

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1994

IN THE MATTER OF:)
) R94-7
RCRA UPDATE, USEPA REGULATIONS) (Identical in Substance Rules)
(7-1-93 THROUGH 12-31-93))

Adopted Rule. Final Order.

OPINION OF THE BOARD (by E. Dunham):

Pursuant to Section 22.4(a) of the Environmental Protection Act (Act), the Board adopts amendments to the RCRA hazardous waste (RCRA) regulations.

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) shall not apply. 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.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This rulemaking updates the Illinois RCRA Subtitle C rules to correspond with federal amendments made in the period from July 1 through December 31, 1993. The U.S. EPA actions during this period are as follows:

| Federal Action | Summary |
|-----------------------------------|--|
| 58 Fed. Reg. 38816, July 20, 1993 | Revision of "Guideline on Air Quality Models" and codification as 40 CFR 51, appendix W; amendment of all references to the guideline in BIF rules |
| 58 Fed. Reg. 42466, Aug. 9, 1993 | Determination not to list four large-volume wastes from Coal-fired electric utility power plants as Subpart D listed hazardous wastes |
| 58 Fed. Reg. 46040, Aug. 31, 1993 | Update of "Test Methods for Evaluating Solid Waste, Physical/Chemical |

Methods", EPA Publication SW-846, to third edition, and amendments to incorporations by reference

58 Fed. Reg. 59598, Nov. 9, 1993

Amendment of the health-based standards for qualifying for the Bevill exemption from regulation for BIF residues

The August 9, 1993 action did not result in federal regulatory amendments. Rather, it constituted a formal U.S. EPA determination not to amend the 40 CFR 261, subpart D rules to add listings for four additional wastes. The wastes involved were all generated by coal-fired electric generating utility power plants. The four fossil-fuel combustion wastes (FFC wastes) were fly ash, bottom ash, boiler slag, and flue gas emission control waste. U.S. EPA determined that regulation of these four large-volume wastestreams as listed hazardous wastes was not necessary. U.S. EPA decided to continue to regulate them as exempt from RCRA Subtitle C regulation, but stated that it would study their regulation under RCRA Subtitle D (nonhazardous solid waste landfill regulations). Therefore, no Board action is necessary based on the August 9, 1993 federal action.

PUBLIC COMMENTS

The Board adopted a proposal for Public comment on April 21, 1994. Notices of Proposed Amendments appeared in the Illinois Register on May 5, 1994, at 18 Ill. Reg. 6553 (Part 720), 6526 (Part 721), 6568 (Part 725), 6535 (Part 728), 6580 (Part 703), 6641 (Part 724), and 6600 (Part 726). The Board held the docket open for 45 days after the date of publication in the Illinois Register to receive public comment on the proposal. During this time the Board received the following comments:

- PC 1 Index Department, Administrative Code Division, Office of the Secretary of State (May 18, 1994, by Connie Bradway)
- PC 2 Regulatory Flexibility Unit, Illinois Department of Commerce and Community Affairs (DCCA) (June 8, 1994, by Linda D. Brand, Manager)
- PC 3 Illinois EPA, Division of Legal Counsel (Agency) (June 21, 1994, by Susan J. Schroeder, Associate Counsel)

PC 1 indicated corrections to the notice questionnaires for Parts 721 and 728, a correction in underlining the text in Section 728.107(a)(3)(A), and requested that the Board insert the page numbers for the Notices of Adopted Amendments in the main

source notes of Parts 703, 720, 721, 724, 726, and 728. Those page numbers were not available at the time the Notices of Proposed Amendments were submitted to the Secretary of State for publication in the Illinois Register. The Board has made all the suggested corrections. PC 2 essentially states that DCCA has determined that none of the proposed amendments will significantly impact small businesses in Illinois. By PC 3, the Agency suggested a number of corrections to various segments of the proposed rule. The Agency-suggested corrections are discussed below.

In addition to the written public comments, the Board received informal communications from JCAR staff and U.S. EPA Region V. These communications also indicated corrections to the amendments as proposed. The calls from JCAR staff were from Joseph Schatteeman. The JCAR-suggested corrections included corrections to Sections not originally involved in the proposal for public comment. The U.S. EPA Region V call was from Gary Westefer, the state implementation officer assigned primacy and authorization oversight of the Illinois RCRA Subtitle C program. All the suggested corrections are discussed below.

The Board will delay filing today's adopted rules with the Secretary of State for 30 days, particularly to allow U.S. EPA to review the rules as adopted before they become effective. The complete text of the adopted amendments follows the discussions of this opinion.

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

The Board appended 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

Three of the federal actions that underlie this proceeding will require amendment of the Illinois RCRA Subtitle C regulations. This segment of the discussion briefly focuses on each by subject matter. The more detailed Section-by-Section

discussions that follow indicate the specific details of the actions taken by the Board.

Updated Air Emissions Guidelines and Screening Procedures

The U.S. EPA action of July 20, 1993 was actually an air pollution control rulemaking that incidentally impacted the RCRA Subtitle C corrective actions. U.S. EPA updated and codified its "Guideline on Air Quality Models (Revised)". Formerly incorporated into the federal regulations by reference, U.S. EPA has codified the Guideline and its two supplements, supplements A and B, as appendix W to 40 CFR 51. U.S. EPA simultaneously amended several references to the Guideline in its regulations, including in the RCRA Subtitle C regulations pertaining to boilers and industrial furnaces (BIFs) that burn hazardous wastes. U.S. EPA repealed the former version of the Guideline, which appeared as part of the BIF rules as 40 CFR 266, appendix X (corresponding with 40 CFR 726.Appendix J). U.S. EPA also amended the "Screening Procedures for Estimating Air Quality Impact of Stationary Sources, Revised" to an October, 1992 version, now listed as available from U.S. EPA in Research Triangle Park, NC. The amended incorporation by reference to the Screening Procedure appears at 40 CFR 260.11 (corresponding with 35 Ill. Adm. Code 720.111). The amended references to these documents appear at 40 CFR 266.104(e)(3) and 266.106(h) (corresponding with 35 Ill. Adm. Code 726.204(e)(3) and 726.206(h), respectively).

Updated Analytical Procedures for Hazardous Waste

U.S. EPA amended the analytical procedures applicable to RCRA Subtitle C-regulated hazardous wastes on August 31, 1993. U.S. EPA updated "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", SW-846 to its third edition with one update. U.S. EPA incorporated this document by reference in place of the second edition with updates I and II in 40 CFR 260.11(a) (corresponding with 35 Ill. Adm. Code 720.111(a)). U.S. EPA used that opportunity to delete a listing of specific methods from SW-846 from section 260.11 (which the Board never duplicated since the entire document was incorporated). Since SW-846 includes the toxicity characteristic leaching procedure (TCLP; Method 1311) and the older extraction procedure toxicity test (EP toxicity: Method 1310), U.S. EPA amended 40 CFR 261, appendix II and 40 CFR 268, appendices I and IX (corresponding with 35 Ill. Adm. Code 261.Appendix B, 268.Appendix A, and 268.Appendix I, respectively) to refer to the SW-846 method. 40 CFR 261, appendix II formerly set forth the entire TCLP method and 40 CFR 268, appendix IX formerly set forth the EP toxicity method.

U.S. EPA also updated other methods and references to methods. It added a bomb-acid digestion method to 40 CFR

260.11(a) for analyzing waste-derived fuel, ASTM Standard E926-88, Method C. U.S. EPA replaced a table that specified analytical methods from SW-846 by contaminant, at 40 CFR 261, appendix III (corresponding with 35 Ill. Adm. Code 721.Appendix C), with a reference to information in SW-846 on methods selection. It deleted an analytical method for chlorinated dibenzodioxins and dibenzofurans, at 40 CFR 261, appendix X (corresponding with 35 Ill. Adm. Code 721.Appendix J). Finally, U.S. EPA replaced the incorporation by reference at section 268.6(a) (corresponding with 35 Ill. Adm. Code 728.106(a)) with a cross-reference to section 260.11 as the central listing of documents incorporated by reference.

U.S. EPA correspondingly amended all references elsewhere in the regulations to the amended methods. The references to SW-846; and part 261, appendix X; and ASTM E926-88C were changed throughout the regulations. These appear at sections 260.22(d)(1)(i), 261.22(a)(1), 261.24(a), 264.190(a), 264.314(c), 265.190(a), 265.314(d), 268.7(a), 268.40(a), 268.41(a), 270.19(c)(1), 270.62(b)(2)(i), and 270.66(c)(2) (corresponding with 35 Ill. Adm. Code 720.122(d)(1)(A), 721.122(a)(1), 721.124(a), 724.290(a), 724.414(c), 725.290(a), 725.414(d), 728.107(a), 728.140(a), 728.141(a), 703.205(c)(1), 703.223(b)(1), and 703.232(c)(2), respectively).

Administrative Stay of Second Test for Bevill Exemption

U.S. EPA adopted regulations for the burning of hazardous waste in boilers and industrial furnaces (the BIF rules) on February 21, 1991. Those regulations included two tests for determining whether the residues derived from Bevill devices, such as kilns, primary smelters, boilers, etc. were exempted from hazardous waste regulation. The first test is whether the levels of hazardous constituents was not significantly higher than the normal residue of combustion. The second test is whether levels of contaminants in the residues do not exceed specified health-based levels.

On November 9, 1993, U.S. EPA amended the Bevill exclusion by amending the second, health-based levels, test. U.S. EPA substituted the land disposal restriction contaminant levels for nonwastewaters from part 268 for the health-based levels. U.S. EPA amended 40 CFR 266.112(b)(2)(i) and 266, appendix VII (corresponding with 35 Ill. Adm. Code 726.212(b)(2)(A) and 726.Appendix G) to stay the effect of the levels listed in appendix VII until further federal action. The alternative levels referenced are those for F039 nonwastewaters in 40 CFR 268.43 (Table CCW; corresponding with 35 Ill. Adm. Code 728.Table B). Further, U.S. EPA has provided that an owner or operator has demonstrated a good-faith effort to detect a constituent, it is deemed in compliance with the alternative levels.

DETAILED DISCUSSION

General Revisions

The Board will continue to change our method of referring to the United States Environmental Protection Agency in this present rulemaking that we began in the last update docket, R93-16. 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 our move toward presentation of equations and expressions in standard scientific notation. Thus, in Section 726.204, we have used the form " $a \times 10^b$ " in place of "aEb" (e.g., "2E-03" became " 2×10^{-3} "). In Section 726.Appendix G we simply translated "aEb" into the decimal number because the numbers were more direct and there was sufficient room in the column to insert them e.g., "2E-03" became "0.002", "5E+01" became "50", and "4E+00" became "4."). In Section 726.204 the summation equations are now presented as

$$\sum_{i=1}^n \frac{A_i}{B_i} \leq 1.0$$

rather than the former " $\text{SUM}(A_i/B_i) \leq 1.0$ ". We believe that any person mathematically sophisticated enough to understand the equations will more readily recognize them in the standard mathematical notation, as they appear in the federal original. Although the "aEb" notation appears in the federal original, the Board deviates because it was apparently chosen by U.S. EPA for spatial constraints in the Code of Federal Regulations format. We do not have those constraints, and the standard decimal depiction is clearer. Finally, we substituted " μg " for "ug" (micrograms), " m^3 " for "cu m" (cubic meters), and "or" for "/" (except in document titles and numbers).

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. This meant that we deleted all appearances of "(eye)" in references to "Appendix I". In the Illinois Administrative Code, all appearances of "Appendix I" refer to the letter "I", not a roman numeral. We also changed "who" to "that", where the person to which the regulation referred was not necessarily a natural person, changed "which" to

"that" for restrictive relative clauses, corrected the format of a chemical name ("2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans"), capitalized the Section headings and corrected their format where necessary, and corrected punctuation within sentences.

Updated Methods and Incorporations by Reference--Sections 703.110, 703.223, 703.232, 720.111, 720.122, 721.122, 721.124, 721.Appendix B, 721.Appendix C, 724.290, 724.414, 725.290, 725.414, 725.204, 726.206, 728.107, 728.141, 728.Appendix A & 728.Appendix I

As described in the descriptions of the July 20 and August 31, 1993 federal actions above, U.S. EPA amended and updated two analytical testing resources at 58 Fed. Reg. 38816 (July 20, 1993) and 58 Fed. Reg. 46040 (Aug. 31, 1993). U.S. EPA updated its "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", SW-846 to the third edition with one update, and it codified the "Guideline on Air Quality Models (Revised)" as updated as 40 CFR 51, subpart W. U.S. EPA updated the incorporations by reference for SW-846 in 40 CFR 260.11 and the numerous references to these documents throughout the text of the regulations. U.S. EPA deleted an analytical method for chlorinated dibenzodioxins and dibenzofurans, at 40 CFR 261, appendix X; essentially repealed the incorporations by reference listing at section 270.6 and the codified versions of two methods that formerly appeared at 40 CFR 261, appendix II and 40 CFR 268, appendices I and IX; and replaced a table that specified analytical methods from SW-846 by contaminant, at 40 CFR 261, appendix III (corresponding with 35 Ill. Adm. Code 721.Appendix C), with a reference to information in SW-846 on methods selection.

The Board has incorporated the federal amendments without substantive deviation. Instead of "EPA document number", we used "U.S. EPA document number" wherever this was used in the text. The Board also used the abbreviation "(TCLP)" in parallel with the references to the toxicity characteristic leaching procedure in the text, whether or not U.S. EPA also used the abbreviation in parallel. Similarly, we inserted "SW-846", the common "short-name", in all references to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", without regard to whether U.S. EPA was similarly consistent. Finally, we placed the document names in quotation marks and offset them with commas, as necessary, wherever they appear in the text. The Board invited public comment on our approach to these Sections, but received none. We construe silence as acceptance of the chosen approach.

Stay of Health-Based Test for Beville Exclusion--Sections 726.212 and 726.Appendix G

Section 726.212 derives from 40 CFR 266.112, which, as

discussed above, U.S. EPA amended at 58 Fed. Reg. 59602 (Nov. 9, 1993). U.S. EPA stayed the test criteria for the health-based test for the Bevill exclusion. The stay institutes an alternative test that uses the land disposal restriction limitations as the upper limit allowable to qualify for the exclusion. The Board has adopted the federal amendments with minimal deviation. We added the parenthetical "ten times" to make "an order of magnitude above" all the clearer. Since the original language of Section 726.212 was in terms of micrograms per kilogram ($\mu\text{g}/\text{kg}$), we revised note 1 of Section 726.Appendix G so that the primary numerical reference similarly appears in micrograms per kilogram, with the former reference to milligrams per kilogram (mg/kg) given parenthetically. The Board also added a reference to U.S. EPA as the developer of the new guidance and standards on the health-based test, to avoid any possible confusion over the state's lack of any role in that regard, and to the fact that the stay will terminate only upon further rulemaking action. The Board invited public comment on our approach to these Sections, but received none. We construe silence as acceptance of the chosen approach.

Public Comment-Based Corrections

As mentioned above, the Board received several suggestions from JCAR staff, U.S. EPA Region V, and the Agency for corrections to the text of the amendments as proposed. We also received suggestions from JCAR staff for corrections to Sections not included in the proposal for public comment. The Board tabulates the suggested corrections and our resulting actions as follows (sources of suggested corrections are indicate with ¹ indicating JCAR, ² indicating the Agency, ³ indicating U.S. EPA, and ⁴ indicating Board-initiated; * denotes Section not included in proposed rule):

| Section ^{Source} | Suggested Correction | Board Action |
|-------------------------------------|--|--|
| 703.232(c)(2)(B) ² | Delete " " from before "Test" | No change because underlining indicates addition of quote mark |
| 703.232(c)(2)(B) ² | Add reference to SW-846 after name of citation | Done |
| 703.232 End Board Note ¹ | Change reference to 40 CFR 270.66 | Done |
| 724 Table of Contents ⁴ | Change Section 724.324 to 724.323 | Done |

| | | |
|--|---|--|
| 724.414(c) & (e)(2)(B) ² | Correct incorpora- tion to cite Section 720.111 | Done; error made in R85-22 (Dec. 20, 1985) in adding subsection |
| 725.414(d) ² | Correct incorpora- tion to cite Section 720.111 | Done; error in base text made in filing R93-4 (Sep. 23, 1993) |
| 726.212(b)(1) ² | Delete " " from before "Test" | No change because underlining indi- cates addition of quote mark |
| 728.107(a) ^{1,3} | Correct second cited method to Method 1310, EP Toxicity Test | Done |
| 728.107(a) ² | "Shall" is used in place of "must" in the federal | No change because Board convention uses shall in this instance (see the discussion of edit- orial convention in this opinion) |
| 728.107(a) ² | Federal text relat- ing to use of EP Toxicity test is missing | The Board cannot find a missing seg- ment of text, but we have corrected the duplicate reference to the TCLP Method to refer to the EP Toxicity Method |
| 728.140(a) ² | "value" appears in place of "concentra- tions" in federal text | "Concentration" is used; U.S. EPA amended the second appearance of "val- ue" to "concentra- tions" at 56 Fed. Reg. 3879 (Jan. 31, 1991), and the Board should have followed suit in R91-13 (Apr. 9, 1992), but did not; the federal usage of the plural is improper in con- text |

| | | |
|--------------------------------------|---|--|
| 728.141(a) ² | "developed" appears in place of "extracted" in federal text | Done; this August 31, 1993 federal amendment should have appeared in the proposed rule |
| 728.142(b)* ¹ | Delete "of" | Done |
| 728.Table B K086-P037 ¹ | Three pages of amendments from R93-16 appeared in the <u>Illinois Register</u> , but were not filed | Amendments Repeated in this docket |
| 728.Table B F039 ¹ | Place entries for "acrolien" and "methanol" in proper alphabetical order; change footnote in sixth column of entry for "methylparathion" to "A" | Done |
| 728.Table B U047 & U239 ¹ | Remove duplicate "B" footnote from the fifth column | Done |
| 728.Table D U240 ¹ | Change "*" the third column to "A" | Done |

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:

- 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
- 738 Hazardous Waste Injection Restrictions

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). 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 September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)
- R93-16 March 17, 1994, Supplemental opinion and order on April 21, 1994. (1/1/93 through 6/30/93)
- R94-7 This docket; Proposal for Public Comment, April 21, 1994; 18 Ill. Reg. 6933. (7/1/93 through 12/31/93)

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 and Envirite (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)

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

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 standards 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.)

The Board has granted hazardous waste delistings by way of adjusted standards (generator name in parentheses):

AS91-1 130 PCB 113, February 6, 1992. (Keystone Steel and Wire Co.)

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

AS93-7 February 17, 1994. (Keystone Steel & Wire)

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 delayed closure of land disposal units (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.)

Still another adjusted standard proceeding related to substantive physical requirements of the RCRA Subtitle C regulations:

AS91-10 Dismissed at -- PCB --, May 19, 1994. (Cabot Corp.)

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 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 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 August 5, 1993; 17 Ill. Reg. 15641, effective September 14, 1993. (7/1/92 through 12/31/92)
- R93-17 Dismissed September 23, 1993. (No U.S. EPA amendments 1/1/93 through 6/30/93)
- R94-5 Present docket. (7/1/93 through 12/31/93)

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 February 17, 1994. (Cabot Corp.)

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.

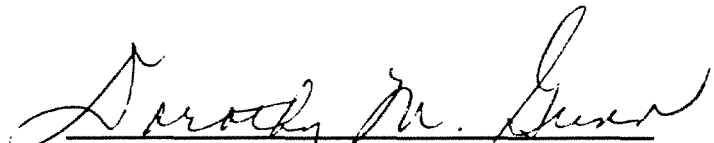
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note 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, hereby certify that the above opinion was adopted on the 23rd day of June, 1994, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board