal text in the tables to 40 CFR 268.40 and 268.48. Especially with the core treatment standards table (Section 728.Table T), we could not readily adapt the federal format to comply with the Illinois Administrative Code codification requirements. In the case of the universal treatment standards table (Section 728.Table U), the purpose of the reformatting solely to widen the four substantive columns. Also, the Board found corrections necessary to some of the chemical names in the text: benzo(k)fluoranthene (Table T, F039), bis(2-chloroisopropyl)ether (same), hexachlorocyclopentadiene (K097, Table T), 5-aminomethyl-3-isoxazolol (P007, Table T), O,O-diethyl-O-pyrazinyl-phosphorothioate (P040, Table T), N-methyl-N'-nitro-N-nitrosoguanidine (U163, Table T), and 2,4-dimethyl phenol (Table U). The Board further added a statement to footnote four to Section 728.Table T an explanation of the notation "fb". U.S. EPA defined the abbreviation in 40 CFR 268.42, Table 1, but the Board prefers to define it in the text of the table that uses the abbreviation. **The Board invites comment on our codification of the Phase II land disposal restrictions in Part 728.**

Corrective Amendments to UIC Provisions--Sections 730.104, 730.105, 730.110, 730.132, 730.133 & 730.151

As previously discussed, the Board opened Sections 730.104, 730.105, 730.110, 730.132, 730.133, and 730.151 for the primary purpose of deleting references to Section 700.106 in the source notes. To do this, we amended each Section for enhanced clarity, intending no substantive amendments. Although some of these amendments might at first appear to change the regulatory language, the most major amendments are limited to moving phrases.

HISTORY OF RCRA Subtitle C, UST and UIC ADOPTION

The Illinois UIC (Underground Injection Control), RCRA

(Resource Conservation and Recovery Act) Subtitle C, 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:

- 700 Outline of Waste Disposal Regulations
- 702 RCRA Subtitle C and UIC Permit Programs
- 703 RCRA Subtitle C 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
- 732 Petroleum Underground Storage Tanks
- 738 Hazardous Waste Injection Restrictions
- 739 Standards for the Management of Used Oil

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

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA Subtitle C regulations. U.S. EPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. U.S. EPA granted final authorization of the Illinois RCRA Subtitle C "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). U.S. EPA 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). U.S. EPA authorized certain subsequent amendments and granted further partial HSWA authorizations effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), and June 3, 1991, at 56 Fed. Reg. 13595 (April 3, 1991); and August 14, 1994, at 59 Fed. Reg. 30525 (June 14, 1994). U.S. EPA codified its approvals of the Illinois program at 40 CFR 272.700

and 272.701 on November 13, 1989, at 54 Fed. Reg. 37649 (Sep. 12, 1989), and on March 31, 1992, at 57 Fed. Reg. 3731 (Jan. 31, 1992). The entire listing of all RCRA Subtitle C identical in substance rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

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

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

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

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

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

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

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

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

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

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

- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280,
November 30, 1987, effective November 10 & 12,

1987. (10/1/86 through 12/31/86)
- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)
- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)
- R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)
- R90-17 Delisting Procedures (See below)
- R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)
- R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)
- R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)
- R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg.

17636, effective November 6, 1992. (7/1/91 through 12/31/91)

- R92-10 138 PCB 549, January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)
- R93-4 -- PCB --, September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)
- R93-16 -- PCB --, March 17, 1994, Supplemental opinion and order on April 21, 1994. (1/1/93 through 6/30/93)
- R94-7 -- PCB --, June 23, 1994, 18 Ill. Reg. 12160, effective July 29, 1994. (7/1/93 through 12/31/93)
- R94-17 -- PCB --, October 20, 1994, 18 Ill. Reg. 17480, effective November 23, 1994. (1/1/94 through 6/30/94)
- R95-6 This docket. (Consolidated with R95-4, UIC Update.) (7/1/94 through 12/31/94)

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 U.S. EPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted U.S. EPA delistings at the request of Amoco, Envirote, and USX (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. (Amoco Corp.)
- R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (Envirote Corp.)

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

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

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

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

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

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

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

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

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

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

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

Waste generators have filed Part 106 adjusted standard petitions for hazardous waste delistings with the Board pursuant to Section 720.122 (generator name in parentheses):

AS91-1 Granted at 130 PCB 113, February 6, 1992, and modified at 133 PCB 189, April 23, 1992. (Keystone Steel & Wire Co.)

AS91-3 Granted at 139 PCB 121, February 4, 1993; opinion issued at 140 PCB --, March 11, 1993. (Peoria Disposal Co.)

AS93-7 Granted at -- PCB --, February 17, 1994. (Keystone Steel & Wire Co.)

AS94-10 Granted at -- PCB --, December 14, 1994.
 (Envirite Corporation.)

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

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

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

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

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

Other adjusted standard proceedings sought relief from aspects of the land disposal unit closure and post-closure care requirements (petitioners' names in parentheses):

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

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

One adjusted standard proceeding sought relief from a RCRA Subtitle C land disposal restriction (petitioner's name in parentheses):

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

Still another adjusted standard proceeding relates to substantive treatment, storage, and disposal facility requirements of the RCRA Subtitle C regulations (petitioner's name and requirements involved in parentheses):

AS91-10 Dismissed at -- PCB --, May 19, 1994. (Cabot
 Corp.; secondary containment for tanks)

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

R91-11 Dismissed at 125 PCB 295, August 8, 1991. (Big
 River Zinc Corp.)

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

- R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 14, 1984, effective December 4, 1984.
- R83-28 68 PCB 295, February 26, 1986; 10 Ill. Reg. 4875, March 21, 1986, effective March 7, 1986.
- R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, November 21, 1986, effective November 5, 1986.

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

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA Subtitle C docket. U.S. EPA authorized the Illinois UIC program on March 3, 1984, at 49 Fed. Reg. 3991 (Feb. 1, 1984); codified that approval as 40 CFR 147, Subpart O, at 49 Fed. Reg. 20197 (May 11, 1984); and amended the authorization at 53 Fed. Reg. 43087 (Oct. 25, 1988). 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 U.S. EPA 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)
- R89-2 107 PCB 369, January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11 111 PCB 489, May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5 Dismissed at 109 PCB 627, March 22, 1990. (No U.S. EPA amendments 12/1/89 through 12/31/89)
- R90-14 122 PCB 335, May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991. (1/1/90 through 6/30/90)
- R91-4 Dismissed at 119 PCB 219, February 28, 1991. (No U.S. EPA amendments 9/1/90 through 12/31/90)
- R91-16 Dismissed at 128 PCB 229, December 6, 1991. (No U.S. EPA amendments 1/1/90 through 6/30/91)
- R92-4 Dismissed at 133 PCB 107, April 9, 1992. (No U.S. EPA amendments 7/1/91 through 12/31/91)
- R92-13 139 PCB 361, February 4, 1993; 17 Ill. Reg. 6190, effective April 5, 1993. (1/1/92 through 6/30/92)
- R93-6 -- PCB --, August 5, 1993; 17 Ill. Reg. 15641, effective September 14, 1993. (7/1/92 through 12/31/92)
- R93-17 Dismissed at -- PCB --, September 23, 1993. (No U.S. EPA amendments 1/1/93 through 6/30/93)
- R94-5 -- PCB --, November 3, 1994; 18 Ill. Reg. 18244, effective December 20, 1994. (7/1/93 through 12/31/93)
- R94-24 -- PCB --, October 6, 1994. (U.S. EPA amendments 7/1/93 through 12/31/94 included in RCRA Subtitle C docket R94-17)

R95-4 Present Docket. (Consolidated with R95-6, RCRA Subtitle C Update.) (7/1/94 through 12/31/94)

In one proceeding filed, the Board granted an adjusted standard from a UIC land disposal restriction, pursuant to the procedures outlined above with respect to the RCRA Subtitle C program (petitioner name in parentheses):

AS92-8 Granted at -- PCB --, February 17, 1994. (Cabot Corp.; no migration exception)

AGENCY OR BOARD ACTION?

Section 7.2(a)(5) of the Act requires the Board to specify which decisions USEPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.

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 a few instances in identical in substance rules, decisions are not appropriate for Agency action pursuant to a permit application. Among the considerations in determining the general division of authority between the Agency and the Board are:

1. Is the person making the decision 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. Is there a clear standard for action such that the Board can give meaningful review to an Agency decision?
3. Does the action result in exemption from the permit requirement itself? If so, Board action is generally required.
4. Does the decision amount 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 decision: 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). Note

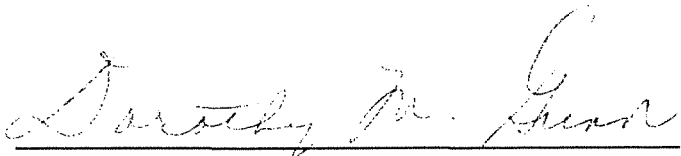
that there often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

EDITORIAL CONVENTIONS

As a final note, 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" - "shall" is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "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".

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion was adopted by the Board on the 2nd day of March, 1995, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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