

ILLINOIS POLLUTION CONTROL BOARD  
April 21, 1994

IN THE MATTER OF: )  
 )  
RCRA UPDATE, USEPA REGULATIONS ) (Identical in Substance Rules)  
(1-1-93 THROUGH 6-30-93) ) R93-16

Adopted Rule. Final Order.

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by E. Dunham):

The Board adopted amendments to the Illinois hazardous waste regulations on March 17, 1994 in this docket. That action under this docket included incorporating the federal amendments that occurred during the period of January 1 through June 30, 1993 into the Illinois RCRA Subtitle C hazardous waste regulations and restoring text that was erroneously omitted from the base text during the course of prior update dockets. The Board issues this supplemental opinion and order to address additional public comments received subsequent to final adoption and to restore an additional segment of text inadvertently omitted from our March 17 order.

The Board received the following three public comments after the adoption on March 17, 1994:

PC 5 U.S. EPA Region 5 (4-8-94, by Norman R. Niedergang, Associate Division Director of RCRA, Waste Management Division)

PC 6 Lenz Oil Service, Inc. (4-13-94, by Mike Lenz, President)

PC 7 National oil Recyclers Association (4-20-94, by Christopher Harris, General Counsel)

In PC 5, U.S. EPA comments that the Board has in our March 17, 1994 order, adequately addressed its comments submitted in PC 3 on February 14, 1994. PC 6 generally commends the Board's approach to adopting the used and waste oil regulations, but makes additional comments on implementation issues. PC 7 endorses the Board's proposal to adopt the used and waste oil regulations as adopted by U.S. EPA. It states that the proposed regulations will encourage recycling while imposing reasonable controls.

The Notices of Proposed Amendments for this rulemaking appeared in the Illinois Register on January 4, 1994. Therefore, pursuant to the Administrative Procedure Act, the public comment period closed on February 28. The Board adopted the amendments on March 17, 1994. We withheld filing the amendments with the Secretary of State for 30 days, as part of our primacy agreement with U.S. EPA, in order to allow the filing of any additional

comments by U.S. EPA on the adopted version of the amendments (PC 5). Consequently, PC 6 and PC 7 are untimely. Nevertheless, since the Board is issuing this supplemental opinion and order, addressing these public comments will cause no delay. Neither PC 7 nor PC 6 will result in any change in the text of the adopted rules. However, the Board does not routinely address such late-filed comments. Identical-in-substance rulemakings are on a legislatively-mandated tight time schedule and late-filed comments could jeopardize the Board's ability to timely meet its deadlines.

PC 6 expresses concerns over the status of water soluble oils that were used as coolants or cutting oils as "used oil". The comment states that U.S. EPA considers these materials "used oil", as contemplated by the used and waste oil regulations. The comment further states as follows:

IEPA considers this waste a [sic] "oily waste". This distinction subjects water soluble oils to full TCLP parameters even when recycled in Illinois. This puts Illinois companies at a major disadvantage when competing outside Illinois for this waste. Companies outside Illinois only have the fuel specification tests to meet . . . .

Thus, the comment implies that Illinois EPA applies a definition of "used oil" that is more stringent than the federal definition.

In response, the Board highlights the scope of the legislative mandate by which we adopted these rules. Sections 7.2 and 22.4 of the Act require the Board to adopt rules that are "identical in substance" to those adopted by U.S. EPA under RCRA Subtitle C. This we have done. The Board's Section 739.100 definition of "used oil" is identical to the federal definition of 40 CFR 279.1:

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Unless the Board were to engage in a general rulemaking under Section 27 of the Act on a petition from the Illinois EPA or some other interested person, subject to the public hearings and full Administrative Procedure Act requirements, this is the only definition we are free to adopt. Therefore, the Act requires that meanings applied to the federal definition are to be applied to the Illinois definition.

Although the federal definition of "used oil" itself makes no reference to water soluble oils, the preamble discussion in the Federal Register indicates that U.S. EPA did address these

materials. U.S. EPA stated in the Federal Register preamble discussion that it received comments relating to "synthetic oil", including water soluble and water-bearing water soluble oils. The commenters requested that U.S. EPA exclude copper drawing solution from the definition of "used oil". U.S. EPA observed, "Copper drawing solution is an emulsion of 1 to 2 percent oil in water." (57 Fed. Reg. 41574 (Sept. 10, 1992).) The discussion stated that U.S. EPA revised the definition prior to final adoption to add "synthetic oil". (57 Fed. Reg. 41604 (Sept. 10, 1992).) The discussion further stated as follows:

EPA has concluded that synthetic oils that are not petroleum based (*i.e.*, those produced from coal or oil shale), those that are petroleum-based but are water soluble (*e.g.*, concentrates of metalworking oils/fluids), or those that are polymer-type, are all used as lubricants similar to petroleum-based lubricants, oils, and laminating surface agents. . . . Therefore, EPA believes that all oils, including used synthetic oils, should be regulated in a similar fashion and, hence, EPA has decided to include synthetic oils in the definition of used oil. For the large part, the definition of used oil includes used lubricants of all kinds that are used for a purpose of lubrication . . . .

57 Fed. Reg. 41574 (Sept. 10, 1992).

To address the concerns expressed in PC 6, the Board need not revise the Illinois definition to implement the federally-derived regulations. Because U.S. EPA contemplated that synthetic water soluble oil lubricants be included in the federal definition of "used oil", the identical-in-substance definition must include them as well. The Illinois regulations will, as always, be consistent with those adopted by U.S. EPA. Thus, the impact of these rules on entities operating in Illinois will be no greater than that of the minimum federal standards applied in other states, as was intended by the General Assembly when they drafted Sections 7.2 and 22.4.

As to the omitted language, the Board is correcting the adopted text of the rules to include the language. As more fully discussed in the March 17, 1994 opinion, we adopted amendments to Part 728 in R91-13 (January 1 through June 30, 1991; effective June 9, 1992) that were excluded from the base text in R93-4 (July 1 through December 31, 1992; effective November 22, 1993). Much of the work involved in the present docket has been to make these restorations. We add one segment of text omitted from our March 17 order at this time because we have not yet filed the adopted amendments with the Secretary of State. The missing text (segment in bold type) is restored to Section 728.107(a)(3)(B) as follows:

## Section 728.107 Waste Analysis and Recordkeeping

a) . . . .

. . . .

- 3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under Section 728.105, an exemption under Section 728.106, an extension under Section 728.101(c)(3) or a nationwide capacity variance under 40 CFR 268.Subpart C (1989), with each shipment of waste, the generator shall submit a notice with the waste to the facility receiving the generator's waste, stating that the waste is not prohibited from land disposal. The notice must include the following information:

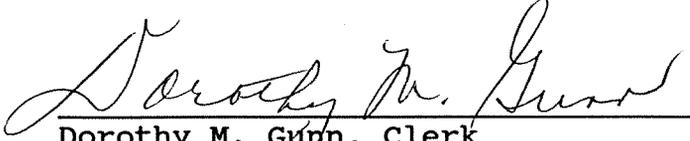
. . . .

- B) The corresponding treatment standards for wastes F001-through F005, F039 and wastes prohibited pursuant to Section 728.132 or Section 3004(d) of the Resource Conservation and Recovery Act, referenced in Section 728.139. Treatment standards for all other restricted wastes must either be included or be referenced as above, or by including on the notification the subcategory of the waste, the treatability group(s) of the waste(s) applicable wastewater or nonwastewater (as defined in Section 728.102) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003, reactive cyanides), and the Section and subsection where the applicable treatment standards appears. Where the applicable treatment standards are expressed as specified technologies in Section 728.142, the applicable five-letter treatment code found in Section 728.Table C (e.g., INCIN, WETOX) also must be listed on the notification.

. . . .

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above supplemental opinion and order was adopted by the Board on the 21<sup>st</sup> day of April, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board