

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 1992

IN THE MATTER OF: )  
 )  
RCRA UPDATE, USEPA REGULATIONS) R92-1  
(7/1/91 - 12/31/91) ) (Identical in Substance  
 ) Rules)

Proposal For Public Comment

PROPOSED OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 7.2 and 22.4(a) of the Environmental Protection Act (Act), the Board is proposing to amend the RCRA hazardous waste regulations. The amendments involve 35 Ill. Adm. Code 720, 721, 722, 724 and 725. The Board will receive public comment for 45 days after the date of publication of the proposed rules in the Illinois Register.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois., Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 22.4(a) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period July 1 through December 31, 1991. The USEPA actions during this period are as follows:

Date	56 Fed. Reg.	Description
July 1, 1991	30195	Wood preserving corrections (R90-11)
July 1, 1991	30200	Liability insurance
July 17, 1991	32688	BIF Corrections (R91-13)
August 19, 1991	41176	K061 Electric Arc Furnace Dust, high zinc subcategory, treatment standard (R91-13)
August 27, 1991	42511	BIF Corrections (R91-13)
September 4, 1991	43705	Hazardous waste exports

September 5, 1991	43877	BIF Corrections (R91-13)
September 23, 1991	47912	Corrections to July 1, 1991, liability insurance amendment
December 23, 1991	66365	Interim status monitoring well locations

Almost all of these have been addressed in prior Dockets. The July 1, 1991, wood preserving corrections were addressed in R90-11. The July 17, August 27 and September 5, 1991 BIF corrections were in R91-13. The August 19, 1991, K061 electric Arc furnace dust correction was also in R91-13.

What remains is probably the smallest RCRA Update Docket ever.

The USEPA amendments include several site-specific delistings. As provided in 35 Ill. Adm. Code 720.122(p), as amended in R90-17, the Board will not adopt site-specific delistings as determined by the USEPA unless and until someone files a proposal showing that the waste will be generated or managed in Illinois.

#### EXTENSION OF TIME ORDERS

Section 7.2(b) of the Act requires that identical in substance rulemakings be completed within one year after the first USEPA action in the batch period. If the Board is unable to do so it must enter an "extension of time" Order. The earliest USEPA action in the Docket was July 1, 1991.

#### HISTORY OF RCRA, UST and UIC ADOPTION

The Illinois RCRA, UST (Underground Storage Tanks) and UIC (Underground Injection Control) regulations, together with more stringent State regulations particularly applicable to hazardous waste, include the following:

702	RCRA and UIC Permit Programs
703	RCRA Permit Program
704	UIC Permit Program
705	Procedures for Permit Issuance
709	Wastestream Authorizations
720	General
721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management

	Facilities
728	USEPA Land Disposal Restrictions
729	Landfills: Prohibited Wastes
730	UIC Operating Requirements
731	Underground Storage Tanks
738	Injection Restrictions

Special procedures for RCRA cases are included in Parts 102, 103, 104 and 106.

Adoption of these regulations has proceeded in several stages. The Phase I RCRA regulations were adopted and amended as follows:

R81-22 45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828, April 23, 1982.

R82-18 51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

Illinois received Phase I interim authorization on May 11, 1982 (47 Fed. Reg. 21043).

The UIC regulations were adopted as follows:

R81-32 47 PCB 93, May 13, 1982; October 15, 1982, 6 Ill. Reg. 12479.

The UIC regulations were amended in R82-18, which is referenced above. The UIC regulations were also amended in R8339:

R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17339, December 20, 1983.

Illinois received UIC authorization February 1, 1984. The Board has updated the UIC regulations:

R85-23 70 PCB 311, June 20, 1986; 10 Ill. Reg. 13274, August 8, 1986.

R86-27 Dismissed at 77 PCB 234, April 16, 1987 (No USEPA amendments through 12/31/86).

R87-29 January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988; (1/1/87 through 6/30/87).

R88-2 June 16, 1988; 12 Ill. Reg. 13700, August 26, 1988. (7/1/87 through 12/31/87).

R88-17 December 15, 1988; 13 Ill. Reg. 478, effective December 30, 1988. (1/1/88 through 6/30/88).

- R89-2 January 25, 1990; 14 Ill. Reg. 3059, effective February 20, 1990 (7/1/88 through 12/31/88).
- R89-11 May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89).
- R90-5 Dismissed March 22, 1990 (12/1/89 through 12/31/89)
- R90-14 Proposed November 8, 1990; November 26, 1990; 14 Ill. Reg. 18681 (1/1/90 through 6/30/90)
- R91-4 Dismissed February 28, 1991 (7/1 through 12/31/90)
- R91-16 Dismissed December 6, 1991 (1/1 through 6/30/91)
- R92-4 Next UIC Docket (7/1/91 through 12/31/91)

The Phase II RCRA regulations included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II regulations were adopted and amended as follows:

- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.
- R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984.

On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison et al. v. IPCB, 127 Ill. App. 3d 446; 468 NE 2d 1339 (Third Dist. 1984).)

The Board updated the RCRA regulations to correspond with USEPA amendments in several dockets. The period of the USEPA regulations covered by the update is indicated in parentheses:

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985. (through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986. (4/25/84 -- 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987.

- Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)
- R86-46 July 16, 1987; August 14, 1987; 11 Ill. Reg. 13435. (7/1/86 --9/30/86)
- R87-5 October-15, 1987; 11 Ill. Reg. 19280, November 30, 1987. (10/1/86 -- 12/31/86)
- 87-26 December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988. (1/1/87 -- 6/30/87)
- R87-32 Correction to R86-1; September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987. Adopted June 14, 1988; 12 Ill. Reg. 12999, August 12, 1988. (7/1/87 -- 12/31/87)
- R88-16 November 17, 1988; 13 Ill. Reg. 447, effective December 28, 1988 (1/1/88 -- 7/31/88). R89-1 September 13, October 18 and November 16, 1989; 13 Ill. Reg. 18278, effective November 13, 1989 (8/1/88 -- 12/31/88)
- R89-9 March 8, 1990; 14 Ill. Reg. 6225, effective April 16, 1990 (1/1/89 through 6/30/89)
- R90-2 July 3 and August 9, 1990; 14 Ill. Reg. 14401, effective August 22, 1990 (7/1/89 through 12/31/89)
- R90-10 August 30 and September 13, 1990; 14 Ill. Reg. 16450, effective September 25, 1990 (TCLP Test) (1/1/90 through 3/31/90)
- R90-11 April 11, May 23, 1991; 15 Ill. Reg. 9323, effective June 17, 1991 (Third Third) (4/1/90 through 6/30/90); Corrected August 8, 1991; Uncorrected August 22, 1991.
- R90-17 Delisting Procedures (See below)
- R91-1 August 8, 1991; 15 Ill. Reg. 14446, effective Septezaber 30, 1991 (Wood Preserving) (7/1/90 through 12/30/90)
- R91-13 April 9, 1992; Boilers and Industrial Furnaces (BIFs) (1/1/91 through 6/30/91)
- R91-26 Wood Preserving Compliance Dates; January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992.
- R92-1 This Docket (7/1/91 through 12/31/91)

Illinois received final authorization for the RCRA program effective January 31, 1986.

The Underground Storage Tank rules were adopted in R86-1 and R86-28, which were RCRA update Dockets discussed above. They are currently being handled in their own Dockets:

- R88-27            April 27, 1989; 13 Ill. Reg. 9519, effective June 12, 1989 (Technical standards, September 23, 1989)
- R89-4            July 27, 1989; 13 Ill. Reg. 15010, effective September 12, 1989 (Financial assurance, October 26, 1989)
- R89-10           February 22, 1990; 14 Ill. Reg. 5797, effective April 10, 1990 (Initial update, through 6/30/89)
- R89-19           April 26, 1990; 14 Ill. Reg. 9454, effective June 4, 1990 (UST State Fund)
- R90-3            June 7, 1990; (7/1/89 - 12/31/89)
- R90-12           February 28, 1991 (1/1/90 - 6/30/90)
- R91-2            July 25, 1991 (7/1 through 12/31/90)
- R91-14           April 9, 1992 (1/1/91 through 6/30/91)
- R92-2            Next UST Docket (7/1/91 through 12/31/91)

The Board added to the federal listings of hazardous waste by listing dioxins pursuant to Section 22.4(d) of the Act:

- R84-34           61 PCB 247, November 21, 1984; 8 Ill. Reg. 24562, effective December 11, 1984.

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by S.B. 1834.

The Board has adopted USEPA delistings at the request of Amoco, Envirite and USX:

- R85-2            69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986.
- R87-30           June 30, 1988; 12 Ill. Reg. 12070, effective July 12, 1988.

R91-12 December 19, 1991; 16 Ill. Reg. 2155, Effective January 27, 1992 (USX)

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

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

The Board has granted a delisting by way of adjusted standard:

AS91-1 Keystone, February 6, 1992

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

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

The Board also adopted in Part 106 special procedures to be followed in certain determinations. Part 106 was adopted in R8522 and amended in R86-46, listed above.

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

R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 4, 1984;

R83-28 February 26, 1986; 10 Ill. Reg. 4875, effective March 7, 1986.

R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, effective November 5, 1986.

The Board's action in adopting emergency regulations in R869 was reversed (CBE and IEPA v. IPCB et al., First District, January 26, 1987).

#### AGENCY OR BOARD ACTION?

The Board has almost always changed "Regional Administrator" to "Agency". However, in some situations "Regional Administrator" has been changed to "USEPAII or "Board". Section 7.2(a)(5) of the Act requires the Board to specify which decisions USEPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced "Regional Administrator" with "USEPA", so as to avoid specifying which office within USEPA is to make a decision.

The regulations will eventually require a RCRA permit for each HWM facility. However, many "existing units" are still in "interim-status". Decisions involving interim status are often more ambiguous as to whether they are permit actions.

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

1. Is the person making the decision applying a Board regulation, or taking action contrary to ("waiving") a Board regulation? It generally takes some form of Board action to "waivell a Board regulation. For example, the Agency clearly has authority to apply a regulation which says "If A, do X; if not A, do Y". On the other hand, regulations which say "If not A, the state shall waive X" are more troubling.
2. Is there a clear standard for action such that the Board can give meaningful review to an Agency decision?
3. Is there a right to appeal? Agency actions are generally appealable to the Board.
4. Does this action concern a person who is required to have a permit anyway? If so there is a preexisting permit relationship which can easily be used as a context for Agency decision. If the action concerns a person who does not have a permit, it is more difficult to place the decision into a procedural context which would be within the Agency's jurisdiction.
5. Does the action result in exemption from the permit requirement itself? If so, Board action is generally required.
6. Does the decision amount to "determining, defining or implementing environmental control standards" within the meaning of Section 5(b) of the Act? If so, it must be made by the Board.

Once it is determined that a decision must be made by the Board, rather than the Agency, it is necessary to determine what procedural context is best suited for that decision. There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking and enforcement. The first



three are methods by which a relation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note that there are differences in the nomenclature for these decisions between the USEPA and Board regulations. These differences have caused past misunderstandings with USEPA.

A variance is initiated by the operator filing a petition pursuant to Title IX of the Act and 35 Ill. Adm. Code 104. The Agency files a recommendation as to what action the Board should take. The Board may conduct a public hearing, and must do so if there is an objection to the variance.

Board variances are: temporary; based on arbitrary or unreasonable hardship; and, require a plan for eventual compliance with the general regulation. To the extent a USEPA decision involves these factors, a board variance is an appropriate mechanism.

A variance is not an appropriate mechanism for a decision which is not based on arbitrary or unreasonable hardship, or which grants permanent relief without eventual compliance. To grant permanent relief, the Board needs to grant a site specific regulation or an adjusted standard pursuant to Sections 27 or 28.1 of the Act, and 35 Ill. Adm. Code 102 or 106.

As a final note, the rules have been edited to establish a uniform usage with respect to "shall", "will", and "may". "Shall" is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "Will" is used when the Board obliges itself to do something. "May" is used when a provision is optional. Some of the USEPA rules appear to say something other than what was intended. Others do not read correctly when "Board" or "Agency" is substituted into the federal rule. The Board does not intend to make any substantive change in the rules by way of these edits.

#### Section 720.110

This Section is drawn from 40 CFR 260.10, which was amended at 56 Fed. Reg. 66365, in connection with changes to the interim status groundwater monitoring rules, adding the following definition:

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state

registration, professional certifications or completion of accredited university courses that enable the individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport.

The Board has proposed to delete the "may be". As the term is used above, this would seem to mean "may or may not be", which is probably not what USEPA means.

"State" registration could mean either "registration in the State in which the facility is located", or it could mean "registration in some state". The Board suggests that the latter is intended. However, the Board has proposed to add a Board note referencing the engineering licensing regulations in Ill. Rev. Stat. 1991, ch. 111, par. 5201 and 68 Ill. Adm. Code 1380.

The Board has proposed to word this as follows:

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields, as demonstrated by state registration, professional certifications or completion of accredited university courses that enable the individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

BOARD NOTE: "State registration" includes, but is not limited to, registration as a professional engineer with the Department of Professional Regulation, pursuant to Ill. Rev. Stat. 1991, ch. 111, par. 5201 and 68 Ill. Adm. Code 1380.

#### Section 720.111

This is the incorporations by reference Section. The current incorporation by reference of SW-846, under the heading NTIS is as follows:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication number SW-846 (Second Edition 1982 as amended by Update I (April, 1984) and Update II (April, 1985)) (Document number PB87-120291).

From the Board's research into Section 721.122, below, it appears that the current Edition is the Third Edition, Revision I. The Board has proposed to add this reference, and solicits comment on the correct document numbers for the several updates, whether it is current, and whether the above reference to the Second Edition ought to be removed. The new reference as proposed by the Board adds the Third Edition as follows:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication number SW-846 (Third Edition, September 1986 (Document number PB88-239223) as amended by Revision I (December 1987) and First Update, January, 1988) (Document Number PB89148076)).

#### Section 721.122

As was discussed in the R91-13 Opinion, page 3, the Board received a public comment in that Docket, relating to an apparent controversy as to whether the corrosivity characteristic can be applied to a waste which is not a liquid. The Board stated that it would address this language in this Docket.

The text of Section 721.122(a) (261.22(a)) is as follows:

A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

- 1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either an EPA test method or an equivalent test method (35 Ill. Adm. Code 720.121). The EPA test method for pH is specified as Method 5.2 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" , incorporated by reference in 35 Ill. Adm. Code 720.111.
- 2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 550C (1300F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" , incorporated by reference in 35 Ill. Adm. Code 720.111, or an equivalent test method (35 Ill. Adm. Code 720.121).

The question concerns wastes which are not liquids. According to the comment, there is no method specified in the references to measure corrosivity for non-liquids. The comment indicates that the "customary practice", in Illinois is to make a 10% solution or slurry of the waste with water, and measure the pH of the solution or slurry. The comment asked that the Board modify the Section to establish a uniform practice for Illinois.

pH is defined as the base ten logarithm of the reciprocal of the hydrogen ion concentration<sup>1</sup> ( $\text{pH} = -\log[\text{H}^+]$ ) of an aqueous solution at a specified temperature and is a measure of the intensity of the acidic or basic nature of the solution. If the concept is to be used as a measure of the "corrosivity" of a solid, an aqueous solution has to be made.

The pH of the solution made from a given waste will depend on at least three factors: the ratio of waste to water; the starting pH of the water used; and, the buffer capacity of the water. None of these factors are specified in the USEPA rule, or, according to the comment, in the cited documents.

A pH of less than 7 is considered "acidic". and a pH greater than 7 is considered "basic" or "alkaline". The presence of impurities, including dissolved gasses, can affect the pH. If a liquid waste is too acidic (i.e., a pH less than or equal to 2) or too basic (i.e., a pH greater than or equal to 12.5), it is considered to exhibit the characteristic of corrosivity.

According to the comment, some labs use tap water for the "customary" test. Tap water usually has a pH greater than 7.0, depending on the treatment which has been given the water. Moreover, tap water usually has a buffer capacity, which may vary greatly between systems. Therefore, one would not expect uniform results between labs using different local tap water.

If one were designing a test to measure the "corrosivity" of a solid waste in this way, one would need to specify the reagents and a standard buffer with which to mix the waste as well as the procedures for sample collection, preparation and measurement of pH. Interferences and limitations would also have to be specified. This type of measurement procedure would be meaningful and provide reproducible results. For example, SW 846 specifies a method (9045) for the pH of a soil sample in which the soil sample is mixed either with Type II (ASTM D 1193) water, for noncalcareous soils, or a 0.1 M calcium chloride solution for calcareous soils, prior to measurement of the pH. The Board solicits comment as to this or any other standardized method which might be used for this purpose.

As an alternative to proposing a specific test, the Board seeks comment on whether the USEPA rule is being misread. In the

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<sup>1</sup>More precisely, the "hydrated hydrogen ion activity", since the hydrogen ion is generally present in aqueous solutions in the hydrated form as a hydronium ion ( $\text{H}_3\text{O}^+$ ) or with additional molecules of water and the molar concentration is approximately equal to the activity only in very dilute solutions (ionic strength less than 0.1).

context of Section 721.122, the Board views "aqueous solid waste" to mean wastes that either contains water or is dissolved in water so as to be able to measure pH. The Board could not discern any rationale for why solid waste would be excluded from a test to determine the characteristic-of corrosivity. The comment should address the question of whether the intent of the USEPA rule at 40 CFR 261.22(a)(1) was to limit pH measurements to liquid phase wastes and not subject solid phase wastes to pH-based corrosivity testing at all, particularly since USEPA has not clearly specified a test method for pH measurement that would apply to "solid wastes".

In addition, the reference to Method 5.2 in Section 721.122 (a)(1) may be wrong. The pH measurement methods in SW-846 that we can find are: Method 9040 (electrometric method for aqueous wastes and those multiphase wastes where the aqueous phase constitutes at least 20% of the total volume of waste); Method 9041 (pH paper method); and Method 9045 (soil pH) all in Chapter 6. The Board has proposed to reference these methods, but solicits comment.

The complete text of Section 720.122(a), as proposed by the Board, is as follows:

A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

- 1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either an EPA test method or an equivalent test method (35 Ill. Adm. Code 720.121). The EPA test methods for pH ~~is~~ are specified as ~~Method 5.2~~ Methods 9040, 9041 or 9045 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", incorporated by reference in 35 Ill. Adm. Code 720.111. EPA Test Method 9045 for noncalcareous soils requiring blending with ASTM Type II water to form an aqueous solution prior to pH measurement shall be applicable to the pH measurement of solid phase wastes and the results shall be reported as "solid waste pH measured in water".
- 2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 550C (1300F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", incorporated by reference in 35 Ill. Adm. Code 720.111, or an equivalent test method (35 Ill. Adm. Code 720.121).

## Section 722.153 and 722.156

These Sections are drawn from 40 CFR 262.53 and 262.56, which were amended at 56 Fed. Reg. 43705, September 4, 1991. This changes addresses at USEPA for receipt of notification and reports of hazardous waste exports. Since the Board incorporated these provisions by reference, this involves only an update of the references.

## Section 724.247

This Section is drawn from 40 CFR 264.147, which was amended at 56 Fed. Reg. 30200. This deals with liability insurance.

The amendment to Section 724.247(a)(2) adds a cross reference to subsection (g).

The amendment to 40 CFR 264.147(b) extends the liability insurance requirement for nonsudden occurrences to "disposal miscellaneous units", in addition to surface impoundments, landfills and land treatment facilities. As was discussed in the R89-1 Opinion, at p. 27, USEPA added this language when it adopted the regulations applicable to "miscellaneous units", but then inadvertently repealed it in another rulemaking. The Board noted the error, and retained the language. However, as adopted by the Board, the provision includes "miscellaneous disposal units". The Board has not proposed to change this to "disposal miscellaneous units", which is more correct.

## Section 725.191

This Section is drawn from 40 CFR 265.191, which was amended at 56 Fed. Reg. 66365, December 23, 1991. This involves the location of monitoring wells at interim status facilities.

The USEPA amendment adds Section 265.191(a)(3):

3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

Subsection (a)(3) provides that the "operator may demonstrate..." This is a true option with the operator, for which "may" is clearly appropriate.

The term "qualified ground-water scientist" is defined in Section 720.110, above.

Subsection (a)(3)(iii) [(a)(3)(C)] is worded awkwardly. It can be improved, as follows:

The **alternate** location ensures detection as early as possible, of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

The Board solicits comment on this change. The proposed language of Section 725.191(a) (3) is as follows:

- 3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified groundwater scientist and establish that:
  - A) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and
  - B) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and
  - C) The alternate location ensures detection as early as possible, of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.
  - D) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this subsection.

## Section 725.247

This Section was drawn from 40 CFR 265.147, which was amended at 56 Fed. Reg. 30200, July 1, 1991, and corrected at 56 Fed. Reg. 47912, September 23, 1991. The Section deals with liability insurance for interim status facilities.

The amendment is to Section 265.147(a)(2) [725.247(a)(2)]. This involves addition of a reference to the financial test of subsection (f).

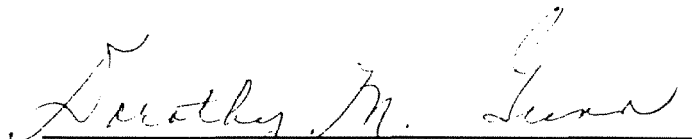
The similar amendment to Section 724.247, above, included a reference to "miscellaneous disposal units". This is not present in the interim status rule, apparently because these units must have permits under Section 724.Subpart X.

The correction reprinted the text of Section 625.147(a)(z)(i) and (ii) [725.247(a)(z)(A) and (B)], which were omitted from the July 1, 1991, Federal Register (and from the 1991 Edition of the CFR). There are apparently no changes to the text of these subsections. The wording differences result from adaptation, in prior Dockets, of the federal rule to Illinois law.

This Opinion supports the Board's Order of this same date. The Board will receive public comment for 45 days after the date of publication of the proposed rules in the Illinois Register.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above proposed opinion was adopted on the 7<sup>th</sup> day of May, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board