

ILLINOIS POLLUTION CONTROL BOARD
November 15, 1989

IN THE MATTER OF:)
)
IDENR SPECIAL WASTE) R89-13 (A)
CATEGORIZATION STUDY) (Rulemaking)

PROPOSED RULE SECOND NOTICE.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

Status of Rulemaking

The Board today is adopting a Proposed Second Notice Opinion and Order in this matter. On August 10, 1989, the Board had adopted a First Notice Opinion and Order. In response to testimony and exhibits introduced at hearings and sixteen public comments, the Board on October 18, 1989, then adopted proposed changes in an Opinion and Order titled Interim Request for Public Comment (Interim Request). The Interim Request afforded another opportunity to comment on the proposed changes prior to going to Second Notice.

This Second Notice Opinion and Order contains further clarification and changes primarily in response to these latest comments (P.C. #14-21) and to the preliminary review questions of the Joint Committee on Administrative Rules (JCAR).

Because the latter comment period was short, and because certain commenters state that they received the document late, some were filed after the deadline. Under the circumstances all comments have been accepted. Comments were received from the Department of Energy and Natural Resources and its Hazardous Waste Research and Information Center (DENR/HWRIC), P.C. #19 and 21; the Illinois Environmental Protection Agency (Agency), P.C. #20; and the Illinois Environmental Regulatory Group (IERG), P.C. #17. Also, the Joint Committee on Administrative Rules filed preliminary review questions at our request, and the Illinois Department of Commerce and Community Affairs, Small Business Assistance Bureau filed its review, P.C. #18. We also note that the motion to substitute comments from the Illinois Steel Group (P.C. #22, substituted for P.C. #10 and 14) were accepted by the Board by Order of November 2, 1989. In certain respects the comments contain information or arguments already considered by the Board and addressed in its October 18, 1989 Opinion and order. The Board's responses contained later in this opinion concentrate on those portions of the comments not previously addressed as well as explain the basis for the changes made to the Proposed Order.

INTRODUCTION

This proposal creates 35 Ill. Adm. Code 808 and modifies 35 Ill. Adm. Code 809. Part 809 was adopted as "Chapter IX" in R76-10, 33 PCB 131, March 15, 1979. We note that Part 807 is the subject of a proposal in R88-7, which is pending. The proposal in this Docket does not assume that certain features of the proposal in R88-7 will be adopted, but attempts to avoid incompatibility with such features should they be adopted.

CLOSE OF DOCKET R85-27

By separate Order, the Board concurrently with the First Notion Opinion and Order closed Docket R85-27. After approximately four years of exhibits, hearings and finally the draft regulatory proposal by STS (and including the record from Docket R84-43), R85-27 was no longer the appropriate vehicle for consideration of the Board's proposal. However, the consolidated record of R85-27 is expressly included in this docket.

STATUTORY FRAMEWORK

This rulemaking implements Sections 22.01 and 22.9 of the Act, which were adopted at different times.

Section 22.01 of the Act requires the Board to review and consider the repeal of the manifesting requirement for non-hazardous special waste by December 1, 1989, (35 Ill. Adm. Code 809). However, the Board is to adopt an annual report requirement for non-hazardous special waste.

Section 22.9(a) of the Act requires the Department of Energy and Natural Resources (DENR) to complete a study of the benefits and feasibility of establishing a system of classifying and regulating special wastes according to their degree of hazard by July 1, 1985. Section 22.9(b) requires the Board to adopt regulations that establish standards and criteria for classifying special wastes according to degree of hazard or an alternative method following completion of the DENR study, but no later than December 1, 1989.

Section 22.9(c) requires the Board to adopt regulations establishing standards and criteria by which the Agency may determine that a waste or class of waste is not a special waste. Section 22.9(d) contains a temporary statutory standard by which the Agency makes this decision pending adoption of Board regulations. Section 22.9(e) provides that, if the Agency fails to act on a determination within 60 days, the requestor may seek review before the Board as if the Agency had denied a permit.

Section 22.9(f) provides that the determination that a waste is not a special waste does not apply to hazardous waste. This precludes the declassification of special wastes which are hazardous wastes (i.e., wastes which are hazardous under RCRA

(per Section 22.4(a)) or under independent State law and regulations which are at least as stringent as, and not inconsistent with, RCRA (per Section 22.4(b) and (c)).

HISTORY

The protracted history of developments regarding special wastes reflects the interconnection between the perceived need for relief from regulatory requirements (e.g., manifesting) for a potentially significant proportion of the universe of "special waste" as defined by Section 3.45 of the Act, the desire to classify special wastes to assure that their handling is appropriate to their characteristics, the obligation to maintain a State system which is consistent with federal law, including RCRA (see Section 20(a)(7)-(9)), and efforts to update all solid waste rules in R84-17/R88-7.

Sections 22.01 and 22.9 of the Act reflect these diverse concerns. Section 22.01 was added by Public Act 83-1461, effective September 17, 1984. That law was the culmination of compromises which altered the original proposal (HB 3042), which would have immediately required the Board to drop all manifest requirements for non-hazardous special wastes. As enacted, the Board was only required to "review and consider" such action by January 1, 1986.

Section 22.9 traces its roots to a different enactment, Public Act 83-1268, effective January 1, 1985 which required DENR to complete a study of the "benefits and feasibility" of establishing a degree of hazard classification system for special wastes regulation by July 1, 1985 (subsection (a)) and required the Board to promulgate regulations for classifying (subsection (b)) and declassifying (subsection (c)) waste by September 1, 1988. This deadline was subsequently moved back to December 1, 1989 (Public Act 85-1327, eff. August 31, 1988).

In response to the mandate of Section 22.01, the Board opened Docket R84-43 (December 20, 1984), for review and consideration of the manifest requirement. The Board held two inquiry hearings in March of 1985. From the beginning, the Board noted the DENR mandate imposed by 22.9, observing that the DENR study due July 1, 1985 would be the subject of other Board hearings and that this study "will undoubtedly provide a useful data base for consideration in this docket and will be made a part of the record in this proceeding" (Bd. Order, R84-43, December 20, 1984, page 2).

The DENR report was received by the Board on November 21, 1985.* By Order of the same date, the Board established Docket R85-27. One month later (December 20, 1985), the Board, having

* "Special Waste Categorization Study", HWRIC RR005 (Reddy, October 1985).

considered the testimony and exhibits submitted in R84-43, entered an order in which it found that "it would be imprudent to repeal the manifest requirement at this time and that further deliberation should proceed under a consolidated R84-43/R85-27 Docket" (p. 1). It also proposed for First Notice a rule to require, effective July 1, 1987, annual reports from all facilities accepting non-hazardous special wastes, without attempting to define the affected universe of facilities.

Ironically, on the same day, Public Act 84-1108 became effective. This law directed DENR to prepare another report for the completion of a study on the degree of hazard of industrial wastes. This second DENR report was received by the Board on January 22, 1987.* Upon receipt of this report, the Board scheduled and held two hearings in May, 1987. After considering the testimony and comments produced in the consolidated R84-43/R85-27 docket, the Board dismissed its proposal on December 17, 1987, and further formally dismissed and closed Docket R84-43.

On April 7, 1988, the Board entered an Interim Order directing the Board's Scientific and Technical Section (STS) to prepare a regulatory proposal. It was contemplated in the Order that the STS efforts would be aided by the final installment of the DENR "degree of hazard" studies undertaken pursuant to Public Acts 83-1268 and 84-1108, which the Order noted was expected to be delivered to the Board "shortly". To serve as an independent proponent, the Order established an "exterior to the Board" arrangement consistent with RES 86-1, whereby the STS was for this purpose created a separate entity and subjected to customary ex parte restrictions as such a proponent.

The DENR's third installment was received by the Board on October 27, 1988.** By its cover letter, the DENR's Hazardous Waste Research and Information Center (HWRIC) indicated that one additional report, "The Characterization of Non-RCRA Special Waste" by William W. Frerichs, would likely be submitted within two weeks.

The Frerichs report was published in January of 1989, but has not been submitted to the Board for filing in Docket R85-27. The Board's staff obtained a copy of that report on April 28, 1989. The cover letter accompanying the report and responding to the Board staff inquiry indicated that the Frerichs report was a product of DENR's continuing research mission and was not intended to be filed with the Board as an exhibit in the R85-27 proceeding.

* Assigning a Degree of Hazard Ranking to Illinois Waste Streams", (Plewa et al, 1986).

** "Refining the Degree of Hazard Ranking Methodology for Illinois Industrial Waste Streams". (Plewa et al, 1988).

Working on the basis of selected preliminary drafts, STS staff member Morton Dorothy prepared a rough draft regulatory proposal and "supporting document". A second draft of the STS rule proposal was prepared on June 28, 1989, and a third draft submittal was filed with the Board on July 24, 1989. An accompanying "Supporting Document" was filed on July 26, 1989. Noting the press of the statutory deadline and that an effort was already underway to develop this Board proposal, Dr. Harish Rao, Chief of the STS, on July 31, 1989, filed a Statement Of The Scientific and Technical Section Regarding Submission of Documents. Dr. Rao indicated that additional efforts to develop a formal STS proposal appear to be unnecessary in R85-27, since that Docket will be closed.

In submitting and perfecting this proposal, DENR provided technical testimony and support for the proposed categorization/-ranking methodology. The First Notice Opinion gives further explanation regarding the creation of separate Docket A and B, and the STS draft. The Docket A proposal does not address all the potential ramifications of a waste classification system, particularly those thorny issues related to creation of a "high hazard" non-RCRA special waste category (i.e., those special wastes assigned a score of 3 pursuant to Section 808.245). That will be considered in Docket B.

Consideration of refinements to the hazard ranking system and the possible use of that system to prescribe requirements specific to special waste classes, including those non-RCRA special wastes assigned the highest hazard ranking, will be the subject of Docket B.

POST FIRST NOTICE ACTIVITIES

Upon adoption of the proposal for First Notice, the Board scheduled and held two public hearings, the first in Springfield on September 1, 1989, and the second in Chicago on September 14; a third hearing, scheduled for September 15, was canceled after no one appeared to present testimony or examine witnesses. Testimony was presented at the hearings on behalf of the Department of Energy and Natural Resources (DENR), including its Hazardous Waste Resource and Information Center (HWRIC). Also presenting testimony were the Illinois Environmental Protection Agency (Agency), Mr. John Andrae of the DuPage County Health Department, the Board's Hearing Officer (in his capacity as a principal draftsman of the Board's proposal) and Dr. Harish Rao, head of the Board's Scientific/Technical Section (STS). Prefiled comments and questions were received from the National Renderers' Association and Waste Management of Illinois. Prefiled testimony was provided by DENR and HWRIC representatives.

The Hazard Ranking System

Testimony provided by DENR and HWRIC focused on the three scientific studies and proposals for creating a system to rank

special wastes according to their relative degree of hazard to human health and the environment. Witnesses for DENR and HWRIC were generally supportive of the Board's proposal (see, e.g., testimony of Dr. David Miller, R. 19-21). These witnesses also defended the HWRIC studies' choice of methodology, "break points" for hazard ranking chosen by HWRIC, and the toxicological data and reference compound (i.e., copper sulfate LD50) selected by HWRIC and proposed by the Board (see, e.g., testimony of Dr. Michael Plewa, R. 21-27). The witnesses for HWRIC and DENR stated that the computerized system is presently "up and running" and could be used on all wastes, providing that adequate information on the waste components were provided to the Agency by the applicant or were already in the data base (R. 42-44).

The witnesses felt that the system was conservative enough to avoid error for declassification purposes. In contrast, concerning its use for classifying at the high toxicity level, DENR/HWRIC stated that, since the system is conservative, there is a chance that a waste's high-hazard ranking would be lower if they had more specific information on constituents and toxicities (P. C. #4).

The witnesses also made clear that the degree of hazard system should be viewed as a potential degree of hazard system; it should be but one element within the overall evaluation by which the Agency would make a determination, and that the ranking could be adjusted up or down, depending on the appropriate modes of treatment or disposal of special wastes (e.g., R. 57-59).

The witnesses also acknowledged that a number of their rankings were not based on the scientific rationale they developed. Rather, they utilized a "legal" rationale; they borrowed a regulatory standard applicable to some potential characteristic of waste from an unrelated federal or state regulatory program, for instance the federal RCRA standard for pH, and established a "break point" without use of refinement or incremental adjustment based upon the degree of hazard system (R. 61, 68, 71-73).

The witnesses also testified that the system's database and application program has utility as a planning device, whereby members of the regulated community could calculate the effects of process substitutions and system changes on the waste stream's degree of hazard (R. 40-52). They noted that the system could be applied manually. In any event, DENR/HWRIC argues for a state universal data base system (presumably maintained by the Agency), thus letting all know what the ground rules are (R. 47 and 52, P. C. #4). They also noted that new data should be screened by experts, so as to maintain a standardized system and thus avoid delisting evaluations by those lacking the expertise or access to literature (P. C. #4).

Dr. David Miller, Assistant Director and Research Program Manager of HWRIC, estimated that a computer and software

appropriate for the purpose would cost the Agency about \$3000.00 (R. 31).

Several questions arose at hearing concerning the HWRIC ranking methodology and proposal. In response to the questions of Mr. James O'Brien, Manager of the Agency's Office of Chemical Safety (OCS), concerning the use solely of equivalent oral doses when the inhalation or dermal exposure route might be more appropriate, DENR/HWRIC stated that the toxicity weighting table on Page 11 in the Plewa 1988 report takes this into account. Regarding Mr. O'Brien's concerns about lack of consideration of sub-acute or systemic chronic toxicity, DENR/HWRIC responded that relatively little data exists and, because the system is conservative, such values would have little effect anyway. Regarding Mr. O'Brien's comments on test method appropriateness, DENR/HWRIC responded that those parameters are difficult to measure, such as pH for solid samples; these could be left blank or a slurry with water could be analyzed. In any event, DENR/HWRIC asserted, the Agency needs to consider the use of these values in its final determination of the waste stream's status (R. 112-119, Exh. 4).

Mr. Andrae of DuPage County took particular note of the fact that toxicity appears to increase with volume using the DENR/HWRIC toxic hazard methodology (Appendix B, subpar. (B)), and asserted that this might render the methodology suspect as a means of classifying or declassifying certain wastestreams. (R. 391-395). DENR/HWRIC responded that the system focused on landfills, rather than effluent going into water and, as such, seeks to avoid a large volume of toxins where total mass may present a threat. (P. C. #4). In a somewhat related vein, IERG also noted some problems posed by a volume-dependent measure of toxicity, including examples of how the system could yield absurd results (P.C. #11, pp. 6-8). Mr. Andrae also stated the county's concern regarding the exemption from the manifesting requirements for septic pumpings and grease trap pumpings (R. 398-401).

Comments And Questions

The National Renderers Association argued in its pre-filed questions that licensed renderers, who are exempted currently from the manifest system pursuant to 35 Ill. Adm. Code 809.331, should be similarly exempted from the "Unmanifested Waste Report" requirements of proposed Section 809.502 (R. 256-257).

The Agency generally indicated that the proposed system was overly complicated, time consuming and unnecessary (R. 220, 237). The Agency proposed in its stead (R. 220) that the Board adopt a system of classification derived from the Agency's present guidance document (Exh. 7). Several commenters endorsed this view (P.C. #'s 10, 11 and 14). The Agency also acknowledged that it rarely, and then only informally, utilizes the Office of Chemical Safety to assist in the toxicity evaluation components of its guidance document (R. 102, 147, 163 and 169-170).

One questioner, and two commenters representing the Illinois Steel Group and the Illinois Environmental Regulatory Group (IERG) (P.C. # 10, 11 and 14), suggested that DENR had failed to provide, on request, a copy of the computer program developed by DENR/HWRIC, and that this refusal had denied them access to data in order to meaningfully testify on or evaluate that system; they accordingly urged the Board to take no action based on the DENR system. DENR/HWRIC responded that they offered those with specifics on their waste stream "to come to our offices" to run the degree of hazard (P.C. #4, p. 5); they had not released the system because they didn't want others modifying the program, especially during its development phase, and that it now can be downloaded to a diskette. They want to assure that there is only one state system and thus need to assure that it is secure (R. 215-216, P.C. #4).

Comment was received after the hearings, and prior to the Board's Interim Request Opinion and Order, from the Metropolitan Water Reclamation District of Greater Chicago (P.C. #3), DENR (#4), the National Slag Association (P.C. #5), International Mill Service Inc. (P.C. #6), the St. Louis Slag Products Company (P.C. #7), the Steel Manufacturer's Association (P.C. #8), BFI Waste Systems (P.C. #9), the Illinois Steel Group (P.C. #10 and 14), the IERG (P.C. #11), the Edward C. Levy Co., Inc. (P.C. #12), the U.S. Department of Interior, Bureau of Mines (P.C. #13), Dr. David J. Schaeffer, Department of Veterinary Biosciences, University of Illinois (P.C. #15) and the Agency (P.C. #16).*

Comments #4 and #16 were in the form of responses to two sets of questions propounded in Orders issued by the Hearing Officer ("Further Questions for DENR/HWRIC Witnesses", September 12, 1989, and "Additional Questions for IEPA and DENR/HWRIC Witnesses", September 13, 1989). The Hearing Officer has been advised that the Agency and DENR are coordinating their activities to provide the Board with at least a partial response to the fourth question raised by the Hearing Officer in his September 12, 1989 order, namely, that DENR run its degree of hazard (DOH) analysis on the requests which the Agency has already received and handled under its interim guidance policies over the past 2½ years. Such a "cross check" will serve to either confirm or counter claims regarding whether the system is practicable, and will provide a comparison of results from use of the DENR system alone with results from use of the Agency's policy guidance alone.

Mr. Frank E. Dalton, General Superintendent of the Metropolitan Water Reclamation District of Greater Chicago (P.C. #3) suggested that a proposed Section 808.247 be added to the

* Comments of a technical nature relating to the form of the rules for purposes of publication in the Illinois Register were also received from Mimi Griffiths, Administrative Code Division, Office of the Secretary of State (P.C. #2).

rules to continue to exempt municipal wastewater treatment plant sludge from classification as a special waste. He also urged that proposed amended Section 809.255 be revised to make clear that washings from a special waste hauling vehicle may not be discharged to a POTW except in compliance with all applicable local limits on discharges to that POTW. A somewhat similar suggestion was made by BFI Waste Systems (P.C. #9, third and fourth pages) and Waste Management of Illinois (WMI) (P.C. #1, p. 13).

In addition to faulting various aspects of the DENR/HWRIC proposal and the Board's draft rules, the Agency proposed that all special non-RCRA waste be manifested by using a four-part manifest augmented by an annual reporting requirement (R. 92-97, 218-219; P.C. #16), in lieu of the currently-required six-part manifest which the Agency characterized as imposing an unreasonable "paperwork burden" upon both the Agency and the regulated community without commensurate benefit in terms of increased Agency oversight (*id.*). Other commenters agreed with the Agency on this point (P.C. #8, 9 and 11). The Agency quantified this burden upon the Agency as growing rapidly and consisting of approximately 350,000 pieces of paper annually (R. 92-93). The Agency also suggested that the Board's rules should set forth minimum requirements for the annual reports which it suggests to augment a four-part manifest requirement.

By far the greatest number of comments and questions regarding the proposal were received from WMI before the hearings (P.C. #1). Many of these questions and comments related to typographical errors and omissions, all of which have been duly noted. On a substantive plane, WMI suggested that, in light of their obvious stake in classification determinations as well as their knowledge of actual conditions, waste treaters and disposers should have a role as of right in the classification process (P.C. #1, pp. 1-2). WMI recommended that notice of pending classification requests be provided to such receiving sites, and that such sites be entitled to participate in Agency classification proceedings (see, e.g., R. 259-260 and P.C. #1, p. 5). WMI also noted that numerous sections of the proposal (e.g., proposed section 808.121(c)(1)) reference concepts embodied in sections or Parts not yet in existence, notably Part 811 (see R. 264-266, 326, 329-330, and 345-348). As noted by the Hearing Officer at hearing (R. 264-266), these sections, as well as those proposed sections of Part 809 establishing substantive requirements for waste haulers, including haulers of wastes other than special wastes (e.g., Sections 809.221-809.227) were drafted in the expectation of prior adoption of proposed rules in Board Docket R88-7; such prior adoption has not occurred. Finally, WMI noted several problems with the Infectious Hospital Waste rules as transported over to proposed rule 808.601 from Subpart I of Part 809 (R.322-329) and with the several substantive new requirements in Part 809 for waste haulers, including requirements for overnight parking and covers on waste trucks.

The largest number of post-hearing comments were received from persons concerned that the proposal would somehow have the effect of expanding the universe of materials considered to be "wastes" particularly with respect to slags generated in the production of iron and steel (P.C. #'s 5,6,7,8,10,12,13 and 14). All these commenters stated that such slags are fully utilized as products such as railroad ballast, concrete aggregate or as raw material in the manufacture of glass and mineral wool.

The Illinois Environmental Regulatory Group and the Agency expressed concern lest the new rules overturn prior Agency determinations under Section 22.9(d) of the Act or otherwise create needless confusion (P.C. #'s 11 and 16). Some commenters also observed that the DOH methodology may not always be applicable or practicable (P.C. #11, 15 and 16); they urged the Board to introduce sufficient flexibility in the rules to allow use of alternative modes of determining the nominal toxicity hazard posed by a given waste-stream, (P.C. #15 and 16). Dr. Schaeffer recommended a bioassay-based approach, which he has developed in a study undertaken for DENR and which he asserts can be easily implemented and made capable of gauging the synergistic and/or antagonistic effects of individual constituents in a waste stream so as to assess the toxicity of complex mixtures (P.C. #15).

BFI Waste Systems (BFI) joined in WMI's criticisms of the substantive requirements proposed in Part 809 to regulate waste haulers, including proposed requirements for overnight parking, maintenance and odor control. (P.C. #9). BFI suggested that "cover" be defined although at hearing two participants suggested that covers might be impractical, unnecessary or even detrimental in some cases (R. 345-353 and 388-389).

BOARD CONCLUSIONS AND RESPONSES TO TESTIMONY AND COMMENTS IN
ITS OCTOBER 18 INTERIM REQUEST

Both the Interim Request as well as this draft Opinion and Order contains a number of modifications based on the testimony at hearing and public comments received to date. Generally, the draft as now crafted a) clarifies that the toxicity ranking methodology developed by DENR/HWRIC is meant to supplement the present Agency system of evaluation as a first screening, not replace it, b) includes other considerations as derived from the Agency's present policy paper, c) utilizes the DENR/HWRIC degree of hazard categories for which they have developed a scientific rationale (i.e., toxicity), but rely on the existing Agency evaluation system rather than those DENR/HWRIC rankings based on a "legal" rationale (e.g., pH), d) provides for a four-part manifest system plus quarterly or annual reports, e) removes amendatory language not directly related to the DENR/HWRIC classification system, including leaving intact the Board's now-existing hazardous (infectious) hospital waste regulations, and f) provides for a re-evaluation within two years for those wastes that the Agency earlier determined not to be special wastes.

For continuity, the Board is restating below its Interim Request conclusions and comments. The Board emphasizes that the purpose and effect of this proposed rulemaking does not include expansion of the universe of wastes. "Wastes" and "Industrial Process Wastes" are defined by the Act; judging from the several comments received regarding steel slags (e.g., P.C. #7), it would appear that such slags are properly defined as products unless abandoned or discarded, and to that extent are unaffected by this proposal. In light of the several comments which suggests that some persons misunderstand this fact, the Board will insert a clarifying sentence in Section 808.100(a).

Upon consideration of the several comments and questions and testimony at hearing, the Board made several substantive changes in the proposed rule. It is clear, as many participants have noted, that references to certain provisions and concepts must be dropped from this rulemaking in view of the fact that rulemaking in R88-7 will not be completed in time for this proceeding. In consequence of this reality, all present references to Part 811 are proposed to be eliminated from proposed Part 808 and proposed amendments to Part 809, as are all substantive requirements in proposed amendments to Part 809 (e.g., proposed Sections 809.221-809.227) not relating directly to special waste classification.

In like manner, the proposed relocation of the hazardous (infectious) hospital waste rules from Part 809 to Part 808, together with the attendant changes to the text of those rules, must be deferred for the present. These wastes were not newly evaluated by DENR's methodology. Also, this change will accommodate the need to have separate reconsideration of the hazardous (infectious) hospital waste rules themselves. The Board is aware of ongoing "medical waste" legislative initiatives regarding infectious wastes generally, and believes that this also augurs against taking any new actions in this proceeding.

As for the DENR/HWRIC classification system, the Board concludes that it can and should serve as a component of a system for classification of special waste wastestreams. It is clearly not intended to be a means of classifying wastestreams in and of itself. It is also clearly a system which is to some extent volume-dependent. Moreover, the Board will not utilize that part of the HWRIC ranking system which is not justified by its science-based methodology, but rather relies upon other standards (statutory or regulatory) adopted and in place for other wastestreams. The trouble with using such standards, such as the pH standard of RCRA, for example, is that such standards are not necessarily appropriate for or germane to the toxicity-based ranking in this rulemaking. Accordingly, Appendices C and D of Part 808 proposed at First notice will be discarded for the time being. Although we await the results of a spot check of DENR's methodology on wastestreams which have been submitted previously to the Agency for declassification under Section 22.9(d) of the Act, we are not persuaded by the concerns about adopting the rules before the commenters could test the degree of hazard

computerized system on their own computers on wastes of their choosing. DENR/HWRIC have tested the computer system extensively; the DENR/HWRIC approach has been available for testing at HWRIC's offices for some time. In any case, the commenters could have tested the system manually. In any event, the Board does not believe that rules, including these rules and certainly as presently crafted, should be held in abeyance for these reasons.

Moreover, the Board finds that the concepts embodied in the Agency's current policy guidance document provide some basis for a comprehensive system, but lack the discipline imposed by use of a formal ranking system such as proposed by the DENR/HWRIC toxic hazard ranking system. The testimony of Agency witnesses makes clear that the present system for determining declassification requests lacks a consistent approach for determining toxicity and utilizing the resources of its own OCS; absent regular use of a central body of information such as OCS there can be little assurance that determinations will be consistent or based upon current data. We do not find persuasive the Agency's assertion that the inclusion of the proposed formal system of evaluation is unnecessary or that the computerized system envisioned by HWRIC would be too onerous to use. On the other hand, as for the concerns over the applicability and volume-dependent measure of toxicity provided by Appendix B, newly proposed language in Section 808.245 intends to make clear that an applicant may show that the system is inapplicable, and use another equivalent or comparable approach. No regulatory procedure or standard works in every conceivable circumstance; the same remedies are available here as are available without an articulated degree of hazard system, except that a system provides a benchmark for evaluating disputes. Further, where volume is a factor in a lowered toxic score or classification, new subsection (f) of rule Section 808.245 requires that such factor be specified in the Agency's determination (see also new language in subsection (b) of Appendix B).

The Board is not convinced of the propriety of requiring that waste treaters or disposers be brought into the classification process as active participants. The proper role of operators of such facilities, in our view, is to assure that wastes received are as described, not to participate at the Agency level in the classification process. Moreover, practical considerations make involving the entire universe of potential destinations of a given wastestream unfeasible.

The Board partially agrees with the comments from the Metropolitan Water Reclamation District of Greater Chicago; while we do not agree that all water or wastewater treatment sludges should be exempt from the definition of "special wastes", we do agree that such sludges already regulated by the Agency under an approved sludge management plan should be exempt from the special waste manufacturing and hauling requirements. Section 808.121(b)(4) has been added to this effect.

The Four Part Manifest

The Board is persuaded that the Agency is correct in asserting that the gathering of information by way of required reports based on a four-part manifest, rather than keeping the Agency in the six-part manifest loop, is warranted for non-RCRA special wastes. It is illuminating in this regard that USEPA requires only a four-part manifest even for RCRA hazardous wastes. It is certainly worth noting that, in the record of this docket as well as its predecessor dockets, R84-43 and R85-27, neither the Agency nor any member of the regulated community has ever suggested that there is a necessary function served by burying the Agency under an avalanche of manifest forms which ultimately are seldom, if ever, timely used owing to their sheer bulk. In so saying, the Board agrees with the concerns of DENR and others that, if the Agency is taken out of the loop, the required reports should include the same type of information, albeit reported on a less frequent basis. To this end, the Board has added subsections (h) and (i) to rule Section 809.501.

However, the Board does not believe that annual reporting provides an adequate measure of control over those wastes which are ranked as having a high degree of potential hazard. Hence, quarterly reporting will be required for Class A wastes; annual reporting will be required for all Class B wastes. Consequently, the Board will continue to distinguish between special wastes which pose a high degree of hazard and those which do not. Note that one related change the Board is making in its proposal is that wastes posing a "moderate" degree of hazard (i.e., those which achieve a score of 2 under the system) will be grouped together with wastes posing a low degree of hazard as Class B special wastes rather than as class A special wastes, as previously proposed.

Incorporation of Agency Policy

The language of Part 808 has been altered in an effort to "marry" the breadth and flexibility of the Agency's policy guidance memorandum with the HWRIC system for ranking relative toxic hazards. The casual reader, however, will have difficulty finding the Agency's existing guidance policy in this revised proposal because the Board has attempted to distill that policy into basic elements before blending it into the rules.

The Agency's guidance policy is set forth in the November 1986 Memorandum To solid waste generators entitled "Special Waste Determinations, Criteria and Procedures" (Exh. 7, Attachment "A"). That requires applicants for declassifying special wastes to provide information on:

- A. Aspects of the waste or waste stream;
- B. Health and Environmental Aspects; and
- C. Disposal Site Aspects.

On close examination, it may be seen that several of the subcategories of these major divisions are either unrelated to the major division (e.g., item A.1 relates to the identity of the applicant, not to the aspects of the waste or waste stream) or overlap with other subcategories, including subcategories of other major divisions (e.g., item A.5 which requires a "physical description and analysis, including contaminant components of the waste", appears to replicate item B.1.c., which requires a "physical description and components of the waste"). The Board has thus attempted to more clearly "sort out" the concerns which the Agency's policy addresses. Procedural matters aside, it appears that the Agency's concerns are as follows:

- A. Wastes whose physical form renders them difficult to manage in a landfill or in storage or transit, such as wastes containing free liquids or consisting of finely divided particles. Items A.3, A.4, A.5, B.1.c., C.1, C.2.a and C.2.b appear to be directed wholly or in part to this concern. The Board's proposal embodies this concern in Section 808.245(C)(1).
- B. Wastes whose chemical properties render them difficult to manage in a landfill or in storage or transit in the event of a leak or spill. Items A.4, A.5, B.7.a, B.1.b., C.1, and C.2.b appear to be directed wholly or in part to this concern. The Board's proposal embodies this concern in Section 808.245(c)(2).
- C. Wastes whose chemical properties threaten the integrity of containment devices and structures. Items A.5, B.1.b., B.1.d., B.1.e and C.2.b appear to be directed wholly or in part to this concern. The Board's proposal embodies this concern in Section 808.245(c)(3).

All three items are somewhat interrelated, particularly items B and C. For purposes of this proposal, the chemical properties of concern in item B are those which would pose a problem in the event of a loss of containment, such as a spill, leak or rupture. The chemical properties of concern in item C are those properties which promote the creation of a spill, leak or rupture due to the unstable nature of the waste. The same chemical property may exhibit both characteristics (e.g., a wastestream containing a high concentration of hydrochloric acid may tend both to threaten the integrity of containment due to its corrosivity and to make difficult the management of the waste in the event of a leak or spill due to its creation of toxic fumes and its mobility.

As for the specific manner of incorporating the Agency's policies, the Board has reasoned that the potential toxicity of a waste, represented by its "toxic score" as determined according to Appendix B or an equivalent means, should represent the "first cut" means of classifying a waste. Hence, a waste stream's toxic score will determine its classification unless (in the case of

wastes receiving a toxic score of 1 or 2) its physical, chemical or "unstable" properties dictate the higher classification, or (in the use of wastes receiving a score of 1, 2 or 3) its mode of containment or treatment warrants assigning the waste to a lower classification (including declassification) in the form of a conditioned wastestream classification determination. Under this provision, finely divided waste dusts or powders might be expected to qualify for a reduced classification or for declassification based on the requirement that they be delivered for transport or disposal in bags, barrels or other containment which precludes air dispersal.

Wastes whose "toxic score" is zero would normally be expected to be declassified. However, the Board has retained the concept of "special handling wastes" to address those situations where the waste presents a hazard to persons handling it in the course of transport, storage or disposal operations notwithstanding its relative lack of toxicity. At hearing, discussions concerning talcum powder and similar types of non-toxic "fines" which nevertheless can present a potent threat to handlers if inhaled well illustrated the need for this type of mechanism to allow the Agency to keep tabs on shipment and disposal of such wastes.

One final note: the rules proposed in this Interim Request do not define the "dangerous characteristics" alluded to in Section 808.245(e), nor do they itemize which characteristics are applicable to "special handling wastes" as defined in Section 808.110 and used in Section 808.242. It may be assumed that characteristics in the nature of those listed under 808.245(c)(1),(2), and (3) would tend to constitute "dangerous characteristics" and to render an otherwise declassifiable waste a "special handling waste". However, the Board will refrain from explicitly limiting the Agency in this regard, so as to afford the Agency opportunity to consider other types of "dangerous properties" or other types of circumstances which might warrant labelling a waste as a "special handling waste".

Board Conclusions and Responses to Comments Following
its Post-Interim Request Opinion and Order

As noted on page one of this Opinion, the Board received post-Interim Request comments and JCAR questions, which the Board is responding to below. In a number of instances the Board is making certain changes to its Interim Request Order; however, the elements of that Order, as outlined on p. 12 of this Opinion remain basically unchanged.

DENR/HWRIC supports the proposal, but expressed concern in the following areas: DENR/HWRIC believes that the pH and flashpoint criteria should be used in evaluating waste hazard. The Board believes that these criteria will be evaluated by the Agency pursuant to Section 808.410, Physical and Chemical Analysis as well as Section 808.245, Classification of Wastes.

In essence, the Board intends that such parameters be evaluated as an addition to DENR/HWRIC's toxicological hazard based system. DENR also believed that IERG's "absurd results" example in an earlier comment (P.C.#11) overlooked the definition of innocuous substances; DENR/HWRIC suggested, for clarity, that a reference to this definition be included in Appendix B. We have included a paraphrase of DENR/HWRIC's recommended language (see Section 808 Appendix B. a. (6)).

DENR/HWRIC then summarized the status of its degree of hazard analysis of wastes reviewed by the Agency under its interim guidance policies. Of the 14 wastestream records sent as samples by the Agency to DENR/HWRIC, DENR/HWRIC noted they can make a determination on eight of them. Five wastestreams cannot be evaluated by DENR/HWRIC: one because the Agency deemed it not to be a waste, one because the Agency deemed it not to be a special waste, two (which were also not declassified by the Agency) because of insufficient information, and one (which was declassified by the Agency) because the information provided to DENR/HWRIC by the Agency lacks identification of the waste components. In the latter case DENR/HWRIC notes that "Essentially no data on the waste were provided in the letter of application for delisting to IEPA. Only a sample was provided. The Agency reviewed the special waste stream application in making its determination but without specific criteria or standards. If the Agency would have had the use of the degree of hazard system when (sic) then they could have had a scientifically defensible basis for making their determination." The waste at issue was thermosetting plastic. (P.C. #21, p.2.)

Also, HWRIC, in a supplemental filing (P.C. #19)* performed preliminary degree of hazard evaluations, based on the information available, for two of the eight delisting applications noted in their earlier comments. The first, evaluation, of a molding sand, supported the Agency's decision to declassify. The second evaluation, of one of 80 items listed, called "Resolve", also poses a negligible degree of hazard. The Agency did not make a final determination on the latter application.

IERG (P.C. #17), asked a series of questions aimed at showing that the regulations will place a greater burden on the generator than is presently required by the Agency, and asks if anyone has complained about the present system using Agency guidelines. In response, the Board notes that a scientifically based system for ranking the toxicology hazard component of course places a greater burden on the generator wishing to get relief; it does not follow however, that burden is therefore lacking in merit. While we are uncertain as to what "complaints" IERG might be referring to, we do note that the Board a) has

* The P.C. numbers are out of sequence because of inadvertent delay in giving a number to P.C. #21.

crafted regulatory language that meshes the Agency's guidelines and DENR/HWRIC's system, based on the merits of the information contained in the record; and b) in any event has provided a considerably firmer footing for Board review on appeal of an Agency decision.

IERG also asserts its belief that, while recognizing that the system is voluntary, the system will be seldom used because of the increased costs of the information requirements as compared to that required by the Agency pursuant to its guidelines. As an example, IERG used as an example scrap polystyrene plastic, which the Agency "delisted" based upon an application to "delist", a copy of the supplemental permit, and a sample of the special waste. We note that this waste appears to be the same as, or in a similar situation to, the thermosetting plastic wastestream which as noted in this Opinion, DENR/HWRIC complained of for having informational deficiencies. We believe that this record in this proceeding supports the need for a methodology, including the underlying information, to assess the potential degree of toxicological hazard, and that DENR/HWRIC has justified the use of its system.

The Agency in its comments strongly opposes the transitional requirement that it re-review the wastestreams it has already acted upon, asserting that this will strain its resources and has no environmental benefit. The Board disagrees. It is hardly unreasonable to require compliance with a regulation requiring a systematized toxicological review, and we also note that the manifesting relief provided in these regulations frees up sizeable Agency resources. The Board also suggests that the Agency's stated intent not to utilize its authority in the transitional rules to phase-in at the most 58 applications would seem to aggravate the straining of the resources that the Agency complains of. The Board also questions the basis for the Agency's assertion that its decisions are appropriately based on the fact that "the material did not pose an environmental or public health threat greater than that proposed by normal municipal waste" (P.C. #20, p. 2). The Agency also disagrees with the dual special waste classes (Classes A and B), asserting that the quarterly vs. annual reporting system for Class A and Class B, respectively, will cause confusion among generators, haulers and receiving facilities and is of little environmental benefit. The Board disagrees. The four part manifest will continue and we find it difficult to believe that a generator able to receive a Class B will be confused about having only to file an annual report.

The Agency next questions the use of terms like negligible, low or moderate degree of hazard in Section 808.240(a) and (b), which the Agency suggests implies that refuse or municipal waste poses a negligible degree of hazard. We note that these regulations relate to special waste and do not address the municipal waste issue. However, Section 808.240(a) has been simplified to state simply that there are Class A, Class B

special wastes and declassified wastes. We believe that the use of low or moderate degree of hazard in Section 808.240(b) is appropriate to the ranking system. The Board has added subsection (c) to Section 808.100 to make clear that declassified wastes remain subject to Board regulations governing non-special wastes.

In response to other Agency concerns, we do not see how Section 808.302(b)(5) orders the release of confidential or trade-secret material any more than would be the case in, say, a permit setting. Also, maintaining a publicly available list of data sources required in Section 808.302 is now clarified as intending that the list include sources of data and bioassay procedures previously utilized by the Agency, thus removing the implication that these are of a rulemaking nature. In response to Agency's recommendation that generators be required to submit discrepancy, reports on an annual basis and requiring annual reports in all cases, shifting such an analyses requirement would be a new burden on the regulated community beyond what is presently required in the manifest regulations, and thus is a subject matter that should be addressed in another proceeding. We also note that the quarterly reports will enable the Agency to more timely oversee compliance for potentially high hazard special wastes. We also do not believe that the Interim Request Opinion and Order was unclear about the fact that the toxic score is intended to be the first declassification screen which the waste must pass through to be eligible for ultimate declassification, based on the Board's determination that DENR/HWRIC system potential is a component of first concern. Also, the DENR/HWRIC system does indeed anticipate the availability of more information than is now available in wastestream requests, a point DENR/HWRIC made in its own comments.

The Agency also recommended definitional language for "Carcinogen" and "Mutagen". The Board does not feel that this is necessary in this particular regulation, and notes that the Agency stated that there are many and various definitions for these terms. We also note that, if a definition is to be used there is merit to explicitly utilizing the same definition as that used by USEPA. In deference to the Agency's stated concern, the Board will insert the proffered definitions in Section 808.110. The Board is also including in Section 808.410(b)(2) and (b)(3) the Agency's recommended definitions for pH and flashpoint so as to be consistent with the clarification in the Board's October 18, 1989 Opinion. In response to the Agency's proposed changes regarding the oral vs. inhalation rat issue, the Board declines to make the changes for reasons expressed by DENR/HWRIC and noted earlier in this Opinion. Also, while there was dispute over which test methodology should take precedence, the rules do provide for flexibility; in addition, paragraph (i) of Appendix B provides conversion factors for moving to an equivalent oral toxicity from other measures of toxicity based on exposure route, including inhalation and dermal routes. The

Board has also made the changes recommended for Section 808.402, which would require the generator to describe the current disposal practices of a currently produced waste; 808.520 which now deletes the 30 day "more information" limit as unnecessary, and 808.521 which adds "if any" after the words "expiration date" in subsection (f).

The Board has changed the annual Class B reporting date to October first rather than the March first date in Subsection 809.501(g) as the Agency requests. Regarding Section 808.541, the Agency is correct that it had been earlier acknowledged that the rules should not contain any language referring to motions for reconsideration before the Agency; the failure to correct this section was inadvertent and the correction has been made. Regarding Agency-recommended changes to Section 808.430, the clarification has been made in Section 808.402. Subsection 808.430(a) has added language to clarify that the underlying information or data used in the degree of hazard calculation is to be submitted by the applicant. Section 808.123 has corrected the "190 days" to 180 days, a typographical error. As a final note, the Agency did express strong support for the Board's proposal to shift from the six part to a four part manifest, and affirmed that their policy paper is reflected accurately in the Board's regulatory format.

There were a number of changes made in the proposal by the Board on its own initiative. Most of these were in the nature of corrections of typographical errors; some were made to promote internal parallelism in sentence structure or to eliminate redundancies (e.g., deletion of Sections 808.246 and 808.503). One change was made to delete a reference to the non-existent Part 810 (i.e., the former definition of "waste" in Section 808.110), consistent with the Board's First Notice Opinion, page 7. Changes of note include the following:

1. Addition of subsection 808.240(e) to include a specific reference to Subpart H;
2. Amendment of the definition of "special handling waste" in Section 808.110 and the provisions of Section 808.242 to make clear that the Agency can impose conditions on wastes in storage as well as in transport;
3. Amendment of the title and text of Sections 808.243 and 808.244 for clarity;
4. Amendment of Section 808.245(a) to clarify the standards for determining whether a test methodology is "equivalent or comparable" (and eliminating the use of these terms, which were negatively commented upon by the Agency and IERG), and to provide for a binary alternative means of showing entitlement to a toxic score of 0 (zero) where Appendix B or its equivalent under 808.431 is inapplicable or unavailable (e.g.,

waste for which there is no toxicological data or testing protocol);

5. Expansion of the "reasonably reliable" factors set forth in Section 808.302 to include bioassay procedures (necessitated by the previously-described amendments to Section 808.245); and
6. Restoration of Subsection (b) of Appendix B to its correct text as set forth in the Board's First Notice proposal. The text of the Board's order of October 18, 1989, erroneously omitted the introductory portion of this subsection, rendering it meaningless, and further erroneously included text as a subparagraph (b)(1) which related to off-specification, surplus or spoiled food products. This text was among several alternatives considered and rejected as overbroad by the Board and was never intended to be inserted in the proposal. Since no commenter made note either of this subsection's garbled text or its incongruous reference to food products, the Board assumes that no harm or prejudice occurred as a result of this error.
7. Changing of the reporting deadlines in Subsections 809.501(f) and (g) to "as mailed" rather than "as received", because of the relatively short time frame particularly for the quarterly reports.

Also, certain changes have been made in response to JCAR's preliminary questions filed October 3, 1989.

1. In Section 808.123, a sentence been added to articulate that small quantity generators can record and maintain quantities and rates of waste generated and accumulated to establish compliance with the time limit on accumulation.
2. In Section 808.402(b), the second sentence has been deleted. Appendix B is always used if a toxic score is to be calculated; Section 808.245(a) is the controlling language for alternative toxicity test methods. (see JCAR ques. #10).
3. Subpart H, Section 808.600 was created primarily to mesh the Board's Hazardous (infectious) Hospital Waste regulations from Part 809 into Part 808. We believe the Subpart should be preserved. However, the language of subsections 808.600(a) and (b) have been modified for greater clarity. (JCAR ques. #22).
4. In Section 808.110, the definition of "special waste" makes clear that the terms are derived from the Act. (JCAR ques. #4).

5. In Section 808.412, a phrase from the Board Note has been added to clarify when common names are to be used. (see JCAR ques. #16).
6. In Section 808.520, the statutory phrase in 22.9(e) regarding Agency denial of a request was inadvertently omitted. (see JCAR ques. #19).
7. In Section 808.545, the requirement was not intended as a Board Note, and has been corrected.

There were other JCAR questions that required only non-substantive edits, which were done. The rest of JCAR's questions will be responded to at Second Notice.

We also note that DCCA deferred to the "Illinois Environmental Group" for its comments.

As a final observation, the Board notes that some of the concerns regarding potential problems with using the degree of hazard system are by and large speculative. We also note that, at hearing, DENR/HWRIC offered to supply diskettes for testing the system or for other purposes to anyone who requested them; however, this record since that time contains no challenges to the system. In any event, we are persuaded that further problems, if any, will not be identified until the regulations are effective, and the generators have submitted data on which the system depends. If difficulties arise, they can then be demonstrated in another proceeding.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 808
SPECIAL WASTE CLASSIFICATIONS

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SUBPART H: CATEGORICAL AND CHARACTERISTIC WASTES

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Appendix A Assignment of Special Waste to Classes
Appendix B Toxicity Hazard

AUTHORITY: Implementing Sections 21, 22, 22.01 and 22.9, and authorized by Title VII of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1021, 1022, 1022.01, 1022.9 and 1027.)

SOURCE: Adopted in R89-13A at Ill. Reg. , effective

SUBPART A: GENERAL PROVISIONS

Section 808.100 Purpose, Scope and Applicability

- a) This Part provides a means by which persons may obtain a declassification or classification of special (non-RCRA) waste as defined in Section 808.110 based on the degree of hazard of the waste or other characteristics to assure that the waste receives appropriate handling. This Part does not apply to materials which are not special wastes as defined by the Act.
- b) This Part allows any person generating such special waste to request waste classification and prescribes procedures by which applicants may supply detailed information in order to establish the appropriate waste classification. For purposes of this Part, the term "classification" includes declassification. Waste which has been declassified shall not be deemed to be special

waste until further action to the contrary by the Agency pursuant to this Part.

- c) Special wastes that are declassified pursuant to this Part are not subject to any of the special waste hauling, disposal and reporting requirements but are still subject to other applicable Board regulations governing the transport, treatment, storage and hauling of nonspecial wastes.

Section 808.101 Transitional Rule

Wastestreams which have been declassified by the Agency pursuant to Section 22.9(c) of the Act prior to the effective date of these rules shall remain declassified for a period of not more than two years following the effective date of these rules, unless extended by the Board in a variance proceeding. In order to accommodate its workload, the Agency may by not less than 180 days' prior written notice require generators to make reapplication by a date certain within this two year time period; the Agency may extend its reapplication deadline for a period of not more than an additional 180 days but in no event may the Agency extend the deadline to a date more than two years following the effective date of these rules. Upon timely application, such wastestreams shall remain declassified during the pendency of any Agency determination or any appeal to the Board of such determination pursuant to Section 22.9(e) of the Act. As provided in Section 808.241, all special (non-RCRA) wastes shall be deemed to be Class A special wastes unless a contrary determination has been made pursuant to this Part.

Section 808.110 Definitions

"Act" means the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1001 et seq.

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

"Carcinogen" means a chemical, or complex mixture of closely related chemicals, which has been determined in accordance with USEPA Guidelines for Carcinogenic Risk Assessment (51 Fed. Reg. 33992-34003 (September 21, 1986) to have either sufficient or limited human evidence or sufficient animal evidence supporting a causal association between exposure to the chemical and an increase in incidence of benign or malignant neoplasms or substantial decrease in the latency period between exposure and onset of neoplasms.

"Declassified Waste" means a waste which has been determined pursuant to Section 808.245 to not be a special waste.

"Degree of hazard" is determined as provided in Section 808.247.

"Hazardous waste" is as defined in 35 Ill. Adm. Code 721.

"Mutagen" means a chemical, or complex mixture of closely related chemicals or ionizing radiation which has been determined in accordance with USEPA Guidelines for Mutagenic Risk Assessment (51 Fed. Reg. 34006-34012 (September 24, 1986)) to have sufficient evidence supporting a causal association between exposure to the chemical and point mutations (i.e., submicroscopic changes in the base sequence of DNA) or structural or numerical chromosome aberrations. Structural aberrations include deficiencies, duplications, insertions, inversions, and translocations, whereas numerical aberrations are gains or losses of whole chromosomes (e.g., trisomy, monosomy) or sets of chromosomes (haploidy, polyploidy).

"Special handling waste" is a declassified waste which, due to its form or mode of containment in transport or storage, presents a danger to a person handling the waste such that the person needs information about the waste to safely transport or store the waste. "Special handling waste" includes any such waste which would pose a danger if handled in a manner similar to household waste. "Dangers" include, but are not limited to, the following: fire, explosion, and emission of toxic or carcinogenic gas or dust. "Special handling waste" also includes any special waste which, because of appearance or packaging, resembles waste which would be a special handling waste. Such waste includes, but is not limited to, any special waste contained in a sealed drum. Irrespective of its degree of hazard ranking under Section 808.245, a special handling waste is a special waste.

BOARD NOTE: Section 808.244 provides that special handling waste which would otherwise be declassified is at least a Type B special waste.

"Special (non-RCRA) Waste" is any special waste not defined as a hazardous waste pursuant to Board RCRA regulations at 35 Ill. Adm. Code 721.

"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste as defined in Section 3.45 of the Act which has not been declassified pursuant to Section 808.245.

Section 808.111 Incorporations by Reference

- a) The Board incorporates the following materials by reference:

ANSI. Available from the American National Standards Institute, 1430 Broadway, New York, New York 10018, (212) 354-3300:

ANSI/ASQC C1-1985, "Specification of General Requirements for a Quality Program", approved November, 1985.

ANSI/ASQC S1-1987, "An Attribute Skip-Lot Sampling Program", approved March 6, 1987.

ANSI/ASQC Q94-1987, "Quality Management and Quality System Elements -- Guidelines", Approved June 15, 1987.

ANSI/ASQC Z1.4-1981, "Sampling Procedures and Tables for Inspection by Attributes", Approved 1981.

ANSI/ASQC Z1.9-1980, "Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming", Approved March 6, 1980.

ASTM. Available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, (215) 299-5400:

ASTM Standard D 3828-87 "Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester", approved December 14, 1987.

ASTM Standard E 896-87 "Standard Test Method for Conducting Aqueous Direct Photolysis Tests", approved September 25, 1987.

ASTM Standard E 1147-87 "Standard Test Method for Partition Coefficient (n-Octanol/Water) Estimation by Liquid Chromatography", approved February 27, 1987.

ASTM Standard E 1148-87 "Standard Test Method for Measurements of Aqueous Solubility", approved April 3, 1987

NTIS. Available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600:

"Methods for Chemical Analysis of Water and Wastes", Third Edition, March, 1983. (Document number PB 84-128677)

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication number

SW-846 "United States Environmental Protection Agency (Third Edition, November, 1986)."

- b) This Section incorporates no future amendments or editions

Section 808.121 Generator Obligations

- a) Each person who generates waste shall determine whether the waste is a special waste.

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

- b) No person shall deliver special waste to a hauler unless the waste is accompanied by a manifest as specified in Section 808.122 and the hauler has a special waste hauling permit issued pursuant to 35 Ill. Adm. Code 809. The following are exceptions to this prohibition:

- 1) The person is subject to the small quantity generator exemption of Section 808.123.
- 2) The hauler and waste are subject to a hauler exemption under 35 Ill. Adm. Code 809.211.
- 3) The Agency has determined pursuant to this Part that the waste is not a special waste.
- 4) The waste consists of municipal water or wastewater treatment plant sludge regulated under a sludge management plan approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.

- c) No person shall cause, threaten or allow the treatment, storage or disposal of special waste in Illinois except:

- 1) At a facility permitted or otherwise authorized to manage the special waste pursuant to 35 Ill. Adm. Code 703 or 807; or
- 2) At a facility owned and operated by such person and subject to the on-site disposal exemption of Section 21(d) of the Act.

- d) No person shall deliver special waste to a hauler or a permitted facility without a supplemental wastestream permit.

- e) No person shall deliver to a hauler or permitted facility waste which has been classified or declassified by the Agency pursuant to this Part unless the waste conforms with the description and characteristics in the wastestream classification determination.

Section 808.122 Manifests

If required by Section 808.121(b), the generator of any special waste shall prepare a manifest as prescribed by 35 Ill. Adm. Code 809.501 prior to shipment.

Section 808.123 Small Quantity Generators

Any person who generates a total quantity of a special waste of 100 kilograms (220 pounds) or less in any calendar month is not required to initiate a manifest when delivering such special waste to a hauler providing that such waste shall not be accumulated for more than 180 days prior to shipment. In any action to enforce the terms of this Section, the burden of proof shall be on the generator to establish compliance with the time limit on accumulation. The generator shall record and maintain the quantities and rates of waste generated and accumulated to establish compliance with such time limit.

SUBPART B: CLASSES OF SPECIAL WASTE

Section 808.240 Special Waste Classes

- a) This Subpart contains rules for the classification and declassification of special (non-RCRA) wastes. There are two classes of such special waste, "Class A" and "Class B". Wastes which are declassified pursuant to Section 808.245 of this Part shall no longer be considered special wastes.
- b) "Class A" special wastes are those special wastes which the Agency has not determined pursuant to this Part to be a Class B special waste. "Class B" special wastes are those wastes which the Agency determines pursuant to Section 808.245 of this Part pose a low or moderate degree of hazard to the environment or the public health in the course of their transportation, storage, treatment or disposal.
- c) This Subpart should be read in conjunction with the flowchart in Appendix A. The Sections of this Subpart are arranged such that the first Section which assigns a waste classification to the waste controls.
- d) Subpart D contains procedures by which a person requests that the Agency assign special wastestreams to classes.
- e) Subpart H contains waste classifications based on source or characteristics to which specific wastestreams have been assigned.

Section 808.241 Default Classification of Special Wastes

Any special (non-RCRA) is a Class A special waste unless and until demonstrated otherwise to the Agency pursuant to this Part.

Section 808.242 Special Handling Waste

The Agency may determine that, notwithstanding its degree of hazard, a declassifiable waste is a special handling waste. Any such waste shall be so identified by the Agency, together with appropriate conditions on its form and mode of containment in transport or storage. A declassifiable waste which is determined to be a special handling waste is a Class B special waste.

BOARD NOTE: This rule sets the special handling flag. A special handling waste will require manifesting regardless of the predicted degree of hazard score under Section 808.245, to protect the waste hauler, the treatment or disposal operator and their employees.

Section 808.243 Wastes Categorized by Source

- a) Subpart H identifies certain categories of wastes based on the type of source or generator and assigns them to classes.
- b) A waste which meets the criteria for inclusion within a category is a special waste of the class specified for the category.

Section 808.244 Wastes Categorized by Characteristics

- a) Subpart H identifies certain categories of waste based on their characteristics and assigns such wastes to classes.
- b) A waste which exhibits the characteristic of a category is a special waste of the class specified for such characteristics.

Section 808.245 Classification of Wastes

Special wastes which are subject to this Subpart shall be classified or declassified as follows:

- a) Compute the toxic score for the wastestream pursuant to Appendix B or, where applicable, Section 808.431, utilizing a data base which meets the standards of Section 808.302; however if use of Appendix B or Section 808.431 is demonstrated to the Agency to be inapplicable or unavailable for the wastestream, the generator may employ a bioassay procedure approved by the Agency pursuant to Section 808.302 solely for the purpose of determining if the waste in its undiluted form results

in no behavioral response from the exposed test organism, and thus warrants a toxic score of 0 (zero). Where applicable, the toxic score shall include the maximum volume of waste to which such score applies.

- b) Except as authorized under subsection (e), a wastestream receiving a toxic score of 3 shall be deemed to be a Class A special waste.
- c) Except as authorized under subsection (e), a wastestream receiving a toxic score of 1 or 2 shall be deemed to be a Class B special waste; however, such waste shall be deemed to be a Class A special waste if the Agency determines that it exhibits any of the following characteristics:
 - 1) The physical form of the waste renders it difficult to manage in transport, storage or handling prior to final disposition, or in a landfill. Examples of wastes possessing such form are wastes containing free liquids, and wastes in finely divided form which are conducive to airborne dispersal.
 - 2) The chemical properties of the waste, if exposed to the atmosphere or to an aqueous environment, render it difficult to manage in the event of a leak, spill or other inadvertent loss of containment during transport, storage or handling prior to final disposition, or in a landfill. Examples of wastes possessing such properties are wastes which produce noxious or toxic fumes or gases in sufficient concentration and quantity to pose a threat to the public health or the environment, wastes which are ignitable or flammable, wastes which are readily soluble in water, and wastes which are highly mobile in an aqueous environment, including groundwater.
 - 3) The unstable nature of the waste renders it difficult to contain during transport, storage or handling prior to final disposition, or in a landfill. Examples of wastes possessing such unstable nature are wastes which are corrosive or reactive, and any other wastes which, under foreseeable conditions, may cause the premature failure of containment devices and structures.
- d) A wastestream receiving a toxic score of 0 shall be declassified, except that such waste determined by the Agency to be a special handling waste shall be deemed to be Class B special waste.

- e) Notwithstanding a wastestream's toxic score, the Agency may condition a lowered classification or a declassification of a special waste under this Section. Such conditions shall be limited to measures by which the generator shall by particular modes or forms of containment or treatment assure that the dangerous characteristics of the wastes are avoided or reduced; however, under no circumstances shall a wastestream with a toxic score of 3 be declassified based solely upon its mode of containment. Examples of such measures are neutralization of acidic wastes prior to shipment, containment or encapsulation of finely divided wastes, and treatment of ignitable wastes so as to preclude ignition.
- f) All conditions or limitations related to the toxic score (including, where applicable, maximum wastestream volume) and classification or declassification of a wastestream shall be specified in the Agency's determination.

SUBPART C: CRITERIA AND DATA REQUIREMENTS

Section 808.300 Introduction

This Subpart governs criteria and data requirements used to predict the degree of hazard pursuant to Section 808.245.

Section 808.301 Degree of Hazard Determination by Computer

- a) The Agency may employ electronic data processing equipment and programs to accomplish the purposes of this Subpart. Any such program must assign a degree of hazard according to the method specified in Section 808.245.
- b) The program must display all data used in each degree of hazard prediction, together with the source of the data.

Section 808.302 Data Base and Bioassay Procedures

- a) This Section governs the data base and bioassay procedures which may be employed to assess the physical, chemical and toxicological properties of waste constituents.
- b) The data base, and any bioassay procedure utilized pursuant to subsection (a) of Section 808.245, shall consist of and use data and procedures which the Agency determines are reasonably reliable as a basis for decision. Reasonable reliability of a source of data and procedures shall be assessed by reference to factors including, but not limited to, scientific validity, consistency with directly observable data, including

monitoring data, and the consistency of results of repeated applications of data, procedures and formulae. Such sources include, but are not limited to the following:

- 1) Standard reference sources;
 - 2) Material published or incorporated by reference by a federal regulation or by a regulation adopted by an agency of the State of Illinois;
 - 3) The application under consideration and any written communications between the applicant and the Agency or their representatives with respect to the application;
 - 4) Data and procedures previously used by the Agency in other wastestream categorization determinations;
 - 5) Agency inspection, permitting and enforcement files relating to the generator or the wastestream, excluding complaint forms except where the complainant will be available voluntarily for deposition and examination under oath at any hearing on appeal pursuant to Subpart G.
- c) The Agency shall make available for inspection and copying by the public a list of the sources of data and bioassay procedures which it has previously utilized for purposes of this Section, excluding any data described in subsection (b)(3) of this Section.

SUBPART D: REQUEST FOR WASTE CLASSIFICATION

Section 808.400 Introduction

- a) This Subpart specifies the procedures used to obtain a waste classification from the Agency.
- b) Waste classification may be requested by generators of special waste as specified in Subpart A.

Section 808.401 Application Forms

Persons applying for waste classification shall use application forms provided or approved by the Agency.

Section 808.402 Application for Waste Classification

An application for waste classification shall, at a minimum, include the following information:

- a) Basic information.

- 1) The name, address and phone number of the original generator.
- 2) The original generator's United States Environmental Protection Agency (USEPA) identification number (35 Ill. Adm. Code 722.122) and the Agency identification number, if the original generator has already obtained either.
- 3) The name and address of any treater of the waste.
- 4) Any treater's USEPA identification number and Agency site number.
- 5) Whether any treater has a RCRA permit or interim status.
- 6) A chemical and physical analysis as specified in Section 808.410.
- 7) A wastestream description as specified in Section 808.413.
- 8) A quality assurance plan as specified in Section 808.420.
- 9) A description of any current waste storage, treatment and disposal processes applicable to the wastestream.
- 10) Identification of the disposal site or sites to which the applicant proposes to send the waste and the proposed modes of transportation.

BOARD NOTE: This information is requested to assist the Agency in reviewing the application. These rules do not preclude use of a disposal site which is not identified in the application for classification.

- 11) Wastestream number of any supplemental wastestream permit issued for the waste pursuant to 35 Ill. Adm. Code 807.210, and the expiration date of any such permit.
- b) The rationale for requesting classification, including all relevant calculations and other bases for conclusions. If Appendix B of this Part has not been utilized for purposes of calculating the toxic score, such rationale shall indicate the reasons for using an alternative means of determining the toxic score, including an explanation as to whether the alternative means chosen is equivalent to Appendix B.

- c) Data establishing that the waste is not a hazardous waste pursuant to 35 Ill. Adm. Code 721.

BOARD NOTE: Wastestream categorization is not applicable to RCRA hazardous waste. If the generator anticipates that this will be an issue, the generator should include documentation supporting the claim that the waste is not a hazardous waste pursuant to 35 Ill. Adm. Code 721.

- d) Data bearing on whether the waste is a special handling waste, including the physical form of the waste and the mode of containment, if any, during transport.
- e) Whether the waste can be categorized by source pursuant to Section 808.243 or by characteristic pursuant to Section 808.244.
- f) Sufficient physical, chemical and toxicological data to assign a degree of hazard pursuant to Section 808.430.
- g) If necessary, results of toxicological testing as specified in Section 808.431.
- h) Such additional information as the generator believes is appropriate to show that the waste should be classified as the generator requests.
- i) Such additional information as the Agency determines is necessary for it to assign the waste to a class. The Agency may specify additional information by a request directed to the individual applicant.

Section 808.410 Physical and Chemical Analysis

Physical and chemical analysis of wastes for purposes of this Subpart shall be as follows:

- a) Samples shall be representative of the wastestream and shall:
 - 1) include all waste phases;
 - 2) be taken from areas distributed spatially within the waste bulk; and
 - 3) be taken at suitable time intervals and over sufficient period of time to account for variation in the wastestream through work shifts, seasons, etc.
- b) The following properties shall be determined and reported:

- 1) The physical description of the wastestream, including, but not limited to, its temperature, color, phase and flowrate;
 - 2) The pH of aqueous phases of the waste or the pH of a 1:1 volume dilution of solid phases of the waste with distilled and buffered water;
 - 3) The flashpoint of liquid phases by the Pennsky-Martens Closed Cup test method specified in ASTM Standard D-93-79 of D-93-80, or by a Setaflash Closed Cup tester, using the test method specified in ASTM standard D-3278-78;
 - 4) Results of an EP toxicity test as specified in 35 Ill. Adm. Code 721.124; and
 - 5) Density.
- c) The waste shall be analyzed for its constituents as follows;
- 1) The analysis must include all materials introduced into each process generating the wastestream, and all materials which come into contact with products and materials produced by the process or in storage including end products and impurities;
 - 2) The analysis must include all constituents which will react with each other under the process conditions;
 - 3) If available, the analysis must use the Chemical Abstracts Service (CAS) name and number for each constituent, or a name from the list of common names pursuant to Section 808.412. Otherwise, the person requesting classification shall provide a name and complete description of the constituent;
 - 4) The analysis shall include a list of major constituents and concentrations which accounts for at least 99% of the mass of the waste. The list may include an entry for "other" or "unknown", if the significant trace constituents have been identified as provided for in subsection (c)(5) of this Section. The analysis shall list major constituents of the waste rounded to the nearest tenth of a percent, and shall be supported by a mass balance;
 - 5) Significant trace constituents. The generator shall include a list and the concentration of all significant trace constituents as defined in Section 808.411; and

- 6) The analysis shall identify all major constituents and significant trace constituents as are listed in 35 Ill. Adm. Code 721. Appendix H.
- d) The analysis must report the average concentration or percentage mass value and the expected range of each major constituent and significant trace constituent. The expected range must predict the interval within which 95% of analyses for the constituent are expected to fall. The error analysis must take into account the following:
 - 1) Temporal variation in the wastestream properties;
 - 2) Uncertainties arising from sampling the waste; and
 - 3) Uncertainties arising from the method of analysis.

Section 808.411 Significant Trace Constituents

A significant trace constituent is a constituent revealed by analysis:

- a) Which is present at a concentration percentage mass less than 1%; and,
- b) Which has a toxicity, BiTi, as determined in Appendix B, less than 500 mg/l.

Section 808.412 Common Names

The Agency shall utilize common names, together with a description of each, for constituents not amenable to chemical nomenclature.

BOARD NOTE: The purpose of this provision is to promote greater consistency in the naming of constituents. The Agency may use this mechanism to assign common names to constituents. Suggested names include: Sand, water, wood, foodstuff. In addition, this mechanism can be used to assign a name and toxicological properties to complex mixtures after these have been determined for a wastestream or a type of waste-generating process.

Section 808.413 Wastestream Description

- a) The wastestream description must include the following:
 - 1) The name of the generator if other than the original generator identified in Section 808.402(a)(1);
 - 2) The name of the wastestream as assigned by the Agency under Section 808.412, or as assigned by the

generator if no name has been assigned by the Agency;

- 3) A general description of the activity, production process or treatment process which gives rise to the waste;
- 4) A general description of the physical and chemical properties of the wastestream including anticipated annual volume.

BOARD NOTE: This description may be summary and narrative; detailed description of physical and chemical properties of the wastestream is governed by Section 808.410.

- b) The wastestream description may include a description of a range of physical and chemical properties of the wastestream based on physical and chemical analysis pursuant to Section 808.410, associated with periodic, occasional or anticipated changes in the process which produces the waste (e.g., changes in materials used as coatings, bonding agent or solvents).

BOARD NOTE: The wastestream description differs from the waste analysis discussed above. The wastestream description should describe the waste which the applicant wishes to have classified, which may not be exactly what the applicant presently produces. The waste which is subjected to analysis must fit within the wastestream description, but need not be identical to all permutations of it. To avoid having to necessarily repeat the waste classification process, the applicant should request classification of a broadly-defined and characterized wastestream so as to cover any periodic, occasional or anticipated modification to the waste properties. However, this will tend to increase the degree of hazard ranking of the wastestream.

Section 808.420 Quality Assurance Plan

A quality assurance plan shall detail steps which the generator will take to ensure that waste conforms with the wastestream description.

- a) The plan must include employee orientation measures, such as the following:
 - 1) Assignment of responsibility for assuring compliance;
 - 2) Employee training;
 - 3) Work rules;

- 4) Posting of signs;
 - 5) Positioning of waste receptacles.
- b) The plan must include periodic and random inspection, sampling and analysis of the wastestream to ensure that it conforms with the wastestream description. The plan must be designed so that there is at least a 95% probability that loads meet the wastestream description. The plan may specify measures to be taken to account for variables in the properties by the wastestream so as to prevent false negatives.

BOARD NOTE: The applicant should use statistical quality control to devise a plan with an inspection schedule which meets the above standard based on the properties and variability of the wastestream.

- c) The plan may provide for inspection, sampling and analysis by the permitted facility which receives the waste. If so, the plan must include a written agreement by the receiving facility detailing what it will do.

BOARD NOTE: The permitted facility is required by permit and by 35 Ill. Adm. Code 811 to inspect, sample and analyze wastes it receives. This is distinct from similar activities undertaken by contract on behalf of the generator pursuant to this Section.

Section 808.430 Degree of Hazard Data

- a) The applicant shall include its degree of hazard prediction, including the estimated toxic score, as well as the information or data used to calculate the prediction with the application.

BOARD NOTE: The applicant may include the results of a degree of hazard prediction performed by a computer program.

- b) The Agency may request additional data if necessary to assign the waste to a class and the application contains inadequate information to determine the degree of hazard of the waste.

BOARD NOTE: If the Agency requests data, the request may include a computer-generated result of an attempt to perform the degree of hazard prediction, with a specific request for needed data.

- c) Degree of hazard data shall include sufficient information to classify the waste pursuant to Section 808.245. The data includes, but is not limited to, the following with respect to each constituent, in addition

to the information normally present in the physical and chemical analysis above:

- 1) Toxicity;
- 2) n-Octanol/water partition coefficient;
- 3) Persistence, measured as the half-life in days; and
- 4) Solubility in water in parts per million on a weight basis.

Section 808.431 Toxicological Testing

- a) The applicant shall elect to include the results of toxicological testing of either the components of the waste or the waste itself.
- b) Except as otherwise authorized by subsection (a) of Section 808.245, the Agency shall request that the applicant perform toxicological testing of components or of the waste pursuant to Appendix B of this Part if a toxic score determination is necessary to assign the waste to classes and the Agency concludes that there is not adequate information in its data base to determine the toxic score.
- c) Testing required under subsection (b) of this Section shall be to determine an LD50 - oral rat. The Agency shall approve alternative toxicological testing if the applicant demonstrates why an LD50 - oral rat cannot be measured or is inapplicable. The applicant shall document the relation of the chosen parameter to an LD50 - oral rat.

SUBPART E: REVIEW OF CLASSIFICATION REQUESTS

Section 808.501 Order of Requesting Information

- a) If possible, the Agency shall categorize the wastestream without requesting or using degree of hazard data pursuant to Section 808.430. Nothing herein shall preclude the Agency from requesting or using degree of hazard data to confirm the characteristics of the waste.

BOARD NOTE: For example, if the waste is a categorical waste, it should be assigned to the type for that category without resort to degree of hazard data.

- b) If after requesting and receiving degree of hazard data pursuant to Section 808.430, the Agency still cannot determine the degree of hazard, the Agency shall request toxicological testing pursuant to Section 808.431.

Section 808.502 Completeness

- a) An incomplete application is one which has insufficient information to classify the waste, including the lack of degree of hazard data or toxicological testing, if necessary.
- b) If the Agency determines that an application is incomplete, it shall classify the waste as a Class A special waste unless the Agency determines, based on such information as may be available, that the waste is a RCRA hazardous waste pursuant to 35 Ill. Adm. Code 721. However, if the applicant waives the decision period specified by Section 808.520, the Agency may hold an application pending receipt of additional information.

SUBPART F: WASTESTREAM CLASSIFICATION DETERMINATIONS

Section 808.520 Time for Agency Action

- a) The Agency shall issue a wastestream classification determination within 60 days after the date of receipt of a complete application.
- b) The applicant may waive the time for Agency action.
- c) As provided in Section 22.9(e) of the Act, IF THE AGENCY DENIES A REQUEST OR FAILS TO ACT WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST, THE APPLICANT MAY SEEK REVIEW BEFORE THE BOARD PURSUANT TO SECTION 40 OF THE ACT AS IF THE AGENCY HAD DENIED AN APPLICATION FOR A PERMIT.

Section 808.521 Conditions of Wastestream Classification

The Agency shall include the following conditions in each wastestream classification determination:

- a) Wastestream description.
- b) Wastestream identification number assigned to the specific determination.
- c) Classification of the special waste.
- d) Limitations on the management of the waste consistent with this Part, and 35 Ill. Adm. Code 809.
- e) Quality assurance plan.
- f) Expiration date, if any.

- g) Such additional conditions as the Agency determines are necessary to assure that waste managed pursuant to the classification determination is of the class specified.

Section 808.522 Final Agency Action

Final Agency action shall consist of a final determination of a wastestream classification request. The Agency takes final action on the date the wastestream classification determination is mailed to the applicant.

SUBPART G: MODIFICATION, APPEAL AND ENFORCEMENT

Section 808.541 Request for Modification

If the application is a request for modification of a previous final wastestream determination, the new determination is stayed and the applicant shall continue to manage waste pursuant to the old determination.

Section 808.542 Appeal

- a) Within 35 days after the Agency's final action, the applicant may appeal a wastestream classification determination to the Board: Appeals under this section shall be subject to the requirements applicable to permit appeals pursuant to 35 Ill. Adm. Code 105.
- b) The record before the Board consists of the data base which was considered by the Agency at the time the Agency took final action. The applicant may supplement the record before the Board only under one or more of the following conditions:
 - 1) If the applicant attempted to place the information into the data base before the Agency.

BOARD NOTE: This provision is intended to prevent the use of appeals to challenge the validity of degree of hazard data through the introduction of new information without the Agency having the opportunity to reconsider.

- 2) If the data base filed by the Agency is not complete with respect to materials identified in subsection (b)(3) of Section 808.302.

Section 808.543 Effect of Classification

A wastestream classification provides the generator with a determination necessary to obtain a wastestream identification number or to obtain a modification to a supplemental wastestream permit, which in turn is necessary for completion of manifests and reports required by this Part, 35 Ill. Adm. Code 809 and

807. The wastestream classification authorizes the generator, hauler and permitted facility to transport and manage waste meeting the wastestream description in accordance with regulations governing the transportation and management of special waste of the class provided in the classification determination.

Section 808.544 Enforcement

Any person may bring an enforcement action pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103. Penalties are as provided in Title XII of the Act. Sanctions include revocation of a wastestream classification determination.

Section 808.545 Modification

- a) A generator who has received a wastestream classification may request modification at any time by filing a new application. The generator shall file a new application at the time the waste the generator produces no longer meets the wastestream description.
- b) The Agency shall modify a wastestream classification to reflect changes in the Act or Board regulations. The Agency shall give the generator at least 30 days prior written notice before it modifies the wastestream classification.

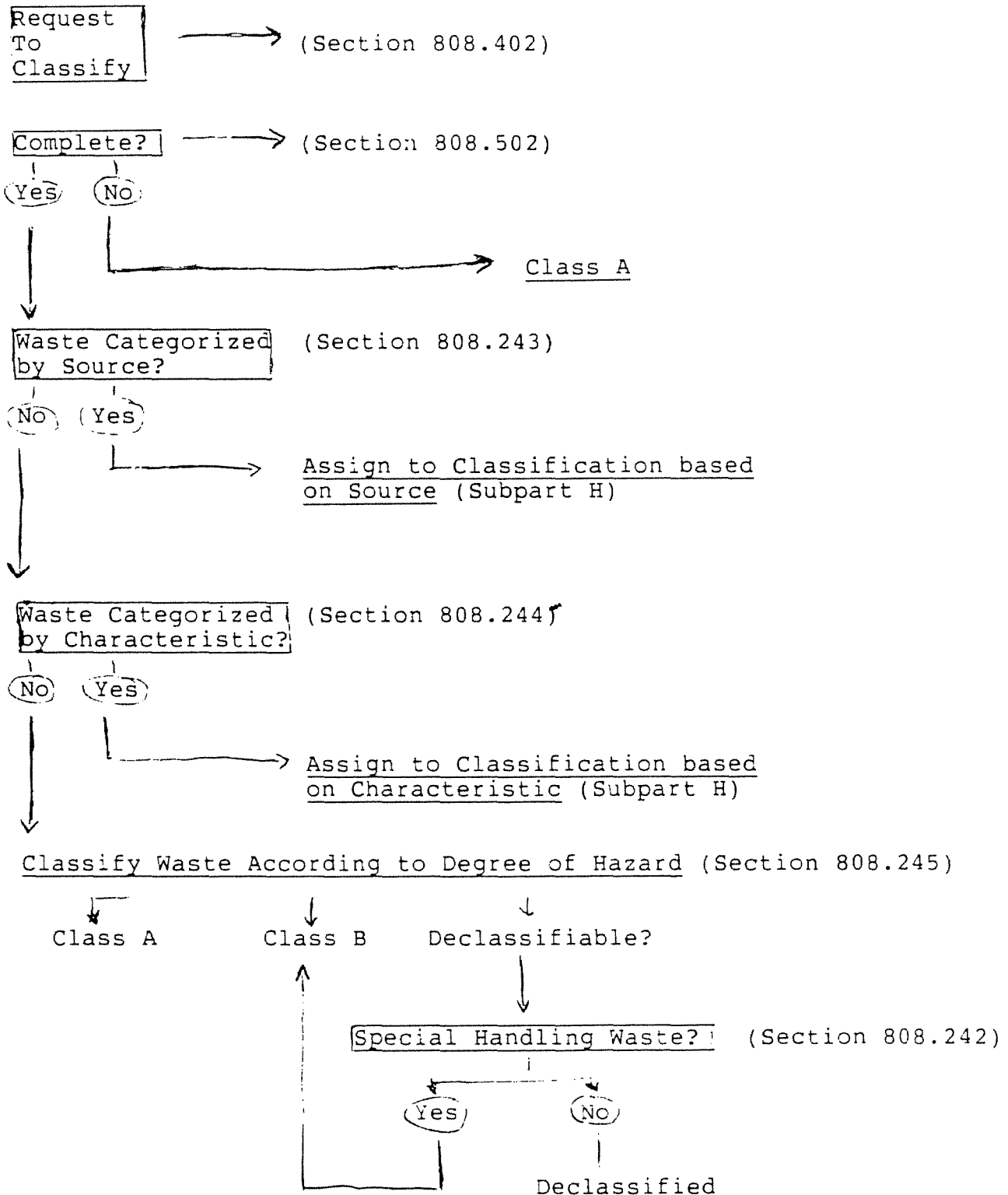
SUBPART H: CATEGORICAL AND CHARACTERISTIC WASTES

Section 808.600 Introduction

- a) This Subpart defines "categories of wastes" by the type of source or generator producing the waste, by the process from which the waste arises or by name. This Subpart also defines categories of wastes based on its "characteristics wastes" based on physical or chemical properties of the waste.
- b) Categorical and characteristic Special (non-RCRA) wastes are assigned to a category defined under this Subpart special waste classification based on the similarity of the physical, chemical or biological properties of the wastes to those properties representative of that category their general properties, regardless of the degree of hazard of individual wastes or wastestreams.

Section 808.601 (Reserved)

Section 808.Appendix A: Assignment of Special Waste to Classes



Section 808. Appendix B Toxicity Hazard

- a) The wastestream equivalent toxic concentration is calculated as follows:

$$C_{eq} = A \text{ SUM}(C_i / B_i T_i)$$

where:

- 1) SUM means the sum of the results of the calculation in parentheses for each component of the wastestream.
- 2) C_i is the concentration of component i as a percent of the waste by weight.
- 3) T_i is a measure of the toxicity of component i , as provided in paragraph (h).
- 4) A is a constant equal to 300.

BOARD NOTE: A is a constant used to allow the entry of percent values for C_i , and to adjust the results so that a reference material, 100% copper sulfate, with an oral toxicity of 300 mg/kg, achieves an equivalent toxicity of 100. Under the following paragraphs, 100 kg/month of the reference material has a "toxic amount" of 10,000, defining the borderline between a "toxic score" of 2 or 3 for a small quantity generator.

- 5) B_i is a conversion factor used to convert toxicities (T_i) to equivalent oral toxicities. B_i is determined from paragraph (i).
- 6) Innocuous substances as defined at subsection considered (j)(1) of this Appendix shall be in calculating C_{eq} .

- b) The toxic amount, M , is calculated as follows:

$$M = S C_{eq}$$

where:

- 1) S is the maximum size of a wastestream shipment in kg/month. Such maximum size shall be specified as a condition of the wastestream classification.
- 2) C_{eq} is the equivalent concentration from paragraph (a).

- c) The toxic score is calculated as follows:

- 1) If the toxic amount is less than 100, the toxic score is 0.
 - 2) If the toxic amount is greater than or equal to 100 and less than 1000, the toxic score is 1.
 - 3) If the toxic amount is greater than or equal to 1000 and less than 10,000, the toxic score is 2.
 - 4) If the toxic amount is greater than or equal to 10,000, the toxic score is 3.
- d) The toxic score shall be used as follows:
- 1) If the toxic score is 0 or 3, the toxic score shall be used in Section 808.245 without adjustment.
 - 2) If the toxic score is 1 or 2, the toxic score shall be adjusted based on environmental fate pursuant to paragraphs (e),(f) and (g) of this Appendix.
- e) The environmental fate score (F) is calculated as follows:
- $$F = \text{SUM}(C_i L_i)$$
- where:
- 1) SUM means the sum of the results of the calculation in parentheses for each component of the wastestream.
 - 2) C_i is the concentration of component i as a percent of the waste by weight.
 - 3) L_i is the environmental level of the component as determined by paragraph (j)
- f) The toxic score is adjusted as follows:
- 1) If the environmental fate score (F) is less than 100, subtract 1 from the toxic score.
 - 2) If the environmental fate score is greater than or equal to 100 and less than 200, the toxic score is not modified.
 - 3) If the environmental fate score is greater than or equal to 200, add 1 to the toxic score.
- g) Return to Section 808.245 with the toxic score or adjusted toxic score.
- h) Sources of toxicity data.

- 1) The generator is required to provide information to substantiate that any waste is other than a type A waste.
 - 2) Carcinogens and mutagens. If available, use a TD50 oral rat. Otherwise:
 - A) Carcinogens are assigned a Ti of 0.1 mg/kg; and
 - C) Mutagens are assigned a Ti of 0.6 mg/kg.
 - 3) The best toxicity value is selected according to the following criteria.
 - A) Toxicities are converted to equivalent oral toxicities as specified in paragraph (i).
 - B) Toxicity values are ranked by source according to the following priorities, with the better sources listed first.
 - i) Oral rat; inhalation rat; dermal rabbit; or, aquatic toxicity.
 - ii) Other mammalian toxicity values.
 - C) If there is more than one value for the toxicity from the best available source, the lowest (most toxic) equivalent oral toxicity value is used.
- i) Conversion factors for equivalent oral toxicities (Bi):
- | <u>Toxicity measure</u> | <u>Units</u> | <u>Bi</u> |
|------------------------------|--------------|-----------|
| Oral - LD50 | mg/kg | 1. |
| Carcinogen/mutagen -- TD50 | mg/kg | 1. |
| Aquatic - 48 or 96 hour LC50 | ppm | 5. |
| Inhalation - LC50 | mg/l | 25. |
| Dermal - LD50 | mg/kg | 0.25 |
- 1) If a carcinogen or mutagen is assigned a value for Ti in the absence of a TD50, Bi is assigned a value of 1.
- j) Environmental levels (Li). If the component is innocuous, Li is equal to 0. Otherwise, Li for a component is the highest level for that component in the following table, based on bioaccumulation, persistence

and solubility. If a value is on the boundary between ranges, the higher value of Li is used.

<u>Bioaccumulation</u>		<u>Persistence</u>		<u>Solubility</u>		<u>Li</u>
<u>Min.</u>	<u>Max.</u>	<u>Min.</u>	<u>Max.</u>	<u>Min.</u>	<u>Max.</u>	
5	---	365	---	10,000	---	3
4	5	30	365	1000	10,000	2
0	4	0	30	0	1000	1

- 1) "Innocuous" components are those for which BiTi, as determined in paragraph (a), is greater than 5000mg/kg.
 - 2) Bioaccumulation is measured as the logarithm to the base 10 of the n-octanol/water partition coefficient for the constituent, measured according to ASTM E 1147, incorporated by reference in Section 808.111.
 - 3) Persistence is determined as provided in paragraph (k).
 - 4) Solubility is measured as parts per million on a weight basis. Solubility may be measured according to the method described in ASTM E 1148, incorporated by reference in Section 808.111.
- k) Persistence. If available, a value for persistence measured as provided in subsection (k)(1) must be used. Otherwise, the table of subsection (k)(2) must be used.
- 1) Persistence must be measured according to the method described in ASTM E 896, incorporated by reference in Section 808.111.
 - 2) Persistence may be estimated using the following table. Constituents which fit into more than one category have the longest half life indicated.

Type of Compound or Material	Half Life (days)
Metal, metal oxide or inorganic oxide	366
Inorganic salts	366
Asbestos	366
Clay	366
Plastics or polymers	366
Pesticides	366

Halogenated hydrocarbons	366
Polyaromatic hydrocarbons and biphenyls	366
Phthalate esters	366
Paper products	366
Fats, oils and greases	366
Resins and pigments	366
Aromatic and alicyclic hydrocarbons	31
Aliphatic hydrocarbons	
More than 10 carbons	31
10 carbons or less	1
Not otherwise listed	366

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 809
SPECIAL WASTE HAULING

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Appendix A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 10, 13 and 22 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111-1/2, pars. 1005, 1010, 1013, 1022, and 1027).

SOURCE: Adopted at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment at 4 Ill. Reg. 34, p. 214, effective August 7, 1980 for a maximum of 150 days; emergency amendment at 5 Ill. Reg. 270, effective January 1, 1981 for a maximum of 150 days; amended at 5 Ill. Reg. 6384, effective May 28, 1981; amended at 5 Ill. Reg. 6378, effective May 31, 1981; codified at 7 Ill. Reg. 13640, effective September 30, 1983.; recodified from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at Ill. Reg. , effective

SUBPART A: GENERAL PROVISIONS

Section 809.103 Definitions

"Act" means the ~~Illinois~~ Illinois Environmental Protection Act (Ill. Rev. Stat. ~~1981~~1987, ch. 111-1/2, pars. 1001, et seq.).

"Agency" means the Illinois Environmental Protection Agency. "Board" means the Illinois Pollution Control Board.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or special waste into or on any land or water so that such waste or special waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. (See "Waste", "Special Waste").

"Garbage" means the waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage and sale of produce (see "Waste").

"Hazardous Waste" means a waste, or combination of wastes, which because of quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential threat to human health or to the environment when improperly treated, stored, transported or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. or pursuant to Agency guidelines consistent with the requirements of the Act and Board regulations.

"Industrial Process Waste" means any liquid, solid, semi-solid or gaseous waste, generated as a direct or indirect result of the manufacture of a product or the performance of a service, which poses a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Industrial Process Waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes, core sands, metallic dust sweepings, asbestos dust, hospital pathological wastes and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.

"Manifest" means the form provided or prescribed by the Agency and used for indentifying name, quantity, and the origin, routing, and destination of special waste during its transportation from the point of generation to the point of disposal, treatment, or storage, as required by this Part, 35 Ill. Adm. Code: Subtitle H, or by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., or regulations thereunder.

"Permitted Disposal Site" means a sanitary landfill or other type of disposal site including but not limited to a deep well, a pit, a pond, a lagoon or an impoundment which has a current, valid operating permit issued by the agency under Subpart B of this Part and a supplemental permit issued by the Agency under Subpart B of this Part specifically permitting the site to accept a special waste tendered for disposal.

"Permitted Storage Site" means any site used for the interim containment of special waste prior to disposal or treatment which has a current, valid operating permit issued by the Agency under Subpart B of this Part and a supplemental permit issued by the Agency under Subpart B of this Part, specifically permitting the site to accept a special waste tendered for storage.

"Permitted Treatment Site" means any site used to change the physical, chemical or biological character or composition of any special waste, including but not limited to a processing center, a reclamation facility or a recycling center which has a current, valid operating permit issued by the Agency under Subpart B of this Part and a supplemental permit issued by the Agency under Subpart B of this Part, specifically permitting the site to accept a special waste tendered for treatment.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity or their legal representative, agent or assignee.

"Pollution Control Waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution Control Waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, scrubber sludges and chemical spill cleanings.

"Reclamation" means the recovery of material or energy from waste for commercial or industrial use.

"Refuse" means any garbage or other discarded materials, with the exception of radioactive materials discarded in accordance with the provisions of the Ill. Rev. Stat., 1981, Ch. 111-1/2, par. 211-229 and 230.1-230.14 as now or hereafter amended (see "Waste").

"Septic Tank Pumpings" means the liquid portions and sludge residues removed from septic tanks.

"Site" means any location, place or tract of land and facilities used for collection, storage, disposal or treatment of special waste.

"Solid Waste" (see "Waste").

"Special Waste" -means any "hazardous waste," "industrial process waste" or "pollution control waste"-is as defined in 35 Ill. Adm. Code 808.110. Special waste may be either "class A" or "class B" pursuant to 35 Ill. Adm. Code 808.245.

"Special Waste Hauler" means any person who transports special waste from any location.

"Spill" means any accidental discharge of special waste.

"Storage" means the interim containment of special waste prior to disposal or treatment.

"Tank" means any bulk container placed on or carried by a vehicle to transport special waste, including wheel mounted tanks.

"Treatment" means any method, technique or process including neutralization designed to change the physical, chemical or biological character or composition of any special waste so as to neutralize that waste or so as to render that waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of special waste to render it less dangerous or nonhazardous. "Treatment" also includes reclamation, re-use and recycling of special waste.

"Truck" means any unitary vehicle used to transport special waste.

"Truck Tractor" means any motor vehicle used to transport special waste which is designed and used for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Vehicle" means any device used to transport special waste in bulk or in packages, tanks or other containers.

"Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities.

"Waste" as here defined does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or in industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; or radioactive materials discarded in accordance with the provisions of Illinois Revised Statutes, 1981, Chapter 111-1/2, par. 230.1 et seq. approved August 16, 1963, as now or hereafter amended, and as authorized by regulations promulgated pursuant to the "Radiation Protection Act," Ill. Rev. Stat., 1981, Ch. 111-1/2, par. 211 et seq; as now or hereafter amended. "Waste" as here defined is intended to be consistent with the definition of "solid waste" set forth in Section 1004(27) of Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

SUBPART B: SPECIAL WASTE HAULING PERMITS

Section 809.211 Exemptions for Special Waste Haulers

The following persons need not obtain a special waste hauling permit or carry a manifest if they haul only the waste indicated:

- a) Any person licensed in accordance with the Private Sewage Disposal Licensing Act, Ill. Rev. Stat., - 1981, Ch. 111-1/2, par. 116.301 et seq., and who hauls only septic tank pumpings- need not obtain a special waste hauling permit or carry and complete a manifest under this Part-.
- b) Any person who hauls only livestock waste intended for land application pursuant to -Agency Guideline WPE-2 need not obtain a special waste hauling permit or carry and complete a manifest under this Part- 35 Ill. Adm. Code 560.
- c) -Generators and h-Haulers of municipal water or wastewater treatment plant sludge which is to be applied to land and which is -to be -regulated under -35 Ill- Adm- Code- Subtitle E pursuant to -a sludge management scheme approved by the Agency pursuant to 35 Ill. Adm. Code 309.208-need not obtain a special waste hauling permit or prepare, carry and complete a manifest under this Part for that sludge-
- d) Any person licensed in accordance with "An Act in relation to the Disposal of Dead Animals," Ill. Rev. Stat., -1981, Ch.-1987, ch. 8, par. 149.1 et seq., and who hauls only grease, meat packing scraps, dead animals and parts of animals for delivery to a renderer- need not obtain a special waste hauling permit or carry and complete a manifest under this Part-.

- e) Any person operating under rules and regulations adopted pursuant to "An Act in relation to Oil, Gas, Coal and Other Surface and Underground Resources," Ill. Rev. Stat., ~~1981, Ch. 1987, ch. 96-1/2, par. 5401 et seq.,~~ and who hauls only oil and gas extraction wastes as defined ~~therein need not obtain a special waste hauling permit or carry and complete a manifest under this Part-~~ in that Act.
- f) Any person who hauls only radioactive wastes as defined by the Radiation Protection Act, Ill. Rev. Stat., ~~1981, Ch. 1987, ch. 111-1/2, par. 211 et seq.-7~~ need not obtain a special waste hauling permit or carry and complete a manifest under this Part-
- g) Any person holding a permit or certificate issued by the Illinois Commerce Commission or the Interstate Commerce Commission and who handles only shipments pursuant to a bill of lading in accordance with such Commission's regulations- need not obtain a special waste hauling permit or carry and complete a manifest under this Part-
- h) Any person who hauls only coal combustion fly ash- need not obtain a special waste hauling permit or carry and complete a manifest under this Part-.
- i) Any person who hauls only declassified waste or refuse.
- j) Any person who hauls only special waste exempted by 35 Ill. Adm. Code 808.123 (small quantity generators).

(Source: Repealed Ill. Reg. ,
effective)

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section 809.501 Manifests, Records, Access to Records, and Reporting Requirements and Forms

- a) Any person who delivers special waste to a permitted special waste hauler shall complete a manifest to accompany the special waste from delivery to the destination of the special waste. The manifest which shall be provided or prescribed by the Agency shall, as a minimum, contain the name of the generator of the special waste; when and where generated; name of the person from whom delivery is accepted and the name of the site from which delivered; the name of the special waste hauler; the date of delivery; the final disposal, storage or treatment site; and the name, classification and quantity of the special waste delivered to the hauler. The Agency may provide or prescribe a different

form of manifest for Class A special wastes than for Class B special wastes.

- b) The manifest shall consist of four parts, in contrasting colors, such that an entry or signature on one part will be directly reproduced upon all underlying parts. The top part of the manifest shall be signed by the person who delivers special waste to a special waste hauler, such signature acknowledging such delivery. The top part of the manifest shall also be signed by the special waste hauler, such signature acknowledging receipt of the special waste. The person who delivers special waste to a special waste hauler shall send one copy of the manifest signed by the deliverer and the special waste hauler to the Agency within two working days and shall retain one copy the top part of the manifest as a record. The remaining four copies three parts of the manifest shall accompany the special waste shipment. At the destination, the second part of the manifest shall be signed by the person who accepts special waste from a special waste hauler, such signature acknowledging acceptance of the special waste.
- c) A permitted site which receives special waste for disposal, storage or treatment of special waste must be designated on the manifest as the final destination point. Any subsequent delivery of the special waste or any portion or product thereof to a special waste hauler shall be conducted under a manifest initiated by the permitted disposal, storage or treatment site.
- d) In all cases, the special waste hauler shall deliver the third and fourth parts three copies of the complete, signed manifest to the person who accepts delivery of special waste from the hauler. The special waste hauler shall retain the second part one copy of the completed, signed manifest as a record of delivery to a permitted disposal, storage or treatment site. In addition, at the end of each month, or such longer period of time approved by the Agency, the owner and the operator of the permitted disposal, storage or treatment site who accepts special waste from a special waste hauler shall submit a copy of each completed, signed manifest received during that period to the Agency, and shall send the fourth part one copy of the completed manifest to the person who delivered the special waste to the special waste hauler.
- e) Every person who delivers special waste to a special waste hauler, every person who accepts special waste from a special waste hauler and every special waste hauler shall retain a copy their respective parts of the special waste manifest as a record of all special waste transactions. These copies parts shall be retained for

three years and shall be made available at reasonable times for inspection and photocopying by the Agency.

BOARD NOTE: The manifest requirements of 35 Ill. Adm. Code 722, 724 and 725 relative to RCRA hazardous wastes are not affected by this subsection. Generators and receiving facilities subject to those Parts shall continue to supply copies of all manifests to the Agency.

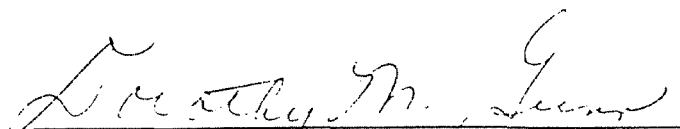
- f) Every person who delivers Class A special waste to a special waste hauler, and every person who accepts Class A special waste from a special waste hauler shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar quarter. Such reports shall, at a minimum, include the information specified in subsections (h) and (i) of this Section and be mailed no later than the tenth day of the month following the end of the calendar quarter. This subsection shall be applicable to all Class A special wastes which are delivered to a special waste hauler on or after January 1, 1990.
- g) Every person who delivers Class B special waste to a special waste hauler, and every person who accepts Class B special waste from a special waste hauler shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding year, ending on August 1. Such reports shall, at a minimum include the information specified in subsection (h) of this Section and shall be mailed no later than October 1, i.e. two months following the end of the preceding year. This subsection shall be applicable to all Class B special wastes which are delivered to a special waste hauler on or after January 1, 1990.
- h) Every quarterly or annual report required to be filed with the Agency by a generator pursuant to subsection (f) or (g) of this Section shall include the following:
- 1) The IEPA identification number, name and address of the generator;
 - 2) The period (calendar quarter or year) covered by the report;
 - 3) The IEPA identification number, name and address for each off-site treatment, storage or disposal facility in the United States to which waste was shipped during the period;
 - 4) The name and IEPA identification number of each transporter used during the period for shipments to a treatment, storage or disposal facility within the United States;

- 5) The IEPA supplemental permit identification number issued for the wastestream shipped off-site;
 - 6) The total quantity of each wastestream shipped off-site, listed by IEPA identification number of each receiving site; and
 - 7) A certification signed by the generator or the generator's authorized representative.
- i) Every quarterly or annual report required to be filed with the Agency by a person accepting special waste from a waste hauler pursuant to subsection (f) or (g) of this Section shall include the following information:
- a) The IEPA identification number, name and address of the facility;
 - b) The period (calendar quarter or year) covered by the report;
 - c) For off-site facilities, the IEPA identification number of each hazardous waste generator from which the facility received a non-hazardous special waste during the period; for imported shipments, the report must give the name and address of the foreign generator;
 - d) A description and the quantity of each non-hazardous special waste the facility received from off-site during the period. This information must be listed by IEPA identification number of each generator;
 - e) The method of treatment, storage or disposal for each non-hazardous special waste; and
 - f) A certification signed by the owner or operator of the facility or the owner or operator's authorized representative.

IT IS SO ORDERED.

Board Members J. Dumelle, B. Forcade and M. Nardulli dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion and Order was adopted on the 15th day of December, 1989, by a vote of 4-3.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board